

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 58th Legislature (2021)

4 ENGROSSED SENATE
5 BILL NO. 433

By: Rosino of the Senate

and

6 Lawson of the House
7
8

9 An Act relating to community-based services; amending
10 56 O.S. 2011, Section 1025.1, as amended by Section
11 37, Chapter 475, O.S.L. 2019 (56 O.S. Supp. 2020,
12 Section 1025.1), which relates to definitions; adding
13 definitions; amending 56 O.S. 2011, Section 1025.3,
14 which relates to community services worker registry;
15 requiring certain investigation to include certain
16 notification process; excluding area of concern or
17 administrative information from certain investigative
18 information; directing the Department of Human
19 Services to develop certain procedure; and providing
20 an effective date.

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

22 SECTION 1. AMENDATORY 56 O.S. 2011, Section 1025.1, as
23 amended by Section 37, Chapter 475, O.S.L. 2019 (56 O.S. Supp. 2020,
24 Section 1025.1), is amended to read as follows:

Section 1025.1. For the purposes of ~~this chapter~~ Sections
1025.2 through 1025.4 of this title:

1. "Administrative information" means information reported to
or obtained by the Department of Human Services regarding the

1 community services provider during the investigative process that
2 may be appropriate for internal administrative action but does not
3 have the potential to impact the immediate health, safety or welfare
4 of recipients of community services, has not been verified as true
5 and is for informational purposes only;

6 2. "Area of concern" means an issue that does not rise to the
7 level of abuse or neglect but may constitute a possible deficiency,
8 irregularity or deviation from policies and best practices by the
9 community services provider which has the potential to impact the
10 health, safety or welfare of recipients of community-based services,
11 and the Department of Human Services has conducted sufficient
12 inquiry into the issue to meet the probable cause investigative
13 standard;

14 3. "Bureau" means the Oklahoma State Bureau of Investigation;

15 ~~2.~~ 4. "Community services provider" means a community-based
16 program, corporation, or individual who contracts with, or is
17 licensed or funded by, the Department of Human Services to provide
18 residential or vocational services to persons who are elderly or
19 persons with intellectual or developmental disabilities, or
20 contracts with the Oklahoma Health Care Authority to provide
21 services to individuals with intellectual disabilities through a
22 Home and Community-Based Waiver, except a private ICF/IID;

23 ~~3.~~ 5. "Community services worker" means any person employed by
24 or under contract with a community services provider who provides,

1 for compensation or as a volunteer, health-related services,
2 training, or supportive assistance to persons who are elderly or
3 persons with developmental disabilities, and who is not a licensed
4 health professional or any person who contracts with the Oklahoma
5 Health Care Authority to provide specialized foster care,
6 habilitation training specialist services, or homemaker services to
7 persons with developmental disabilities;

8 ~~4.~~ 6. "Department" means the Department of Human Services;

9 ~~5.~~ 7. "Developmental disability" means a severe, chronic
10 disability of a person which:

11 a. is attributable to a mental or physical impairment or
12 combination of mental and physical impairments, such
13 as an intellectual development disorder, cerebral
14 palsy, or autism,

15 b. is manifested before the person attains twenty-two
16 (22) years of age,

17 c. is likely to continue indefinitely,

18 d. results in substantial functional limitations in three
19 or more of the following areas of major life activity:

20 (1) self-care,

21 (2) receptive and expressive language,

22 (3) learning,

23 (4) mobility,

24 (5) self-direction,

1 (6) capacity for independent living, and

2 (7) economic self-sufficiency, and

3 e. reflects the person's need for a combination and
4 sequence of special, interdisciplinary, or generic
5 care, treatment, or other services which are of
6 lifelong or extended duration and are individually
7 planned and coordinated;

8 ~~6.~~ 8. "Health-related services" means those services provided
9 by community services providers or community services workers to
10 persons who are elderly or persons with developmental disabilities
11 that include, but are not limited to, personal hygiene,
12 transferring, range of motion, supervision or assistance in
13 activities of daily living, basic nursing care such as taking
14 temperature, pulse or respiration, positioning, incontinent care,
15 and identification of signs and symptoms of disease. Certain tasks
16 that may be performed as basic nursing care by community services
17 workers require appropriate training provided or approved by the
18 Department, written agreement by the service recipient's personal
19 support team, and the primary care physician's acknowledgement and
20 specific order related to the task. Under such circumstances, basic
21 nursing care may include, but need not be limited to:

22 a. nutrition, including meals by gastrostomy tube or
23 jejeunostomy tube,

24 b. blood glucose monitoring,

- c. ostomy bag care,
- d. oral suctioning, and
- e. administration of oral metered dose inhalers and nebulizers;

~~7.~~ 9. "Supportive assistance" means the service rendered to persons with developmental disabilities which is sufficient to enable such person to meet an adequate level of daily living. Supportive assistance includes, but is not limited to, training, supervision, assistance in housekeeping, assistance in the preparation of meals, and assistance in activities of daily living as necessary for the health and comfort of persons with developmental disabilities;

~~8.~~ 10. "Maltreatment" means abuse, verbal abuse, sexual abuse, neglect, financial neglect, exploitation or sexual exploitation of vulnerable adults as defined in Section 10-103 of Title 43A of the Oklahoma Statutes or abuse, neglect, sexual abuse or sexual exploitation of children as defined in Section 1-1-105 of Title 10A of the Oklahoma Statutes;

~~9.~~ 11. "Personal care" means a level of assistance provided in the home of an individual to meet the individual's activities of daily living needs such as bathing, grooming, meal preparation, light housekeeping, laundry, and care plan-directed errands;

~~10.~~ 12. "Medicaid personal care services provider" means a program, corporation or individual who provides services under the

1 state Medicaid program personal care program or ADvantage Waiver to
2 individuals who are elderly or who have a physical disability;

3 ~~11.~~ 13. "Medicaid personal care assistant" means a person who
4 provides Medicaid services funded under the state Medicaid program
5 personal care program, who is not a certified nurse aide or a
6 licensed professional;

7 ~~12.~~ 14. "Specialized foster care" means the home- and
8 community-based service as defined in the 1915(c) waiver approved by
9 the Centers for Medicare and Medicaid Services;

10 ~~13.~~ 15. "Habilitation training specialist services" means the
11 home- and community-based service as defined in the 1915(c) waiver
12 approved by the Centers for Medicare and Medicaid Services; and

13 ~~14.~~ 16. "Homemaker services" means the home- and community-
14 based service as defined in the 1915(c) waiver approved by the
15 Centers for Medicare and Medicaid Services.

16 SECTION 2. AMENDATORY 56 O.S. 2011, Section 1025.3, is
17 amended to read as follows:

18 Section 1025.3. A. The ~~Commission for~~ Director of the
19 Department of Human Services shall promulgate rules to establish and
20 maintain a community services worker registry. Such rules may
21 include, but need not be limited to:

22 1. A procedure for notation in such registry of a final
23 Department of Human Services investigative finding or a finding by
24

1 an Administrative Law Judge of maltreatment of an individual by a
2 community services worker or a Medicaid personal care assistant;

3 2. A procedure for notice and due process for a community
4 services worker, or a Medicaid personal care assistant, or applicant
5 before the entering of such person's name in the registry as having
6 a final Department of Human Services investigative finding or
7 Administrative Law Judge finding of maltreatment of an individual;

8 3. Disclosure requirements for information in the registry; and

9 4. Procedures for granting a waiver of the provisions of
10 paragraph 1 of subsection F of Section 1025.2 of this title by the
11 Director of Human Services.

12 B. The community services worker registry shall include, but
13 not be limited to, the following information on each community
14 services worker and each Medicaid personal care assistant:

15 1. The individual's full name;

16 2. Information necessary to identify each individual;

17 3. The date the individual's name was placed in the registry;

18 and

19 4. Information on any final Department of Human Services
20 investigative finding or Administrative Law Judge finding of
21 maltreatment concerning the worker.

22 C. A community services worker, a Medicaid personal care
23 assistant, or applicant who is adversely affected by an
24 Administrative Law Judge finding of maltreatment of an individual

1 may seek judicial review pursuant to Article II of the
2 Administrative Procedures Act. The finding of the Administrative
3 Law Judge may be appealed to the district court of the county in
4 which the community services worker, Medicaid personal care
5 assistant, or applicant resides within thirty (30) days of the date
6 of the decision. A copy of the petition shall be served by mail
7 upon the general counsel of the Department of Human Services.

8 D. An investigation conducted under Section 1025.1 et seq. of
9 this title shall include a process for notifying a community
10 services provider of areas of concern and administrative
11 information. An area of concern or administrative information shall
12 not be considered final investigative findings, nor shall the area
13 of concern or administrative information be included in a final
14 investigative report of the Department of Human Services. The
15 Department shall develop a procedure by which a community services
16 provider may request an investigative status update within ten (10)
17 calendar days of the initiation of an investigation conducted under
18 Section 1025.1 et seq. of this title.

19 SECTION 3. This act shall become effective November 1, 2021.
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21 COMMITTEE REPORT BY: COMMITTEE ON CHILDREN, YOUTH AND FAMILY
22 SERVICES, dated 03/30/2021 - DO PASS.
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