

HOUSE CONSUMER AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 627

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

AN ACT

RELATING TO HEALTH; AMENDING SECTIONS OF THE CAREGIVERS
CRIMINAL HISTORY SCREENING ACT; CLARIFYING DEFINITIONS; ADDING
DISQUALIFYING CONVICTIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 29-17-4 NMSA 1978 (being Laws 1998,
Chapter 68, Section 3, as amended) is amended to read:

"29-17-4. DEFINITIONS.--As used in the Caregivers
Criminal History Screening Act:

A. "applicant" means a person who seeks and is
offered employment or contractual service as a caregiver or
hospital caregiver with a care provider;

B. "caregiver" means a person, not otherwise
required to undergo a nationwide criminal history screening by
the New Mexico Children's and Juvenile Facility Criminal

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underscored material = new
[bracketed material] = delete

1 Records Screening Act, whose employment or contractual service
2 with a care provider includes direct care or routine and
3 unsupervised physical or financial access to any care recipient
4 served by that provider;

5 C. "care provider" or "provider" means a skilled
6 nursing facility; an intermediate care facility; a care
7 facility for the mentally retarded; a general acute care
8 facility; a psychiatric facility; a rehabilitation facility; a
9 home health agency; a homemaker agency; a home for the aged or
10 disabled; a group home; an adult foster care home; a guardian
11 service provider; a case management entity that provides
12 services to people with developmental disabilities; a private
13 residence that provides personal care, adult residential care
14 or nursing care for two or more persons not related by blood or
15 marriage to the facility's operator or owner; an adult daycare
16 center; a boarding home; an adult residential care home; a
17 residential service or habilitation service authorized to be
18 reimbursed by medicaid; any licensed or medicaid-certified
19 entity or any program funded by the [~~state agency on~~] aging and
20 long-term services department that provides respite, companion
21 or personal care services; or programs funded by the children,
22 youth and families department that provide homemaker or adult
23 daycare services. "Care provider" or "provider" does not
24 include [~~general acute care hospitals~~] resident care facilities
25 located at or performing services exclusively for any

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underscoring material = new
[bracketed material] = delete

1 correctional facility, outpatient treatment facilities,
 2 diagnostic and treatment facilities, ambulatory surgical
 3 centers and facilities, end-stage renal dialysis and treatment
 4 facilities, rural health clinics, private physicians' offices
 5 or other clinics that operate in the same manner as private
 6 physicians' offices in group practice settings;

7 D. "care recipient" means any person under the care
 8 of a provider who has a physical or mental illness, injury or
 9 disability or who suffers from any cognitive impairment that
 10 restricts or limits the person's activities;

11 E. "conviction" means a plea, judgment or verdict
 12 of guilty, a plea of nolo contendere, an Alford plea or any
 13 plea or judgment entered in connection with a suspended
 14 sentence, in this state or any other state or jurisdiction;

15 F. "hospital caregiver" means a person who provides
 16 direct unsupervised patient care in an inpatient setting and is
 17 not a licensed New Mexico health care professional practicing
 18 within the scope of a profession's license;

19 [~~E.~~] G. "nationwide criminal history screening"
 20 means a criminal history background investigation of an
 21 applicant, [~~or~~] caregiver or hospital caregiver through the use
 22 of fingerprints collected by the department of public safety
 23 and submitted to the federal bureau of investigation, resulting
 24 in generation of a nationwide criminal history record for that
 25 applicant, [~~or~~] caregiver [~~and~~] or hospital caregiver;

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1 [F-] H. "nationwide criminal history record" means
2 information concerning a person's arrests, indictments or other
3 formal criminal charges and any dispositions arising therefrom,
4 including convictions, dismissals, acquittals, sentencing and
5 correctional supervision and collected by criminal justice
6 agencies [~~and stored in the computerized databases of the~~
7 ~~federal bureau of investigation, the national law enforcement~~
8 ~~telecommunications system, the department of public safety or~~
9 ~~the repositories of criminal history information of other~~
10 ~~states~~]; and

11 I. "statewide criminal history screening" means a
12 criminal history background investigation of an applicant or
13 caregiver through the comparison of identifying information
14 with the department of public safety's criminal record
15 repository."

16 Section 2. Section 29-17-5 NMSA 1978 (being Laws 1998,
17 Chapter 68, Section 4, as amended) is amended to read:

18 "29-17-5. CRIMINAL HISTORY SCREENING REQUIRED--
19 REGULATORY IMPLEMENTATION--APPEALS.--

20 A. The department of health is authorized to
21 receive an applicant's, [~~or~~] caregiver's or hospital
22 caregiver's nationwide criminal history record obtained by the
23 department of public safety as a result of a nationwide
24 criminal history screening pursuant to an applicant's, [~~or~~]
25 caregiver's or hospital caregiver's authorization for such

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1 nationwide criminal history screening. Providers shall submit
2 a set of fingerprints of applicants, ~~and~~ caregivers and
3 hospital caregivers to the department of health for a
4 nationwide criminal history screening, and the department of
5 public safety shall accept from the department of health such
6 fingerprints for the purpose of conducting a nationwide
7 criminal history screening.

8 B. The department of health is authorized to
9 promulgate ~~regulations~~ rules to implement the Caregivers
10 Criminal History Screening Act, including ~~regulations~~ rules
11 establishing a three-year phased implementation based upon
12 provider type; fingerprint submission procedures; fees;
13 confidentiality; time frames for an applicant's or caregiver's
14 nationwide criminal history screening; procedures for
15 clarifying incomplete or confusing criminal history
16 information; provider sanctions for noncompliance; and
17 employment procedures pending the results of the nationwide
18 criminal history screening relating to applicants and
19 caregivers.

20 C. No caregiver or hospital caregiver may be
21 employed by a care provider unless the caregiver or hospital
22 caregiver first has submitted to a request for a nationwide
23 criminal history screening prior to beginning employment in
24 accordance with procedures established by ~~regulation~~ rule by
25 the departments of health and public safety. ~~or unless the~~

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1 ~~caregiver has submitted to a nationwide criminal history~~
2 ~~screening and has been cleared within the previous twelve~~
3 ~~months]~~ A caregiver or hospital caregiver shall apply for
4 statewide criminal history screening when applying for
5 employment with a care provider within twelve months of the
6 caregiver's or hospital caregiver's most recent nationwide
7 criminal history screening.

8 D. The following felony convictions disqualify an
9 applicant, ~~[or]~~ caregiver or hospital caregiver from employment
10 as a caregiver:

11 (1) homicide;
12 (2) trafficking controlled substances;
13 (3) kidnapping, false imprisonment, aggravated
14 assault or aggravated battery;

15 (4) rape, criminal sexual penetration,
16 criminal sexual contact, incest, indecent exposure or other
17 related sexual offenses;

18 (5) crimes involving adult abuse, neglect or
19 financial exploitation;

20 (6) crimes involving child abuse or neglect;

21 ~~[or]~~

22 (7) robbery, larceny, burglary, fraud,
23 extortion, forgery, embezzlement, credit card fraud or
24 receiving stolen property; or

25 (8) an attempt, solicitation or conspiracy

1 involving any of the felonies in this subsection.

2 E. Upon receipt by the department of health of the
3 results of the applicant's, [~~or~~] caregiver's or hospital
4 caregiver's nationwide criminal history screening, the
5 department of health shall give notice to the submitting care
6 provider whether [~~or not~~] the applicant or caregiver has a
7 disqualifying conviction of a crime specified in Subsection D
8 of this section. No other results of the applicant's, [~~or~~]
9 caregiver's or hospital caregiver's nationwide criminal history
10 screening shall be provided to the care provider. Except as
11 provided in Subsection F of this section, a care provider shall
12 not employ an applicant or continue to employ a caregiver or
13 hospital caregiver whose nationwide criminal history screening
14 record reflects a disqualifying conviction. When the
15 department of health provides notice to the care provider of a
16 disqualifying conviction of a crime specified in Subsection D
17 of this section, it shall also notify the applicant, [~~or~~]
18 caregiver or hospital caregiver, stating with specificity the
19 convictions on which its decision is based and identifying the
20 agency that provided the records.

21 F. An applicant, [~~or~~] caregiver or hospital
22 caregiver whose nationwide criminal history record, obtained
23 through the applicant's, [~~or~~] caregiver's or hospital
24 caregiver's nationwide criminal history screening and other
25 clarifying endeavors of the department of health, reflects a

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1 disqualifying conviction of a crime specified in Subsection D
2 of this section may request from the department of health an
3 administrative reconsideration. The care provider may, in its
4 discretion, continue to employ such person during the pendency
5 of the reconsideration. A care provider may employ the
6 applicant or caregiver if the reconsideration proceeding
7 results in a determination by the department of health that the
8 applicant's, ~~[or]~~ caregiver's or hospital caregiver's
9 nationwide criminal history record inaccurately reflects a
10 disqualifying conviction of a crime specified in Subsection D
11 of this section or that the employment presents no risk of harm
12 to a care recipient or that the conviction does not directly
13 bear upon the applicant's, ~~[or]~~ caregiver's or hospital
14 caregiver's fitness for the employment.

15 G. The department of health is authorized to adopt
16 ~~[regulations]~~ rules for the administrative reconsideration
17 proceeding available to an applicant or caregiver whose
18 nationwide criminal history record reflects a disqualifying
19 conviction. The ~~[regulations]~~ rules shall take into account
20 the requirements of the Criminal Offender Employment Act.

21 H. A care provider shall maintain records
22 evidencing compliance with the requirements of this section
23 with respect to all applicants and caregivers employed on or
24 after May 20, 1998.

25 I. All criminal history records obtained pursuant

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1 to this section by the department of health are confidential.
 2 No criminal history records obtained pursuant to this section
 3 shall be used for any purpose other than determining whether an
 4 applicant, [~~or~~] caregiver or hospital caregiver has a criminal
 5 conviction that would disqualify [~~him~~] the applicant, caregiver
 6 or hospital caregiver from employment as a caregiver or
 7 hospital caregiver. Except on court order or with the written
 8 consent of the applicant, [~~or~~] caregiver or hospital caregiver,
 9 criminal records obtained pursuant to this section and the
 10 information contained therein shall not be released or
 11 otherwise disclosed to any other person or agency. A person
 12 who discloses confidential records or information in violation
 13 of this section is guilty of a misdemeanor and shall be
 14 sentenced pursuant to the provisions of Subsection A of Section
 15 31-19-1 NMSA 1978.

16 J. The department of health shall maintain a
 17 registry of all applicants who are disqualified from employment
 18 or contractual service as caregivers or hospital caregivers.
 19 An applicant's arrest record information shall not be released
 20 except upon request of the applicant as provided in the Arrest
 21 Record Information Act.

22 K. A care provider, including its administrators
 23 and employees, is not civilly liable to an applicant or a
 24 caregiver for a good faith decision to employ, not employ or
 25 terminate employment pursuant to the Caregivers Criminal

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1 History Screening Act.

2 L. Failure to comply with the requirements of this
3 section are grounds for the state agency having enforcement
4 authority with respect to the care provider to impose
5 appropriate administrative sanctions and penalties."

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