

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 59th Legislature (2023)

4 ENGROSSED SENATE
5 BILL NO. 369

By: Garvin of the Senate

6 and

7 McEntire of the House

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9
10 An Act relating to long-term care; amending 63 O.S.
11 2021, Section 1-1950.1, which relates to criminal
12 history background check for nurse aide; modifying
13 time period of certain requirement; modifying certain
14 restrictions on employment; and providing an
15 effective date.

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

17 SECTION 1. AMENDATORY 63 O.S. 2021, Section 1-1950.1, is
18 amended to read as follows:

19 Section 1-1950.1. A. For purposes of this section:

20 1. "Nurse aide" means any person who provides, for
21 compensation, nursing care or health-related services to residents
22 in a nursing facility, a specialized facility, a residential care
23 home, continuum of care facility, assisted living center or an adult
24 day care center and who is not a licensed health professional. Such

1 term also means any person who provides such services to individuals
2 in their own homes as an employee or contract provider of a home
3 health or home care agency, or as a contract provider of the
4 Medicaid State Plan Personal Care Program;

5 2. "Employer" means any of the following facilities, homes,
6 agencies or programs which are subject to the provision of this
7 section:

- 8 a. a nursing facility or specialized facility as such
9 terms are defined in the Nursing Home Care Act,
- 10 b. a residential care home as such term is defined by the
11 Residential Care Act,
- 12 c. an adult day care center as such term is defined in
13 the Adult Day Care Act,
- 14 d. an assisted living center as such term is defined by
15 the Continuum of Care and Assisted Living Act,
- 16 e. a continuum of care facility as such term is defined
17 by the Continuum of Care and Assisted Living Act,
- 18 f. a home health or home care agency,
- 19 g. the Department of Human Services, in its capacity as
20 an operator of any hospital or health care institution
21 or as a contractor with providers under the Medicaid
22 State Plan Personal Care Program,
- 23 h. any facility operated by the Oklahoma Department of
24 Veterans Affairs, and

1 i. any facility approved and annually reviewed by the
2 United States Department of Veterans Affairs as a
3 medical foster home in which care is provided
4 exclusively to three or fewer veterans;

5 3. "Home health or home care agency" means any person,
6 partnership, association, corporation or other organization which
7 administers, offers or provides health care services or supportive
8 assistance for compensation to three or more ill, disabled, or
9 infirm persons in the temporary or permanent residence of such
10 persons, and includes any subunits or branch offices of a parent
11 home health or home care agency;

12 4. "Bureau" means the Oklahoma State Bureau of Investigation;
13 and

14 5. "Completion of the sentence" means the last day of the
15 entire term of the incarceration imposed by the sentence including
16 any term that is deferred, suspended or subject to parole.

17 B. ~~Before any employer makes an offer to employ or to contract~~
18 ~~with~~ a nurse aide begins employment or a contract to provide nursing
19 care, health-related services or supportive assistance to any
20 individual, the employer shall provide for a criminal history
21 background check to be made on the nurse aide pursuant to the
22 provisions of the Long-Term Care Security Act. If the employer is a
23 facility, home or institution which is part of a larger complex of
24 buildings, the requirement of a criminal history background check

1 shall apply only to an offer of employment or contract made to a
2 person who will work primarily in the immediate boundaries of the
3 facility, home, or institution.

4 Where the provisions of the Long-Term Care Security Act
5 pertaining to registry screenings and national criminal history
6 record ~~check~~ checks are not in effect pending an effective date
7 established in rulemaking, an employer is authorized to obtain any
8 criminal history background records maintained by the Bureau
9 pursuant to the following:

10 1. The employer shall request the Bureau to conduct a criminal
11 history background check on the nurse aide and shall provide to the
12 Bureau any relevant information required by the Bureau to conduct
13 the check. The employer shall pay a fee of Fifteen Dollars (\$15.00)
14 to the Bureau for each criminal history background check that is
15 conducted pursuant to such a request;

16 2. An employer may make an offer of temporary employment to a
17 nurse aide pending the results of the criminal history background
18 check. The employer in such instance shall provide to the Bureau
19 the name and relevant information relating to the person within
20 seventy-two (72) hours after the date the person accepts temporary
21 employment. The employer shall not hire or contract with the nurse
22 aide on a permanent basis until the results of the criminal history
23 background check are received;

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1 3. An employer may accept a criminal history background report
2 less than one (1) year old of a person to whom such employer makes
3 an offer of employment. The report shall be obtained from the
4 previous employer or contractor of such person and shall only be
5 obtained upon the written consent of such person; and

6 4. Every employer while subject to the provisions of this
7 subsection shall inform each applicant for employment, or each
8 prospective contract provider, as applicable, that the employer is
9 required to obtain a criminal history background record before
10 making an offer of permanent employment or contract to a nurse aide.

11 C. 1. If the results of a criminal history background check
12 reveal that the subject person has been convicted of, pled guilty or
13 no contest to, or received a deferred sentence for, a felony or
14 misdemeanor offense for any of the following offenses in any state
15 or federal jurisdiction, the employer shall not hire or contract
16 with the person:

17 a. abuse, neglect, or financial exploitation of any
18 person entrusted to the care or possession of such
19 person,

20 b. rape, incest, or sodomy, or any crime that resulted in
21 the person being registered on a sex offender registry
22 at any time,

23 c. child abuse,

24 d. murder or attempted murder,

- e. manslaughter,
- f. kidnapping,
- g. human trafficking,
- h. aggravated assault and battery,
- ~~h.~~ i. assault and battery with a dangerous weapon, or
- ~~i.~~ j. arson in the first degree.

2. If less than ~~seven (7)~~ five (5) years have elapsed since the completion of sentence, and the results of a criminal history check reveal that the subject person has been convicted of, or pled guilty or no contest to, a felony or misdemeanor offense for any of the following offenses, in any state or federal jurisdiction, the employer shall not hire or contract with the person:

- a. assault,
- b. battery,
- c. indecent exposure and indecent exhibition, except where such offense disqualifies the applicant as a registered sex offender,
- d. pandering,
- e. burglary in the first or second degree,
- f. robbery in the first or second degree,
- g. robbery or attempted robbery with a dangerous weapon, or imitation firearm,
- h. arson in the second degree,

- 1 i. unlawful manufacture, distribution, prescription, or
- 2 dispensing of a Schedule I through V drug as defined
- 3 by the Uniform Controlled Dangerous Substances Act,
- 4 j. grand larceny, or
- 5 k. petit larceny or shoplifting.

6 D. An employer shall not employ or continue employing a person
7 addicted to any Schedule I through V drug as specified by the
8 Uniform Controlled Dangerous Substances Act unless the person
9 produces evidence that the person has successfully completed a drug
10 rehabilitation program.

11 E. All employment eligibility determination records received by
12 the employer pursuant to this section are confidential and are for
13 the exclusive use of the State Department of Health and the employer
14 which requested the information. Except on court order or with the
15 written consent of the person being investigated, the records shall
16 not be released or otherwise disclosed to any other person or
17 agency. These records shall be destroyed after one (1) year from
18 the end of employment of the person to whom such records relate.

19 F. As part of the inspections required by the Nursing Home Care
20 Act, Continuum of Care and Assisted Living Act, the Residential Care
21 Act, and the Adult Day Care Act, the State Department of Health
22 shall review the employment files of any facility, home or
23 institution required to obtain a criminal history background

1 determination to ensure such facilities, homes or institutions are
2 in compliance with the provisions of this section.

3 SECTION 2. This act shall become effective November 1, 2023.

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5 COMMITTEE REPORT BY: COMMITTEE ON HEALTH SERVICES AND LONG-TERM
6 CARE, dated 04/04/2023 - DO PASS.

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