

1 ENGROSSED SENATE  
2 BILL NO. 1385

By: Stanley of the Senate

3 and

4 Lawson of the House

5  
6 An Act relating to home- and community-based  
7 services; amending 56 O.S. 2021, Section 1025.1,  
8 which relates to definitions; modifying and adding  
9 definitions; amending 56 O.S. 2021, Section 1025.2,  
10 which relates to community services provider  
11 requirements; broadening allowed criminal history  
12 records searches for certain providers; authorizing  
13 the Department of Human Services to obtain national  
14 criminal history records search for certain community  
15 services providers; describing certain searches;  
16 broadening applicability of certain provisions;  
17 increasing time period of certain temporary  
18 employment; requiring certain community services  
19 providers to provide national criminal history  
20 records search for certain workers; updating  
21 statutory references; and providing an effective  
22 date.

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

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

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

1. "Administrative information" means information reported to  
or obtained by the Department of Human Services regarding the  
community services provider during the investigative process that

1 may be appropriate for internal administrative action but does not  
2 have the potential to impact the immediate health, safety or welfare  
3 of recipients of community services, has not been verified as true  
4 and is for informational purposes only;

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

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

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

23 5. "Community services worker" means any person employed by or  
24 under contract with a community services provider who provides, for

1 compensation or as a volunteer, health-related services, training,  
2 or supportive assistance to persons who are elderly or persons with  
3 developmental disabilities, and who is not a licensed health  
4 professional or any person who contracts with the Oklahoma Health  
5 Care Authority to provide specialized foster care, habilitation  
6 training specialist services, or homemaker services to persons with  
7 developmental disabilities;

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

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

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

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

17 c. is likely to continue indefinitely,

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

20 (1) self-care,

21 (2) receptive and expressive language,

22 (3) learning,

23 (4) mobility,

24 (5) self-direction,

- 1 (6) capacity for independent living, and  
2 (7) economic self-sufficiency, and  
3 e. reflects the person's need for a combination and  
4 sequence of special, interdisciplinary, or generic  
5 care, treatment, or other services which are of  
6 lifelong or extended duration and are individually  
7 planned and coordinated;

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

- 22 a. nutrition including meals by gastrostomy tube or  
23 ~~jejeunostomy~~ jejunosomy tube,  
24 b. blood glucose monitoring,

- c. ostomy bag care,
- d. oral suctioning, and
- e. administration of oral metered dose inhalers and nebulizers;

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

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

11. "Maltreatment" means abuse, verbal abuse, sexual abuse, neglect, financial neglect, exploitation or sexual exploitation of vulnerable adults as defined in Section 10-103 of Title 43A of the Oklahoma Statutes or abuse, neglect, sexual abuse or sexual

1 exploitation of children as defined in Section 1-1-105 of Title 10A  
2 of the Oklahoma Statutes;

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

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

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

16 ~~14.~~ 15. "Specialized foster care" means the home- and  
17 community-based service as defined in the 1915(c) waiver approved by  
18 the Centers for Medicare and Medicaid Services;

19 ~~15.~~ 16. "Habilitation training specialist services" means the  
20 home- and community-based service as defined in the 1915(c) waiver  
21 approved by the Centers for Medicare and Medicaid Services; and

22 ~~16.~~ 17. "Homemaker services" means the home- and community-  
23 based service as defined in the 1915(c) waiver approved by the  
24 Centers for Medicare and Medicaid Services.

SECTION 2. AMENDATORY 56 O.S. 2021, Section 1025.2, is

amended to read as follows:

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

- a. provide, prior to a check with the Department of Human Services, for a criminal history records search to be made on the community services worker applicant or Medicaid personal care assistant or contractor pursuant to the provisions of this section, and
- b. check with the Department of Human Services to determine if the name of the applicant seeking employment or contract has been entered on the community services worker registry created pursuant to Section 1025.3 of this title. Prior to a decision by the Department to enter the name of a community services worker or a Medicaid personal care assistant

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

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

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



1        4. Community services providers and Medicaid personal care  
2 services providers are authorized to obtain records of any criminal  
3 conviction, guilty plea, or plea of nolo contendere maintained by  
4 the Oklahoma State Bureau of Investigation (Bureau), or a Federal  
5 Bureau of Investigation (FBI) national criminal history records  
6 search, based on fingerprints which the employer is required or  
7 authorized to request pursuant to the provisions of this section.

8        5. The Department of Human Services is authorized to obtain a  
9 national criminal history records search based on submission of  
10 fingerprints for community services providers that provide remote  
11 supports. The search shall:

12            a. be conducted by the Oklahoma State Bureau of  
13 Investigation and the Federal Bureau of Investigation  
14 pursuant to Section 150.9 of Title 74 of the Oklahoma  
15 Statutes, with the Department as the authorized  
16 agency,

17            b. be submitted and have results received between the  
18 Department and the Oklahoma State Bureau of  
19 Investigation through secure electronic transmissions,  
20 and

21            c. be paid for by the applicant or the community services  
22 provider.

23        6. A criminal history records search for community services  
24 providers shall include:

- a. an Oklahoma State Courts Network search, except for community services providers that provide remote supports,
- b. a search of the Restricted Registry established under the Oklahoma Child Care Facilities Licensing Act,
- c. a national criminal history records search for community services providers that provide remote supports in accordance with paragraph 5 of this subsection,
- d. a sex offender registry search conducted by an authorized source, when the individual has lived outside this state within the last five (5) years, and
- e. a search of the Department of Corrections' files maintained pursuant to the Sex Offenders Registration Act and conducted by the Department of Human Services.

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

~~6.~~ 8. The community services provider shall request the Bureau or FBI to conduct a criminal history records search on a community services worker desiring employment or a contract with the provider and shall provide to the Bureau or FBI any relevant information required by the Bureau or FBI to conduct the search. The community

1 services provider shall pay a reasonable fee to the Bureau for each  
2 criminal history records search that is conducted pursuant to such a  
3 request. Such fee shall be determined by the Oklahoma State Bureau  
4 of Investigation.

5 ~~7.~~ 9. A community services provider that provides remote  
6 supports shall request the Department to conduct a national criminal  
7 history records search based on submission of fingerprints on a  
8 community services worker or applicant who will be providing remote  
9 supports and shall provide to the Department any relevant  
10 information required by the Oklahoma State Bureau of Investigation  
11 and the Federal Bureau of Investigation to conduct the search. The  
12 community services worker or applicant shall pay a reasonable fee to  
13 the Oklahoma State Bureau of Investigation for each national  
14 criminal history records search that is conducted pursuant to such a  
15 request. Such fee shall be determined by the Oklahoma State Bureau  
16 of Investigation.

17 10. The requirement of a criminal history records search shall  
18 not apply to an offer of employment made to:

- 19 a. any person who is the holder of a current license or  
20 certificate issued pursuant to the laws of this state  
21 authorizing such person to practice the healing arts,  
22 b. a registered nurse or practical nurse licensed  
23 pursuant to the Oklahoma Nursing Practice Act,  
24

- 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-Language 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 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~~ 10 of subsection A of this section, at any time during the period of employment of such worker with the provider.

C. A community services provider may make an offer of temporary employment to a community services worker pending the results of

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

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

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

1       F. When a community services provider will be providing remote  
2 supports from outside this state, the community services provider  
3 shall provide an FBI national criminal history records search, based  
4 on fingerprints, on out-of-state community services workers or  
5 applicants in lieu of a criminal history records search by the  
6 Oklahoma State Bureau of Investigation pursuant to this section.

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

15       2. The community services provider may request, in writing, a  
16 waiver of the provisions of paragraph 1 of this subsection from the  
17 Director of the Department of Human Services, or a designee of the  
18 Director. The Director or a designee of the Director may waive the  
19 provisions based upon standards promulgated by the Commission for  
20 Human Services after concurrence by the Chief Executive Officer of  
21 the Oklahoma Health Care Authority as the State Medicaid Agency. No  
22 waiver shall be granted for offenses resulting in a felony  
23 conviction or plea of guilty or nolo contendere to a felony that  
24 occurred less than five (5) calendar years prior to the date of

1 request. In no case shall a waiver be granted for employment of a  
2 community services worker who has been convicted of, or pled guilty  
3 or nolo contendere to, a felony count of aggravated assault and  
4 battery, homicide, murder, attempted murder, rape, incest, sodomy,  
5 or abuse, neglect, or financial exploitation of any person entrusted  
6 to the worker's care.

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

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

19 ~~I.~~ J. As part of any inspections required by law, the  
20 Department of Human Services shall review the employment files of  
21 the community services provider or Medicaid personal care services  
22 provider required to conduct a criminal history records search to  
23 ensure such provider is in compliance with the provisions of this  
24 section.

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

SECTION 3. This act shall become effective November 1, 2024.

Passed the Senate the 7th day of March, 2024.

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Presiding Officer of the Senate

Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
2024.

Presiding Officer of the House  
of Representatives