

O·K·L·A·H·O·M·A



Protective
Health Services

Oklahoma State
Department of Health



National Background Check Program

Implementation Update

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Program Web Site: <http://onbc.health.ok.gov>



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Current law status: HB2582 (2012) 63 O.S. Section 1-1945 *et seq.*

- Effective date of law: November 1, 2012
- Law authorized staggered implementation
- Law defines:
 - Employers affected
 - To whom the law applies based on direct patient access
 - Disqualification registries applicable that must be checked for ***all*** employment classes
 - Barrier criminal offenses applicable based on ***each*** employment class
 - Process for collecting fingerprints and obtaining eligibility determinations





For purposes of the Long-term Care Security Act:

4. "Employer" means any of the following facilities, homes, agencies or programs which are subject to the provisions of Section 1-1947 of this title: [63 O.S. 2012, § 1-1945(4)]

- Nursing Facilities
- Residential Care
- Adult Day Care
- Assisted Living
- Intermediate Care Facility for Individuals with Intellectual Disabilities
- Home Health Agencies
- Hospice Agencies
- Sooner Care Nurse Aide Scholarship Program
- DHS as an operator of any hospital or health care institution
- DHS as a contractor with providers under the Oklahoma Personal Care Program
- Medicaid home- and community-based services waived providers
- Staffing Agencies Contracting with Providers
- Independent Contractors Serving Providers



Title 63 Section 1-1947(D)

- 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:
 - 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;





Applies to those with direct patient access on an ongoing basis [63 O.S. 2012, § 1-1945(9)]

*Means access to a service recipient of an employer, through employment, independent contract, or the granting of clinical privileges, in which the performance of duties involve, or may involve one-on-one contact with a service recipient of the employer **on an ongoing basis**. Such term shall include access to a patient's or resident's property, medical information or financial information. Such term **does not include a volunteer unless the volunteer has duties that are equivalent to the duties of a direct patient access employee and those duties involve one-on-one contact with a patient or resident of an employer, without line of sight supervision by employer staff**;*



Employment Barriers [63 O.S. 2012, § 1-1947(D)]

- Failure to act in conformity with federal, state and municipal laws applicable to their professional license, certificate, permit, or employment class, as established by the authority having jurisdiction for the applicant's license, certificate, permit, or employment class.
- **Translation:** a conviction record is cleared by the Authority responsible for the license or certification (Board of Nursing, Board of Medical Licensure, Board of LTC Administrators, Nurse Aide Registry, etc.)





Role of the Authority Having Jurisdiction

- Where a conviction is present on the Criminal History Record (CHR),
- Determination staff will review the time of the conviction against the initial date of licensure and the applicable law or rule of the authority having jurisdiction
- If it is not clear that the conviction is not a disqualifying event then the applicant will be requested to provide evidence from the authority having jurisdiction of non-disqualification



Role of the Authority Having Jurisdiction

- Where the authority having jurisdiction has previously fingerprinted the applicant
- and uses electronic criminal history monitoring
- separate fingerprinting is not required



RAP BACK

- RAP Sheet – Record of Arrest and Prosecution
- RAP Back – reporting to ONBC program office if an arrest is made after the background check was completed
- A potentially disqualifying arrest is monitored for conviction
- Employer notified of revoked eligibility if convicted for disqualifying offense



Amended Nurse Aide Barrier Convictions

Effective November 1, 2012

- Shall not employ an Aide who was convicted of, pled guilty or no contest to, or received a deferred sentence to, a felony or misdemeanor offense for any of the following offenses in any state:
 - abuse, neglect or financial exploitation of any person entrusted to the care or possession of such person,
 - rape, incest or sodomy,
 - child abuse,
 - murder or attempted murder,
 - manslaughter,
 - kidnapping,
 - aggravated assault and battery,
 - assault and battery with a dangerous weapon, or
 - arson in the first degree.

Hyperlink:
[63 O.S. 2012, Section 1-1950.1\(C\)\(1\)](#)



7-Years Post Completion of Sentence Barriers for Nurse Aides

Effective November 1, 2012

Shall not employ an aide where 7 years have not elapsed since the completion of sentence where the aide was 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:

- assault,
- battery,
- indecent exposure and indecent exhibition, except where such offense disqualifies the applicant as a registered sex offender,
- pandering,
- burglary in the first or second degree,
- robbery in the first or second degree,
- robbery or attempted robbery with a dangerous weapon, or imitation firearm,
- arson in the second degree,
- unlawful manufacture, distribution, prescription, or dispensing of a Schedule I through V drugs as defined by the Uniform Controlled Dangerous Substances Act,
- grand larceny, or
- petit larceny or shoplifting.

Hyperlink:
[63 O.S. 2012, Section 1-1950.1\(C\)\(2\)](#)



Other Employment Barriers [63 O.S. 2012, § 1-1947(D)]

- Currently subject to an exclusion as described under Title 42 of the United States Code, Section 1320a-7
- 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, Sections 1395i-3(g)(1)(C) or 1396r(g)(1)(c), or Sections 1-1950.7 or 1-1951 of Title 63 of the Okla. Statutes





Other Employment Barriers [63 O.S. 2012, § 1-1947(D)]

- Entered on the Community Services Worker Registry
- Recorded on the Child Care Restricted Registry
- Registered Sex or Violent Offender in OK or on another state's sex offender registry.
- Nurse aides and NTSWs are disqualified from employment based on an amended list of barrier crimes
- An individual providing direct patient services in an employment class not otherwise licensed, certified or permitted would be subject to criminal offense barriers defined for nurse aides



Appeals (Waivers) 63 O.S. § 1-1947(T)

- **Notice to the applicant to include the reasons why not eligible for employment and right to appeal**
- **Days to initiate an appeal:** *thirty (30) days from receipt of the notice of disqualification*
- **Types of appeals:**
 - Challenging the registry finding that the applicant is the subject of the results
 - Challenging the accuracy and completeness of the criminal history
 - Requesting a waiver based on a demonstration that the applicant should be allowed to work because he or she does not pose a risk to patients, facilities or their property





Criteria for waiver

- (1) The time elapsed since the disqualifying criminal conviction, whether the applicant has fulfilled the sentence requirements, and whether there are any subsequent arrests or convictions of any nature;
- (2) Any extenuating circumstances such as the offender's age at the time of conviction, substance abuse history and treatment, or mental health issues and treatment;
- (3) Rehabilitation as demonstrated by character references and recommendation letters from past employers, the applicant's record of employment history, education, and training subsequent to conviction;



Criteria for waiver

- (4) The relevancy of the particular disqualifying information with respect to the proposed employment of the individual to include the job type and duties, the extent to which the applicant has unsupervised access to service recipients, whether the crime was committed against a vulnerable child or adult, and whether the conviction was related to an employer subject to the requirements of the Long Term Care Security Act; and





Inaccuracy of Criminal Record

- To demonstrate that the criminal history record is inaccurate, the applicant shall submit to the Department written documents, issued and certified by a governmental entity that demonstrate that the information contained in the criminal history report is inaccurate.

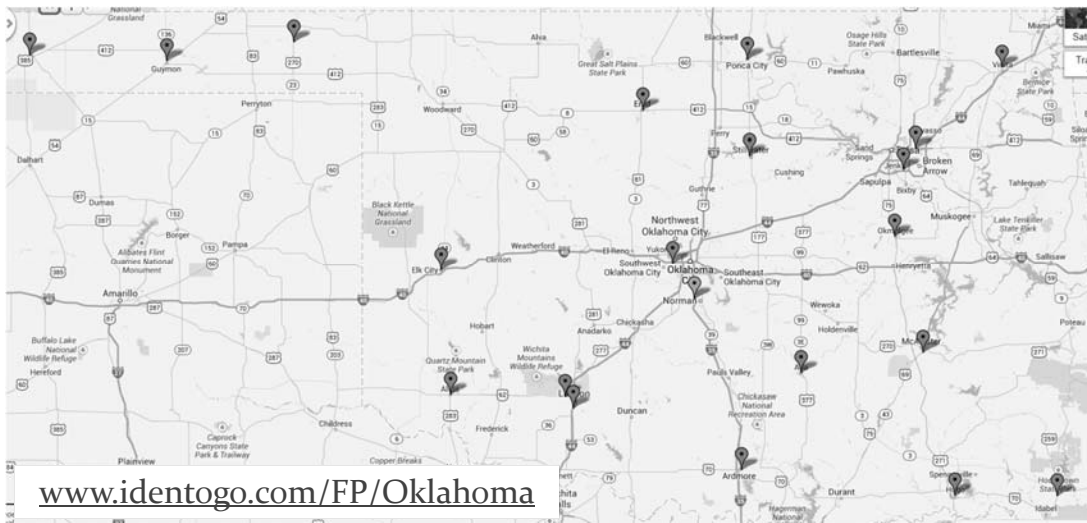


Personnel Files (See Handouts)

- OK-SCREEN Consent and Release
 - OK-SCREEN Final Registry Results
 - OK-SCREEN Employment Authorization Form
 - OSBI Report (Not Required but available for viewing and download in OK-SCREEN where there is a criminal history that does not disqualify.)
-
- FBI Report is NOT AVAILABLE TO THE FACILITY



Live Scan Sites as of 2/5/2014



Effective Dates: all may start as of Feb. 1, 2014

Must Comply by **March 1, 2014:**

- Adult Day Care Centers
- Residential Care Homes

Must Comply by **April 1, 2014:**

- Specialized Nursing Facilities (ICF/IID and ICF/AD)

Must Comply by **May 1, 2014:**

- Applicants for employment with DHS and OSDH working inside LTCFs
- Nursing Facilities





Effective Dates: all may start as of Feb. 1, 2014

Must Comply by **June 1, 2014:**

- Continuum of Care and Assisted Living facilities
- Hospice programs

Must Comply by **July 1, 2014:**

- Medicare Certified Home Care Agencies

Must Comply by **August 1, 2014:**

- All other employers defined in Title 63 O.S. § 1-1945(4)



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Other Effective Dates

- For Nurse Aide Scholarship Programs operated under contract with the OHCA: may begin July 1, required by August 1, 2014.
- Staffing agencies and independent contractors must match the compliance of the contracted employer.
- Medicaid HCBS waived providers as defined in Section 1915(c) or 1915(i) of the SSA may voluntarily participate in the submission of fingerprints for applicants. Instead:
 - a name-based check from the OSBI
 - fee established in Section 150.9 of Title 74 (currently \$15)
 - determination of employment eligibility made by providers based on new barrier criteria



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Screening and Background Check Process

- Employer enters basic applicant info. in system
- Registries and prior screening enrollment status checked
- If cleared & not previously enrolled, employer enrolls applicant for FP and pays \$19 fee (provisional employment allowed)
 - Applicant pays \$10 scanning fee at fingerprinting
 - OSBI/FBI results sent to OSDH
 - OSDH pays OSBI/FBI fingerprinting fee & scanning vendor fee
 - OSDH reviews criminal history & sends determination to employer/employee
 - If cleared employee enrolled in monitoring
 - If not cleared, employee ineligible in system (appeal rights)
- If applicant was cleared through previous or current employment & new employer elects to hire, employer pays \$19 fee and enrolls employee for criminal history monitoring under employer



Where to direct inquiries

- Walter Jacques, Program Director
WalterJ@health.ok.gov 271-9444, ext 56767
- Susan Daniels, Administrative Assistant
SusanD@health.ok.gov 271-9444, ext 56465
- Background Check Program E-Mail
okscreen@health.ok.gov
- IdentoGo Live Scan Sites:
www.identogo.com/FP/Oklahoma
- Full OK-SCREEN Demos -- subscribe to the Program web page to receive updates: <http://onbc.health.ok.gov>



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UPDATED February 4, 2014

The Training Website has now been updated. All prior applicants in the Pilot Website have been removed. The new training website features new enhancements, expanded auto-check function and the ability to test payments and test the scheduling of fingerprints. See new training materials posted below. To test the payment processing functionality please use the following:

The Board of Health approved the proposed emergency rule establishing the effective dates for fingerprinting. The Governor approved the rules January 6, 2014, with an effective date of February 1, 2014. See the adopted rule here: Chapter 2, Procedures of the Oklahoma State Department of Health, January 6, 2014.

Based on comment received through the public comment period, the staggered effective dates for fingerprinting were revised to begin February 1, 2014 and extend through August 1, 2014. The new schedule of effective dates will allow providers to begin submission as of February 1, 2014, but not later than the effective date established, which differs for the various provider and industry segments. The program implementation budget includes funding for provider training which will be scheduled across the state during the seven month period of implementation. The last effective date is August 1, 2014.

Providers must now begin training in the OK-SCREEN portal and plan their migration to the final implementation by the established effective date. A name based background check is now only authorized until the established effective date for your provider group, as shown in the list below.

Apply for your OK-SCREEN Account: Training materials on OK-SCREEN and OK-SCREEN account management are provided below. Providers may use OK-SCREEN now for the pre-screening portion of the applicant review process. For an OK-SCREEN account print this Provider End User Security Agreement Form and submit it to the OK-SCREEN office okscreen@health.ok.gov. Instructions are in the form.



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