

EXCERPT FROM
TITLE 63 OF THE OKLAHOMA STATUTES
NURSING HOME CARE ACT
§63-1-1950.1 - §63-1-1951.

§63-1-1950.1. Definitions - Criminal arrest check on certain persons offered employment - Exemptions.

A. For purposes of this section:

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

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

- a. a nursing facility or specialized facility as such terms are defined in the Nursing Home Care Act,
- b. a residential care home as such term is defined by the Residential Care Act,
- c. an adult day care center as such term is defined in the Adult Day Care Act,
- d. an assisted living center as such term is defined by the Continuum of Care and Assisted Living Act,
- e. a continuum of care facility as such term is defined by the Continuum of Care and Assisted Living Act,
- f. a home health or home care agency, and
- g. the Department of Human Services, in its capacity as an operator of any hospital or health care institution or as a contractor with providers under the Medicaid State Plan Personal Care Program;

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

4. "Bureau" means the Oklahoma State Bureau of Investigation.

B. 1. Except as otherwise provided by subsection C of this section, before any employer makes an offer to employ or to contract with a nurse aide or other person to provide nursing care, health-related services or supportive assistance to any individual except as provided by paragraph 4 of this subsection, the employer shall provide for a criminal history background check to be made on the nurse aide or other person pursuant to the provisions of this section. If the employer is a facility, home or institution which is part of a larger

complex of buildings, the requirement of a criminal history background check shall apply only to an offer of employment or contract made to a person who will work primarily in the immediate boundaries of the facility, home or institution.

2. Except as otherwise specified by subsection D of this section, an employer is authorized to obtain any criminal history background records maintained by the Oklahoma State Bureau of Investigation which the employer is required or authorized to request by the provisions of this section.

3. The employer shall request the Bureau to conduct a criminal history background check on the person and shall provide to the Bureau any relevant information required by the Bureau to conduct the check. The employer shall pay a fee of Fifteen Dollars (\$15.00) to the Bureau for each criminal history background check that is conducted pursuant to such a request.

4. The requirement of a criminal history background check shall not apply to an offer of employment made to:

- a. a nursing home administrator licensed pursuant to the provisions of Section 330.53 of this title,
- b. any person who is the holder of a current license or certificate issued pursuant to the laws of this state authorizing such person to practice the healing arts,
- c. a registered nurse or practical nurse licensed pursuant to the Oklahoma Nursing Practice Act,
- d. a physical therapist registered pursuant to the Physical Therapy Practice Act,
- e. a physical therapist assistant licensed pursuant to the Physical Therapy Practice Act,
- f. a social worker licensed pursuant to the provisions of the Social Worker's Licensing Act,
- g. a speech pathologist or audiologist licensed pursuant to the Speech-Language Pathology and Audiology Licensing Act,
- h. a dietitian licensed pursuant to the provisions of the Licensed Dietitian Act,
- i. an occupational therapist licensed pursuant to the Occupational Therapy Practice Act, or
- j. an individual who is to be employed by a nursing service conducted by and for the adherents of any religious denomination, the tenets of which include reliance on spiritual means through prayer alone for healing.

5. At the request of an employer, the Bureau shall conduct a criminal history background check on any person employed by the employer, including the persons specified in paragraph 4 of this subsection at any time during the period of employment of such person.

C. 1. An employer may make an offer of temporary employment to a nurse aide or other person pending the results of the criminal history background check on the person. The employer in such instance shall provide to the Bureau the name and relevant information relating to the person within seventy-two (72) hours after the date the person accepts temporary employment. The employer shall not hire or contract

with a person on a permanent basis until the results of the criminal history background check are received.

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

D. 1. The Bureau shall not provide to the employer the criminal history background records of a person being investigated pursuant to this section unless the criminal records relate to:

- a. any felony or misdemeanor classified as a crime against the person,
- b. any felony or misdemeanor classified as a crime against public decency or morality,
- c. any felony or misdemeanor classified as domestic abuse pursuant to the provisions of the Protection from Domestic Abuse Act,
- d. a felony violation of any state statute intended to control the possession or distribution of a Schedule I through V drug pursuant to the Uniform Controlled Dangerous Substances Act, and
- e. any felony or misdemeanor classified as a crime against property.

2. Within five (5) days of receiving a request to conduct a criminal history background check, the Bureau shall complete the criminal history background check and report the results of the check to the requesting employer.

E. Every employer who is subject to the provisions of this section shall inform each applicant for employment, or each prospective contract provider, as applicable, that the employer is required to obtain a criminal history background record before making an offer of permanent employment or contract to a nurse aide or other person described in subsection B of this section.

F. 1. If the results of a criminal history background check reveal that the subject person has been convicted of, pled guilty or no contest to, or received a deferred sentence for any of the following offenses, the employer shall not hire or contract with the person:

- a. assault, battery, or assault and battery with a dangerous weapon,
- b. aggravated assault and battery,
- c. murder or attempted murder,
- d. manslaughter, except involuntary manslaughter,
- e. rape, incest or sodomy,
- f. indecent exposure and indecent exhibition,
- g. pandering,
- h. child abuse,
- i. abuse, neglect or financial exploitation of any person entrusted to the care or possession of such person,
- j. burglary in the first or second degree,
- k. robbery in the first or second degree,
- l. robbery or attempted robbery with a dangerous weapon, or imitation firearm,

- m. arson in the first or second degree,
- n. unlawful possession or distribution, or intent to distribute unlawfully, Schedule I through V drugs as defined by the Uniform Controlled Dangerous Substances Act,
- o. grand larceny, or
- p. petit larceny or shoplifting within the past seven (7) years.

2. If the results of a criminal history background check reveal that an employee or a person hired on a temporary basis pursuant to subsection C of this section or any other person who is an employee or contract provider has been convicted of any of the offenses listed in paragraph 1 of this subsection, the employer shall immediately terminate the person's employment or contract. The provisions of this paragraph shall not apply to an employee or contract provider of an employer who has completed the requirements for certification and placement on the nurse aide registry and who has been continuously employed by the employer prior to January 1, 1992.

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

H. All criminal records received by the employer are confidential and are for the exclusive use of the State Department of Health and the employer which requested the information. Except on court order or with the written consent of the person being investigated, the records shall not be released or otherwise disclosed to any other person or agency. These records shall be destroyed after one (1) year from the end of employment of the person to whom such records relate.

I. Any person releasing or disclosing any information received pursuant to this section without the authorization prescribed by this section shall be guilty of a misdemeanor.

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

Added by Laws 1990, HB 2100, c. 149, § 1, eff. October 1, 1990;
Amended by Laws 1991, HB 1690, c. 315, § 1, eff. January 1, 1992;
Amended by Laws 1992, HB 2008, c. 139, § 1, eff. September 1, 1992;
Amended by Laws 1992, HB 1615, c. 249, § 5, eff. September 1, 1992;
Amended by Laws 2004, SB 1184, c. 287, § 1, emerg. eff. July 1, 2004;
Amended by Laws 2004, HB 2723, c. 436, § 12, emerg. eff. June 4, 2004;
Amended by Laws 2010, SB 1289, c. 185, § 1, eff. November 1, 2010.

§63-1-1950.2. Nontechnical medical care providers - Employment by department.

Nothing contained in this act shall be construed as creating an employer-employee relationship between the Department of Human

Services and anyone contracting with the Department of Human Services as a nontechnical medical care provider.

Added by Laws 1991, c. 315, § 2, eff. Jan. 1, 1992.

§63-1-1950.3. Nurses aides - Employment of persons not licensed - Medication aides - Rules for medication administration.

A. 1. Until November 1, 2004, no employer or contractor who is subject to the provisions of Section 1-1950.1 or 1-1950.2 of this title shall use, on a full-time, temporary, per diem, or other basis, any individual who is not a licensed health professional as a nurse aide for more than four (4) months, unless such individual has satisfied all requirements for certification and is eligible for placement on the nurse aide registry maintained by the State Department of Health.

2. a. Effective November 1, 2004, no nursing facility, specialized facility, continuum of care facility, assisted living center, adult day care or residential home shall employ as a nurse aide, on a full-time, temporary, per diem, or any other basis, any individual who is not certified as a nurse aide in good standing and is not eligible for placement on the nurse aide registry maintained by the State Department of Health.
- b. The Department may grant a temporary emergency waiver to the provisions of this paragraph to any nursing facility, continuum of care facility, assisted living center or adult day care or residential home which can demonstrate that such facility, home or institution has been unable to successfully meet its staffing requirements related to the provisions of subparagraph a of this paragraph. No later than September 30, 2004, the State Board of Health shall promulgate rules related to eligibility for receipt of such waiver, and the process and the conditions for obtaining the waiver.
- c. From November 1, 2004, until October 31, 2005, the Department shall not issue any monetary penalties nor shall it issue any licensure deficiency related to the provisions of subparagraph a of this paragraph to a nursing facility, specialized facility, continuum of care facility, assisted living center, adult day care or residential care home, which is unable to comply with the requirements and which has applied for a temporary waiver under subparagraph b of this paragraph, whether or not the waiver application has been approved.

B. 1. Until November 1, 2004, no person shall use an individual as a nurse aide unless the individual:

- a. is enrolled in a Department-approved training and competency evaluation program,
- b. is currently certified and eligible to be listed on the nurse aide registry, or

- c. has completed the requirements for certification and placement on the nurse aide registry.
2. An individual employed as a nurse aide who is enrolled in a Department-approved training and competency evaluation program for nurse aides shall successfully complete such training and competency evaluations within four (4) months of entering the training program.
3. The individual shall obtain certification, and the Department shall place the nurse aide on the registry within thirty (30) days after demonstration of competency.
4. Any nursing facility, specialized facility, continuum of care facility, assisted living center, adult day care or residential care home that employs an individual who is in nurse aide training, as provided in this section, shall ensure that the trainee shall:
 - a. complete the required training and competency program as provided in rules prior to any direct contact with a resident or client,
 - b. not perform any service for which the trainee has not trained and been determined proficient by the instructor, and
 - c. be supervised at all times by no less than a licensed practical nurse.
5. No employer may use as a nurse aide an individual who has not completed the nurse aide training and competency program within the required four-month period.
 - C. For purposes of this section, "four (4) months" means the equivalent of four (4) months of full-time employment as a nurse aide by any employer in any nursing facility, specialized facility, continuum of care facility, assisted living center, adult day care or residential care home.
 - D. 1. The Department may grant a trainee a one-time extension of the four-month training requirement if:
 - a. such requirement causes an undue hardship for the trainee due to unusual circumstances or illness, and
 - b. the trainee has demonstrated a good faith effort to complete the training and competency evaluation program.
 2. The State Board of Health shall promulgate rules related to the review of and the process and conditions for such an extension.
 - E. 1. Certified medication aides, upon successful completion of competency standards or prescribed training courses, shall be eligible to distribute medications or treatments provided by paragraph 2 of this subsection within a correctional facility, as set forth in Section 623 of Title 57 of the Oklahoma Statutes, as well as any correctional facility operated by a contractor of the Department of Corrections, nursing facility, specialized facility, continuum of care facility, assisted living center, adult day care or residential care home.
 2. Certified medication aides may:
 - a. perform fingerstick blood sugars,
 - b. administer diabetic medications, including subcutaneous injections of insulin, provided that the certified medication aide has completed a Department-approved

advanced training program on diabetes and the administration of diabetes medications, including injections,

- c. administer medications, first aid treatments and nutrition; by oral, rectal, vaginal, otic, ophthalmic, nasal, skin, topical, transdermal, and nasogastric/gastrostomy tubes routes, and
- d. administer oral metered dose inhalers and nebulizers;

3. The State Board of Health shall establish rules necessary to ensure the safety of medication administration by certified medication aides, including but not limited to:

- a. competency and practice standards for medication aides,
- b. maintaining a list of skills and functions that medication aides will be able to perform upon completion of certification course work,
- c. certification and recertification requirements for medication aides,
- d. development of criteria and procedures for approval or disapproval of training and competency evaluation programs, and
- e. procedures for denying, suspending, withdrawing, or refusing to renew certification for a medication aide;

4. Each facility shall develop policies and procedures that comply with the provisions of this subsection and rules promulgated by the State Board of Health. This policy shall be reviewed and approved by the facility Medical Director, Director of Nurses and/or Registered Nurse Consultant.

F. Any person convicted of violating any of the provisions of this section or Section 1-1950.1 of this title shall be 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.

*Added by Laws 1991, HB 1690, c. 315, § 3, eff. January 1, 1992;
Amended by Laws 1999, SB 622, c. 129, § 1, eff. November 1, 1999;
Amended by Laws 2002, HB 2604, c. 230, § 15, eff. November 1, 2002;
Amended by Laws 2003, HB 1442, c. 429, § 3, emerg. eff. June 6, 2003);
Amended by Laws 2004, HB 2282, c. 420, § 1, eff. November 1, 2004
(repealed by Laws 2005, HB 2060, c. 1, § 92, emerg. eff. March 15, 2005); Amended by Laws 2004, HB 2723, c. 436, § 13, emerg. eff. June 4, 2004; Multiple amendment repealed by Laws 2005, HB 2060, c. 1, § 92, emerg. eff. March 15, 2005; Amended by Laws 2005, HB 1688, c. 460, § 12, eff. November 1, 2005; Amended by Laws 2006, HB 2518, c. 79, § 2, emerg. eff. April 21, 2006.*

§63-1-1950.4. Nurse aides - Uniform employment application.

A. 1. The State Department of Health, in conjunction with the Office of the State Long-term Care Ombudsman of the Department of Human Services, shall develop a uniform employment application to be used in the hiring of nurse aide staff by a nursing facility or a specialized facility as such terms are defined in the Nursing Home Care Act, a residential care home, as such term is defined by the

Residential Care Act, an assisted living center as such term is defined by the Continuum of Care and Assisted Living Act, a continuum of care facility as defined by the Continuum of Care and Assisted Living Act, a hospice inpatient facility or program providing hospice services as such terms are defined by the Hospice Licensing Act, an adult day care center as such term is defined by the Adult Day Care Act, and a home care agency as defined by the Home Care Act. Such uniform application shall be used as the only application for employment of nurse aides in such facilities on and after January 1, 2001.

2. Nothing in this section shall prohibit the State Department of Health or any other state agency from requiring applicants for any position in the classified service to be certified by the state using the State of Oklahoma Employment Application.

B. The uniform employment application shall be designed to gather all pertinent information for entry into the nurse aide registry maintained by the State Department of Health. The uniform application shall also contain:

1. A signature from the applicant to confirm or deny any previous felony conviction;

2. A release statement for the applicant to sign giving the State Department of Health and the Oklahoma State Bureau of Investigation the authority to proceed with state criminal history record checks; and

3. Such other information deemed necessary by the Department.

C. The Department shall provide implementation training on the use of the uniform employment application.

Added by Laws 2000, HB 2019, c. 340, § 23, emerg. eff. July 1, 2000; Amended by Laws 2001, HB 1768, c. 381, § 25, emerg. eff. June 4, 2001; Amended by Laws 2003, SB 591, c. 339, § 5, eff. November 1, 2003.

§63-1-1950.4a. Uniform employment application for nurse aides - Providing false information - Penalties.

A. It shall be unlawful for any person to provide false information regarding a criminal conviction on the uniform employment application for nurse aides. The State Department of Health shall amend the uniform employment application to include a statement informing the applicant of this provision.

B. Any violation of the provisions of subsection A of this section shall constitute a misdemeanor. Every violator, upon conviction, shall be punished by a fine not to exceed Five Hundred Dollars (\$500.00), by imprisonment in the county jail for a term of not more than one (1) year, or by both such fine and imprisonment.
Added by Laws 2003, HB678 c. 344, § 1, emerg. eff. May 29, 2003.

§63-1-1950.5. Caregiver - Solicitation or acceptance of gifts - Offense.

A. 1. It shall be unlawful for a caregiver to solicit or accept anything of value greater than One Dollar (\$1.00) from any person in the caregiver's care; provided, however, nothing in this section shall be construed as prohibiting a group of individuals, including family members and friends of residents, from establishing an employee

recognition program consisting of voluntary, anonymous and confidential donations to care providers; provided further, no care provider shall be included in the group making decisions regarding the disbursement. Such donations may be disbursed pursuant to procedures established by the group.

2. As used in this section, "caregiver" means a person who is:
 - a. the paid agent or employee of:
 - (1) an assisted living center,
 - (2) a nursing facility, specialized facility, or residential care home as such terms are defined in Section 1-1902 of this title,
 - (3) an adult day care center as such term is defined in Section 1-872 of this title,
 - (4) a home health or home care agency, or
 - (5) the Department of Human Services, in its capacity as an operator of any hospital or health care institution, or as a contractor with providers under the Personal Care Services Program, or
 - b. a personal care attendant hired by a consumer under the Oklahoma Consumer-Directed Personal Assistance and Support Services (Oklahoma CD-PASS) Program.

"Caregiver" does not include a guardian, limited guardian, or conservator as such terms are defined in the Oklahoma Guardianship and Conservatorship Act.

B. Any person who violates the provisions of paragraph 1 of subsection A of this section, upon conviction, shall be guilty of a misdemeanor.

Added by Laws 2001, SB 345, c. 393, § 5, eff. November 1, 2001; Amended by Laws 2003, SB 658, c. 71, § 1, eff. November 1, 2003; Amended by Laws 2004, SB 1109, c. 249, § 4, eff. November 1, 2004 (repealed by Laws 2005, HB 2060, c. 1, § 93, emerg. eff. March 15, 2005); Amended by Laws 2004, HB 2300, c. 285, § 2, emerg. eff. July 1, 2004; Multiple amendment repealed by Laws 2005, HB 2060, c. 1, § 93, emerg. eff. March 15, 2005.

§63-1-1950.6. Effective date - Definitions.

A. Sections 1-1950.6 through 1-1950.9 of this title shall be effective September 1, 2005.

- B. As used in Sections 1-1950.6 through 1-1950.9 of this title:
1. "Board" means the State Board of Health;
 2. "Bureau" means the Oklahoma State Bureau of Investigation;
 3. "Department" means the State Department of Health;
 4. "Nursing facility" means a nursing facility and specialized facility as such terms are defined in Section 1-1902 of this title;
 5. "Nontechnical services worker" means a person employed by a nursing facility to provide, for compensation, nontechnical services in or upon the premises of a nursing facility. The term "nontechnical services worker" shall not include a nurse aide, or any person who is exempt from the criminal arrest check provisions of Section 1-1950.1 of this title; and
 6. "Nontechnical services" means services that:

- a. are performed in or on the premises of a nursing facility and that are predominantly physical or manual in nature, and
- b. involve or may involve patient contact including, but not limited to, housekeeping, janitorial or maintenance services, food preparation and administrative services.

Added by Laws 2002, HB1963 c. 470, § 2, eff. July 1, 2002. Amended by Laws 2005, HB2218 c. 465, § 7, emerg. eff. June 9, 2005.

§63-1-1950.7. Nontechnical services worker abuse registry.

A. The State Department of Health shall establish a registry for those nontechnical services workers that have been noted to have committed abuse, verbal abuse, or exploitation of a resident in a nursing facility.

B. The State Board of Health shall promulgate rules to establish and maintain the nontechnical services worker abuse registry. Such rules may include, but need not be limited to:

1. A procedure for notation in the abuse registry of a final State Department of Health investigative finding or an Administrative Law Judge finding of abuse, verbal abuse, or exploitation, as these terms are defined in Section 10-103 of Title 43A of the Oklahoma Statutes, of an individual by a nontechnical services worker;

2. A procedure for notice and due process for a nontechnical services worker or applicant before the entering of such person's name in the abuse registry as having a final Department investigative finding or Administrative Law Judge finding of abuse, verbal abuse, or exploitation of an individual; and

3. Disclosure requirements for information in the abuse registry.

C. The nontechnical services worker abuse registry shall include, but not be limited to, the following information on each nontechnical services worker:

1. The individual's full name;

2. Information necessary to identify each individual;

3. The date the individual's name was placed in the abuse registry; and

4. Information on any final Department investigative finding or Administrative Law Judge finding of abuse, verbal abuse or exploitation, as these terms are defined in Section 10-103 of Title 43A of the Oklahoma Statutes, concerning the nontechnical services worker.

D. A nontechnical services worker or applicant who is adversely affected by an Administrative Law Judge finding of abuse, verbal abuse or exploitation of an individual may seek judicial review pursuant to the provisions of Article II of the Administrative Procedures Act. The finding of the Administrative Law Judge may be appealed to the district court in which the nontechnical services worker or applicant resides within thirty (30) days of the date of the decision. A copy of the petition shall be served by mail upon the general counsel of the Department.

Added by Laws 2002, HB2218 c. 470, § 3, eff. July 1, 2002.

§63-1-1950.8. Criminal history records and nontechnical services worker abuse registry search - Temporary employment.

A. 1. Except as otherwise provided in subsection C of this section, before any nursing facility makes an offer to employ a nontechnical services worker applicant subject to subsection A of Section 3 of this act on or after the effective date of Sections 2 through 5 of this act, to provide nontechnical services, the nursing facility shall:

- a. provide for, prior to a check with the State Department of Health, a criminal history records search to be conducted upon the nontechnical services worker applicant pursuant to the provisions of this section, and
- b. check with the Department to determine whether the name of the applicant seeking employment appears on the nontechnical services worker abuse registry created pursuant to the provisions of Section 3 of this act. If the name of the applicant seeking employment with the nursing facility is listed on the abuse registry as having a final Department investigative finding or an Administrative Law Judge finding pursuant to the requirements of Section 3 of this act, and the Department has allowed for notice and opportunity for due process for such applicant, the nursing facility shall not hire the applicant.

2. A nursing facility is authorized to obtain records of any criminal conviction, guilty plea, or plea of nolo contendere maintained by the Oklahoma State Bureau of Investigation which the nursing facility is required or authorized to request pursuant to the provisions of this section.

3. The nursing facility shall request the Bureau to conduct a criminal history records search on a nontechnical services worker desiring employment with the nursing facility and shall provide to the Bureau any relevant information required by the Bureau to conduct the search. The nursing facility shall pay a reasonable fee to the Bureau for each criminal history records search that is conducted pursuant to such a request. The fee shall be determined by the Bureau.

B. At the request of the nursing facility, the Bureau shall conduct a criminal history records search on any applicant desiring employment pursuant to the provisions of subsection A of this section or any nontechnical services worker employed by the nursing facility at any time during the period of employment of such worker with the nursing facility.

C. A nursing facility may make an offer of temporary employment to a nontechnical services worker pending the results of such criminal history records search and the abuse registry review on the applicant. The nursing facility in such instance shall provide to the Bureau the name and relevant information relating to the applicant within seventy-two (72) hours after the date the applicant accepts temporary employment. The nursing facility shall not hire an applicant as a nontechnical services worker on a permanent basis until the results of

the criminal history records search and the abuse registry review are received.

D. Within five (5) days of the receipt of a request to conduct a criminal history records search, the Bureau shall complete the criminal history records search and report the results of the search to the requesting nursing facility.

E. Every nursing facility shall inform each nontechnical services worker applicant for employment of the requirement to obtain a criminal check and an abuse registry review before making an offer of permanent employment with a nontechnical services worker applicant.

F. A nursing facility shall not hire or contract with and shall immediately terminate the employment, contract or volunteer arrangement of any applicant, contract worker or employee for whom the results of a criminal history records search from any jurisdiction reveals that such person has been convicted of, or pled guilty or nolo contendere to:

1. Assault, battery, or assault and battery with a dangerous weapon;
2. Aggravated assault and battery;
3. Murder or attempted murder;
4. Manslaughter, except involuntary manslaughter;
5. Rape, incest or sodomy;
6. Abuse, neglect or financial exploitation of any person entrusted to his or her care or possession;
7. Burglary in the first or second degree;
8. Robbery in the first or second degree;
9. Robbery or attempted robbery with a dangerous weapon, or imitation firearm;
10. Arson in the first or second degree;
11. Unlawful possession or distribution, or intent to distribute unlawfully, Schedule I through V drugs as defined by the Uniform Controlled Dangerous Substances Act;
12. Grand larceny; or
13. Petit larceny or shoplifting within the past seven (7) years.

G. All criminal history records received by the nursing facility are for the exclusive use of the State Department of Health and the nursing facility that requested the information. Except as otherwise provided by Sections 2 through 5 of this act or upon court order or with the written consent of the person being investigated, the criminal history records shall not be released or otherwise disclosed to any other person or agency.

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

I. As part of any inspections required by law, the Department shall review the employment files of the nursing facility required to conduct a criminal history records search to ensure compliance with the provisions of this section.

Added by Laws 2002, HB2218 c. 470, § 4, eff. July 1, 2002.

§63-1-1950.9. Fine and imprisonment.

Any violation of the provisions of Sections 2 through 4 of this act shall be deemed a misdemeanor and, upon conviction or plea of guilty or nolo contendere, shall be punishable by a fine of not less than Three Hundred Dollars (\$300.00), but not more than One Thousand Dollars (\$1,000.00). In addition to the fine, such violator may be imprisoned in the county jail for not more than thirty (30) days. Each day that the violation continues shall be considered to be a separate violation.

Added by Laws 2002, HB2218 c. 470, § 5, eff. July 1, 2002.

§63-1-1951. Certification, training and registration.

A. The State Department of Health shall have the power and duty to:

1. Issue certificates of training and competency for nurse aides;
2. Approve training and competency programs including, but not limited to, education-based programs and employer-based programs;
3. Determine curricula and standards for training and competency programs. The Department shall require such training to include a minimum of ten (10) hours of training in the care of Alzheimer's patients;
4. Establish and maintain a registry for certified nurse aides and for nurse aide trainees;
5. Establish categories and standards for nurse aide certification and registration, including feeding assistants as defined in 42 CFR Parts 483 and 488; and
6. Exercise all incidental powers as necessary and proper to implement and enforce the provisions of this section.

B. The State Board of Health shall promulgate rules to implement the provisions of this section and shall have power to assess fees.

1. Each person certified as a nurse aide pursuant to the provisions of this section shall be required to pay certification and recertification fees in amounts to be determined by the State Board of Health, not to exceed Fifteen Dollars (\$15.00).

2. In addition to the certification and recertification fees, the State Board of Health may impose fees for training or education programs conducted or approved by the Board.

3. All revenues collected as a result of fees authorized in this section and imposed by the Board shall be deposited into the Public Health Special Fund.

C. Only a person who has qualified as a certified nurse aide and who holds a valid current nurse aide certificate for use in this state shall have the right and privilege of using the title Certified Nurse Aide and to use the abbreviation CNA after the name of such person. Any person who violates the provisions of this section shall be subject to a civil monetary penalty to be assessed by the Department.

D. 1. The State Department of Health shall establish and maintain a certified nurse aide, nurse aide trainee and feeding assistant registry that:

- a. is sufficiently accessible to promptly meet the needs of the public and employers, and

- b. provides a process for notification and investigation of alleged abuse, exploitation or neglect of residents of a facility or home, clients of an agency or center, or of misappropriation of resident or client property.
2. The registry shall contain information as to whether a nurse aide has:
 - a. successfully completed a certified nurse aide training and competency examination,
 - b. met all the requirements for certification, or
 - c. received a waiver from the Board.
3. a. The registry shall include, but not be limited to, the following information on each certified nurse aide or nurse aide trainee:
 - (1) the full name of the individual,
 - (2) information necessary to identify each individual,
 - (3) the date the individual became eligible for placement in the registry,
 - (4) information on any finding of the Department of abuse, neglect or exploitation by the certified nurse aide or nurse aide trainee, including:
 - (a) documentation of the Department's investigation, including the nature of the allegation and the evidence that led the Department to confirm the allegation,
 - (b) the date of the hearing, if requested by the certified nurse aide or nurse aide trainee, and
 - (c) a statement by the individual disputing the finding if the individual chooses to make one.
4. The Department shall include the information specified in division (4) of subparagraph a of paragraph 3 of this subsection in the registry within ten (10) working days of the substantiating finding and it shall remain in the registry, unless:
 - a. it has been determined by an administrative law judge, a district court or an appeal court that the finding was in error, or
 - b. the Board is notified of the death of the certified nurse aide or nurse aide trainee.
5. Upon receipt of an allegation of abuse, exploitation or neglect of a resident or client, or an allegation of misappropriation of resident or client property by a certified nurse aide or nurse aide trainee, the Department shall place a pending notation in the registry until a final determination has been made. If the investigation, or administrative hearing held to determine whether the certified nurse aide or nurse aide trainee is in violation of the law or rules promulgated pursuant thereto, reveals that the abuse, exploitation or neglect, or misappropriation of resident or client property was unsubstantiated, the pending notation shall be removed within twenty-four (24) hours of receipt of notice by the Department.

6. The Department shall, after notice to the individuals involved and a reasonable opportunity for a hearing, make a finding as to the accuracy of the allegations.

7. If the Department after notice and opportunity for hearing determines with clear and convincing evidence that abuse, neglect or exploitation, or misappropriation of resident or client property has occurred and the alleged perpetrator is the person who committed the prohibited act, notice of the findings shall be sent to the nurse aide and to the district attorney for the county where the abuse, neglect or exploitation, or misappropriation of resident or client property occurred and to the Medicaid Fraud Control Unit of the Attorney General's Office. Notice of ineligibility to work as a nurse aide in a long-term care facility, a residential care facility, assisted living facility, day care facility, or any entity that requires certification of nurse aides, and notice of any further appeal rights shall also be sent to the nurse aide.

8. The Department shall require that each facility check the nurse aide registry before hiring a person to work as a nurse aide. If the registry indicates that an individual has been found, as a result of a hearing, to be personally responsible for abuse, neglect or exploitation, that individual shall not be hired by the facility.

9. If the state finds that any other individual employed by the facility has neglected, abused, misappropriated property or exploited in a facility, the Department shall notify the appropriate licensing authority and the district attorney for the county where the abuse, neglect or exploitation, or misappropriation of resident or client property occurred.

10. Upon a written request by a certified nurse aide or nurse aide trainee, the Board shall provide within twenty (20) working days all information on the record of the certified nurse aide or nurse aide trainee when a finding of abuse, exploited or neglect is confirmed and placed in the registry.

11. Upon request and except for the names of residents and clients, the Department shall disclose all of the information relating to the confirmed determination of abuse, exploitation and neglect by the certified nurse aide or nurse aide trainee to the person requesting such information, and may disclose additional information the Department determines necessary.

12. A person who has acted in good faith to comply with state reporting requirements and this section of law shall be immune from liability for reporting allegations of abuse, neglect or exploitation.

E. Each nurse aide trainee shall wear a badge which clearly identifies the person as a nurse aide trainee. Such badge shall be furnished by the facility employing the trainee. The badge shall be nontransferable and shall include the first and last name of the trainee.

F. 1. For purposes of this section, "feeding assistant" means an individual who is paid to feed residents by a facility or who is used under an arrangement with another agency or organization and meets the requirements cited in 42 CFR Parts 483 and 488.

2. Each facility that employs or contracts employment of a feeding assistant shall maintain a record of all individuals, used by

the facility as feeding assistants, who have successfully completed a training course approved by the state for paid feeding assistants.
Added by Laws 1996, SB 1177, c. 336, § 8, eff. November 1, 1996;
Amended by Laws 2002, HB 2604, c. 230, § 16, eff. November 1, 2002;
Amended by Laws 2005, SB 950, c. 235, § 1, eff. November 1, 2005
(repealed by Laws 2006, HB 3139, c. 16, § 45, emerg. eff. March 29, 2006); Amended by Laws 2005, HB 1688, c. 460, § 13, eff. November 1, 2005; Amended by Laws 2006, HB 3139, c. 16, § 44, emerg. eff. March 29, 2006.