

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 SENATE BILL 537

By: Thompson

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6 AS INTRODUCED

7 An Act relating to the Long-Term Care Security Act;
8 amending 63 O.S. 2011, Section 1-1947, as amended by
9 Section 2, Chapter 358, O.S.L. 2012 (63 O.S. Supp.
10 2014, Section 1-1947), which relates to employee
background checks; removing requirement for on-site
supervision during certain period; and providing an
effective date.

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13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

14 SECTION 1. AMENDATORY 63 O.S. 2011, Section 1-1947, as
15 amended by Section 2, Chapter 358, O.S.L. 2012 (63 O.S. Supp. 2014,
16 Section 1-1947), is amended to read as follows:

17 Section 1-1947. A. 1. The State Department of Health and the
18 Department of Human Services shall conduct criminal history
19 background checks on all current employees and applicants for
20 employment of the State Department of Health and Department of Human
21 Services whose responsibilities include working inside long-term
22 care facilities on behalf of the State Department of Health or the
23 Department of Human Services.
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1 2. A criminal history background check shall be conducted on
2 the following individuals whose responsibilities include working
3 inside long-term care facilities:

- 4 a. any current employee of or applicant for employment
5 with the State of Oklahoma,
- 6 b. any individual contracting with the State of Oklahoma,
- 7 c. any individual volunteering for a state-sponsored
8 program,
- 9 d. any individual contracting with the Department of
10 Human Services Advantage Waiver Program who enters any
11 long-term care facility,
- 12 e. any individual providing services to the disabled or
13 elderly in a facility or client's home, and
- 14 f. any individual employed by or volunteering for the
15 State Long-term Care Ombudsman Program.

16 3. The State Department of Health and the Department of Human
17 Services shall not hire or continue employment of an individual that
18 has been convicted of the crimes listed in Section 1-1950.1 of this
19 title. The criminal history background checks required by this
20 section shall follow the requirements of Section 1-1950.1 of this
21 title.

22 B. The State Department of Health and the Department of Human
23 Services shall also submit a list of all employees of the State
24 Department of Health and the Department of Human Services who work

1 inside long-term care facilities to the Department of Corrections.
2 The Department of Corrections shall promptly notify the State
3 Department of Health and the Department of Human Services of any
4 employee who is required to register pursuant to the Sex Offenders
5 Registration Act or the Mary Rippy Violent Crime Offenders
6 Registration Act.

7 C. The State Department of Health shall conduct an employment
8 screening prior to an offer of employment to a Health Facilities
9 Surveyor applicant. Each applicant shall fully disclose all
10 employment history and professional licensure history, including
11 actions taken regarding licensure. The Department shall review the
12 compliance history of the facilities during the time of the
13 applicant's employment. If the applicant served as Director of
14 Nursing or as an administrator during a survey that resulted in
15 substandard quality of care and the facility failed to achieve
16 compliance in an appropriate and timely manner, the applicant shall
17 not be considered for employment. The Department shall also review
18 professional licensure history of each applicant, including actions
19 to suspend or revoke licenses by the Board of Nursing Home
20 Administrators, Board of Nurse Licensure, or other applicable
21 related licenses. Failure to fully disclose employment history and
22 professional licensure actions shall constitute grounds for
23 dismissal or prohibit employment as a surveyor.
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1 D. Except as otherwise provided by subsection F of this
2 section, an employer shall not employ, independently contract with,
3 or grant clinical privileges to any individual who has direct
4 patient access to service recipients of the employer, if one or more
5 of the following are met:

6 1. If the results of a state and national criminal history
7 records check reveal that the subject person has failed to act in
8 conformity with all federal, state and municipal laws as applicable
9 to his or her professional license, certification, permit or
10 employment class, as established by the authority having
11 jurisdiction for the subject person's professional license,
12 certification, permit, or employment class;

13 2. If the individual is currently subject to an exclusion as
14 described under Title 42 of the United States Code, Section 1320a-7;

15 3. If the individual is currently the subject of a
16 substantiated finding of neglect, abuse, verbal abuse,
17 misappropriation of property, maltreatment, or exploitation, by any
18 state or federal agency pursuant to an investigation conducted in
19 accordance with Title 42 of the United States Code, Section 1395i-
20 3(g) (1) (c) or 1396r(g) (1) (c), or Section 1-1950.7 or 1-1951 of this
21 title;

22 4. If the individual is entered on the community services
23 worker registry pursuant to Section 1025.3 of Title 56 of the
24 Oklahoma Statutes;

1 5. If the individual is recorded on the Child Care Restricted
2 Registry pursuant to Section 405.3 of Title 10 of the Oklahoma
3 Statutes;

4 6. If the individual is registered pursuant to the Sex
5 Offenders Registration Act, the Mary Rippy Violent Crime Offenders
6 Registration Act, or registered on another state's sex offender
7 registry; or

8 7. If the individual has direct patient access in an employment
9 class not otherwise described in this subsection and is subject to a
10 disqualifying condition identified in subsection B of Section 1-
11 1950.1 of this title.

12 E. If the results of a registry screening or criminal history
13 check reveal that an employee or a person hired, contracted with, or
14 granted clinical privileges on a temporary basis pursuant to
15 subsection L of this section has been disqualified pursuant to
16 subsection D of this section, the Department shall advise the
17 employer or requesting agency to immediately terminate the person's
18 employment or contract.

19 F. Except as otherwise provided in subsection L of this
20 section, an employer shall not employ, independently contract with,
21 or grant privileges to, an individual who regularly has direct
22 patient access to service recipients of the employer until the
23 employer conducts a registry screening and criminal history record
24 check in compliance with subsection I of this section. This

1 subsection and subsection D of this section shall not apply to the
2 following:

3 1. An individual who is employed by, under independent contract
4 to, or granted clinical privileges with, an employer on or before
5 November 1, 2012. An individual who is exempt under this subsection
6 is not limited to working within the employer with which he or she
7 is employed, under independent contract to, or granted clinical
8 privileges. That individual may transfer to another employer that
9 is under the same ownership with which he or she was employed, under
10 contract, or granted privileges. If that individual wishes to
11 transfer to another employer that is not under the same ownership,
12 he or she may do so provided that a registry screening and criminal
13 history record check are conducted by the new employer in accordance
14 with subsection I of this section.

15 a. If an individual who is exempt under this subsection
16 is subsequently found, upon seeking transfer to
17 another employer, ineligible for employment,
18 independent contract, or clinical privileges, as
19 provided in subsection D of this section, then the
20 individual is no longer exempt and shall be terminated
21 from employment or denied employment.

22 b. If an individual who is exempt under this subsection
23 is subsequently found ineligible for employment,
24 independent contract, or clinical privileges, as

1 provided in subsection D of this section, based on
2 disqualifying events occurring after November 1, 2012,
3 then the individual is no longer exempt and shall be
4 terminated from employment; and

5 2. An individual who is an independent contractor to an
6 employer, if the services for which he or she is contracted are not
7 directly related to the provision of services to a service recipient
8 or if the services for which he or she is contracted allow for
9 direct patient access to service recipients but are not performed on
10 an ongoing basis. This exception includes, but is not limited to,
11 an individual who independently contracts with the employer to
12 provide utility, maintenance, construction, or communications
13 services.

14 G. A nurse aide scholarship program shall not accept into its
15 training program candidates seeking eligibility for listing on the
16 nurse aide registry pursuant to 42 U.S.C. 1395i-3(e)(2)(A) or 42
17 U.S.C. 1396r(e)(2)(A) until the training program conducts a registry
18 screening and criminal history record check in compliance with
19 subsection I of this section. The candidate shall be subject to the
20 administrative fee in paragraph 1 of subsection J of this section.
21 A nurse aide scholarship program shall not accept into enrollment a
22 candidate ineligible for employment pursuant to Section 1-1950.1 of
23 this title.
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1 H. An applicant shall provide the employer a government photo
2 identification of the applicant and written consent for the employer
3 to conduct a registry screening and the Bureau to conduct a state
4 and national criminal history record check under this section. The
5 employer shall maintain the written consent and information
6 regarding the individual's identification in their files for audit
7 purposes.

8 I. 1. Upon receipt of the written consent and identification
9 required under subsection H of this section, an employer shall
10 submit an applicant's name, any aliases, address, former states in
11 which the applicant resided, social security number, and date of
12 birth, through an Internet portal maintained by the Department, as
13 provided in subsection V of this section, for the purpose of
14 conducting a check of all relevant registries established pursuant
15 to federal and state law and regulations for any findings barring
16 employment. If the findings of the check do not reveal any basis
17 that would prevent the employment of the applicant pursuant to
18 subsection D of this section, and where the applicant does not have
19 a monitored employment record pursuant to the provisions in
20 subsection S of this section, the Department shall authorize the
21 collection and submission of fingerprints through an authorized
22 collection site to the Bureau for the performance of a criminal
23 history record check on the applicant, pursuant to Section 150.9 of
24 Title 74 of the Oklahoma Statutes and in accordance with U.S. Public

1 Law 111-148. Results of such search conducted through both the
2 Bureau and FBI databases shall be returned electronically to the
3 Department.

4 2. The Bureau shall retain one set of fingerprints in the
5 Automated Fingerprint Identification System and submit the other set
6 to the FBI for a national criminal history records search.

7 3. Fingerprint images may be rejected by the Bureau or the FBI.
8 A rejection of the fingerprints by the Bureau or the FBI shall
9 require the applicant to be fingerprinted again.

10 4. The applicant shall have ten (10) calendar days, after
11 receipt of authorization as provided in this subsection, to submit
12 his or her fingerprints through an authorized collection site or his
13 or her application shall be deemed withdrawn and the applicant shall
14 be required to commence the application process from the beginning.

15 5. Medicaid home and community-based services waived
16 providers as defined in Section 1915 (c) or 1915 (i) of the federal
17 Social Security Act may voluntarily participate in the submission of
18 fingerprints for applicants. In lieu of fingerprinting, said
19 providers shall obtain a name-based state criminal history record
20 check from the Bureau at the fee established in Section 150.9 of
21 Title 74 of the Oklahoma Statutes. No other fees shall apply to
22 said providers relying on a name-based state criminal history record
23 check. The determination of employment eligibility shall be made by
24

1 said providers based on the criteria established in subsection D of
2 this section.

3 J. 1. The employer shall pay a fee of Nineteen Dollars
4 (\$19.00) to the Department for each applicant submitted for
5 fingerprinting or criminal history monitoring or both fingerprinting
6 and criminal history monitoring pursuant to subsection S of this
7 section. The prospective employee, independent contractor or
8 clinical privileges candidate authorized for fingerprint collection
9 by the Department shall pay an administrative fee of Ten Dollars
10 (\$10.00) at the time of fingerprinting. Subsequent fingerprinting
11 shall not be required of an applicant if the applicant has a
12 monitored employment record pursuant to subsection S of this
13 section.

14 2. The Department shall be responsible for screening and
15 fingerprinting and criminal history monitoring fees for persons
16 participating in a Medicaid program who self-direct their own care,
17 and the applicants of such self-directed care employers.

18 3. The Department shall use National Background Check grant
19 funds, employer fees and administrative fee collections, and
20 available Medicaid matching funds, to reimburse fingerprint
21 collection vendors, pay administrative expenses, and reimburse the
22 Bureau and FBI for each processed fingerprint review and automatic
23 notification services for subsequent arrest. The Department shall
24 reimburse fingerprint collection vendors, the Bureau, and the FBI,

1 the applicable costs for those identified in paragraph 2 of this
2 subsection.

3 4. At the consent of the current employee and request of an
4 employer, the Department shall authorize the collection and
5 submission of fingerprints for the purposes of conducting a criminal
6 history record check on any person excluded from the criminal
7 history requirements pursuant to subsection F of this section. The
8 employer shall pay a fee of Sixty-five Dollars (\$65.00) to the
9 Department for the cost of registry screening, fingerprint
10 collection and submission, and arrest record monitoring. The
11 collection of fingerprints from those employed, contracted, or
12 granted clinical privileges, prior to the effective date established
13 by rule as authorized in subsection Y of this section, is voluntary
14 and not required for the purposes of this section.

15 K. 1. If the criminal history record check results reveal
16 information that precludes the Department from making a final
17 determination of employment eligibility, the employer and applicant
18 shall be given notice of such and the applicant shall have sixty
19 (60) days to make any necessary corrections or additions for the
20 Department to review.

21 2. If the applicant is unable to make corrections or additions
22 to the record within the sixty (60) days, the Department shall deny
23 employment based on the disqualifying results and shall notify the
24 applicant of his or her right to appeal. The notice shall include

1 the reasons why the applicant is not eligible for employment and a
2 statement that the applicant has a right to appeal the decision made
3 by the Department regarding the employment eligibility. The notice
4 shall also include information regarding where to file and describe
5 the appellate procedures.

6 L. If an employer determines it necessary to employ, contract
7 with, or grant clinical privileges to an applicant before receiving
8 the results of the applicant's criminal history record check under
9 this section, the employer may conditionally employ, conditionally
10 contract with, or grant conditional clinical privileges to the
11 applicant if all of the following apply:

12 1. The employer requests the criminal history record check
13 under this section upon conditionally employing, contracting with,
14 or granting clinical privileges to the individual;

15 2. The individual signs a statement in writing that indicates
16 the applicant affirms and agrees to all of the following:

17 a. that the applicant is not disqualified from
18 employment, an independent contract, or clinical
19 privileges, based on the disqualifying criteria
20 defined in subsection D of this section,

21 b. that the applicant agrees that, if the information in
22 the registry screening and criminal history record
23 check conducted under this section does not confirm
24 the individual's statements under subparagraph a of

1 this paragraph, his or her employment, independent
2 contract, or clinical privileges shall be terminated
3 by the employer as required under subsection D of this
4 section unless and until the individual appeals and
5 can provide that the information is incorrect, and

6 c. that the applicant understands that the conditions
7 described in subparagraphs a and b of this paragraph
8 may result in the termination of his or her
9 employment, independent contract, or clinical
10 privileges, and that those conditions are good cause
11 for termination; and

12 3. The period of provisional employment shall not exceed sixty
13 (60) days pending the completion of the required background check.
14 ~~During this time the employee shall be subject to direct on-site~~
15 ~~supervision.~~ The sixty-day time period may only be extended for
16 those employees who are appealing the results of the background
17 check. The time period shall only be extended for the duration of
18 the appeal.

19 M. The Department shall develop and distribute a model form for
20 the statement required under paragraph 2 of subsection L of this
21 section. The Department shall make the model form available to
22 health facilities or agencies subject to this section upon request
23 at no charge.
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1 N. If an individual is employed as a conditional employee, has
2 a conditional independent contract, or is granted conditional
3 clinical privileges under subsection L of this section, and the
4 report described in subsection I of this section does not confirm
5 the individual's statement under subparagraph a of paragraph 2 of
6 subsection L of this section, the employer shall terminate the
7 individual's employment, independent contract, or clinical
8 privileges, as required by subsection E of this section.

9 O. An individual who knowingly provides false information
10 regarding his or her identity, criminal convictions, or
11 substantiated findings on a statement described in subparagraph a of
12 paragraph 2 of subsection L of this section is guilty of a
13 misdemeanor punishable by a fine of not less than One Hundred
14 Dollars (\$100.00) nor more than Three Hundred Dollars (\$300.00),
15 imprisonment in the county jail for not more than thirty (30) days,
16 or by both such fine and imprisonment.

17 P. The Department shall use criminal history record information
18 obtained under subsection I of this section only for the purpose of
19 evaluating an applicant's qualifications for employment, an
20 independent contract, or clinical privileges, in the position for
21 which he or she has applied and for the purposes of subsections H
22 and N of this section. The Department shall not disclose criminal
23 history record information. An individual who knowingly uses or
24 disseminates the criminal history record information obtained under

1 subsection I of this section in violation of this subsection is
2 guilty of a misdemeanor punishable by imprisonment for not more than
3 thirty (30) days or a fine of not more than Five Hundred Dollars
4 (\$500.00), or both. Except for a knowing or intentional release of
5 false information, the Department or employer has no liability in
6 connection with a criminal history record check conducted under this
7 section.

8 Q. As a condition of continued employment, each employee,
9 independent contractor, or individual granted clinical privileges
10 shall agree in writing to report to the employer immediately upon
11 being arraigned or indicted for one or more of the criminal offenses
12 listed in subsection D of this section, upon being convicted of, or
13 pleading guilty or nolo contendere to, one or more of the criminal
14 offenses listed in subsection D of this section, or upon being the
15 subject of a substantiated finding on a relevant registry as
16 described in subsection D of this section. Reporting of an
17 arraignment under this subsection may be cause for leave without
18 pay, placement under direct supervision, restriction from direct
19 patient access, termination, or denial of employment.

20 R. An employer convicted for knowingly and willfully failing to
21 conduct the criminal history checks as required under this section
22 may be found guilty of a misdemeanor punishable by a fine of not
23 less than One Thousand Dollars (\$1,000.00) nor more than Three
24 Thousand Dollars (\$3,000.00), imprisonment in the county jail for

1 not more than thirty (30) days, or by both such fine and
2 imprisonment.

3 S. The Department shall establish a database to store the
4 records of an employer's prospective and enrolled employees, the
5 results of the screening and criminal arrest records search, and an
6 identifier issued by the Bureau for the purposes of receiving an
7 automatic notification from the Bureau if and when a subsequent
8 criminal arrest record submitted into the system matches a set of
9 fingerprints previously submitted in accordance with this section.
10 Upon such notification, the Bureau shall immediately notify the
11 Department and the Department shall immediately notify the
12 respective employee. Information in the database established under
13 this subsection is confidential, is not subject to disclosure under
14 the Oklahoma Open Records Act, and shall not be disclosed to any
15 person except for purposes of this act or for law enforcement
16 purposes. The employee shall promptly respond to Department
17 inquiries regarding the status of an arraignment or indictment.
18 Reporting of an arraignment or indictment under this subsection may
19 be cause for leave without pay, placement under direct supervision,
20 restriction from direct patient access, termination, or denial of
21 employment.

22 T. 1. Any individual who has been disqualified from or denied
23 employment by an employer pursuant to this section may file an
24 appeal with the Department within thirty (30) days of the receipt of

1 the notice of disqualification, if the applicant believes that the
2 criminal history report is inaccurate or that consideration of the
3 passage of time, extenuating circumstances, demonstration of
4 rehabilitation, or relevancy of the particular disqualifying
5 information with respect to the current or proposed employment of
6 the individual merits a waiver of the disqualification or employment
7 denial.

8 2. The Department shall specify in rule the criteria for
9 issuing a waiver of the disqualification or employment denial. The
10 criteria shall include consideration of the passage of time,
11 extenuating circumstances, demonstration of rehabilitation, and
12 relevancy of the particular disqualifying information with respect
13 to the current or proposed employment of the individual.

14 3. The appeal shall be conducted as an individual proceeding
15 pursuant to the Administrative Procedures Act.

16 U. An employer who has acted in good faith to comply with the
17 requirements of this section of law shall be immune from liability
18 in carrying out the provisions of this section.

19 V. The Department shall maintain an electronic web-based system
20 to assist employers, and nurse aide scholarship programs, required
21 to check relevant registries and conduct criminal history record
22 checks of its prospective students, employees, independent
23 contractors, and those to whom the employer would grant clinical
24 privileges. The employer shall maintain the status of the

1 employment, contract, or privileges in the system, and the
2 Department shall provide for an automated notice to employers for
3 those employees, independent contractors, and those granted clinical
4 privileges, who, since the initial check, have been convicted of a
5 disqualifying offense or have been the subject of a substantiated
6 finding on a relevant registry.

7 W. The Department is authorized to obtain any criminal history
8 records maintained by the Bureau and FBI which the Department is
9 required or authorized to request by the provisions of this section.

10 X. There is hereby created in the State Treasury a revolving
11 fund for the Department to be designated the "Oklahoma National
12 Background Check Fund". The fund shall be a continuing fund, not
13 subject to fiscal year limitations, and shall consist of all monies
14 received by the Department from employers and administrative fees
15 collected pursuant to this section. Screening and administrative
16 fees collected pursuant to this section shall be deposited into the
17 fund. All monies accruing to the credit of the fund are hereby
18 appropriated and may be budgeted and expended by the Department for
19 the following purposes:

20 1. Obtaining available Medicaid funds for screening,
21 fingerprinting, the cost of criminal history records obtained from
22 the Bureau and FBI, and program administration;

23 2. Reimbursement of fingerprint collection vendors;
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1 3. Reimbursement to the Bureau and FBI for criminal history
2 records; and

3 4. Administrative and other applicable expenses of the
4 Department related to the background check program.

5 Y. The Department is authorized to phase in implementation of
6 subsections D through V of this section by category of employer.
7 The State Board of Health shall promulgate rules prescribing
8 effective dates and procedures for the implementation of a national
9 criminal history record check for the employers and nurse aide
10 scholarship programs defined in Section 1-1945 of this title. Said
11 dates may be staggered to facilitate implementation of the
12 requirements of this section.

13 Z. On or before November 1, 2015, the Department shall submit a
14 written report to the Legislature detailing the fee collections and
15 costs for the previous three (3) years and revolving fund
16 projections for the next five (5) years. A plan shall be provided
17 to cover the costs of the criminal history checks required under
18 this section if funding is inadequate to cover the costs of the
19 criminal history checks required under this section after November
20 1, 2020.

21 SECTION 2. This act shall become effective November 1, 2015.
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