

1 ENGROSSED HOUSE  
2 BILL NO. 3470

By: Lawson of the House

and

Rosino of the Senate

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7 An Act relating to poor persons; amending 56 O.S.  
8 2021, Sections 1025.1 and 1025.2, which relate to  
9 community-based program of services; proscribing  
10 methods by which services may be provided; defining  
11 term; authorizing certain providers to obtain records  
12 maintained by certain agencies; updating references;  
13 modifying time period; requiring certain providers to  
14 provide a Federal Bureau of Investigation Identity  
15 History Summary Check; and providing an effective  
16 date.

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

18 SECTION 1. AMENDATORY 56 O.S. 2021, Section 1025.1, is  
19 amended to read as follows:

20 Section 1025.1 For the purposes of Sections 1025.2 through  
21 1025.4 of this title:

22 1. "Administrative information" means information reported to  
23 or obtained by the Department of Human Services regarding the  
24 community services provider during the investigative process that  
may be appropriate for internal administrative action but does not  
have the potential to impact the immediate health, safety or welfare

1 of recipients of community services, has not been verified as true  
2 and is for informational purposes only;

3 2. "Area of concern" means an issue that does not rise to the  
4 level of abuse or neglect but may constitute a possible deficiency,  
5 irregularity or deviation from policies and best practices by the  
6 community services provider which has the potential to impact the  
7 health, safety or welfare of recipients of community-based services,  
8 and the Department of Human Services has conducted sufficient  
9 inquiry into the issue to meet the probable cause investigative  
10 standard;

11 3. "Bureau" means the Oklahoma State Bureau of Investigation;

12 4. "Community services provider" means a community-based  
13 program, corporation, or individual who contracts with, or is  
14 licensed or funded by, the Department of Human Services to provide  
15 residential or vocational services through in-person supports or  
16 through the use of remote supports to persons who are elderly or  
17 persons with intellectual or developmental disabilities, or  
18 contracts with the Oklahoma Health Care Authority to provide  
19 services to individuals with intellectual disabilities through a  
20 Home and Community-Based Waiver, except a private ICF/IID;

21 5. "Community services worker" means any person employed by or  
22 under contract with a community services provider who provides, for  
23 compensation or as a volunteer, health-related services, training,  
24 or supportive assistance to persons who are elderly or persons with

1 developmental disabilities, and who is not a licensed health  
2 professional or any person who contracts with the Oklahoma Health  
3 Care Authority to provide specialized foster care, habilitation  
4 training specialist services, or homemaker services to persons with  
5 developmental disabilities;

6 6. "Department" means the Department of Human Services;

7 7. "Developmental disability" means a severe, chronic  
8 disability of a person which:

9 a. is attributable to a mental or physical impairment or  
10 combination of mental and physical impairments, such  
11 as an intellectual development disorder, cerebral  
12 palsy, or autism,

13 b. is manifested before the person attains twenty-two  
14 (22) years of age,

15 c. is likely to continue indefinitely,

16 d. results in substantial functional limitations in three  
17 or more of the following areas of major life activity:

18 (1) self-care,

19 (2) receptive and expressive language,

20 (3) learning,

21 (4) mobility,

22 (5) self-direction,

23 (6) capacity for independent living, and

24 (7) economic self-sufficiency, and

1 e. reflects the person's need for a combination and  
2 sequence of special, interdisciplinary, or generic  
3 care, treatment, or other services which are of  
4 lifelong or extended duration and are individually  
5 planned and coordinated;

6 8. "Health-related services" means those services provided by  
7 community services providers or community services workers to  
8 persons who are elderly or persons with developmental disabilities  
9 that include, but are not limited to, personal hygiene,  
10 transferring, range of motion, supervision or assistance in  
11 activities of daily living, basic nursing care such as taking  
12 temperature, pulse or respiration, positioning, incontinent care,  
13 and identification of signs and symptoms of disease. Certain tasks  
14 that may be performed as basic nursing care by community services  
15 workers require appropriate training provided or approved by the  
16 Department, written agreement by the service recipient's personal  
17 support team, and the primary care physician's acknowledgement and  
18 specific order related to the task. Under such circumstances, basic  
19 nursing care may include, but need not be limited to:

- 20 a. nutrition including meals by gastrostomy tube or  
21 jejeunostomy tube,
- 22 b. blood glucose monitoring,
- 23 c. ostomy bag care,
- 24 d. oral suctioning, and

1 e. administration of oral metered dose inhalers and  
2 nebulizers;

3 9. "Supportive assistance" means the service rendered to  
4 persons with developmental disabilities which is sufficient to  
5 enable such person to meet an adequate level of daily living.  
6 Supportive assistance includes, but is not limited to, training,  
7 supervision, assistance in housekeeping, assistance in the  
8 preparation of meals, and assistance in activities of daily living  
9 as necessary for the health and comfort of persons with  
10 developmental disabilities;

11 10. "Remote supports" means the utilization of technology by  
12 community services workers who are in remote locations, away from  
13 the residences or locations of individuals with developmental or  
14 intellectual disabilities, to provide health-related services or  
15 supportive assistance to those individuals. Communication with  
16 individuals with developmental or intellectual disabilities shall be  
17 achieved with the use of two-way communications by the community  
18 services workers through such means as telephone or video feeds;

19 11. "Maltreatment" means abuse, verbal abuse, sexual abuse,  
20 neglect, financial neglect, exploitation or sexual exploitation of  
21 vulnerable adults as defined in Section 10-103 of Title 43A of the  
22 Oklahoma Statutes or abuse, neglect, sexual abuse or sexual  
23 exploitation of children as defined in Section 1-1-105 of Title 10A  
24 of the Oklahoma Statutes;

1       ~~11.~~ 12. "Personal care" means a level of assistance provided in  
2 the home of an individual to meet the individual's activities of  
3 daily living needs such as bathing, grooming, meal preparation,  
4 light housekeeping, laundry, and care plan-directed errands;

5       ~~12.~~ 13. "Medicaid personal care services provider" means a  
6 program, corporation or individual who provides services under the  
7 state Medicaid program personal care program or ADvantage Waiver to  
8 individuals who are elderly or who have a physical disability;

9       ~~13.~~ 14. "Medicaid personal care assistant" means a person who  
10 provides Medicaid services funded under the state Medicaid program  
11 personal care program, who is not a certified nurse aide or a  
12 licensed professional;

13       ~~14.~~ 15. "Specialized foster care" means the home- and  
14 community-based service as defined in the 1915(c) waiver approved by  
15 the Centers for Medicare and Medicaid Services;

16       ~~15.~~ 16. "Habilitation training specialist services" means the  
17 home- and community-based service as defined in the 1915(c) waiver  
18 approved by the Centers for Medicare and Medicaid Services; and

19       ~~16.~~ 17. "Homemaker services" means the home- and community-  
20 based service as defined in the 1915(c) waiver approved by the  
21 Centers for Medicare and Medicaid Services.

22       SECTION 2.       AMENDATORY       56 O.S. 2021, Section 1025.2, is  
23 amended to read as follows:

24

1 Section 1025.2 A. 1. Except as otherwise provided by  
2 subsection C of this section, before any community services provider  
3 or Medicaid personal care services provider makes an offer to employ  
4 or to contract with a community services worker applicant or a  
5 Medicaid personal care assistant applicant to provide health-related  
6 services, training, or supportive assistance to a person with a  
7 developmental disability, or personal care services to a person who  
8 receives the services of the state Medicaid personal care program,  
9 the community services provider or Medicaid personal care services  
10 provider shall:

- 11 a. provide, prior to a check with the Department of Human  
12 Services, for a criminal history records search to be  
13 made on the community services worker applicant or  
14 Medicaid personal care assistant or contractor  
15 pursuant to the provisions of this section, and
- 16 b. check with the Department of Human Services to  
17 determine if the name of the applicant seeking  
18 employment or contract has been entered on the  
19 community services worker registry created pursuant to  
20 Section 1025.3 of this title. Prior to a decision by  
21 the Department to enter the name of a community  
22 services worker or a Medicaid personal care assistant  
23 on such registry, the Department shall allow for  
24 notice and opportunity for due process for such

1 community services worker or Medicaid personal care  
2 assistant against whom a final investigative finding  
3 by the Department of Human Services of maltreatment of  
4 an individual has been made. If the name of the  
5 applicant seeking employment or a contract with the  
6 community services provider or Medicaid personal care  
7 assistant is listed on the registry as having a  
8 finding by an Administrative Law Judge pursuant to the  
9 requirements of Section 1025.3 of this title, and the  
10 Department has allowed for notice and opportunity for  
11 due process for such applicant, the provider shall not  
12 hire the applicant.

13 2. If the Department of Human Services contracts directly with  
14 a Medicaid personal care assistant, the Department shall follow the  
15 screening procedures required by this section for Medicaid personal  
16 care services providers.

17 3. If the Oklahoma Health Care Authority contracts directly  
18 with a specialized foster care provider or habilitation training  
19 specialist services provider or a homemaker services provider, the  
20 Department shall follow the screening procedures required by this  
21 section for community services providers.

22 4. Community services providers and Medicaid personal care  
23 services providers are authorized to obtain records of any criminal  
24 conviction, guilty plea, or plea of nolo contendere maintained by

1 the Oklahoma State Bureau of Investigation (Bureau) or Federal  
2 Bureau of Investigation (FBI) Identity History Summary Check which  
3 the employer is required or authorized to request pursuant to the  
4 provisions of this section.

5 5. A Medicaid personal care services provider shall request the  
6 Bureau or FBI to conduct a criminal history records search on  
7 Medicaid personal care assistants pursuant to the provisions of  
8 Section ~~1-1950.1~~ 1025.1 of ~~Title 63 of the Oklahoma Statutes~~ this  
9 title.

10 6. The community services provider shall request the Bureau or  
11 FBI to conduct a criminal history records search on a community  
12 services worker desiring employment or a contract with the provider  
13 and shall provide to the Bureau or FBI any relevant information  
14 required by the Bureau or FBI to conduct the search. The community  
15 services provider shall pay a reasonable fee to the Bureau or FBI  
16 for each criminal history records search that is conducted pursuant  
17 to such a request. Such fee shall be determined by the Oklahoma  
18 State Bureau of Investigation or FBI.

19 7. The requirement of a criminal history records search shall  
20 not apply to an offer of employment made to:

21 a. any person who is the holder of a current license or  
22 certificate issued pursuant to the laws of this state  
23 authorizing such person to practice the healing arts,  
24

- b. a registered nurse or practical nurse licensed pursuant to the Oklahoma Nursing Practice Act,
- c. a physical therapist registered pursuant to the Physical Therapy Practice Act,
- d. a physical therapist assistant licensed pursuant to the Physical Therapy Practice Act,
- e. a social worker licensed pursuant to the provisions of the Social Worker's Licensing Act,
- f. a speech pathologist or audiologist licensed pursuant to the Speech Pathology and Audiology Licensing Act,
- g. a dietitian licensed pursuant to the provisions of the Licensed Dietitian Act,
- h. an occupational therapist licensed pursuant to the Occupational Therapy Practice Act, or
- i. a respiratory care practitioner licensed pursuant to the Respiratory Care Practice Act.

B. At the request of the community services provider, the Bureau or FBI shall conduct a criminal history records search on any applicant desiring employment or a contract pursuant to subsection A of this section or any worker employed by the community services provider, including any of the workers specified in paragraph 6 of subsection A of this section, at any time during the period of employment of such worker with the provider.

1 C. A community services provider may make an offer of temporary  
2 employment to a community services worker pending the results of  
3 such criminal history records search and the registry review on the  
4 applicant. The community services provider in such instance shall  
5 provide to the Bureau or FBI the name and relevant information  
6 relating to the applicant within seventy-two (72) hours after the  
7 date the applicant accepts temporary employment. Temporary  
8 employment shall not extend longer than the time necessary to  
9 receive the results of the criminal history records search and  
10 registry review, not to exceed ~~thirty (30)~~ forty-five (45) days.  
11 The community services provider shall not hire or contract with an  
12 applicant as a community services worker on a permanent basis until  
13 the results of the criminal history records search and the registry  
14 review are received.

15 D. Within five (5) days of receipt of a request to conduct a  
16 criminal history records search, the Bureau shall complete the  
17 criminal history records search and report the results of the search  
18 to the requesting community services provider.

19 E. Every community services provider and Medicaid personal care  
20 services provider shall inform each applicant for employment, or  
21 each prospective contract worker, as applicable, that the community  
22 services provider or Medicaid personal care services provider is  
23 required to obtain a criminal history records search and a registry  
24 review before making an offer of permanent employment or a contract

1 with the community services worker or Medicaid personal care  
2 assistant or applicant described in subsection A of this section.

3 F. When a community services provider will be providing remote  
4 supports from outside the State of Oklahoma, the provider shall  
5 provide an FBI Identity History Summary Check on prospective out-of-  
6 state community services workers in lieu of a criminal history  
7 records search by the Oklahoma State Bureau of Investigation  
8 pursuant to this section.

9 G. 1. If the results of any criminal history records search  
10 from any jurisdiction reveals that the subject worker or applicant  
11 has been convicted, or pled guilty or nolo contendere to a felony or  
12 to a misdemeanor assault and battery, the employer shall not hire or  
13 contract with the applicant, but shall immediately terminate the  
14 community services worker's employment, contract, or volunteer  
15 arrangement, subject to the provisions of paragraph 2 of this  
16 subsection.

17 2. The community services provider may request, in writing, a  
18 waiver of the provisions of paragraph 1 of this subsection from the  
19 Director of the Department of Human Services, or a designee of the  
20 Director. The Director or a designee of the Director may waive the  
21 provisions based upon standards promulgated by the Commission for  
22 Human Services after concurrence by the Chief Executive Officer of  
23 the Oklahoma Health Care Authority as the State Medicaid Agency. No  
24 waiver shall be granted for offenses resulting in a felony

1 conviction or plea of guilty or nolo contendere to a felony that  
2 occurred less than five (5) calendar years prior to the date of  
3 request. In no case shall a waiver be granted for employment of a  
4 community services worker who has been convicted of, or pled guilty  
5 or nolo contendere to, a felony count of aggravated assault and  
6 battery, homicide, murder, attempted murder, rape, incest, sodomy,  
7 or abuse, neglect, or financial exploitation of any person entrusted  
8 to the worker's care.

9 ~~G.~~ H. All criminal history records received by the community  
10 services provider or Medicaid personal care services provider are  
11 for the exclusive use of the Department of Human Services, the  
12 Oklahoma Health Care Authority and the community services provider  
13 or Medicaid personal care services provider that requested the  
14 information. Except as otherwise provided by this chapter or upon  
15 court order or with the written consent of the person being  
16 investigated, the criminal history records shall not be released or  
17 otherwise disclosed to any other person or agency.

18 ~~H.~~ I. Any person releasing or disclosing any information in  
19 violation of this section, upon conviction thereof, shall be guilty  
20 of a misdemeanor.

21 ~~I.~~ J. As part of any inspections required by law, the  
22 Department of Human Services shall review the employment files of  
23 the community services provider or Medicaid personal care services  
24 provider required to conduct a criminal history records search to

1 ensure such provider is in compliance with the provisions of this  
2 section.

3 ~~J.~~ K. The Department of Human Services shall disclose all  
4 registry information, all criminal records gathered and any  
5 inspections conducted as a result of this section to the Oklahoma  
6 Health Care Authority upon the request of the Oklahoma Health Care  
7 Authority.

8 SECTION 3. This act shall become effective November 1, 2022.

9 Passed the House of Representatives the 7th day of March, 2022.

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11 \_\_\_\_\_  
12 Presiding Officer of the House  
of Representatives

13 Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2022.

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16 \_\_\_\_\_  
17 Presiding Officer of the Senate