

1 ENGROSSED HOUSE AMENDMENT  
TO  
2 ENGROSSED SENATE BILL NO. 1436 By: Garvin of the Senate  
3 and  
4 McEntire of the House  
5  
6

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

13 AMENDMENT NO. 1. Strike the title, enacting clause, and entire bill  
14 and insert:

15 "An Act relating to long-term care; amending 63 O.S.  
16 2021, Section 1-1950.1, which relates to criminal  
17 history background check for nurse aide; modifying  
18 time period of certain requirement; modifying  
19 certain restrictions on employment; and providing an  
20 effective date.

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

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

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

1. "Nurse aide" means any person who provides, for  
compensation, nursing care or health-related services to residents

1 in a nursing facility, a specialized facility, a residential care  
2 home, continuum of care facility, assisted living center or an adult  
3 day care center and who is not a licensed health professional. Such  
4 term also means any person who provides such services to individuals  
5 in their own homes as an employee or contract provider of a home  
6 health or home care agency, or as a contract provider of the  
7 Medicaid State Plan Personal Care Program;

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

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

1 or as a contractor with providers under the Medicaid  
2 State Plan Personal Care Program,

3 h. any facility operated by the Oklahoma Department of  
4 Veterans Affairs, and

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

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

16 4. "Bureau" means the Oklahoma State Bureau of Investigation;  
17 and

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

21 B. ~~Before any employer makes an offer to employ or to contract~~  
22 ~~with~~ a nurse aide begins employment or a contract to provide nursing  
23 care, health-related services or supportive assistance to any  
24 individual, the employer shall provide for a criminal history

1 background check to be made on the nurse aide pursuant to the  
2 provisions of the Long-Term Care Security Act. If the employer is a  
3 facility, home or institution which is part of a larger complex of  
4 buildings, the requirement of a criminal history background check  
5 shall apply only to an offer of employment or contract made to a  
6 person who will work primarily in the immediate boundaries of the  
7 facility, home, or institution.

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

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

20 2. An employer may make an offer of temporary employment to a  
21 nurse aide pending the results of the criminal history background  
22 check. The employer in such instance shall provide to the Bureau  
23 the name and relevant information relating to the person within  
24 seventy-two (72) hours after the date the person accepts temporary

1 employment. The employer shall not hire or contract with the nurse  
2 aide on a permanent basis until the results of the criminal history  
3 background check are received;

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

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

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

20 a. abuse, neglect, or financial exploitation of any  
21 person entrusted to the care or possession of such  
22 person,  
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1           b.    rape, incest, or sodomy, or any crime that resulted in  
2                    the person being registered on a sex offender registry  
3                    at any time,

4           c.    child abuse,

5           d.    murder or attempted murder,

6           e.    manslaughter,

7           f.    kidnapping,

8           g.    human trafficking,

9           h.    aggravated assault and battery,

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

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

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

18           a.    assault,

19           b.    battery,

20           c.    indecent exposure and indecent exhibition, except  
21                    where such offense disqualifies the applicant as a  
22                    registered sex offender,

23           d.    pandering,

24           e.    burglary in the first or second degree,

- 1 f. robbery in the first or second degree,
- 2 g. robbery or attempted robbery with a dangerous weapon,
- 3 or imitation firearm,
- 4 h. arson in the second degree,
- 5 i. unlawful manufacture, distribution, prescription, or
- 6 dispensing of a Schedule I through V drug as defined
- 7 by the Uniform Controlled Dangerous Substances Act,
- 8 j. grand larceny, or
- 9 k. petit larceny or shoplifting.

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

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

23 F. As part of the inspections required by the Nursing Home Care  
24 Act, Continuum of Care and Assisted Living Act, the Residential Care

1 Act, and the Adult Day Care Act, the State Department of Health  
2 shall review the employment files of any facility, home or  
3 institution required to obtain a criminal history background  
4 determination to ensure such facilities, homes or institutions are  
5 in compliance with the provisions of this section.

6 SECTION 2. This act shall become effective November 1, 2022."

7 Passed the House of Representatives the 27th day of April, 2022.

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Presiding Officer of the House of  
Representatives

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Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2022.

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Presiding Officer of the Senate

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