



Title 63. Public Health and Safety

Oklahoma Statutes Citationized

Title 63. Public Health and Safety

Chapter 1 - Oklahoma Public Health Code

Long-term Care Security Act

Article Article 19 - Nursing Home Care Act

Section 1-1947 - Criminal History Background Check on Employees, Applicants, Contractors, etc. - Employment

Screening

Cite as: O.S. §, ___ __

A. 1. The State Department of Health and the Department of Human Services shall conduct criminal history background checks on all current employees and applicants for employment of the State Department of Health and Department of Human Services whose responsibilities include working inside long-term care facilities on behalf of the State Department of Health or the Department of Human Services.

2. A criminal history background check shall be conducted on the following individuals whose responsibilities include working inside long-term care facilities:

- a. any current employee of or applicant for employment with the State of Oklahoma,
- b. any individual contracting with the State of Oklahoma,
- c. any individual volunteering for a state-sponsored program,
- d. any individual contracting with the Department of Human Services Advantage Waiver Program who enters any long-term care facility,
- e. any individual providing services to the disabled or elderly in a facility or client's home, and
- f. any individual employed by or volunteering for the State Long-term Care Ombudsman Program.

3. The State Department of Health and the Department of Human Services shall not hire or continue employment of an individual that has been convicted of the crimes listed in Section 1-1950.1 of this title. The criminal history background checks required by this section shall follow the requirements of Section 1-1950.1 of this title.

B. The State Department of Health and the Department of Human Services shall also submit a list of all employees of the State Department of Health and the Department of Human Services who work inside long-term care facilities to the Department of Corrections. The Department of Corrections shall promptly notify the State Department of Health and the Department of Human Services of any employee who is required to register pursuant to the Sex Offenders Registration Act or the Mary Rippy Violent Crime Offenders Registration Act.

C. The State Department of Health shall conduct an employment screening prior to an offer of employment to a Health Facilities Surveyor applicant. Each applicant shall fully disclose all employment history and professional licensure history, including actions taken regarding licensure. The Department shall review the compliance history of the facilities during the time of the applicant's employment. If the applicant served as Director of Nursing or as an administrator during a survey that resulted in substandard quality of care and the facility failed to achieve compliance in an appropriate and timely manner, the applicant shall not be considered for employment. The Department shall also review professional licensure history of each applicant, including actions to suspend or revoke licenses by the Board of Nursing Home Administrators, Board of Nurse Licensure, or other applicable related licenses. Failure to fully disclose employment history and professional licensure actions shall constitute grounds for dismissal or prohibit employment as a surveyor.

D. Except as otherwise provided by subsection F of this section, an employer shall not employ, independently contract with, or grant clinical privileges to any individual who has direct patient access to service recipients of the employer, if one or more of the following are met:

1. If the results of a state and national criminal history records check reveal that the subject person has failed to act in conformity with all federal, state and municipal laws as applicable to his or her professional license, certification, permit or employment class, as established by the authority having jurisdiction for the subject person's professional license, certification, permit, or employment class;
 2. If the individual is currently subject to an exclusion as described under Title 42 of the United States Code, Section 1320a-7;
 3. If the individual is currently the subject of a substantiated finding of neglect, abuse, verbal abuse, misappropriation of property, maltreatment, or exploitation, by any state or federal agency pursuant to an investigation conducted in accordance with Title 42 of the United States Code, Section 1395i-3(g)(1)(c) or 1396r(g)(1)(c), or Section 1-1950.7 or 1-1951 of this title;
 4. If the individual is entered on the community services worker registry pursuant to Section 1025.3 of Title 56 of the Oklahoma Statutes;
 5. If the individual is recorded on the Child Care Restricted Registry pursuant to Section 405.3 of Title 10 of the Oklahoma Statutes;
 6. If the individual is registered pursuant to the Sex Offenders Registration Act, the Mary Rippy Violent Crime Offenders Registration Act, or registered on another state's sex offender registry; or
 7. If the individual has direct patient access in an employment class not otherwise described in this subsection and is subject to a disqualifying condition identified in subsection B of Section 1-1950.1 of this title.
- E. If the results of a registry screening or criminal history check reveal that an employee or a person hired, contracted with, or granted clinical privileges on a temporary basis pursuant to subsection L of this section has been disqualified pursuant to subsection D of this section, the Department shall advise the employer or requesting agency to immediately terminate the person's employment or contract.
- F. Except as otherwise provided in subsection L of this section, an employer shall not employ, independently contract with, or grant privileges to, an individual who regularly has direct patient access to service recipients of the employer until the employer conducts a registry screening and criminal history record check in compliance with subsection I of this section. This subsection and subsection D of this section shall not apply to the following:
1. An individual who is employed by, under independent contract to, or granted clinical privileges with, an employer on or before November 1, 2012. An individual who is exempt under this subsection is not limited to working within the employer with which he or she is employed, under independent contract to, or granted clinical privileges. That individual may transfer to another employer that is under the same ownership with which he or she was employed, under contract, or granted privileges. If that individual wishes to transfer to another employer that is not under the same ownership, he or she may do so provided that a registry screening and criminal history record check are conducted by the new employer in accordance with subsection I of this section.
 - a. If an individual who is exempt under this subsection is subsequently found, upon seeking transfer to another employer, ineligible for employment, independent contract, or clinical privileges, as provided in subsection D of this section, then the individual is no longer exempt and shall be terminated from employment or denied employment.
 - b. If an individual who is exempt under this subsection is subsequently found ineligible for employment, independent contract, or clinical privileges, as provided in subsection D of this section, based on disqualifying events occurring after November 1, 2012, then the individual is no longer exempt and shall be terminated from employment; and
 2. An individual who is an independent contractor to an employer, if the services for which he or she is contracted are not directly related to the provision of services to a service recipient or if the services for which he or she is contracted allow for direct patient access to service recipients but are not performed on an ongoing basis. This exception includes, but is not limited to, an individual who independently contracts with the employer to provide utility, maintenance, construction, or communications services.
- G. A nurse aide scholarship program shall not accept into its training program candidates seeking eligibility for listing on the nurse aide registry pursuant to 42 U.S.C. 1395i-3(e)(2)(A) or 42 U.S.C. 1396r(e)(2)(A) until the training program conducts a registry screening and criminal history record check in compliance with subsection I of this section. The candidate shall be subject to the administrative fee in paragraph 1 of subsection J of this section. A nurse aide scholarship program shall not accept into enrollment a candidate ineligible for employment pursuant to Section 1-1950.1 of this title.

H. An applicant shall provide the employer a government photo identification of the applicant and written consent for the employer to conduct a registry screening and the Bureau to conduct a state and national criminal history record check under this section. The employer shall maintain the written consent and information regarding the individual's identification in their files for audit purposes.

I. 1. Upon receipt of the written consent and identification required under subsection H of this section, an employer shall submit an applicant's name, any aliases, address, former states in which the applicant resided, social security number, and date of birth, through an Internet portal maintained by the Department, as provided in subsection V of this section, for the purpose of conducting a check of all relevant registries established pursuant to federal and state law and regulations for any findings barring employment. If the findings of the check do not reveal any basis that would prevent the employment of the applicant pursuant to subsection D of this section, and where the applicant does not have a monitored employment record pursuant to the provisions in subsection S of this section, the Department shall authorize the collection and submission of fingerprints through an authorized collection site to the Bureau for the performance of a criminal history record check on the applicant, pursuant to Section 150.9 of Title 74 of the Oklahoma Statutes and in accordance with U.S. Public Law 111-148. Results of such search conducted through both the Bureau and FBI databases shall be returned electronically to the Department.

2. The Bureau shall retain one set of fingerprints in the Automated Fingerprint Identification System and submit the other set to the FBI for a national criminal history records search.

3. Fingerprint images may be rejected by the Bureau or the FBI. A rejection of the fingerprints by the Bureau or the FBI shall require the applicant to be fingerprinted again.

4. The applicant shall have ten (10) calendar days, after receipt of authorization as provided in this subsection, to submit his or her fingerprints through an authorized collection site or his or her application shall be deemed withdrawn and the applicant shall be required to commence the application process from the beginning.

5. Medicaid home and community-based services waived providers as defined in Section 1915 (c) or 1915 (i) of the federal Social Security Act may voluntarily participate in the submission of fingerprints for applicants. In lieu of fingerprinting, said providers shall obtain a name-based state criminal history record check from the Bureau at the fee established in Section 150.9 of Title 74 of the Oklahoma Statutes. No other fees shall apply to said providers relying on a name-based state criminal history record check. The determination of employment eligibility shall be made by said providers based on the criteria established in subsection D of this section.

J. 1. The employer shall pay a fee of Nineteen Dollars (\$19.00) to the Department for each applicant submitted for fingerprinting or criminal history monitoring or both fingerprinting and criminal history monitoring pursuant to subsection S of this section. The prospective employee, independent contractor or clinical privileges candidate authorized for fingerprint collection by the Department shall pay an administrative fee of Ten Dollars (\$10.00) at the time of fingerprinting. Subsequent fingerprinting shall not be required of an applicant if the applicant has a monitored employment record pursuant to subsection S of this section.

2. The Department shall be responsible for screening and fingerprinting and criminal history monitoring fees for persons participating in a Medicaid program who self-direct their own care, and the applicants of such self-directed care employers.

3. The Department shall use National Background Check grant funds, employer fees and administrative fee collections, and available Medicaid matching funds, to reimburse fingerprint collection vendors, pay administrative expenses, and reimburse the Bureau and FBI for each processed fingerprint review and automatic notification services for subsequent arrest. The Department shall reimburse fingerprint collection vendors, the Bureau, and the FBI, the applicable costs for those identified in paragraph 2 of this subsection.

4. At the consent of the current employee and request of an employer, the Department shall authorize the collection and submission of fingerprints for the purposes of conducting a criminal history record check on any person excluded from the criminal history requirements pursuant to subsection F of this section. The employer shall pay a fee of Sixty-five Dollars (\$65.00) to the Department for the cost of registry screening, fingerprint collection and submission, and arrest record monitoring. The collection of fingerprints from those employed, contracted, or granted clinical privileges, prior to the effective date established by rule as authorized in subsection Y of this section, is voluntary and not required for the purposes of this section.

K. 1. If the criminal history record check results reveal information that precludes the Department from making a final determination of employment eligibility, the employer and applicant shall be given notice of such and the applicant shall have sixty (60) days to make any necessary corrections or additions for the Department to review.

2. If the applicant is unable to make corrections or additions to the record within the sixty (60) days, the Department shall deny employment based on the disqualifying results and shall notify the applicant of his or her right to appeal. The notice shall include the reasons why the applicant is not eligible for employment and a statement that the applicant has a right to appeal the decision made by the Department regarding the employment eligibility. The notice shall also include information regarding where to file and describe the appellate procedures.

L. If an employer determines it necessary to employ, contract with, or grant clinical privileges to an applicant before receiving the results of the applicant's criminal history record check under this section, the employer may conditionally employ, conditionally contract with, or grant conditional clinical privileges to the applicant if all of the following apply:

1. The employer requests the criminal history record check under this section upon conditionally employing, contracting with, or granting clinical privileges to the individual;

2. The individual signs a statement in writing that indicates the applicant affirms and agrees to all of the following:

a. that the applicant is not disqualified from employment, an independent contract, or clinical privileges, based on the disqualifying criteria defined in subsection D of this section,

b. that the applicant agrees that, if the information in the registry screening and criminal history record check conducted under this section does not confirm the individual's statements under subparagraph a of this paragraph, his or her employment, independent contract, or clinical privileges shall be terminated by the employer as required under subsection D of this section unless and until the individual appeals and can provide that the information is incorrect, and

c. that the applicant understands that the conditions described in subparagraphs a and b of this paragraph may result in the termination of his or her employment, independent contract, or clinical privileges, and that those conditions are good cause for termination; and

3. The period of provisional employment shall not exceed sixty (60) days pending the completion of the required background check. During this time the employee shall be subject to direct on-site supervision. The sixty-day time period may only be extended for those employees who are appealing the results of the background check. The time period shall only be extended for the duration of the appeal.

M. The Department shall develop and distribute a model form for the statement required under paragraph 2 of subsection L of this section. The Department shall make the model form available to health facilities or agencies subject to this section upon request at no charge.

N. If an individual is employed as a conditional employee, has a conditional independent contract, or is granted conditional clinical privileges under subsection L of this section, and the report described in subsection I of this section does not confirm the individual's statement under subparagraph a of paragraph 2 of subsection L of this section, the employer shall terminate the individual's employment, independent contract, or clinical privileges, as required by subsection E of this section.

O. An individual who knowingly provides false information regarding his or her identity, criminal convictions, or substantiated findings on a statement described in subparagraph a of paragraph 2 of subsection L of this section is guilty of a misdemeanor punishable by a fine of not less than One Hundred Dollars (\$100.00) nor more than Three Hundred Dollars (\$300.00), imprisonment in the county jail for not more than thirty (30) days, or by both such fine and imprisonment.

P. The Department shall use criminal history record information obtained under subsection I of this section only for the purpose of evaluating an applicant's qualifications for employment, an independent contract, or clinical privileges, in the position for which he or she has applied and for the purposes of subsections H and N of this section. The Department shall not disclose criminal history record information. An individual who knowingly uses or disseminates the criminal history record information obtained under subsection I of this section in violation of this subsection is guilty of a misdemeanor punishable by imprisonment for not more than thirty (30) days or a fine of not more than Five Hundred Dollars (\$500.00), or both. Except for a knowing or intentional release of false information, the Department or employer has no liability in connection with a criminal history record check conducted under this section.

Q. As a condition of continued employment, each employee, independent contractor, or individual granted clinical privileges shall agree in writing to report to the employer immediately upon being arraigned or indicted for one or more of the criminal offenses listed in subsection D of this section, upon being convicted of, or pleading guilty or nolo contendere to, one or more of the criminal offenses

listed in subsection D of this section, or upon being the subject of a substantiated finding on a relevant registry as described in subsection D of this section. Reporting of an arraignment under this subsection may be cause for leave without pay, placement under direct supervision, restriction from direct patient access, termination, or denial of employment.

R. An employer convicted for knowingly and willfully failing to conduct the criminal history checks as required under this section may be found guilty of a misdemeanor punishable by a fine of not less than One Thousand Dollars (\$1,000.00) nor more than Three Thousand Dollars (\$3,000.00), imprisonment in the county jail for not more than thirty (30) days, or by both such fine and imprisonment.

S. The Department shall establish a database to store the records of an employer's prospective and enrolled employees, the results of the screening and criminal arrest records search, and an identifier issued by the Bureau for the purposes of receiving an automatic notification from the Bureau if and when a subsequent criminal arrest record submitted into the system matches a set of fingerprints previously submitted in accordance with this section. Upon such notification, the Bureau shall immediately notify the Department and the Department shall immediately notify the respective employee. Information in the database established under this subsection is confidential, is not subject to disclosure under the Oklahoma Open Records Act, and shall not be disclosed to any person except for purposes of this act or for law enforcement purposes. The employee shall promptly respond to Department inquiries regarding the status of an arraignment or indictment. Reporting of an arraignment or indictment under this subsection may be cause for leave without pay, placement under direct supervision, restriction from direct patient access, termination, or denial of employment.

T. 1. Any individual who has been disqualified from or denied employment by an employer pursuant to this section may file an appeal with the Department within thirty (30) days of the receipt of the notice of disqualification, if the applicant believes that the criminal history report is inaccurate or that consideration of the passage of time, extenuating circumstances, demonstration of rehabilitation, or relevancy of the particular disqualifying information with respect to the current or proposed employment of the individual merits a waiver of the disqualification or employment denial.

2. The Department shall specify in rule the criteria for issuing a waiver of the disqualification or employment denial. The criteria shall include consideration of the passage of time, extenuating circumstances, demonstration of rehabilitation, and relevancy of the particular disqualifying information with respect to the current or proposed employment of the individual.

3. The appeal shall be conducted as an individual proceeding pursuant to the Administrative Procedures Act.

U. An employer who has acted in good faith to comply with the requirements of this section of law shall be immune from liability in carrying out the provisions of this section.

V. The Department shall maintain an electronic web-based system to assist employers, and nurse aide scholarship programs, required to check relevant registries and conduct criminal history record checks of its prospective students, employees, independent contractors, and those to whom the employer would grant clinical privileges. The employer shall maintain the status of the employment, contract, or privileges in the system, and the Department shall provide for an automated notice to employers for those employees, independent contractors, and those granted clinical privileges, who, since the initial check, have been convicted of a disqualifying offense or have been the subject of a substantiated finding on a relevant registry.

W. The Department is authorized to obtain any criminal history records maintained by the Bureau and FBI which the Department is required or authorized to request by the provisions of this section.

X. There is hereby created in the State Treasury a revolving fund for the Department to be designated the "Oklahoma National Background Check Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Department from employers and administrative fees collected pursuant to this section. Screening and administrative fees collected pursuant to this section shall be deposited into the fund. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Department for the following purposes:

1. Obtaining available Medicaid funds for screening, fingerprinting, the cost of criminal history records obtained from the Bureau and FBI, and program administration;
2. Reimbursement of fingerprint collection vendors;
3. Reimbursement to the Bureau and FBI for criminal history records; and
4. Administrative and other applicable expenses of the Department related to the background check program.

Y. The Department is authorized to phase in implementation of subsections D through V of this section by category of employer. The State Board of Health shall promulgate rules prescribing effective dates and procedures for the implementation of a national criminal history record check for the employers and nurse aide scholarship programs defined in Section 1-1945 of this title. Said dates may be staggered to facilitate implementation of the requirements of this section.

Z. On or before November 1, 2015, the Department shall submit a written report to the Legislature detailing the fee collections and costs for the previous three (3) years and revolving fund projections for the next five (5) years. A plan shall be provided to cover the costs of the criminal history checks required under this section if funding is inadequate to cover the costs of the criminal history checks required under this section after November 1, 2020.

Historical Data

Laws 2005, HB 1963, c. 465, § 5, emerg. eff. June 9, 2005; Amended by Laws 2012, HB 2582, c.358, § 2, eff. November 1, 2012 ([superseded document available](#)).

Citationizer[®] Summary of Documents Citing This Document

<i>Cite Name</i>	<i>Level</i>
Oklahoma Attorney General's Opinions	
<i>Cite</i>	<i>Name</i> <i>Level</i>
2007 OK AG 16	Question Submitted by: The Honorable Gene Haynes, District Attorney, District 12 Cited

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None Found.