

O·K·L·A·H·O·M·A



Protective
Health Services

Oklahoma State
Department of Health



National Background Check Program Grant

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



Outline

- My Purpose: to explain the purpose behind the new law requiring registry screenings and a fingerprint based background check for all staff in Long Term Care settings and the process
- Why
- Grant Program Purpose
- Legislation and Program Design
- Criminal History Barrier Changes
- Phase 1 Screening Program Demonstration



Nurse Aide Registries: State Compliance and Practices

Nurse Aides with Certifications in Multiple States

#of Nurse Aides Certified	# of States in which Certified
93,697	2
4,919	3
342	4
35	5
10	6
1	7
1	9
1	10
99,006	Total

Source: *Nurse Aide Registries: State Compliance and Practices*, DHHS/OIG, February 2005; OEI-07-03-00380



Nurse Aide Registries: State Compliance and Practices

Nurse Aides with Substantiated Findings
Actively Certified in Multiple States

Nurse aides with substantiated findings in 1 state and active certification in:	Number of Nurse Aides
1 State	1,412
2 States	122
3 States	14
4 States	3
5 States	1
Total	1,552

Source: *Nurse Aide Registries: State Compliance and Practices*, DHHS/OIG, February 2005; OEI-07-03-00380



Nurse Aide Registries: State Compliance and Practices

Oklahoma:

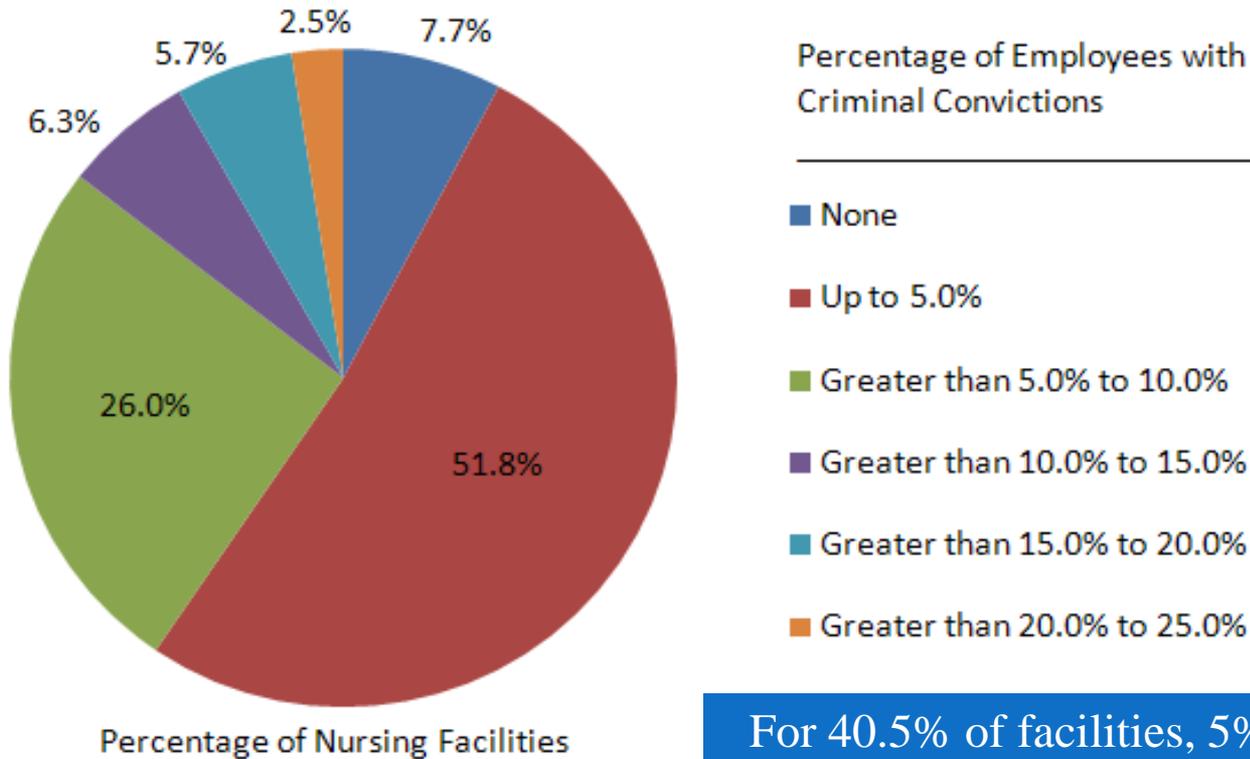
- 101 aides with substantiated findings in Oklahoma working in other states
- 52 aides with current certification in OK had substantiated adverse findings in 16 other States
- 17 aides with current certification in OK had pending adverse findings in 4 other States

Source: *Nurse Aide Registries: State Compliance and Practices*, DHHS/OIG, February 2005; OEI-07-03-00380



DHHS OIG 2011 Report Findings

Percentage of Nursing Facilities Employing Individuals with Criminal Convictions



For 40.5% of facilities, 5% or more of staff had criminal convictions



DHHS OIG 2011 Report Findings

- What kind of crimes were they and how recent?
 - 56.7% of crimes were against persons or property
 - For 36% of employees, < 5 years elapsed since most recent conviction

Source: *Nurse Aide Registries: State Compliance and Practices*, DHHS/OIG, February 2005; OEI-07-03-00380



Program Goals

- Help States protect vulnerable populations in Long Term Care Settings
- Identify efficient, effective, and economical procedures for States to conduct State and Federal background checks
- Establish framework for standardized nationwide program for States to conduct fingerprint-based background checks on all prospective *direct patient access employees* of long term care facilities and providers



Program Fundamentals

- Grant awarded through Centers for Medicare and Medicaid Services (CMS)
- State provides 25% match – currently authorized grant of \$2.6 million, allowed up to \$3 million
- Grant program currently in effect: April 2011 - April 2013; extension pre-authorized to 2014
- Funds for exploration and development of applicant screening program
- Ad Hoc Advisory Group Created
- Legislation: HB2582 signed by Governor June 8, 2012
- Effective date of law is November 1, 2012
- When: The law authorizes staggered implementation by provider groups through rule rulemaking. We anticipate effective dates for the Nursing Home industry of January 1, 2013 at the earliest.

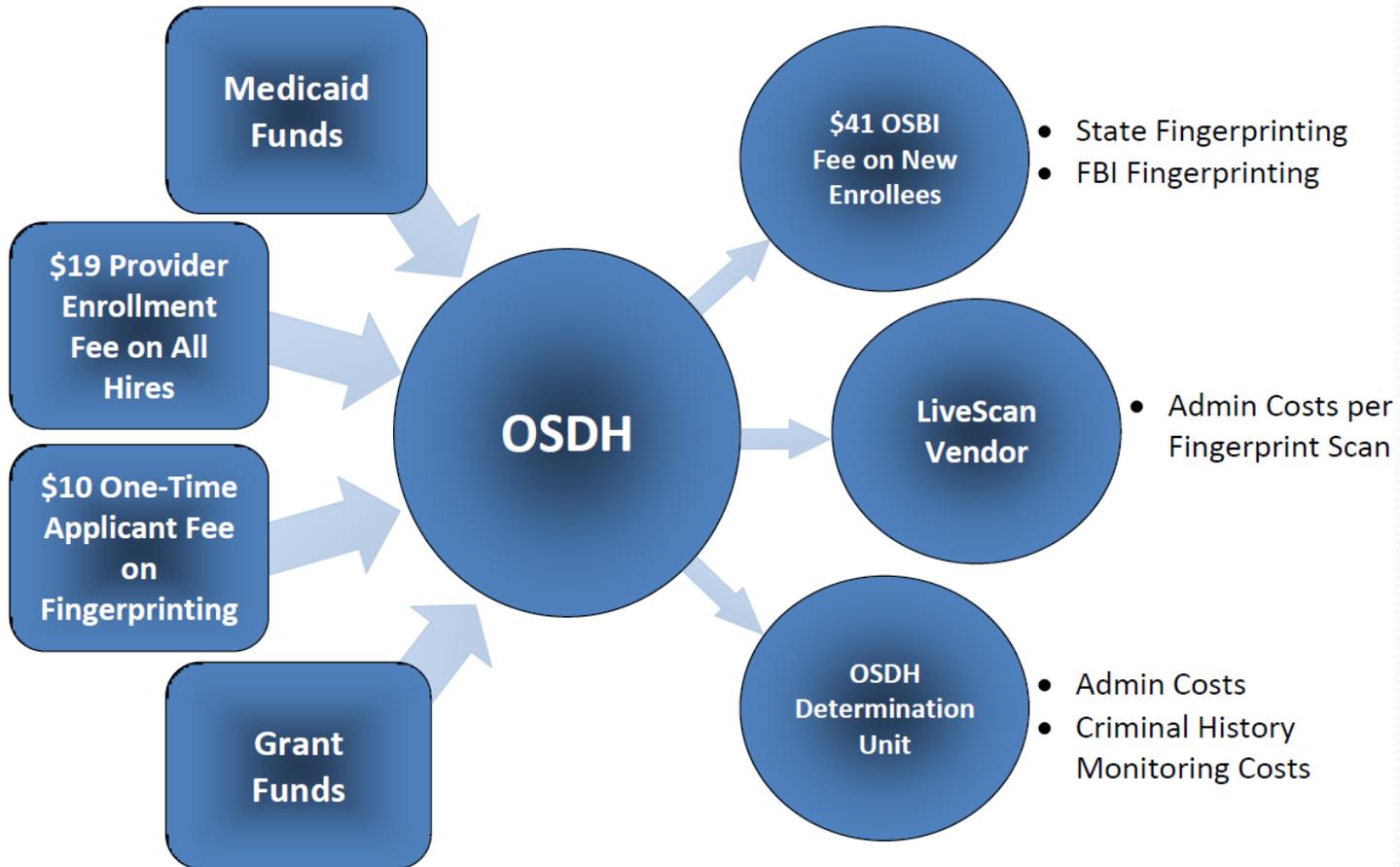


Model for Proposal

- Single web portal point of entry operated by OSDH
- Automated registry checks
 - Sex & Violent Offender
 - Abuse/neglect registries
 - Exclusion Lists
 - 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



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.



Fees

- Actual FP Costs of \$41 are paid by the Department
- If you change employers within the industry you do not have to be re-fingerprinted
- *Applicants previously qualified will have the eligibility determination available to a potential employer*
- *Applicants previously **disqualified** will be made known to potential employer without paying fee for background check*



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



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;*



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.



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



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\(C\)\(1\)](#)



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\(C\)\(2\)](#)



Next Steps

- Software development continues
- Program Director and staff hired
- Live scan network contract drafted
- Live scan network contract awarded
- Training materials developed
- Rule drafting
- Rule promulgated
- Live scan sites established
- Training completed
- Fingerprinting begins



Take-aways

- Providers will be given an account on the OK-SCREEN web portal
- Authorization for fingerprinting comes after registries are reviewed from the web portal
- Providers can screen applicants on multiple registries from one web portal
- More training and support for the portal are coming
- Applicants who are cleared on the registries are authorized for either fingerprinting or an immediate eligibility determination
- Applicants with a continuously monitored criminal history (they were previously fingerprinted under the program) are eligible for immediate eligibility determinations to new employers without re-fingerprinting



Take-aways

- The provider pays \$19 for the fingerprinting/eligibility determination
- The applicant pays \$10 for fingerprinting (“one-time”)
- Disqualified applicants will be notified of their appeal rights
- The eligibility determination based on a review of the criminal history record obtained from fingerprints is made by the Department of Health
- Barriers to employment eligibility are established in the law
 - Screening based barriers
 - Criminal history barriers based on the employment classification
- Name based checks continue until an effective date for fingerprinting is established in rule



Current law status

- HB2582 signed by governor June 8, 2012
- Effective date of law is November 1, 2012
- The law authorizes staggered implementation by provider groups through rule rulemaking. We anticipate effective dates for the Nursing Home industry of January 1, 2013 at the earliest.
- More information and training will be forthcoming
- See the web site <http://onbc.health.ok.gov> for more information

