

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.

Barrier Offenses for the Non-Technical Services Worker
Effective November 1, 2012
63 O.S. § 1-1950.1 (OSCN 2012)

Title 63, Section 1-1950.1(C) 1. If the results of a criminal history background check reveal that the subject person has been convicted of, pled guilty or no contest to, or received a deferred sentence for, a 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. 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,
- e. manslaughter,
- f. kidnapping,
- g. aggravated assault and battery,
- h. assault and battery with a dangerous weapon, or
- i. arson in the first degree.

2. If less than seven (7) years have elapsed since the **completion of sentence**¹, 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, 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.

<p>Note: Possession of a Schedule I through V drug as defined by the Uniform Controlled Dangerous Substances Act is no longer a barrier offense.</p>

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.

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.