



DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL

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SUBJECT: Memorandum Report: *Criminal Convictions for Nurse Aides With Substantiated Findings of Abuse, Neglect, and Misappropriation*,
OEI-07-10-00422

The Patient Protection and Affordable Care Act (ACA) mandates that the Office of Inspector General (OIG) submit a report to Congress evaluating the Nationwide Program for National and State Background Checks on Direct Patient Access Employees of Long-Term-Care Facilities and Providers (background check program) not later than 180 days after the program's completion. One required element of the mandated evaluation is an assessment of the impact of the background check program on reducing the number of incidents of neglect, abuse, and misappropriation of resident property to the extent practicable. The objective of this memorandum report is to provide baseline information for the mandated report on the extent to which nurse aides with substantiated findings of abuse, neglect, and/or misappropriation had previous criminal convictions that could have been detected through background checks and the nature of those convictions. Knowledge of this data will assist in assessing the extent to which the background check program may reduce the number of incidents of neglect, abuse, and misappropriation of resident property.

SUMMARY

Section 6201 of the ACA established the background check program.¹ This voluntary program provides grants to States, the District of Columbia, and U.S. territories (States) to implement programs to conduct background checks on prospective long-term-care employees. The ACA mandates an OIG evaluation of the State programs, including an assessment of the impact of the background check program on reducing the number of

¹ P.L. 111-148, enacted March 23, 2010.

implicated nurse aide.⁷ Only the State survey and certification agency may place substantiated findings on the registry.⁸

Nurse aide registries must include at a minimum: (1) the full name of the individual, (2) identifying information, (3) the date the individual became eligible for placement in the registry, and (4) information regarding substantiated findings, as appropriate.⁹ Federal regulations require States to remove registry records of individuals who have not performed nursing or nursing-related services for a period of 24 consecutive months, unless the individual's registry entry includes substantiated findings of abuse, neglect, or misappropriation of property.¹⁰

Individuals with substantiated findings of abuse, neglect, or misappropriation of property must remain on the registry permanently, unless the findings were made in error, the individual was found not guilty in a court of law, or the State is notified of the individual's death.¹¹ The Balanced Budget Act of 1997 established the only exception, which allows nurse aides with substantiated findings of neglect to petition the State to have their names removed from the registry.¹² Such an individual must wait at least 1 year from the date on which the substantiated finding was added to the registry, and the State must determine that the employment and personal history of the nurse aide did not reflect a pattern of abusive behavior or neglect, and that the neglect involved a singular occurrence.¹³

Apart from the prohibition on employing as nurse aides individuals who have substantiated findings of abuse, neglect, or misappropriation, or who have been found guilty of abuse, neglect, or mistreatment of residents by a court of law, there is no Federal prohibition on employing individuals convicted of other types of crimes.¹⁴

Background Check Program

Section 6201 of the ACA requires the Secretary of Health and Human Services to establish a background check program in which States may voluntarily apply for grant funds to conduct national and State background checks of prospective direct patient access employees of nursing facilities and other long-term-care providers. The program is administered by CMS in cooperation with FBI. The ACA provides up to \$160 million in Federal funds for the program.

To implement the background check program, CMS began soliciting applications for grant awards in June 2010. Program start dates for each participating State vary based on when the State received a grant award; however, the completion date of the program

⁷ Centers for Medicare & Medicaid Services (CMS), *State Operations Manual*, Pub. No. 100-07, ch. 5, § 5310.3.

⁸ 42 CFR § 483.156(b)(2).

⁹ 42 CFR § 483.156(c)(1).

¹⁰ 42 CFR § 483.156(c)(2).

¹¹ 42 CFR § 483.156(c)(1)(iv)(D).

¹² P.L. 105-33 § 4755, amending SSA §§ 1819(g)(1) and 1919(g)(1).

¹³ P.L. 105-33 § 4755, amending SSA §§ 1819(g)(1) and 1919(g)(1).

¹⁴ 42 CFR § 483.13(c)(1)(ii).

5. An evaluation of other aspects of the background check program, as determined appropriate by the Secretary.¹⁷

This memorandum report provides baseline information on issue 4 above. The full mandated report will cover all of the issues listed above.

Related Report

A 2011 OIG evaluation determined the extent to which nursing facilities employed individuals with criminal convictions. In that evaluation, we found that 92 percent of nursing facilities employed at least one individual with at least one criminal conviction.¹⁸ Overall, 5 percent of all nursing facility employees had at least one criminal conviction. OIG recommended that CMS work with States participating in the background check program to develop a list of State and local convictions that disqualify an individual from nursing facility employment under the Federal regulation and periods for which each conviction bars the individual from employment. In response, CMS formed a workgroup of States to provide recommendations on establishing (1) a list of specific conviction types that disqualify individuals from employment, (2) a list of conviction types that can be considered for rehabilitation, and (3) periods for disqualification.¹⁹

METHODOLOGY

Data Collection

Nurse Aide Data. From each State nurse aide registry, we obtained a roster of all nurse aides who received a substantiated finding of abuse, neglect, or misappropriation of property in 2010. For each nurse aide with a substantiated finding, we requested the following data elements: (1) full name, (2) date of birth, (3) Social Security number (SSN), (4) race, (5) sex, (6) date of initial registration, (7) effective date of the substantiated finding, and (8) whether the substantiated finding was for abuse, neglect, or misappropriation of property. We received data on a total of 1,611 nurse aides with substantiated findings in 2010. Table 1 shows the number of nurse aides with each finding type.

¹⁷ P.L. 111-148 § 6201(a)(7)(A)(ii).

¹⁸ OIG, *Nursing Facilities' Employment of Individuals With Criminal Convictions*, OEI-07-09-00110, March 2011.

¹⁹ The Long-Term-Care Criminal Convictions Workgroup is made up of 11 States and CMS central and regional office staff.

Comparison of Conviction Rates and Types for Nurse Aides With Substantiated Findings in 2010 and for Nurse Aides Employed in Nursing Facilities in 2009. We compared the rate and types of convictions for nurse aides with substantiated findings in this evaluation with an estimate of the rate and types of convictions for nurse aides employed in nursing facilities in 2009. For the latter, we used data received for the March 2011 OIG evaluation entitled *Nursing Facilities' Employment of Individuals With Criminal Convictions* (OEI-07-09-00110). This allowed us to determine whether statistically significant differences existed at the 95-percent confidence level between the two groups of nurse aides with criminal convictions: (1) nurse aides who had received substantiated findings of abuse, neglect, and/or misappropriation in 2010, and (2) nurse aides who were actively employed in nursing facilities as of June 1, 2009. Because nursing facilities are prohibited from employing nurse aides with substantiated findings, we assumed that the nurse aides who were actively employed as of June 1, 2009, did not have substantiated findings. Although the periods of review are different (calendar year 2010 for this evaluation versus the single day of June 1, 2009, for the earlier evaluation), we are unaware of any nursing facility-related changes that would invalidate the comparison of these groups of nurse aides with criminal convictions.

Limitations

State nurse aide registries do not identify nurse aides' dates of employment; nurse aides' dates of registration are not necessarily the same as the dates they began employment. Therefore, we are unable to determine whether employers could have been aware of nurse aides' criminal conviction(s) prior to their employment.²⁴ We examined the timing of convictions in relation to nurse aides' dates of registration.

FBI-maintained criminal history records do not contain the necessary information, such as whether the victim of a crime was a long-term-care facility resident, to determine whether a conviction disqualifies an individual from long-term-care facility employment under Federal regulation. Therefore, we limited our use of the FBI data to determining whether nurse aides with substantiated findings had criminal convictions, but not for determining whether these individuals were employed in violation of Federal regulation.

At this time, we do not know how many and which States will participate in the background check program. Therefore, we provide information in this memorandum report on all States. In the final evaluation report, we will report results specific to the States that participated in the background check program.

Standards

This study was conducted in accordance with the *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency.

²⁴ We acknowledge that the data obtained for this memorandum report and the March 2011 OIG evaluation (*Nursing Facilities' Employment of Individuals With Criminal Convictions*, OEI-07-09-00110) are related solely to nursing facilities, whereas the background check program includes nursing facilities as well as other types of long-term-care providers (e.g., home health agencies, hospices).

Table 2: Percentages of Nurse Aides With Convictions Prior to Substantiated Findings by Elapsed Time Between Most Recent Conviction and Date of Substantiated Finding

Elapsed Time Before Substantiated Finding Date	Percentage of Nurse Aides With Convictions Prior to Substantiated Findings (n=300)
Less than 1 year	28.0%
1 year to less than 5 years	30.7%
5 years to less than 10 years	15.7%
10 years to less than 15 years	11.0%
15 years to less than 20 years	7.0%
20 years to less than 30 years	5.0%
30 years or more	2.7%
Total*	100.0%

Source: OIG analysis of FBI criminal history records and data on nurse aides with substantiated findings, 2012.

*Percentages do not sum to 100 percent due to rounding.

Types of Convictions. Among the 300 nurse aides who each had a conviction prior to a substantiated finding, the most common conviction (53 percent) was for crimes against property (e.g., burglary, shoplifting, and writing bad checks). Table 3 shows the six categories of crime and the corresponding percentages of convictions for nurse aides with substantiated findings.

Table 3: Percentages of Convictions Received by Nurse Aides With Substantiated Findings by Category of Crime

Category of Crime	Percentage of Convictions (n=622)
Crimes against property	52.9%
Crimes against persons	14.3%
Other	9.3%
DUI	9.3%
Drug-related crimes	7.2%
Driving-related crimes other than DUI	6.9%
Total*	100.0%

Source: OIG analysis of FBI criminal history records and data on nurse aides with substantiated findings, 2012.

*Percentages do not sum to 100 percent due to rounding.

In our analysis of FBI-maintained criminal history records, we identified five nurse aides with substantiated findings in 2010 who were registered sex offenders. Three nurse aides had sex offender registration dates prior to the dates of their substantiated findings, and two were registered as sex offenders subsequent to the dates of their substantiated findings.

Among Nurse Aides With Convictions, Nurse Aides With Findings of Abuse or Neglect Were More Likely to Have Convictions of Crimes Against Persons; Nurse Aides With Findings of Misappropriation Were More Likely to Have Convictions of Crimes Against Property

We examined relationships between the type of substantiated finding(s) (i.e., abuse, neglect, and/or misappropriation) and the type of conviction (e.g., crimes against persons). Nurse aides with substantiated findings of either abuse or neglect were 3.2 times more likely to have convictions of crime against persons than nurse aides with

percentage of nurse aides with criminal convictions and substantiated findings is higher than the percentage of nurse aides with criminal convictions employed in nursing facilities; however, it is important to note that approximately 80 percent of nurse aides with substantiated findings had no criminal convictions in FBI-maintained criminal history records. To determine trends, we will repeat this analysis for nurse aides with substantiated findings as the background check program progresses. We will present the results in the mandated report entitled *Nationwide Program for National and State Background Checks for Long-Term-Care Employees* (OEI-07-10-00420).

CMS may wish to provide the information in this memorandum report to States that participate in the background check program as well as to the Long-Term-Care Criminal Convictions Workgroup. This report is being issued directly in final form because it contains no recommendations. If you have comments or questions about this report, please provide them within 60 days. Please refer to report number OEI-07-10-00422 in all correspondence.

Employer Instructions for Use – ODH Form 805 Uniform Employment Application for Nurse Aide Staff

Purpose

This form is to be used by employers as the only employment application for hiring nurse aide staff in nursing and specialized nursing facilities, residential care homes, assisted living centers, continuum of care facilities, hospice programs, adult day care centers and home care agencies as mandated by Title 63 O.S. § 1-1950.4, *Uniform Employment Application for Nurse Aide Staff - Purpose - Training*. The content of this form shall not be altered.

Employer Instructions

Provide this form to all applicants seeking employment as a nurse aide. The form may be duplicated as needed.

- **Instruct the applicant to complete each section of this form.**

1. Personal Information
2. Employment Desired
3. U.S. Military Record
4. Prior Work History
5. Educational Background
6. Certification
7. References
8. Background Information
9. Applicant's Certification and Agreement
10. Previous CNA Training: If the applicant will require nurse aide training, instruct to complete section 10 on page 4.

NOTE: If the facility has an approved nurse aide temporary emergency waiver, the applicant must be trained and certified within four (4) months of hire date.

Category: List any CNA training received in the past by type of training: Long Term Care Aide (LTCA), Home Health Aide (HHA), Adult Day Care Aide (ADCA), Residential Care Aide (RCA) and Developmentally Disabled Direct Care Aide (DDDCA).

Program Name: List the title of the training program where the training was received.

Training Days: List the number of days of training completed for each category.

11. Important Information for the Job Applicant

Instruct applicant to read and initial in the gray 'NOTICE' box on page 5, then sign and date certifying the application is true and complete.

12. Criminal Arrest Check

Instruct the applicant to read and complete the 'Criminal Arrest Check List' section on page 5. Obtain the applicant's signature and date in the designated spaces.

Effective November 1, 2012, and in accordance with public law, Title 63 of the Oklahoma Statutes, Section 1-1950.1(C) states:

Uniform Employment Application for Nurse Aide Staff

Effective November 1, 2012

This application form is required by Title 63 O.S. § 1-1950.4 of state law and by the Oklahoma State Board of Health Rules OAC 310-2-15-3. This uniform application shall be used as the *only* application for employment of nurse aides in nursing and specialized nursing facilities, residential care homes, assisted living centers, continuum of care facilities, hospice programs, adult day care centers and home care agencies.

This employer does not discriminate in its hiring decisions or in any other employment decision on the basis of race, color, sex, religion, citizenship, national origin, veteran status, age or upon a physical or mental disability which is unrelated to the applicant's/employee's ability to perform the essential functions of the position.

ATTENTION NURSE AIDES: RETURN YOUR COMPLETED APPLICATION TO EMPLOYER.

Date of Application: _____

Date Available to Start Work: _____

1. Personal Information

Name: _____ Social Security Number: _____
(Last) (First) (Middle)

List any other name(s) you have previously worked under, such as maiden name: _____
_____, _____, _____

Present Address: _____
(Street) (City) (State) (Zip)

Permanent Address (if different than present address): _____
(Street) (City) (State) (Zip)

Telephone #: _____ Date of Birth: _____ Sex: ___ M ___ F Race: _____
[----- For purposes of Criminal History Records Search -----]

Emergency Contact Person: _____
(Name) (Address) (Phone Number)

2. Employment Desired

Position applied for: _____ Salary required: _____

Hours available to work: _____ Days _____ Evenings _____ Nights _____ Weekends

Will you accept employment of: _____ Full Time? _____ Part Time? _____ Occasional Part Time?

3. U.S. Military Record

Branch: _____ Date Entered: _____ Date Discharged: _____ Type of Discharge: _____

4. Prior Work History List your last four (4) jobs beginning with your most recent or current employer.

Employer's Name: _____ Telephone Number: _____

Employer's Address: _____
(Street) (City) (State) (Zip)

Position Held: _____ Supervisor: _____

Dates Employed: From (month/year) _____ To (month/year) _____ Salary: _____

Reason for Leaving: _____

Uniform Employment Application for Nurse Aide Staff

List all technical special skills or education honors, certificates, licenses, memberships or Medication Administration Technician (MAT) certification not previously listed: _____

If you are a CMA, have you obtained your 8 hours of continuing education for the current 12-month certification period before your certification expires? ____ Yes ____ No

If yes, where and when did you obtain. _____

7. **References** List name, address and telephone number of three (3) references who are not relatives or former employers.

8. **Background Information** If you answer YES to any of the questions below, explain in the space after the question. The explanation for a YES answer should include, but not be limited to:

1. State and/or jurisdiction.
2. Nature of complaint/offense.
3. Disposition of complaint and/or offense (e.g., "dismissed insufficient evidence", "deferred sentence").
4. Date of disposition.
5. Attach copy of any correspondence received by you, the applicant, regarding the complaint/offense.

a. ____ Yes ____ No Have you ever: 1) participated in a first offender program; 2) deferred adjudication or other program or arrangement where adjudication has been withheld; 3) pled guilty or no contest; 4) been convicted; 5) received a deferred sentence; and/or 6) been sentenced for any criminal offense in any state or US jurisdiction regardless of whether this matter has been expunged or otherwise removed?

b. ____ Yes ____ No Have you ever been found in violation of any state, US jurisdiction, or federal law regulating the practice of a health care profession?

c. ____ Yes ____ No Are any disciplinary actions or allegations, pending or substantiated, against you or your CNA certification or health care professional license in any state or U.S. jurisdiction?

d. ____ Yes ____ No Have you had any certificate, license, registration or other privilege to practice a health care profession denied, revoked, suspended, restricted, reprimanded, censured or placed on probation by a state or US jurisdiction, federal or foreign authority or have you ever surrendered such credential to avoid, or in connection with, action by such authority?

9. **Applicant's Certification and Agreement**

Please Read Carefully - If you answer 'No' to any of the questions below, explain in the space after the question.

a. ____ Yes ____ No I understand the employer has the right to proceed with any criminal background check.

12. Criminal Arrest Check List

Effective November 1, 2012, and in accordance with public law, Title 63 of the Oklahoma Statutes, Section 1-1950.1, employment at this employer shall **not be** considered if the below signed individual has been *convicted of, pled guilty or no contest to, or received a deferred sentence for, a felony or misdemeanor offense for any of the following offenses in any state or federal jurisdiction*, as stated by Oklahoma Statute, Section 1-1950.1(C)(1) of Title 63:

- | | |
|--|---|
| <ul style="list-style-type: none"> a. abuse, neglect or financial exploitation of any person entrusted to the care or possession of such person, b. rape, incest or sodomy, c. child abuse, d. murder or attempted murder, | <ul style="list-style-type: none"> e. manslaughter, f. kidnapping, g. aggravated assault and battery, h. assault and battery with a dangerous weapon, or i. arson in the first degree. |
|--|---|

Effective November 1, 2012, and in accordance with public law, Title 63 of the Oklahoma Statutes, Section 1-1950.1, employment at this employer shall **not be** considered for the below signed individual *if less than seven (7) years have elapsed since the completion of sentence¹, and the results of a criminal history check reveal that the subject person has been 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*, as stated by Oklahoma Statute, Section 1-1950.1(C)(2) of Title 63:

- | | |
|--|--|
| <ul style="list-style-type: none"> 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, | <ul style="list-style-type: none"> 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. |
|--|--|

¹ Pursuant to 63 O.S. § 1-1950.1(A)(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.

It is further understood that if I am hired, it will be as a temporary employee until the employer receives my criminal background check. If I have no criminal record in accordance with state law, I may be considered for employment, subject to training requirements and other requirements of the job for which I am applying with this employer.

I hereby certify I have no disqualifications for employment as described above and specified in Title 63 of the Oklahoma Statutes, Section 1-1950.1(C). My signature below authorizes the employer to run a check with the Nurse Aide Registry of the Oklahoma State Department of Health for notations of abuse, neglect or misappropriation of resident's property. I hereby give the Oklahoma State Bureau of Investigation authority to proceed with a criminal history records check as authorized by Title 63 of the Oklahoma Statutes, Section 1-1950.1(B).

Signature of Applicant

Date of Signature

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;
- 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.