

O·K·L·A·H·O·M·A



Protective
Health Services
Oklahoma State
Department of Health



Oklahoma National Background Check Program



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



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Current law status

- Effective date of law is November 1, 2012
- **Only new Barrier Offenses for CNAs and NTSWs are effective as of November 1, 2012.**
- The law authorizes staggered implementation by provider groups through rule rulemaking. We anticipate effective dates for fingerprinting after August 1, 2013 at the earliest.
- More information and training will be forthcoming
- See the web site <http://onbc.health.ok.gov> for more information



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Current law status

- Current law changes only apply to nurse aides and nontechnical services workers
- Use the revised Uniform Employment Application for Nurse Aide Staff - [Form 805](#)
- Future law will apply to anyone with direct patient access on a routine basis without line of sight supervision
- Providers continue to process name based background checks under authority at 1-1950.8(A) but apply revised barrier offenses at a fee of \$15
- Providers continue to check sex and violent offender status on all hires under authority at 63 O.S. § 1-1946
- Good idea to check nurse aide abuse registry on all hires



Completion of the sentence

- “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.
- [\[63 O.S. 2012, § 1-1950.1\(A\)\(5\)\]](#)



Amended Nurse Aide Barrier Convictions

Effective November 1, 2012

- Shall not employ an Aide who was convicted of, pled guilty or no contest to, or received a deferred sentence to, a felony or misdemeanor offense for any of the following offenses in any state:
 - abuse, neglect or financial exploitation of any person entrusted to the care or possession of such person,
 - rape, incest or sodomy,
 - child abuse,
 - murder or attempted murder,
 - manslaughter,
 - kidnapping,
 - aggravated assault and battery,
 - assault and battery with a dangerous weapon, or
 - arson in the first degree.

Hyperlink:
[63 O.S. 2012,
Section 1-
1950.1\(C\)\(1\)](#)

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7-Years Post Completion of Sentence Barriers for Nurse Aides

Effective November 1, 2012

Shall not employ an aide where 7 years have not elapsed since the completion of sentence where the aide was 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:

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

Hyperlink:
[63 O.S. 2012, Section 1-
1950.1\(C\)\(2\)](#)



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Background Check Model in Development

- Single web portal point of entry operated by OSDH
- Automated registry checks
 - Sex & Violent Offender
 - Exclusion Lists
 - Abuse/neglect registries
 - Licensure Boards
- Cleared for digital fingerprinting (FP) through statewide vendor shared with sister agencies for best pricing
- Digital transmission of FPs to OSBI/FBI & results
- Determination unit (DU) reviews rap sheets & advises potential employer
- Rap back capability for on-going monitoring of criminal convictions & 1-time fingerprinting

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Screening and Background Check Process

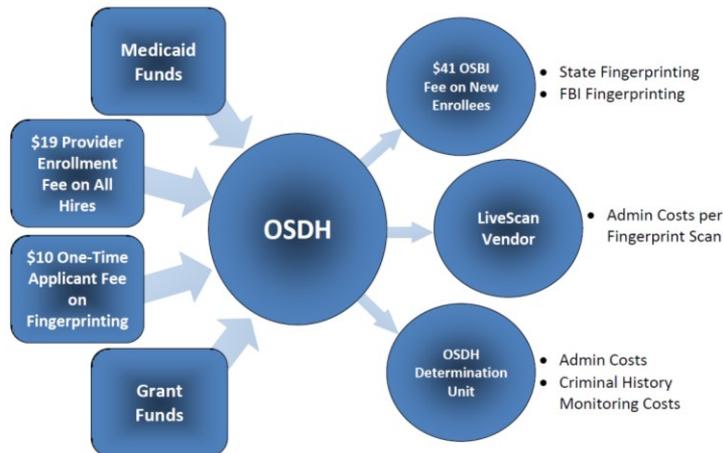
- Employer enters basic applicant info. in system
- Registries and prior screening enrollment status checked
- If cleared & not previously enrolled, employer enrolls applicant for FP and pays \$19 fee (provisional employment allowed)
 - Applicant pays \$10 scanning fee at fingerprinting
 - OSBI/FBI results sent to OSDH
 - OSDH pays OSBI/FBI fingerprinting fee of \$41 & scanning vendor fee of \$15
 - OSDH reviews and sends determination to employer/employee
 - If cleared employee enrolled in monitoring
 - If not cleared, employee ineligible in system (appeal rights)
- If employee was cleared & previously enrolled, & employer hires, employer pays \$19 fee and enrolls employee for criminal history monitoring under employer

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Oklahoma Fingerprint Background Check – HB2582



By year three of the program 2 out of ten hires will be in system and will not require re-fingerprinting.

By year five almost 4 out of every ten hires will be in system and will not require re-fingerprinting.

For those in the system, the OSDH can provide immediate confirmation of eligibility to hire.



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Employers Defined [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
- Staffing agencies contracting with providers
- Independent contractors serving providers



Immunity Clause [63 O.S. 2012, § 1-1947(U)]

- Employers acting in good faith to comply with the requirements of this law shall be immune from liability in carrying out the provisions of the law
- RAP Sheet: Record of arrest and prosecution



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;*

The effective date of this section will be set in rulemaking!



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**
- 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

The effective date of this section will be set in rulemaking!



Mandatory *Time Limited* Exclusions [63 O.S. 2012, § 1-1947(D)]

- **Conviction of program-related crimes**
Any individual or entity that has been convicted of a **criminal offense** related to the delivery of an item or service under Medicare or under any State health care program.
- **Conviction relating to patient abuse**
Any individual or entity that has been convicted, under Federal or State law, of a **criminal offense** relating to neglect or abuse of patients in connection with the delivery of a health care item or service.
- **Felony conviction relating to health care fraud**
Any individual or entity that has been convicted for an offense which occurred after August 21, 1996, under Federal or State law, in connection with the delivery of a health care item or service or with respect to any act or omission in a health care program operated by or financed in whole or in part by any Federal, State, or local government agency, of a criminal offense consisting of a felony relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct.
- **Felony conviction relating to controlled substance**
Any individual or entity that has been convicted for an offense which occurred after August 21, 1996, under Federal or State law, of a criminal offense consisting of a felony relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.

The effective date of this section will be set in rulemaking!



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.
- A nurse aide is disqualified from employment based on an amended list of barrier crimes
- A nontechnical services worker is disqualified from employment based on the same barrier crimes as a nurse aide
- An individual providing direct patient services in an employment class not otherwise described would be subject to barriers defined for nurse aides

The effective date of this section will be set in rulemaking!



OIG - Criminal Convictions for Nurse Aides With Substantiated Findings

- 19% of nurse aides with substantiated findings had at least one conviction prior to their substantiated findings (of 1,611 – 19%)
- Nurse aides with substantiated findings had a higher rate of criminal convictions than nurse aides employed in nursing facilities overall (95% CI)
- Crimes against persons predicts abuse
- Crimes against property predicts misappropriation
- More recent the crime > rate of substantiated findings

