

1 STATE OF OKLAHOMA

2 2nd Session of the 59th Legislature (2024)

3 SENATE BILL 1385

By: Stanley

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5
6 AS INTRODUCED

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

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

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

27 Section 1025.1. For the purposes of Sections 1025.2 through
28 1025.4 of this title:

29 1. "Administrative information" means information reported to
30 or obtained by the Department of Human Services regarding the
31 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,
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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,
25

- 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.

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

2 amended to read as follows:

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

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

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

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

20 ~~6.~~ 8. The community services provider shall request the Bureau
21 or FBI to conduct a criminal history records search on a community
22 services worker desiring employment or a contract with the provider
23 and shall provide to the Bureau or FBI any relevant information
24 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,

- 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.

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

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

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