

October 9, 2013

LTC Concerns For Consideration for Rule development on Bulk Medications:

1. Pharmacist will not have individual pre-dispensing analysis and oversight readily available to determine potential side effects, interactions and contraindications.
2. Cough syrup – can be inviting unintended serious consequences – “Cough medication ingredients mixed with antihypertensive medications can be very harmful. Many cough and cold remedies contain alcohol or other sedating ingredients that mixed with psychotropic medications, antidepressants, or anti-anxiety medications can cause loss of consciousness or decreased vital signs. Cold remedies containing stimulants may cause hypertensive crises.”
 - a. Generic cold and cough remedies contain too many miscellaneous ingredients to be able to monitor all possible interactions for any/all residents who may receive occasional or frequent doses during the course of symptomatic illnesses.
 - b. Decongestants, antihistamines and cough medicine have many ingredients and should be customized to each situation – no size fits all
3. Medications being readily available may encourage staff and physicians to prescribe and administer what is available and before adequate medication review is conducted.
4. Topical medications – infection control between residents – what is the benefit to having a topical medication in bulk
5. Definition of “bulk meds” – what is that? Minimum quantity? Can this be a 16 oz or less?

Alternate language:

(8) Allowed nonprescription drugs.

(XX) Drugs listed in a facility formulary developed or approved by the consultant pharmacist, medical director and director of nurses.

(XX) Non formulary over the counter medications may be prescribed if the resident has drug failure to the formulary over the counter medication or a drug allergy to facility formulary over the counter medication.

Decongestants, antihistamines and cough medicine will be excluded from this list of allowable nonprescription medications.

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 675. NURSING AND SPECIALIZED FACILITIES**

SUBCHAPTER 9. RESIDENT CARE SERVICES

310:675-9-9.1. Medication services

(a) Storage.

(1) Medications shall be stored in a medication room, a locked cabinet, or a locked medication cart, used exclusively for medication storage.

(2) The medication storage area temperature shall be maintained between 60° F. (15.5° C.) to 80° F.(26.6° C.)

(3) The medication room, the medication storage cabinet, and medication cart shall be locked when not in use.

(4) The key to the medication storage areas shall be in the possession of the person responsible for administering medications.

(5) Scheduled medications shall be in a locked box within the locked medication area or cart.

(6) Medications for external use shall be stored separately from medications for internal use.

(7) Medications requiring refrigeration shall be kept within a temperature range of 36° F. (2.2° C.) to 48° F. (8.8° C.) and separated from food and other items. There shall be a method for locking these medications.

(8) The medication areas shall be well lighted, clean and organized.

(9) Running water shall be in close proximity to the medication area.

(10) Powdered over-the-counter medication for topical use may be kept in the resident's room for administration by a nurse aide if:

(A) The facility develops and implements policies and procedures for safe storage and application of the powder; and

(B) Each aide who applies the over-the-counter topical medication is trained in accordance with the established policies and procedures of the facility.

(b) Emergency medications. Emergency medication, policies and equipment shall include but not be limited to:

(1) An electric suction machine with necessary aseptic aspirator tips.

(2) An emergency tray or cart with the following items labeled and accessible to licensed personnel only: resuscitation bag; tongue depressors; and assorted airways; sterile hypodermic syringes in 2 cc, 5 cc, and 20 cc or larger sizes and

appropriate needles. The content shall be limited to emergency medications and contain no scheduled medications. Only two single dose vials of the following medications may be on the tray or cart: 50% Dextrose, respiratory stimulant, a cardiac stimulant, injectable lasix, injectable dilantin and injectable benadryl.

(3) A certified medication aide shall not administer injectable medications from any emergency tray or cart, but shall have access to resuscitation bags, tongue depressors, and assorted sizes of airways.

(c) **Medication accountability.**

(1) Medications shall be administered only on a physician's order.

(2) The person responsible for administering medications shall personally prepare the dose, observe the swallowing of oral medication, and record the medication. Medications shall be prepared within one hour of administration.

(3) An accurate written record of medications administered shall be maintained. The medication record shall include:

(A) The identity and signature of the person administering the medication.

(B) The medication administered within one hour of the scheduled time.

(C) Medications administered as the resident's condition may require (p.r.n.) are recorded immediately, including the date, time, dose, medication, and administration method.

(D) Adverse reactions or results.

(E) Injection sites.

(F) An individual inventory record shall be maintained for each Schedule II medication prescribed for a resident.

(G) Medication error incident reports.

(4) A resident's adverse reactions shall be reported at once to the attending physician.

(d) **Medication labels and handling.**

(1) All prescribed medications shall be clearly labeled indicating the resident's full name, physician's name, prescription number, name and strength of medication, dosage, directions for use, date of issue and expiration, and name, address and telephone number of pharmacy or physician issuing the medication, and the quantity. If a unit dose system is used, medications shall indicate, at least, the resident's full name, physician's name and strength of medication, and directions for use.

(2) When over-the-counter medications are prescribed and obtained in the original manufacturers container, the package directions shall be considered part of the label. The resident's name shall be on the package.

(3) Each resident's medications shall be kept or stored in the originally received containers. Paper envelopes shall not be considered containers.

(4) Medication containers having soiled, damaged, illegible or makeshift labels shall be relabeled by the issuing pharmacy or physician. Labels on containers shall be clearly legible and firmly affixed. No label shall be superimposed on another label on a medication container except for over-the-counter medication containers.

(5) No person shall change labels on medication containers. If the attending physician orders a change of directions, there shall be a procedure to mark the container indicating a label change is needed at the next prescription refill.

(6) A pharmacist shall dilute, reconstitute and label medications, whenever possible. If not possible, a registered nurse may reconstitute, dilute and label medications. A distinctive, indelible, supplementary label shall be affixed to the medication container when diluted or reconstituted for other than immediate use. A licensed practical nurse may reconstitute oral medications only. The label shall include the following: resident's name, dosage and strength per unit/volume, nurse's initials, expiration date, and date and time of dilution or reconstitution.

(7) When a resident is discharged, or is on therapeutic leave, the unused medication shall be sent with the resident, or with the resident's representative, unless there is a written physician's order to the contrary, or the medication has been discontinued, or unless the resident or the resident's representative donates unused prescription medications for dispensation to medically indigent persons in accordance with the Utilization of Unused Prescription Medications Act. The clinical record shall document the quantity of medication sent, and returned or donated, and the signature of the person receiving or transferring the medications.

(8) All medication orders shall be automatically stopped after a given time period, unless the order indicates the number of doses to be administered, or the length of time the medication is to be administered. The automatic stop order may vary for different types of medications. The facility shall develop policies and procedures, in consultation with the medical director and pharmacist, to review automatic stop orders on medications. The policy shall be available to personnel administering medications.

(9) No resident shall be allowed to keep any medications unless the attending physician or interdisciplinary team has indicated on the resident's clinical record that the resident is mentally and physically capable of self-administering

medications.

(10) A resident who has been determined by the physician or interdisciplinary team as capable of self-administering medication may retain the medications in a safe location in the resident's room. The facility shall develop policies for accountability. Scheduled medications shall not be authorized for self-administration, except when delivered by a patient controlled analgesia pump.

(11) A physician's telephone orders shall be conveyed to, recorded in the clinical record, and initialed by the licensed nurse receiving the orders.

(12) Medications shall be administered only by a physician, registered nurse, a licensed practical nurse, or a certified medication aide. The only injectables which a certified medication aide may administer are insulin and vitamin B-12 and then only when specifically trained to do so.

(13) A pharmacy, operating in connection with a facility, shall comply with the State pharmacy law and the rules of the Oklahoma State Board of Pharmacy.

(14) Powdered over-the-counter medication for topical use may be administered by a trained nurse aide when designated in writing by the attending physician and delegated by a licensed nurse. The licensed nurse shall ensure that the aide demonstrates competency in reporting skin changes, storage, application and documentation policies and procedures. The licensed nurse or the attending physician shall document in the resident's record a skin assessment at least twice each week and more often if required by the facility's approved policy.

(e) **Medication destruction.**

(1) Non-controlled medications prescribed for residents who have died and non-controlled medications which have been discontinued shall be destroyed by both the director of nursing and a licensed pharmacist or another licensed nurse. Controlled medication shall be destroyed by a licensed pharmacist and the Director of Nursing. The facility may transfer unused prescription drugs to city-county health department pharmacies or county pharmacies in compliance with the Utilization of Unused Prescription Medications Act and all rules promulgated thereunder. Prescription only medications including controlled medications shall not be returned to the family or resident representatives. The destruction and the method used shall be noted on the clinical record.

(2) Medications prescribed for one resident may not be administered to, or allowed in the possession of, another resident.

(3) There shall be policies and procedures for the destruction of discontinued or other unused medications within a reasonable

time. The policy shall provide that medications pending destruction shall not be retained with the resident's current medications. The destruction of medication shall be carried out in the facility and a signed record of destruction shall be retained in the facility.

(f) **Medication regimen review.** The facility shall ensure that each resident's medications are reviewed monthly, by a registered nurse or a licensed pharmacist. The reviewer shall notify the physician and director of nursing, in writing, when irregularities are evident.

(g) **Consultant pharmacist.** The facility shall have a consultant licensed pharmacist to assist with the medication regimen review and medication destruction. The consultant pharmacist shall discuss policies and procedures for the administration, storage, and destruction of medications with the administrator, director of nursing and other appropriate staff.

(h) **Emergency pharmacy.** The facility shall have a contract, or letter of agreement, with a licensed pharmacy that agrees to serve as the emergency pharmacy. The emergency pharmacy shall be available twenty-four hours a day.

(i) **Bulk nonprescription drugs.** A facility may maintain nonprescription drugs for dispensing from a common or bulk supply if all of the following are accomplished.

(1) **Policy of facility.** The facility must have and follow a written policy and procedure to assure safety in dispensing and documentation of medications given to each resident.

(2) **Acquisition.** The facility shall maintain records which document the name of the medication acquired, the acquisition date, the amount and the strength received for all medications maintained in bulk.

(3) **Dispensing.** Only licensed nurses, physicians, pharmacists or certified medication aides (CMA) may dispense for administration these medications and only upon the written order for as needed (p.r.n.) or nonscheduled dosage regimens dosing from a physician as documented in the clinical record of the resident.

(4) **Storage.** Bulk medications shall be stored in the medication area and not in resident rooms.

(5) **Records.** The facility shall maintain records of all bulk medications which are dispensed on an individual signed medication administration record (MAR).

(6) **Labeling.** The original labels shall be maintained on the container as it comes from the manufacturer or on the unit-of-use (blister packs) package.

(7) **Package size.** The maximum size of packaging shall be established by the facility in its policy and procedures and shall insure that each resident receives the correct dosage;

provided however, that no liquid medications shall be acquired nor maintained in a package size which exceeds 16 fluid ounces.
~~(8) **Allowed nonprescription drugs.** Facilities may have only oral analgesics, antacids, and laxatives for bulk dispensing. No other categories of medication may be maintained as bulk medications.~~

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 587

By: Justice, Johnson
(Constance) and Fields of
the Senate

and

Wright and Pittman of the
House

3
4
5
6
7
8
9 An Act relating to public health; providing
10 definitions; authorizing noncompulsory electronic
11 recording of residents of nursing facilities;
12 prohibiting certain restrictions on residents;
13 prohibiting tampering with electronic recording
14 devices; providing penalties for violations;
15 requiring resident permission for disclosure of
16 certain information; permitting certain information
17 to be used for legal proceedings; providing for
18 codification; and providing an effective date.

16 AUTHORS: Add the following House Coauthors: Sherrer, Hoskin,
17 Shelton and McDaniel (Jeannie)

18 AUTHOR: Add the following Senate Coauthor: Coates

19 AMENDMENT NO. 1. Strike the title, enacting clause and entire bill
20 and insert

21 "An Act relating to public health; providing
22 definitions; authorizing noncompulsory electronic
23 recording of residents of nursing facilities;
24 requiring written notice; prohibiting certain
restrictions on residents; requiring certain
posting; prohibiting tampering with electronic
recording devices; providing penalties for

1 violations; requiring resident permission for
2 disclosure of certain information; permitting
3 certain information to be used for legal
4 proceedings; requiring certain notification;
5 requiring consent form; providing who may give
6 consent; providing rights of other resident of a
7 room; providing for additional information in form;
8 requiring certain compliance; providing for
9 codification; and providing an effective date.

10 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

11 SECTION 1. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 1-1953.1 of Title 63, unless
13 there is created a duplication in numbering, reads as follows:

14 As used in this act:

15 1. "Authorized electronic monitoring" means the placement of
16 electronic monitoring devices in the common areas or room of a
17 resident of a nursing facility and the tapes or recordings from such
18 devices pursuant to the provisions of this act;

19 2. "Authorized electronic monitoring devices" means:

20 a. video surveillance cameras installed in the common
21 areas or resident's room under the provisions of this
22 act, or

23 b. audio devices installed in the room of a resident
24 under the provisions of this act that are designed to
acquire communications or other sounds occurring in
the room;

1 3. "Nursing facility" means the term as defined in Section 1-
2 1902 of Title 63 of the Oklahoma Statutes;

3 4. "Representative of a resident" means the term as is defined
4 in Section 1-1902 of Title 63 of the Oklahoma Statutes;

5 5. "Resident" means the term as is defined in Section 1-1902 of
6 Title 63 of the Oklahoma Statutes; and

7 6. "Unauthorized electronic monitoring" means electronic,
8 mechanical, or other devices that do not meet the provisions of this
9 act and that are specifically used for the nonconsensual
10 interception of wire or electronic communications.

11 SECTION 2. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 1-1953.2 of Title 63, unless
13 there is created a duplication in numbering, reads as follows:

14 A. A nursing facility shall provide written notice to each
15 resident, or to the representative of a resident, that authorized
16 electronic monitoring of a resident's room conducted under the
17 provisions of this act is not compulsory and shall only be conducted
18 with the written consent of the resident or the representative of
19 the resident.

20 B. A nursing facility shall not refuse to admit an individual
21 to residency in the facility and shall not remove a resident from a
22 facility because of authorized electronic monitoring of a resident's
23 room.

1 C. A nursing facility shall post at or near its main entrances
2 a sign that clearly states that electronic monitoring and audio
3 devices may be in use in the facility.

4 SECTION 3. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1-1953.3 of Title 63, unless
6 there is created a duplication in numbering, reads as follows:

7 A. No person or entity shall intentionally hamper, obstruct,
8 tamper with, or destroy an electronic monitoring device installed in
9 a nursing facility.

10 B. Any person or entity that intentionally hampers, obstructs,
11 tampers with, or destroys a recording or an electronic monitoring
12 device installed in a nursing facility shall be subject to the
13 penalties prescribed in Section 1993 of Title 21 of the Oklahoma
14 Statutes.

15 C. No person or entity shall intercept a communication or
16 disclose or use an intercepted communication of an electronic
17 monitoring device placed or installed in a common area of a nursing
18 facility without the express written consent of the facility, or,
19 for an electronic monitoring device installed in a resident's room,
20 the express written consent of the resident or the representative of
21 the resident.

22 SECTION 4. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 1-1953.4 of Title 63, unless
24 there is created a duplication in numbering, reads as follows:

1 Subject to the provisions of law, a tape or recording created
2 through the use of authorized electronic monitoring pursuant to this
3 act may be admitted into evidence in a civil or criminal court
4 action or administrative proceeding.

5 SECTION 5. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 1-1953.5 of Title 63, unless
7 there is created a duplication in numbering, reads as follows:

8 A. A resident or the representative of a resident may conduct
9 authorized electronic monitoring of the resident's room through the
10 use of authorized electronic monitoring devices placed in the room
11 pursuant to the provisions of this act at the expense of such person
12 or representative of the resident and with the written consent of
13 any other resident living in the room.

14 B. A resident who conducts authorized electronic monitoring or
15 the representative of the resident may post and maintain a notice at
16 the entrance to the resident's room stating that the room is being
17 monitored by an electronic monitoring device.

18 C. Nothing in this act shall be construed to prevent a resident
19 or the representative of the resident from placing an electronic
20 monitoring device in the resident's room at the expense of such
21 person; however, if such resident is sharing a room with any other
22 resident, the resident or the representative of the resident shall
23 obtain written consent from such other resident or the
24 representative of the resident living in the room and such consent

1 shall be on a form prescribed by the State Department of Health and
2 shall be placed on file with the administrator of the facility.

3 D. If a resident residing in a shared room, or the
4 representative of a resident residing in a shared room, desires to
5 utilize an authorized electronic monitoring device and another
6 resident living in such shared room refuses to consent to the use of
7 an authorized electronic monitoring device, the nursing facility
8 shall accommodate the resident or the representative of the resident
9 desiring to utilize an authorized electronic monitoring device to
10 move to another room if the resident or resident's representative
11 requests such a room change within a reasonable amount of time.

12 SECTION 6. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1-1953.6 of Title 63, unless
14 there is created a duplication in numbering, reads as follows:

15 A. A resident or representative of a resident who wishes to
16 conduct authorized electronic monitoring shall be required to notify
17 the nursing facility on the consent form prescribed by the State
18 Department of Health.

19 B. The consent form prescribed by the Department shall require
20 the resident or the representative of a resident to obtain the
21 consent of any other resident in the room or the representative of a
22 resident, using the consent form prescribed for this purpose by the
23 Department, if the resident resides in a room with another resident.

24 C. Consent may be given only:

1 1. By the resident or any other resident in the room; or

2 2. By the representative of the resident or representative of
3 any other resident in the room.

4 D. Another resident in the room may:

5 1. When the proposed electronic monitoring device is a video
6 surveillance camera, condition consent on the camera being pointed
7 away from the consenting resident; and

8 2. Condition consent on the use of an audio electronic
9 monitoring device being limited or prohibited.

10 E. Except as provided for in Section 7 of this act, authorized
11 electronic monitoring may begin only after the required consent
12 forms specified in this act have been completed and returned to the
13 nursing facility and placed on file with the administrator of such
14 facility.

15 F. If authorized electronic monitoring is being conducted in
16 the room of a resident, another resident may not be moved into the
17 room unless the resident or representative of the resident has
18 consented to the use of existing electronic monitoring, in
19 accordance with this act.

20 G. The Department may include other information that it
21 considers to be appropriate on any form it is required to prescribe
22 under the provisions of this act.

1 H. The Department shall prescribe the forms required by this
2 act no later than November 1, 2013, and shall make such forms
3 available on its website.

4 SECTION 7. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1-1953.7 of Title 63, unless
6 there is created a duplication in numbering, reads as follows:

7 Any resident or the representative of the resident utilizing
8 existing electronic monitoring devices prior to November 1, 2013,
9 shall comply with all written consent and disclosure provisions of
10 this act no later than January 1, 2014.

11 SECTION 8. This act shall become effective November 1, 2013."

12 Passed the House of Representatives the 22nd day of April, 2013.

13
14
15 _____
16 Presiding Officer of the House of
Representatives

17 Passed the Senate the ____ day of _____, 2013.

18
19
20 _____
Presiding Officer of the Senate



Nurse Aide Registry
Oklahoma State
Department of Health

Nurse Aide Registry Statistics

Prepared for

Long Term Advisory Board

Wednesday, October 10, 2013

**Vicki Kirtley, Director
Nurse Aide Registry**

**For questions regarding:
Nurse Aide Registry, call (405) 271- 5124**

Long Term Care Advisory Board Meeting
 Nurse Aide Registry Activity Report
 Fourth Quarter FY 2013
 April 1, 2013 to June 30, 2013



Nurse Aide Registry
 Oklahoma State
 Department of Health

New Advanced CMA Training Endorsements

Added Per Quarter	CMA Respiratory	CMA Gastrostomy	CMA Glucose Monitor	CMA Insulin Administration	Total Certifications & Registrations
1 st	133	127	54	43	357
2 nd					
3 rd					
4 th					
Totals	133	127	54	43	357

CMA's with Advance CMA training do not receive an additional Certification. The State regulation do not require that a notation of the advanced training be entered on the Nurse Aide Registry

New Feeding Assistants

Added Per Quarter	Feeders Assistants
1 st	47
2 nd	
3 rd	
4 th	
Totals	47

Feeding Assistants are registered versus certified.

Long Term Care Advisory Board Meeting
 Nurse Aide Registry Activity Report
 Fourth Quarter FY 2013
 April 1, 2013 to June 30, 2013



Nurse Aide Registry
 Oklahoma State
 Department of Health

Count of Certificates by Type

Types of Certifications	Unexpired Certifications	Certifications Eligible for Renewal	Total Certifications
ADC	26	171	197
LTC	40,780	75,390	116,175
CMA	5,647	14,103	19,756
CMA Gastro	2,287	1,448	3,735
CMA GM	786	332	1,118
CMA IA	566	258	824
CMA R	2,145	1,505	3,898
Feeding Assistant	534	1,128	1,662
HHA	15,845	34,170	50,016
DDCA	2,145	8,324	10,471
RCA	129	951	1,080
TOTAL	71,137	137,780	208,937

Substantiated Abuse - Long Term Care Aides

Added Per Quarter	Physical	Sexual	Verbal	Mistreatment	Neglect	Misappropriation of Property	Total
1 st	0	0	0	0	2	7	9
2 nd							
3 rd							
4 th							
TOTAL	0	0	0	0	2	7	9

Long Term Care Advisory Board Meeting
 Nurse Aide Registry Activity Report
 Fourth Quarter FY 2013
 April 1, 2013 to June 30, 2013



Nurse Aide Registry
 Oklahoma State
 Department of Health

Number of Approved Training Programs by Type

Long Term Care Aides	Home Health Aides	Developmentally Disabled Direct Care Aides	Residential Care Aides	Adult Day Care Aides	Certified Medication Aides	Total
191	0	14	8	2	51	266

Home Health Aides are going through HHA Deeming Programs to become Certified.

Advanced CMA and CMA/CEU Training Programs

CMA Respiratory	CMA Respiratory/Gastrostomy	CMA Glucose Monitor	CMA Insulin Administration	CMA/CEU	Total
1	27	2	20	40	90

Grand Total Number of Approved Nurse Aide Registry Programs - 356

Number of LTC Onsite Reviews Performed FY2013

1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter	Total
19				19

****FY 2013 Biennial LTC Nurse Aide Training Program Inspections have been completed.****

Inspections have started on 2014 Biennial LTC Nurse Aide Training Programs including all approved Nurse Aide Registry training programs (CMA, CMA Advanced, CMA/CEU, DDCA, RCA, ADC).

How to Make Sure Your Nurse Aide Renewal Application Is Handled Quickly



Nurse Aide Registry
Oklahoma State
Department of Health

Each day the Nurse Aide Registry (The Registry) receives over 100 phone calls from aides or facilities. Most calls are to check on the status of renewal applications and most of these applications are incomplete.

Please read the following information to ensure your renewal application is processed quickly and your certification does not expire due to an incomplete application.

Oklahoma Tax Holds

The Registry is unable to renew your certification if there is an Oklahoma Tax Hold. Oklahoma law requires that certifications not be renewed until the taxpayer is in compliance with Oklahoma tax laws. **The Oklahoma Tax Commission (OTC)** can place holds for varied reasons, such as unpaid OK taxes, or having never paid OK taxes. Aides should contact the OTC if they know they have a tax hold. Please **do not** call the Registry office to find out information on why you have a tax hold. **The Registry does not know why there is a tax hold. You must contact OTC for that information and to have the tax hold lifted.**

If an aide has a tax hold, the Registry Database is locked. We cannot release the tax hold and renew your certification until you contact OTC at **1-800-522-8165** or **(405) 522 6800** and **OTC provides the Registry with an e-mailed release.** OTC e-mails the Registry twice a day with tax releases. As soon as they are received from OTC, the Registry staff will remove the tax hold and complete the application if it is complete. ***Please have tax holds lifted before sending a recertification application.***

Work Proof

You must provide one of the following with your application to prove you have provided nursing or health related services at least eight (8) hours for pay during the twenty-four (24) months before your certification expires: signature of the Administrator, Director, or Supervisor; a copy of your pay stub; or your W-2 form. The Administrator, Director, or Supervisor, must **fill out the dates you worked and sign the recertification application.**

Affidavit of Lawful Presence

As of November 1, 2007, any person fourteen (14) years of age or older who receives public benefits must complete an *Affidavit of Lawful Presence*. The Affidavit reports whether you are a U.S. citizen or an alien who is legally in the country. **If you are a Qualified Alien, you must provide your Admission Card or Registration number.** Under the law, your nurse aide certification is considered a public benefit and can only be renewed if you fill out the Affidavit. You must **print and sign** your name on the Affidavit. Please print clearly.

CMA Renewal Process

CMA renewal requires 8 hours Continuing Education taken every year **before** expiration date **except** for the first year renewal. Your training will take the place of the required CEUs.

Please provide a Certificate of Attendance for the eight (8) hour CMA Continuing Education Update Program.

Complete the Application

Print and sign your name. Please be sure your printed name can be clearly read.

Tell Us If Your Address Changes and Renew Early

Your renewal application is mailed out **three (3) months** before your certification expires. It is very important for you to tell the Registry if there is an address change to make sure you receive your renewal notice. It is also important that you mail your recertification application **at least four (4) to six (6) weeks in advance**. This will allow the Registry to renew your certification before it expires. It also allows time for the Registry to mail a letter to you if your application is incomplete and allow you to resubmit any missing information before your certification expires.

If your application is received one (1) or two (2) weeks before your certification expires it may not allow enough time before expiration. However, **do not mail** your recertification application **more than 3 months prior to expiration**. **It will be returned**. Renewals are processed in the order they are received. **If you bring your renewal to the office, it will be processed at a later date with that day's mail.**

There are over 70,000 aides with certifications. Over 12,000 aides were added last year and more than one certification may be held by an aide. Since there are periods where the Oklahoma State Department of Health has heavier renewal periods, the renewal process can experience delays but we have reduced those in the registry. We now typically process renewals in two (2) to three (3) weeks.

CHECK LIST TO COMPLETE YOUR APPLICATION

- Make sure you do not have a tax hold. **Please do not send in application if you have a tax hold until it has been lifted.** Contact the OTC at 1-800-522-8165 or (405) 522-6800 if you have a tax hold. OTC will provide the Registry with an e-mailed tax hold release.
- Work proof has been provided by signature of the Administrator, Director, or Supervisor; a copy of your pay stub; or your W-2 form.
- Affidavit of Lawful Presence is complete. **If you are a Qualified Alien, you must provide your Admission Card or Registration number.** You must print and sign your name on the Affidavit. Please print clearly.
- Your name is printed clearly and you have signed the application.
- Include the fee if required for certification.

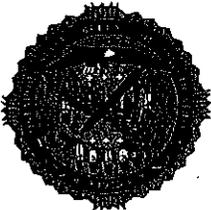
You are very important to us, and we want to make sure your renewal application is processed as quickly as possible. Please make sure you check the application and all documentation needed for completeness.

You can confirm your certification by checking the Registry website or calling our office. Certification cards are mailed out every 2 weeks. Facilities may **not** determine certification status by the date on your card. Facilities are required to check our web site at <http://NAR.health.ok.gov> or call toll free at 1-800-695-2157 or (405) 271-4085 to check that your certification is in good standing.

O·K·L·A·H·O·M·A



Protective
Health Services



Oklahoma State
Department of Health

National Background Check Program

Proposed Rulemaking

okscreen@health.ok.gov

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



 OKLAHOMA STATE DEPARTMENT OF HEALTH • CREATING A STATE OF HEALTH • WWW.HEALTH.OK.GOV

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

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

 OKLAHOMA STATE DEPARTMENT OF HEALTH • CREATING A STATE OF HEALTH • WWW.HEALTH.OK.GOV

Title 63 Section 1-1947(A)(1)

- The State Department of Health and the Department of Human Services shall conduct criminal history background checks on all current employees and applicants for employment of the State Department of Health and Department of Human Services whose responsibilities include working inside long-term care facilities on behalf of the State Department of Health or the Department of Human Services.

3

OKLAHOMA STATE DEPARTMENT OF HEALTH • CREATING A STATE OF HEALTH • WWW.HEALTH.OK.GOV

For purposes of the Long-term Care Security Act:

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

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

4

OKLAHOMA STATE DEPARTMENT OF HEALTH • CREATING A STATE OF HEALTH • WWW.HEALTH.OK.GOV

Title 63 Section 1-1947(D)

- D. Except as otherwise provided by subsection F of this section, an **employer** shall not employ, independently contract with, or grant clinical privileges to any individual who has **direct patient access** to service recipients of the employer, if one or more of the following are met:
 - If the results of a state and national criminal history records check reveal that the subject person has failed to act in conformity with all federal, state and municipal laws as applicable to his or her professional license, certification, permit or employment class, as established by the authority having jurisdiction for the subject person's professional license, certification, permit, or employment class;

5

OKLAHOMA STATE DEPARTMENT OF HEALTH • CREATING A STATE OF HEALTH • WWW.HEALTH.OK.GOV

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

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

6

OKLAHOMA STATE DEPARTMENT OF HEALTH • CREATING A STATE OF HEALTH • WWW.HEALTH.OK.GOV

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

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

7

OKLAHOMA STATE DEPARTMENT OF HEALTH • CREATING A STATE OF HEALTH • WWW.HEALTH.OK.GOV

Role of the Authority Having Jurisdiction

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

8

OKLAHOMA STATE DEPARTMENT OF HEALTH • CREATING A STATE OF HEALTH • WWW.HEALTH.OK.GOV

Role of the Authority Having Jurisdiction

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

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

- Currently subject to an exclusion as described under Title 42 of the United States Code, Section 1320a-7
- Currently the subject of a substantiated finding of neglect, abuse, verbal abuse, misappropriation of property, maltreatment, or exploitation, by any state or federal agency pursuant to an investigation conducted in accordance with Title 42 of the United States Code, Sections 1395i-3(g)(1)(C) or 1396r(g)(1)(c), or Sections 1-1950.7 or 1-1951 of Title 63 of the Okla. Statutes

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

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

11

OKLAHOMA STATE DEPARTMENT OF HEALTH • CREATING A STATE OF HEALTH • WWW.HEALTH.OK.GOV

Appeals (Waivers) 63 O.S. § 1-1947(T)

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

12

OKLAHOMA STATE DEPARTMENT OF HEALTH • CREATING A STATE OF HEALTH • WWW.HEALTH.OK.GOV

Proposed Criteria for waiver

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

Proposed Criteria for waiver

- (4) The relevancy of the particular disqualifying information with respect to the proposed employment of the individual to include the job type and duties, the extent to which the applicant has unsupervised access to service recipients, whether the crime was committed against a vulnerable child or adult, and whether the conviction was related to an employer subject to the requirements of the Long Term Care Security Act; and
- (5) Credible and reliable evidence of the disposition of any arrest for which the nationwide criminal history record was incomplete. This could be evidence, for example, of the certified copies of an acquittal, a dismissal, or conviction of a lesser included crime, submitted to refute or rebut the presumption of a disqualifying conviction created because the nationwide criminal history record was incomplete in not showing the final disposition of an arrest for a crime that constitutes a disqualifying conviction.

RAP BACK

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



15

OKLAHOMA STATE DEPARTMENT OF HEALTH • CREATING A STATE OF HEALTH • WWW.HEALTH.OK.GOV

Personnel Files (See Handouts)

- OK-SCREEN Consent and Release
- OK-SCREEN Final Registry Results
- OK-SCREEN Employment Authorization Form
- OSBI Report (Not Required but available to facility)
- FBI Report is NOT AVAILABLE TO THE FACILITY

16

OKLAHOMA STATE DEPARTMENT OF HEALTH • CREATING A STATE OF HEALTH • WWW.HEALTH.OK.GOV

 Protective Health Services Oklahoma State Department of Health		Final Registry Results Form	
12/2/2012 11:59:30 PM GRACE LIVING CENTER-CHICKASHA 2300 IOWA AVENUE CHICKASHA, OK 73023		OK-SCREEN Oklahoma Screening and Registry Employee Evaluation Network www.ok.gov/health Oklahoma State Department of Health 1000 NE 10th Oklahoma City, OK 73117 405-271-6868	
4052246456 Application Detail related to Licensing and any Registry Events that may be associated with this Person.			
Applicant Information			
Application #:	170	SSN:	999-99-9998
Name:	Timmy Testalde	Date of Birth:	10/1/1980
Address:	1600 NE 10th St. Oklahoma City, OK 73117	Race:	White
County:		Gender:	Male
Place of Birth:		Eye Color:	
		Hair Color:	
		Weight:	
		Height:	
License or Certification			
Name on License/Certification:	TESTALDE, TIMMY		
Address on License/Certification:	1000 NE 10TH		
	OKLAHOMA CITY, OK 73117		
Profession:	Long Term Care Aide (LTC)		
License/Certification #:	A20325350612		
Status:	Active		
Expiration Date:	06/30/2013		
If you dispute the findings shown for the registry indicated contact the phone number provided.			
OK Nurse Aide and Non-Technical Service Worker Registry - ABUSE			
			1 of 5
17  OKLAHOMA STATE DEPARTMENT OF HEALTH · CREATING A STATE OF HEALTH · WWW.HEALTH.OK.GOV			

Oklahoma State Department of Health Oklahoma Screening and Registry Employee Evaluation Network 1000 NE 10th Oklahoma City, OK 73117 Phone: 405-271-6868 Email: HealthResources@health.ok.gov Website: www.ok.gov/health	
Employment Authorization Form	
The Employment Authorization Form provides personal, demographic, eligibility, and employment information for the person listed below as it is captured in the Oklahoma Screening and Registry Employee Evaluation Network as of 10/03/2013. The form can be printed and stored in the person's human resources file to verify the person's eligibility for employment and employment status as of this date.	
Note: This information is current as of 10/03/2013. Please check the system for updated information on each applicant.	
Employment Eligibility (as of 10/03/2013)	
Name:	Christi Michelle Lee
SSN:	999-99-9999
Employment Eligibility Status:	ELIGIBLE ←
Applicant/Employee Information	
Permanent Address:	4709 S 74th E Pl Apt. 5 Tulsa, OK 74145
Date of Birth:	04/04/2013
Race:	Unknown
Gender:	Female
Mailing Address:	4709 S 74th E Pl Apt. 5 Tulsa, OK 74145
Eye Color:	
Hair Color:	
Weight:	
18	

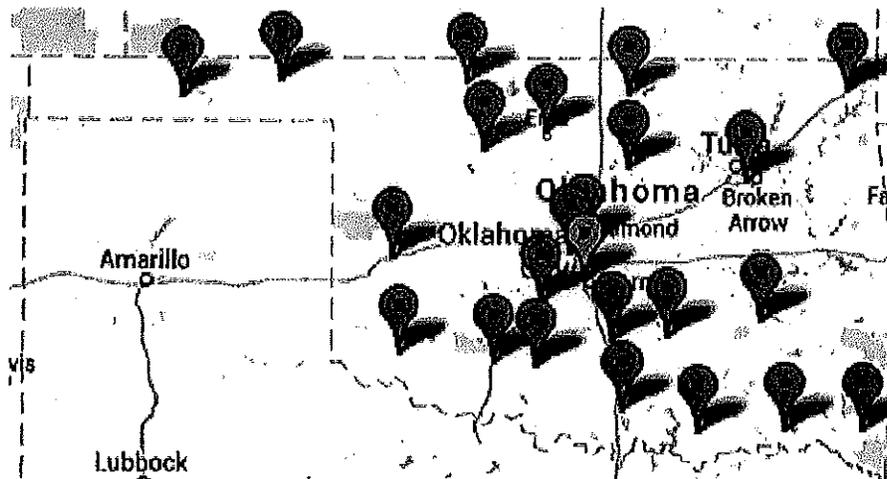
Implementation Process

- Notice of Rulemaking Intent published October 1, 2013
- Comment period through November 1, 2013
- Rules for effective dates have been requested to bring facilities on-line. Tentative proposal is for two week intervals starting January 1, 2014.
 - 1/1/14 - Surveyor Applicants, Adult Day Care & Residential Care
 - 1/15/14 - Nursing Facilities, Assisted Living & Continuum of Care
 - 2/1/14 - All other facilities
- This will change as we near the time for final submission for Board of Health Adoption: December 10, 2013
- Latest thinking is one to two month intervals between employer groups.

19

OKLAHOMA STATE DEPARTMENT OF HEALTH • CREATING A STATE OF HEALTH • WWW.HEALTH.OK.GOV

Live Scan Sites as of 10/1/2013



20

OKLAHOMA STATE DEPARTMENT OF HEALTH • CREATING A STATE OF HEALTH • WWW.HEALTH.OK.GOV

Where to direct inquiries

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

21  OKLAHOMA STATE DEPARTMENT OF HEALTH • CREATING A STATE OF HEALTH • WWW.HEALTH.OK.GOV

http://onbc.health.ok.gov

OSDH Home > Protective Health > Health Resources Development Service > Oklahoma Long Term Care National Background Check Program email print

Oklahoma Long Term Care National Background Check Program

Get E-mail Updates: 

UPDATED October 1, 2013

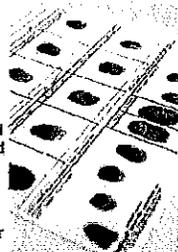
Staggered effective dates for fingerprinting are proposed to begin January 1, 2014. The proposal would stagger the effective dates for industry groups over two week intervals. Public comment on the proposed rules and effective dates are requested. The proposed rules are linked here:

Chapter 2. Procedures of the State Department of Health (70 KB)

The current name based background check process remains in place. However, see below for revised disqualifying offenses for Nurse Aides and Nontechnical Services Workers.

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

Quick Links



OKLAHOMA STATE DEPARTMENT OF HEALTH • CREATING A STATE OF HEALTH • WWW.HEALTH.OK.GOV

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

RULEMAKING ACTION:

Notice of proposed EMERGENCY and PERMANENT rulemaking

PROPOSED RULES:

Subchapter 29. Criminal History Background Checks [NEW]

310:2-29-1. Purpose [NEW]

310:2-29-2. [RESERVED]

310:2-29-3. Implementation [NEW]

310:2-29-4. [RESERVED]

310:2-29-5. Appeals [NEW]

SUMMARY:

This proposal promulgates new rules in the procedures of the Department of Health as required in amendments to the Long Term Care Security Act (Title 63 O.S. § 1-1944 et. seq.), as adopted in 2012, [House Bill 2582](#). This bill authorized fingerprint based criminal history background checks on those applicants who would be employed in a variety of long-term care settings as defined in the law at [Title 63 O.S. Section 1-1945\(4\)](#). The law at [Title 63 O.S. § 1-1947\(T\)\(2\)](#) requires that the Department shall specify rules for issuing a waiver of the disqualification or employment denial and further specifies in paragraph (Y) the State Board of Health shall promulgate rules prescribing effective dates and procedures for the implementation of a national criminal history record check for the employers and nurse aide scholarship programs defined in Section 1-1945 of Title 63 of the Oklahoma Statutes.

Emergency rulemaking is sought pursuant to 63 O.S. § 1-1947(Y) which states, *the State Board of Health shall promulgate rules prescribing effective dates and procedures for the implementation of a national criminal history record check for the employers and nurse aide scholarship programs defined in Section 1-1945 of [Title 63 of the Oklahoma Statutes]. Said dates may be staggered to facilitate implementation of the requirements of this section.*

This Emergency rulemaking action is necessary to provide for the staggered effective dates authorized in law; implement without further delay a more rigorous national background check for those caring for vulnerable adults in our state; and implement the program while grant dollars are available, thereby reducing the cost to the State and providers for background checks. An extension to the current grant has been offered to April of 2015. Upon an effective date for fingerprinting, grant funds will be utilized for seventy-five percent (75%) of fingerprinting costs for the duration of the grant. For each months delay in an effective date approximately eighty thousand dollars (\$80,000) of grant funds will not be captured to assist in program costs. The implementation dates for this program were dependent on software development and contracting with a vendor for a statewide network to provide live scan collection and digital submission of fingerprints to the State Bureau of Investigation. That software and the network are now projected to be complete by November 1, 2013.

310:2-29-1, Purpose. This section specifies the purpose of the rules and authorizing Act.

310:2-29-3, Implementation. This section details procedures for implementing the law and creates staggered effective dates for the fingerprint based background check by various classes of employer. The staggered dates allow for a gradual increase in the volume of requests processed during the initial start-up.

310:2-29-5, Appeals. This section creates the procedures for requesting an appeal of the employment eligibility determination and the criteria to be applied by the hearing officer in making a determination whether the applicant merits a waiver of the applicant's determination of ineligibility. The criteria to be applied are:

(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.

AUTHORITY:

Oklahoma State Board of Health; Title 63 O.S. § 1-104; Title 63 O.S. § 1-1947(T)(2) and 1-1947(Y).

COMMENT PERIOD:

Pursuant to 75 O.S. § 303 (A), the public hearing for the proposed rulemaking in this chapter shall be on November 1, 2013, at the Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207, in room 1102 beginning at 11:00 a.m. Those wishing to present oral comments should be present at that time to register to speak. The hearing will close at the conclusion of those registering to speak. Interested persons may attend for the purpose of submitting data, views or concerns, orally or in writing, about the rule proposal described and summarized in this Notice or may submit this information in writing before November 1, 2013, to the contact person provided in this Notice.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, on the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule. Business entities may submit this information in writing before November 1, 2013, to the contact person provided in this Notice.

COPIES OF PROPOSED RULES:

The proposed rules may be obtained for review from the contact person provided in this Notice, or via the agency website at www.health.ok.gov.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., §303(D), a rule impact statement is available at the location listed above for obtaining copies of the rule.

CONTACT PERSON:

James Joslin, Chief, Health Resources Development Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207, phone 405-271-6868, or by e-mail to james@health.ok.gov.

RULE IMPACT STATEMENT
**(This document may be revised based on comment received
during the public comment period.)**

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

Before the Oklahoma State Board of Health December 10, 2013

1. DESCRIPTION:

This proposal promulgates new rules in the procedures of the Department of Health as required in amendments to the Long Term Care Security Act (Title 63 O.S. § 1-1944 et. seq.), as adopted in 2012, [House Bill 2582](#). This bill authorized fingerprint based criminal history background checks on those applicants who would be employed in a variety of long-term care settings as defined in the law at [Title 63 O.S. Section 1-1945\(4\)](#). The law at [Title 63 O.S. § 1-1947\(T\)\(2\)](#) requires that the Department shall specify rules for issuing a waiver of the disqualification or employment denial and further specifies in paragraph Y the State Board of Health shall promulgate rules prescribing effective dates and procedures for the implementation of a national criminal history record check for the employers and nurse aide scholarship programs defined in Section 1-1945 of Title 63 of the Oklahoma Statutes.

310:2-29-1, Purpose. This section specifies the purpose of the rules and authorizing Act.

310:2-29-3, Implementation. This section details procedures for implementing the law and creates staggered effective dates for the fingerprint based background check by various classes of employer. The staggered dates allow for a gradual increase in the volume of requests processed during the initial start-up.

310:2-29-5, Appeals. This section creates the procedures for requesting an appeal of the employment eligibility determination and the criteria to be applied by the hearing officer in making a determination whether the applicant merits a waiver of the applicant's determination of ineligibility. The criteria to be applied are:

- (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.
- (5) Credible and reliable evidence of the disposition of any arrest for which the nationwide criminal history record was incomplete. This could be evidence, for example, of the certified copies of an

acquittal, a dismissal, or conviction of a lesser included crime, submitted to refute or rebut the presumption of a disqualifying conviction created because the nationwide criminal history record was incomplete in not showing the final disposition of an arrest for a crime that constitutes a disqualifying conviction.

2. DESCRIPTION OF PERSONS AFFECTED AND COST IMPACT RESPONSE:

Affected persons will be residents and their families as well as owners, operators, and applicants of employers defined within the Long Term care Security Act. This rule implements statute and creates no additional reporting or processing requirements beyond that required in the enabling legislation. When a disqualified applicant appeals the determination and requests a hearing they will incur costs in time and postage.

3. DESCRIPTION OF PERSONS BENEFITING, VALUE OF BENEFIT AND EXPECTED HEALTH OUTCOMES:

Those benefiting from the rule's implementation of fingerprint based criminal history background checks will be residents and their families as well as owners and operators. These groups benefit from enhanced employment screening tools creating a safer environment for vulnerable populations. The applicants found ineligible benefit by having an appeals procedure that allows for the consideration of extenuating or mitigating factors that might merit waiving the ineligible determination.

4. ECONOMIC IMPACT, COST OF COMPLIANCE AND FEE CHANGES:

There will be an economic impact to the applicants subject to a background check and to the employers seeking to employ an applicant. The costs for both the applicant and the employer are established in state statute. The monies derived from the costs to the applicant and the employer will cover the costs to obtain the background check and the long-term costs of implementation of the program.

5. COST AND BENEFITS OF IMPLEMENTATION AND ENFORCEMENT TO THE AGENCY:

The cost to the Department to implement the amendments will be approximately \$4,000 to cover the costs of rule drafting, adoption, publication, distribution, and education. The proposed rules will be implemented by Department personnel. The initial startup of the program is supported by a grant with long-term funding supported by the applicant's administrative fingerprinting fee and the employer's fee for obtaining the criminal history record results. These fees are as authorized in the enabling legislation, House Bill 2582 (2012).

Benefits to the Department of Health and the Department of Human Services will be more rigorous background checks for those Department staff whose responsibilities include visits to long-term care settings. These staff will be subject to the same fingerprint based national background check as staff working in long-term care settings. These Departments are also projected to benefit by reduced incidents of abuse, neglect and misappropriation in long term care settings.

6. IMPACT ON POLITICAL SUBDIVISIONS:

There are no anticipated impacts on political subdivisions, nor will it require their cooperation in implementing or enforcing the proposed amendment.

7. ADVERSE EFFECT ON SMALL BUSINESS:

Comment will be sought for adverse economic effects on small businesses as provided by the Oklahoma Small Business Regulatory Flexibility Act but none are anticipated.

8. EFFORTS TO MINIMIZE COSTS OF RULE:

No less costly or non-regulatory methods have been identified.

9. EFFECT ON PUBLIC HEALTH AND SAFETY:

Implementation of fingerprint based criminal history background checks will yield a more credible work force caring for vulnerable residents in the long term care settings and is anticipated to reduce incidents of abuse, neglect and misappropriation in such settings.

10. DETRIMENTAL EFFECTS ON PUBLIC HEALTH AND SAFETY WITHOUT ADOPTION:

Lack of implementation of fingerprint based criminal history background checks will result in continued use of local name based background checks that do not account applicants who cross state lines to avoid their criminal history or who conceal their identity. These applicants are then eligible to work with vulnerable adults after having demonstrated behaviors that in some case are shown to be predictors of abuse, neglect and misappropriation.

11. This rule impact statement was prepared on August 16, 2013 and revised September 24, 2013.

**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 by category of employer for subsections D through V of Section 1-1945 are defined below.

(1) Nurse aide scholarship programs shall have an effective date of January 1, 2014.

(2) The following employers shall have an effective date of January 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);

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

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

(3) The following employers shall have an effective date of January 15, 2014:

(A) A nursing facility or specialized facility as defined by Section 1-1902 of Title 63 of the Oklahoma Statutes; and

(B) A Continuum of Care or Assisted Living facility as defined by Section 1-890.2 of Title 63 of the Oklahoma Statutes.

(4) All other employers defined in Section 1-1945(4) shall have an effective date of February 1, 2014; and

(5) 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.*

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 *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 accuracy and completeness of the criminal history record; 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) 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;

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

(5) Credible and reliable evidence of the disposition of any arrest for which the nationwide criminal history record was incomplete. This could be evidence, for example, of the certified copies of an acquittal, a dismissal, or conviction of a lesser included crime, submitted to refute or rebut the presumption of a disqualifying conviction created because the nationwide criminal history record was incomplete in not showing the final disposition of an arrest for a crime that constitutes a disqualifying conviction.

(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.