

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 2. PROCEDURES OF THE STATE DEPARTMENT OF HEALTH**

SUBCHAPTER 29. Criminal History Background Checks

310:2-29-1. Purpose

These rules implement the Long Term Care Security Act as established at Title 63 O.S. Section 1-1944 et seq., as amended.

310:2-29-2. [RESERVED]

310:2-29-3. Implementation

(a) Authority. Title 63 O.S. Section 1-1947(Y) authorized the Department to establish through rulemaking the effective dates of subsections D through V of Section 1-1945 of Long Term Care Security Act, by category of employer.

(b) Effective dates. The effective dates for subsections D through V of Section 1-1947 (relating to screening and fingerprint based background checks) are defined below.

(1) For the following, compliance may begin February 1, 2014, but shall be required no later than March 1, 2014:

(A) Adult Day Care Centers as defined by Section 1-872 of Title 63 of the Oklahoma Statutes; and

(B) Residential care homes as defined by Section 1-820 Title 63 of the Oklahoma Statutes.

(2) For Specialized Nursing Facilities licensed pursuant to Title 63 O.S. Section 1-1901 et seq., compliance may begin February 1, 2014, but shall be required no later than April 1, 2014:

(3) For the following employers, compliance may begin February 1, 2014, but shall be required no later than May 1, 2014:

(A) Applicants for employment with the State Department of Health and Department of Human Services whose responsibilities include working inside long term care facilities, pursuant to Title 63 O.S. Section 1-1947(A)(1); and

(B) Nursing Facilities licensed pursuant to Title 63 O.S. Section 1-1901 et seq.,

(4) For the following employers compliance may begin February 1, 2014, but shall be required no later than June 1, 2014:

(A) Continuum of Care or Assisted Living facilities licensed pursuant to Title 63 O.S. Section 1-890.1 et seq.; and

(B) Hospice programs licensed pursuant to Title 63 O.S. Section 1-860.1 et seq.

(5) For Medicare Certified Home Care Agencies licensed pursuant to Title 63 O.S. Section 1-1960 et seq., compliance may begin February 1, 2014, but shall be required no later than July 1, 2014.

(6) For all other employers defined in Title 63 O.S. Section 1-1945(4), compliance may begin February 1, 2014, but shall be required no later than August 1, 2014.

(7) For Nurse Aide Scholarship Programs operated under contract with the Oklahoma Health Care Authority compliance may begin July 1, 2014, but shall be required no later than August 1, 2014.

(8) For staffing agencies or independent contractors as defined in Title 63 O.S. Section 1-1945(4), compliance shall match the contracted employer.

(9) Pursuant to Title 63 O.S. Section 1-1947(I)(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 [Oklahoma State Bureau of Investigation] 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 [Title 63 O.S. Section 1-1947].

(c) Nurse Aide Scholarship Programs. For the purposes of complying with Title 63 O.S. Section 1-1947(G) (related to conducting a registry screening and criminal history record check), the Nurse Aide Scholarship Program may refer the applicant's application and release to the Department for registry screening and authorization to collect fingerprints.

(d) Alternate Name Based Background Check. Where the Department is unable to authorize the collection and submission of fingerprints through an authorized collection site pursuant to Title 63 O.S. Section 1-1947(I), the Department shall conduct a name based search of the applicant in the criminal history database maintained by the Oklahoma State Bureau of Investigation.

310:2-29-4. [RESERVED]

310:2-29-5. Appeals

(a) Notice. A determination by the Department that finds an applicant not eligible for employment will result in a notice to the applicant to *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* [63 O.S. § 1-1947(K)(2)].

(b) Days to initiate an appeal. Pursuant to Title 63 O.S. 1-1947(T)1), any individual who has been disqualified from or denied employment by an employer pursuant to Title 63 O.S. Section 1-1947 may file an appeal with the Department within thirty (30) days of the receipt of the notice of disqualification.

(c) Types of appeals. An applicant may appeal the determination by:

(1) Challenging the finding that the applicant is the true subject of the results from a name-based registry background check;

(2) Challenging the criminal history record as inaccurate; or

(3) Requesting a waiver which gives the applicant the opportunity to demonstrate that the applicant should be allowed to work because he or she does not pose a risk to patients, facilities or their property.

(d) Inaccuracy of criminal history 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.

(e) Criteria for consideration in a waiver review. Pursuant to Title 63 O.S. Section 1-1947(T)(2), the Department shall consider the following criteria in considering whether the applicant merits a waiver of the applicant's determination of ineligibility:

(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; and

(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.

(e) **Where to file.** The applicant's appeal shall be submitted in writing to the Administrative Hearings Clerk for the Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117, and shall address the criteria specified in (d) of this Section and how the applicant merits a waiver of the disqualification from employment.

(f) **Conduct of hearing.** The appeal shall be conducted as an individual proceeding pursuant to this Chapter and the Administrative Procedures Act.