

**SENATE FLOOR VERSION**

February 22, 2024

SENATE BILL NO. 1385

By: Stanley of the Senate

and

Lawson of the House

An Act relating to home- and community-based services; amending 56 O.S. 2021, Section 1025.1, which relates to definitions; modifying and adding definitions; amending 56 O.S. 2021, Section 1025.2, which relates to community services provider requirements; broadening allowed criminal history records searches for certain providers; authorizing the Department of Human Services to obtain national criminal history records search for certain community services providers; describing certain searches; broadening applicability of certain provisions; increasing time period of certain temporary employment; requiring certain community services providers to provide national criminal history records search for certain workers; updating statutory references; and providing an effective date.

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

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        1. "Administrative information" means information reported to  
2 or obtained by the Department of Human Services regarding the  
3 community services provider during the investigative process that  
4 may be appropriate for internal administrative action but does not  
5 have the potential to impact the immediate health, safety or welfare  
6 of recipients of community services, has not been verified as true  
7 and is for informational purposes only;

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

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

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

3 5. "Community services worker" means any person employed by or  
4 under contract with a community services provider who provides, for  
5 compensation or as a volunteer, health-related services, training,  
6 or supportive assistance to persons who are elderly or persons with  
7 developmental disabilities, and who is not a licensed health  
8 professional or any person who contracts with the Oklahoma Health  
9 Care Authority to provide specialized foster care, habilitation  
10 training specialist services, or homemaker services to persons with  
11 developmental disabilities;

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

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

15 a. is attributable to a mental or physical impairment or  
16 combination of mental and physical impairments, such  
17 as an intellectual development disorder, cerebral  
18 palsy, or autism,

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

21 c. is likely to continue indefinitely,

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

24 (1) self-care,

- (2) receptive and expressive language,
- (3) learning,
- (4) mobility,
- (5) self-direction,
- (6) capacity for independent living, and
- (7) economic self-sufficiency, and

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

8. "Health-related services" means those services provided by community services providers or community services workers to persons who are elderly or persons with developmental disabilities that include, but are not limited to, personal hygiene, transferring, range of motion, supervision or assistance in activities of daily living, basic nursing care such as taking temperature, pulse or respiration, positioning, incontinent care, and identification of signs and symptoms of disease. Certain tasks that may be performed as basic nursing care by community services workers require appropriate training provided or approved by the Department, written agreement by the service recipient's personal support team, and the primary care physician's acknowledgement and

specific order related to the task. Under such circumstances, basic nursing care may include, but need not be limited to:

- a. nutrition including meals by gastrostomy tube or ~~jejeunostomy~~ jejunostomy tube,
- 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

1 achieved with the use of two-way communications by community  
2 services workers through such means as telephone or video feeds;

3 11. "Maltreatment" means abuse, verbal abuse, sexual abuse,  
4 neglect, financial neglect, exploitation or sexual exploitation of  
5 vulnerable adults as defined in Section 10-103 of Title 43A of the  
6 Oklahoma Statutes or abuse, neglect, sexual abuse or sexual  
7 exploitation of children as defined in Section 1-1-105 of Title 10A  
8 of the Oklahoma Statutes;

9 ~~11.~~ 12. "Personal care" means a level of assistance provided in  
10 the home of an individual to meet the individual's activities of  
11 daily living needs such as bathing, grooming, meal preparation,  
12 light housekeeping, laundry, and care plan-directed errands;

13 ~~12.~~ 13. "Medicaid personal care services provider" means a  
14 program, corporation or individual who provides services under the  
15 state Medicaid ~~program~~ personal care program or ADvantage Waiver  
16 Program to individuals who are elderly or who have a physical  
17 disability;

18 ~~13.~~ 14. "Medicaid personal care assistant" means a person who  
19 provides Medicaid services funded under the state Medicaid ~~program~~  
20 personal care program, who is not a certified nurse aide or a  
21 licensed professional;

22 ~~14.~~ 15. "Specialized foster care" means the home- and  
23 community-based service as defined in the 1915(c) waiver approved by  
24 the Centers for Medicare and Medicaid Services;

1       ~~15.~~ 16. "Habilitation training specialist services" means the  
2 home- and community-based service as defined in the 1915(c) waiver  
3 approved by the Centers for Medicare and Medicaid Services; and

4       ~~16.~~ 17. "Homemaker services" means the home- and community-  
5 based service as defined in the 1915(c) waiver approved by the  
6 Centers for Medicare and Medicaid Services.

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

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

19           a.   provide, prior to a check with the Department of Human  
20               Services, for a criminal history records search to be  
21               made on the community services worker applicant or  
22               Medicaid personal care assistant or contractor  
23               pursuant to the provisions of this section, and  
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1           b.    check with the Department of Human Services to  
2               determine if the name of the applicant seeking  
3               employment or contract has been entered on the  
4               community services worker registry created pursuant to  
5               Section 1025.3 of this title. Prior to a decision by  
6               the Department to enter the name of a community  
7               services worker or a Medicaid personal care assistant  
8               on such registry, the Department shall allow for  
9               notice and opportunity for due process for such  
10              community services worker or Medicaid personal care  
11              assistant against whom a final investigative finding  
12              by the Department of Human Services of maltreatment of  
13              an individual has been made. If the name of the  
14              applicant seeking employment or a contract with the  
15              community services provider or Medicaid personal care  
16              assistant is listed on the registry as having a  
17              finding by an Administrative Law Judge pursuant to the  
18              requirements of Section 1025.3 of this title, and the  
19              Department has allowed for notice and opportunity for  
20              due process for such applicant, the provider shall not  
21              hire the applicant.

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

3 3. If the Oklahoma Health Care Authority contracts directly  
4 with a specialized foster care provider or habilitation training  
5 specialist services provider or a homemaker services provider, the  
6 Department shall follow the screening procedures required by this  
7 section for community services providers.

8 4. Community services providers and Medicaid personal care  
9 services providers are authorized to obtain records of any criminal  
10 conviction, guilty plea, or plea of nolo contendere maintained by  
11 the Oklahoma State Bureau of Investigation (Bureau), or a Federal  
12 Bureau of Investigation (FBI) national criminal history records  
13 search, based on fingerprints which the employer is required or  
14 authorized to request pursuant to the provisions of this section.

15 5. The Department of Human Services is authorized to obtain a  
16 national criminal history records search based on submission of  
17 fingerprints for community services providers that provide remote  
18 supports. The search shall:

19 a. be conducted by the Oklahoma State Bureau of  
20 Investigation and the Federal Bureau of Investigation  
21 pursuant to Section 150.9 of Title 74 of the Oklahoma  
22 Statutes, with the Department as the authorized  
23 agency,

- 1        b.    be submitted and have results received between the  
2        Department and the Oklahoma State Bureau of  
3        Investigation through secure electronic transmissions,  
4        and  
5        c.    be paid for by the applicant or the community services  
6        provider.

7        6.    A criminal history records search for community services  
8        providers shall include:

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

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

5        ~~6.~~ 8. The community services provider shall request the Bureau  
6 or FBI to conduct a criminal history records search on a community  
7 services worker desiring employment or a contract with the provider  
8 and shall provide to the Bureau or FBI any relevant information  
9 required by the Bureau or FBI to conduct the search. The community  
10 services provider shall pay a reasonable fee to the Bureau for each  
11 criminal history records search that is conducted pursuant to such a  
12 request. Such fee shall be determined by the Oklahoma State Bureau  
13 of Investigation.

14        ~~7.~~ 9. A community services provider that provides remote  
15 supports shall request the Department to conduct a national criminal  
16 history records search based on submission of fingerprints on a  
17 community services worker or applicant who will be providing remote  
18 supports and shall provide to the Department any relevant  
19 information required by the Oklahoma State Bureau of Investigation  
20 and the Federal Bureau of Investigation to conduct the search. The  
21 community services worker or applicant shall pay a reasonable fee to  
22 the Oklahoma State Bureau of Investigation for each national  
23 criminal history records search that is conducted pursuant to such a  
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1 request. Such fee shall be determined by the Oklahoma State Bureau  
2 of Investigation.

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

- 5 a. any person who is the holder of a current license or  
6 certificate issued pursuant to the laws of this state  
7 authorizing such person to practice the healing arts,
- 8 b. a registered nurse or practical nurse licensed  
9 pursuant to the Oklahoma Nursing Practice Act,
- 10 c. a physical therapist registered pursuant to the  
11 Physical Therapy Practice Act,
- 12 d. a physical therapist assistant licensed pursuant to  
13 the Physical Therapy Practice Act,
- 14 e. a social worker licensed pursuant to the provisions of  
15 the Social Worker's Licensing Act,
- 16 f. a speech pathologist or audiologist licensed pursuant  
17 to the Speech-Language Pathology and Audiology  
18 Licensing Act,
- 19 g. a dietitian licensed pursuant to the provisions of the  
20 Licensed Dietitian Act,
- 21 h. an occupational therapist licensed pursuant to the  
22 Occupational Therapy Practice Act, or
- 23 i. a respiratory care practitioner licensed pursuant to  
24 the Respiratory Care Practice Act.

1 B. At the request of the community services provider, the  
2 Bureau shall conduct a criminal history records search on any  
3 applicant desiring employment or a contract pursuant to subsection A  
4 of this section or any worker employed by the community services  
5 provider, including any of the workers specified in paragraph ~~6~~ 10  
6 of subsection A of this section, at any time during the period of  
7 employment of such worker with the provider.

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

22 D. Within five (5) days of receipt of a request to conduct a  
23 criminal history records search, the Bureau shall complete the  
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1 criminal history records search and report the results of the search  
2 to the requesting community services provider.

3 E. Every community services provider and Medicaid personal care  
4 services provider shall inform each applicant for employment, or  
5 each prospective contract worker, as applicable, that the community  
6 services provider or Medicaid personal care services provider is  
7 required to obtain a criminal history records search and a registry  
8 review before making an offer of permanent employment or a contract  
9 with the community services worker or Medicaid personal care  
10 assistant or applicant described in subsection A of this section.

11 F. When a community services provider will be providing remote  
12 supports from outside this state, the community services provider  
13 shall provide an FBI national criminal history records search, based  
14 on fingerprints, on out-of-state community services workers or  
15 applicants in lieu of a criminal history records search by the  
16 Oklahoma State Bureau of Investigation pursuant to this section.

17 G. 1. If the results of any criminal history records search  
18 from any jurisdiction reveals that the subject worker or applicant  
19 has been convicted, or pled guilty or nolo contendere to a felony or  
20 to a misdemeanor assault and battery, the employer shall not hire or  
21 contract with the applicant, but shall immediately terminate the  
22 community services worker's employment, contract, or volunteer  
23 arrangement, subject to the provisions of paragraph 2 of this  
24 subsection.

1        2. The community services provider may request, in writing, a  
2 waiver of the provisions of paragraph 1 of this subsection from the  
3 Director of the Department of Human Services, or a designee of the  
4 Director. The Director or a designee of the Director may waive the  
5 provisions based upon standards promulgated by the Commission for  
6 Human Services after concurrence by the Chief Executive Officer of  
7 the Oklahoma Health Care Authority as the State Medicaid Agency. No  
8 waiver shall be granted for offenses resulting in a felony  
9 conviction or plea of guilty or nolo contendere to a felony that  
10 occurred less than five (5) calendar years prior to the date of  
11 request. In no case shall a waiver be granted for employment of a  
12 community services worker who has been convicted of, or pled guilty  
13 or nolo contendere to, a felony count of aggravated assault and  
14 battery, homicide, murder, attempted murder, rape, incest, sodomy,  
15 or abuse, neglect, or financial exploitation of any person entrusted  
16 to the worker's care.

17        ~~G.~~ H. All criminal history records received by the community  
18 services provider or Medicaid personal care services provider are  
19 for the exclusive use of the Department of Human Services, the  
20 Oklahoma Health Care Authority and the community services provider  
21 or Medicaid personal care services provider that requested the  
22 information. Except as otherwise provided by this chapter or upon  
23 court order or with the written consent of the person being  
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1 investigated, the criminal history records shall not be released or  
2 otherwise disclosed to any other person or agency.

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

6 ~~F.~~ J. As part of any inspections required by law, the  
7 Department of Human Services shall review the employment files of  
8 the community services provider or Medicaid personal care services  
9 provider required to conduct a criminal history records search to  
10 ensure such provider is in compliance with the provisions of this  
11 section.

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

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

18 COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES  
19 February 22, 2024 - DO PASS  
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