

1 **SENATE FLOOR VERSION**

2 February 16, 2023

3 SENATE BILL NO. 369

By: Garvin

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5  
6 An Act relating to long-term care; amending 63 O.S.  
7 2021, Section 1-1950.1, which relates to criminal  
8 history background check for nurse aide; modifying  
9 time period of certain requirement; modifying certain  
10 restrictions on employment; and providing an  
11 effective date.

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

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

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

16 1. "Nurse aide" means any person who provides, for  
17 compensation, nursing care or health-related services to residents  
18 in a nursing facility, a specialized facility, a residential care  
19 home, continuum of care facility, assisted living center or an adult  
20 day care center and who is not a licensed health professional. Such  
21 term also means any person who provides such services to individuals  
22 in their own homes as an employee or contract provider of a home  
23 health or home care agency, or as a contract provider of the  
24 Medicaid State Plan Personal Care Program;

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

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

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

8           4. "Bureau" means the Oklahoma State Bureau of Investigation;  
9 and

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

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

24

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

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

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

21       3. An employer may accept a criminal history background report  
22 less than one (1) year old of a person to whom such employer makes  
23 an offer of employment. The report shall be obtained from the  
24

1 previous employer or contractor of such person and shall only be  
2 obtained upon the written consent of such person; and

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

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

- 14 a. abuse, neglect, or financial exploitation of any  
15 person entrusted to the care or possession of such  
16 person,
- 17 b. rape, incest, or sodomy, or any crime that resulted in  
18 the person being registered on a sex offender registry  
19 at any time,
- 20 c. child abuse,
- 21 d. murder or attempted murder,
- 22 e. manslaughter,
- 23 f. kidnapping,
- 24 g. human trafficking,

1           h.    aggravated assault and battery,

2           ~~h.~~ i. assault and battery with a dangerous weapon, or

3           ~~i.~~ j. arson in the first degree.

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

10           a.    assault,

11           b.    battery,

12           c.    indecent exposure and indecent exhibition, except  
13                where such offense disqualifies the applicant as a  
14                registered sex offender,

15           d.    pandering,

16           e.    burglary in the first or second degree,

17           f.    robbery in the first or second degree,

18           g.    robbery or attempted robbery with a dangerous weapon,  
19                or imitation firearm,

20           h.    arson in the second degree,

21           i.    unlawful manufacture, distribution, prescription, or  
22                dispensing of a Schedule I through V drug as defined  
23                by the Uniform Controlled Dangerous Substances Act,

24           j.    grand larceny, or

1 k. petit larceny or shoplifting.

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

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

15 F. As part of the inspections required by the Nursing Home Care  
16 Act, Continuum of Care and Assisted Living Act, the Residential Care  
17 Act, and the Adult Day Care Act, the State Department of Health  
18 shall review the employment files of any facility, home or  
19 institution required to obtain a criminal history background  
20 determination to ensure such facilities, homes or institutions are  
21 in compliance with the provisions of this section.

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

23 COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES  
24 February 16, 2023 - DO PASS