

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 HOUSE BILL 3470

By: Lawson

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5
6 AS INTRODUCED

7 An Act relating to poor persons; amending 56 O.S.
8 2021, Sections 1025.1 and 1025.2, which relate to
9 community-based program of services; proscribing
10 methods by which services may be provided; defining
11 term; authorizing certain providers to obtain records
12 maintained by certain agencies; updating references;
13 modifying time period; requiring certain providers to
14 provide a Federal Bureau of Investigation Identity
15 History Summary Check; and providing an effective
16 date.

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

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

20 Section 1025.1 For the purposes of Sections 1025.2 through
21 1025.4 of this title:

22 1. "Administrative information" means information reported to
23 or obtained by the Department of Human Services regarding the
24 community services provider during the investigative process that
may be appropriate for internal administrative action but does not
have the potential to impact the immediate health, safety or welfare

1 of recipients of community services, has not been verified as true
2 and is for informational purposes only;

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

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

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

21 5. "Community services worker" means any person employed by or
22 under contract with a community services provider who provides, for
23 compensation or as a volunteer, health-related services, training,
24 or supportive assistance to persons who are elderly or persons with

1 developmental disabilities, and who is not a licensed health
2 professional or any person who contracts with the Oklahoma Health
3 Care Authority to provide specialized foster care, habilitation
4 training specialist services, or homemaker services to persons with
5 developmental disabilities;

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

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

- 9 a. is attributable to a mental or physical impairment or
10 combination of mental and physical impairments, such
11 as an intellectual development disorder, cerebral
12 palsy, or autism,
- 13 b. is manifested before the person attains twenty-two
14 (22) years of age,
- 15 c. is likely to continue indefinitely,
- 16 d. results in substantial functional limitations in three
17 or more of the following areas of major life activity:
 - 18 (1) self-care,
 - 19 (2) receptive and expressive language,
 - 20 (3) learning,
 - 21 (4) mobility,
 - 22 (5) self-direction,
 - 23 (6) capacity for independent living, and
 - 24 (7) economic self-sufficiency, and

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

6 8. "Health-related services" means those services provided by
7 community services providers or community services workers to
8 persons who are elderly or persons with developmental disabilities
9 that include, but are not limited to, personal hygiene,
10 transferring, range of motion, supervision or assistance in
11 activities of daily living, basic nursing care such as taking
12 temperature, pulse or respiration, positioning, incontinent care,
13 and identification of signs and symptoms of disease. Certain tasks
14 that may be performed as basic nursing care by community services
15 workers require appropriate training provided or approved by the
16 Department, written agreement by the service recipient's personal
17 support team, and the primary care physician's acknowledgement and
18 specific order related to the task. Under such circumstances, basic
19 nursing care may include, but need not be limited to:

- 20 a. nutrition including meals by gastrostomy tube or
- 21 jejeunostomy tube,
- 22 b. blood glucose monitoring,
- 23 c. ostomy bag care,
- 24 d. oral suctioning, and

1 e. administration of oral metered dose inhalers and
2 nebulizers;

3 9. "Supportive assistance" means the service rendered to
4 persons with developmental disabilities which is sufficient to
5 enable such person to meet an adequate level of daily living.
6 Supportive assistance includes, but is not limited to, training,
7 supervision, assistance in housekeeping, assistance in the
8 preparation of meals, and assistance in activities of daily living
9 as necessary for the health and comfort of persons with
10 developmental disabilities;

11 10. "Remote supports" means the utilization of technology by
12 community services workers who are in remote locations, away from
13 the residences or locations of individuals with developmental or
14 intellectual disabilities, to provide health-related services or
15 supportive assistance to those individuals. Communication with
16 individuals with developmental or intellectual disabilities shall be
17 achieved with the use of two-way communications by the community
18 services workers through such means as telephone or video feeds;

19 11. "Maltreatment" means abuse, verbal abuse, sexual abuse,
20 neglect, financial neglect, exploitation or sexual exploitation of
21 vulnerable adults as defined in Section 10-103 of Title 43A of the
22 Oklahoma Statutes or abuse, neglect, sexual abuse or sexual
23 exploitation of children as defined in Section 1-1-105 of Title 10A
24 of the Oklahoma Statutes;

1 ~~11.~~ 12. "Personal care" means a level of assistance provided in
2 the home of an individual to meet the individual's activities of
3 daily living needs such as bathing, grooming, meal preparation,
4 light housekeeping, laundry, and care plan-directed errands;

5 ~~12.~~ 13. "Medicaid personal care services provider" means a
6 program, corporation or individual who provides services under the
7 state Medicaid program personal care program or ADvantage Waiver to
8 individuals who are elderly or who have a physical disability;

9 ~~13.~~ 14. "Medicaid personal care assistant" means a person who
10 provides Medicaid services funded under the state Medicaid program
11 personal care program, who is not a certified nurse aide or a
12 licensed professional;

13 ~~14.~~ 15. "Specialized foster care" means the home- and
14 community-based service as defined in the 1915(c) waiver approved by
15 the Centers for Medicare and Medicaid Services;

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

19 ~~16.~~ 17. "Homemaker services" means the home- and community-
20 based service as defined in the 1915(c) waiver approved by the
21 Centers for Medicare and Medicaid Services.

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

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

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

1 community services worker or Medicaid personal care
2 assistant against whom a final investigative finding
3 by the Department of Human Services of maltreatment of
4 an individual has been made. If the name of the
5 applicant seeking employment or a contract with the
6 community services provider or Medicaid personal care
7 assistant is listed on the registry as having a
8 finding by an Administrative Law Judge pursuant to the
9 requirements of Section 1025.3 of this title, and the
10 Department has allowed for notice and opportunity for
11 due process for such applicant, the provider shall not
12 hire the applicant.

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

17 3. If the Oklahoma Health Care Authority contracts directly
18 with a specialized foster care provider or habilitation training
19 specialist services provider or a homemaker services provider, the
20 Department shall follow the screening procedures required by this
21 section for community services providers.

22 4. Community services providers and Medicaid personal care
23 services providers are authorized to obtain records of any criminal
24 conviction, guilty plea, or plea of nolo contendere maintained by

1 the Oklahoma State Bureau of Investigation (Bureau) or Federal
2 Bureau of Investigation (FBI) Identity History Summary Check which
3 the employer is required or authorized to request pursuant to the
4 provisions of this section.

5 5. A Medicaid personal care services provider shall request the
6 Bureau or FBI to conduct a criminal history records search on
7 Medicaid personal care assistants pursuant to the provisions of
8 Section ~~1-1950.1~~ 1025.1 of ~~Title 63 of the Oklahoma Statutes~~ this
9 title.

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

19 7. The requirement of a criminal history records search shall
20 not apply to an offer of employment made to:

21 a. any person who is the holder of a current license or
22 certificate issued pursuant to the laws of this state
23 authorizing such person to practice the healing arts,
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- b. a registered nurse or practical nurse licensed 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 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 or FBI 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 of subsection A of this section, at any time during the period of employment of such worker with the provider.

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

15 D. Within five (5) days of receipt of a request to conduct a
16 criminal history records search, the Bureau shall complete the
17 criminal history records search and report the results of the search
18 to the requesting community services provider.

19 E. Every community services provider and Medicaid personal care
20 services provider shall inform each applicant for employment, or
21 each prospective contract worker, as applicable, that the community
22 services provider or Medicaid personal care services provider is
23 required to obtain a criminal history records search and a registry
24 review before making an offer of permanent employment or a contract

1 with the community services worker or Medicaid personal care
2 assistant or applicant described in subsection A of this section.

3 F. When a community services provider will be providing remote
4 supports from outside the State of Oklahoma, the provider shall
5 provide an FBI Identity History Summary Check on prospective out-of-
6 state community services workers in lieu of a criminal history
7 records search by the Oklahoma State Bureau of Investigation
8 pursuant to this section.

9 G. 1. If the results of any criminal history records search
10 from any jurisdiction reveals that the subject worker or applicant
11 has been convicted, or pled guilty or nolo contendere to a felony or
12 to a misdemeanor assault and battery, the employer shall not hire or
13 contract with the applicant, but shall immediately terminate the
14 community services worker's employment, contract, or volunteer
15 arrangement, subject to the provisions of paragraph 2 of this
16 subsection.

17 2. The community services provider may request, in writing, a
18 waiver of the provisions of paragraph 1 of this subsection from the
19 Director of the Department of Human Services, or a designee of the
20 Director. The Director or a designee of the Director may waive the
21 provisions based upon standards promulgated by the Commission for
22 Human Services after concurrence by the Chief Executive Officer of
23 the Oklahoma Health Care Authority as the State Medicaid Agency. No
24 waiver shall be granted for offenses resulting in a felony

1 conviction or plea of guilty or nolo contendere to a felony that
2 occurred less than five (5) calendar years prior to the date of
3 request. In no case shall a waiver be granted for employment of a
4 community services worker who has been convicted of, or pled guilty
5 or nolo contendere to, a felony count of aggravated assault and
6 battery, homicide, murder, attempted murder, rape, incest, sodomy,
7 or abuse, neglect, or financial exploitation of any person entrusted
8 to the worker's care.

9 ~~G.~~ H. All criminal history records received by the community
10 services provider or Medicaid personal care services provider are
11 for the exclusive use of the Department of Human Services, the
12 Oklahoma Health Care Authority and the community services provider
13 or Medicaid personal care services provider that requested the
14 information. Except as otherwise provided by this chapter or upon
15 court order or with the written consent of the person being
16 investigated, the criminal history records shall not be released or
17 otherwise disclosed to any other person or agency.

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

21 ~~I.~~ J. As part of any inspections required by law, the
22 Department of Human Services shall review the employment files of
23 the community services provider or Medicaid personal care services
24 provider required to conduct a criminal history records search to

1 ensure such provider is in compliance with the provisions of this
2 section.

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

8 SECTION 3. This act shall become effective November 1, 2022.

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10 58-2-9277 CMA 12/27/21

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