



Oklahoma State
Department of Health
Creating a State of Health

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Date: October 10, 2012
To: Members of the Long Term Care Advisory Board
From: James W. Joslin, Chief 
Health Resources Development Service
Re: Status Update on Implementation of HB2582
Oklahoma National Background Check Grant Program

This is to provide an update on the Department's activities to implement of HB2582 and the Oklahoma National Background Check Grant Program. For the most current updates see the program website here: <http://onbc.health.ok.gov>

The effective date for fingerprinting under HB2582 will be sometime after March 1, 2013, and will be established through rulemaking and after further notice. Until then, elements in the new law that are effective as of November 1, 2012, include a revised list of employment disqualifying offenses for nurse aides and non-technical services worker staff working in a licensed nursing facility.

Pursuant to HB2582 63 O.S. § § 1-1950.1(B) and 1-1950.8(A)(2), until such time as the fingerprinting requirements are implemented in rule, facilities are authorized to obtain criminal history background records as previously authorized. The new barrier offenses for nurse aides and non-technical service workers are effective as of November 1, 2012. Bulletins are enclosed addressing those items in the law. These will be posted to our website as well.

A question arose on the appropriate classification of the Program Director and other positions now that we have legislative authorization. We need to hire permanent staff versus temporary grant staff so a re-allocation of positions must occur. All positions have been submitted for re-allocation and approval from the Human Capital management. It will be early November before all positions are announced.

Progress continues on software development. We had a successful meeting with the OSBI, CNA representatives, and their software vendor, and received the initial draft of the Phase II requirements document in late August. We received a preliminary demonstration of the Phase II software last week and excited with the product. Our website is updated with presentations and to include a Phase I software demonstration posted there.

You may recall, the grant was initially funded as a two year program through April of next year. We were among the states receiving initial awards and later grantee states were given three year awards. We've been advised we will initially receive a one year extension but not to apply for the extension until we are in our 20th month. I will be preparing a grant extension request and am authorized to submit this in December.

We do not have a decision on whether we will be able to piggy back on the existing live scan network or will need to go out to bid for Live Scan services. The Office of Management and Enterprise Services (OMES) / Information Services Division (ISD) / Procurement on behalf of the Oklahoma Board of Nursing (OBN) is currently accepting proposals for electronic fingerprinting process services. Their trailblazing will expedite the drafting of a request for proposals for the ONBC program.

I'm now projecting effective dates for fingerprinting in the second quarter of 2013.

HB2582 and Background Checks

63 O.S. § 1-1950.1 (OSCN 2012)

Certified Nurse Aides

The effective date for fingerprinting of Certified Nurse Aides under HB2582 will be sometime after March 1, 2013, and will be established through rulemaking and after further notice. Until then, elements in the new law that are effective as of November 1, 2012, include a revised list of employment and certification disqualifying offenses for Certified Nurse Aides.

63 O.S. § 1-1950.1 Definitions

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;

Pursuant to 63 O.S. § 1-1950.1(B), until such time as the fingerprinting requirements are implemented in rule, an employer is authorized to obtain any criminal history background records maintained by the Oklahoma State Bureau of Investigation. The following requirements apply:

- Employers subject to this section are defined in law at 63 O.S. § 1-1950.1(A) and include:
 - a nursing or specialized facility,
 - a residential care home,
 - an adult day care center,
 - an assisted living center,
 - a continuum of care facility
 - a home health or home care agency, and
 - 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;
- Hospice rules at OAC 310:661-3-2(n) require that a Hospice shall obtain a criminal background check on all hospice employees who have direct patient contact or access to patient records. Each such background check must meet the criteria established for certified nurse aides in Title 63 O.S. Section 1-1950.1.
- The employer requests the OSBI to conduct a name based criminal history background check as before and provides the Bureau any relevant information required by the Bureau to conduct the check. The employer fee is Fifteen Dollars (\$15.00).
- Temporary employment remains authorized. Provide to the Bureau the name and relevant information relating to the person within seventy-two (72) hours after the person accepts temporary employment.
- The employer shall not hire or contract with the nurse aide on a permanent basis until the results of the criminal history background check are received,
- The employer may accept a criminal history background report that is less than one (1) year old. The report shall be obtained from the previous employer or contractor of such person and shall only be obtained upon the written consent of the applicant.
- Every employer subject to the provisions of this law shall inform each applicant that the employer is required to obtain a criminal history background record before making an offer of permanent employment.
- An employer shall not hire and shall immediately terminate the employment of any applicant, for whom the results of a criminal history records search from any jurisdiction reveals that such person has a disqualifying criminal offense listed in subsection C of Section 1-1950.1.
- Employment eligibility determination records are for the use of the Department and the employer.
- Releasing or disclosing information in violation of this section, upon conviction thereof, is a misdemeanor.
- As part of any inspections required by law, the Department shall review the employment files of the employer to ensure compliance with the provisions of this law.

Text From HB2582, Section 63 O.S. § 1-1950.1
Pertaining to Nurse Aide Background Checks
63 O.S. § 1-1950.1 (OSCN 2012)

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;

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

5. "Completion of the sentence" means the last day of the entire term of the incarceration imposed by the sentence including any term that is deferred, suspended or subject to parole.

B. Before any employer makes an offer to employ or to contract with a nurse aide to provide nursing care, health-related services or supportive assistance to any individual, the employer shall provide for a criminal history background check to be made on the nurse aide pursuant to the provisions of the Long-term Care Security Act. 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.

felony or misdemeanor offense for any of the following offenses, in any state or federal jurisdiction, the employer shall not hire or contract with the person:

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

D. 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.

E. All employment eligibility determination records received by the employer pursuant to this section 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.

F. 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 a criminal history background determination to ensure such facilities, homes or institutions are in compliance with the provisions of this section.

HB2582 and Background Checks for the Non-Technical Services Worker **63 O.S. § 1-1950.8 (OSCN 2012)**

The effective date for fingerprinting of Non-Technical Services Workers under HB2582 will be sometime after March 1, 2013, and will be established through rulemaking and after further notice. Until then, elements in the new law that are effective as of November 1, 2012, include a revised list of employment disqualifying offenses for non-technical services worker staff working in a licensed nursing facility.

63 O.S. § 1-1950.6 Definitions

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

Pursuant to 63 O.S. § 1-1950.8(A)(2), until such time as the fingerprinting requirements are implemented in rule, a nursing facility is authorized to obtain any criminal history background records maintained by the Oklahoma State Bureau of Investigation. The following requirements apply:

- The employer requests the OSBI to conduct a name based criminal history background check as before and provides the Bureau any relevant information required by the Bureau to conduct the check. The employer fee is Fifteen Dollars (\$15.00).
- Temporary employment remains authorized. 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 facility shall not hire or contract with the nontechnical services worker on a permanent basis until the results of the criminal history background check are received,
- The facility may accept a criminal history background report that is less than one (1) year old. The report shall be obtained from the previous employer or contractor of such person and shall only be obtained upon the written consent of the applicant.
- Every facility while subject to the provisions of this law shall inform each applicant for employment that the employer is required to obtain a criminal history background record before making an offer of permanent employment.
- A nursing facility shall not hire and shall immediately terminate the employment of any applicant, for whom the results of a criminal history records search from any jurisdiction reveals that such person has a disqualifying criminal offense listed in subsection C of Section 1-1950.1.
- Employment eligibility determination records are for the use of the Department and the facility.
- Releasing or disclosing any information in violation of this section, upon conviction thereof, is a misdemeanor.
- As part of any inspections required by law, the Department shall review the employment files of the facility to ensure compliance with the provisions of this law.

Text From HB2582, Section 63 O.S. § 1-1950.8

63 O.S. § 1-1950.8(A)(2). Where the provisions of the Long-term Care Security Act pertaining to registry screenings and national criminal history record checks are not in effect pending an effective date in rulemaking, an employer is authorized to obtain any criminal history background records maintained by the Oklahoma State Bureau of Investigation pursuant to the following:

- a. the employer shall request the Bureau to conduct a criminal history background check on the nontechnical services worker 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,*
- b. an employer may make an offer of temporary employment to a nontechnical services worker pending the results of the criminal history background check. 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 the nontechnical services worker on a permanent basis until the results of the criminal history background check are received,*
- c. an employer may accept a criminal history background report less than one (1) year old of a nontechnical services worker 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, and*
- d. every employer while subject to the provisions of this subsection 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 nontechnical services worker.*

B. 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.

C. 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 a disqualifying criminal offense listed in subsection C of Section 1-1950.1 of this title.

D. All employment eligibility determination 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 1-1950.6 through 1-1950.9 of this title or upon court order or with the written consent of the person being investigated, the employment eligibility determination records shall not be released or otherwise disclosed to any other person or agency.

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

F. 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.