

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR HCPAC DATE TYPED 3/9/05 HB 627/HCPACS

SHORT TITLE Amend Caregivers Criminal Screening Act SB _____

ANALYST Hanika-Ortiz

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			\$100.0	Recurring	General Fund

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
	\$650.0		Recurring	Other State Funds

SOURCES OF INFORMATION

LFC Files

Responses Received From

Developmental Disabilities Planning Council (DDPC)
 Children, Youth & Families Department (CYFD)
 Department of Public Safety (DPS)
 Aging and Long-Term Services Department (ALTSD)
 Human Services Department (HSD)
 Department of Health (DOH)

SUMMARY

Synopsis of Substitute Bill

House Bill 627 amends sections of the Caregivers Criminal History Screening Act (CCHCA) provides for a statewide criminal history screening by the DOH, clarifies definitions and adds conditions that may disqualify a caregiver from employment.

Significant Issues

The intent of the amendments is to broaden protections to further ensure the health and safety of vulnerable populations receiving healthcare services.

Proposed changes to the CCHCA include:

- Adds acute care facilities to the list of providers pursuant to the Act,
- Adds an inpatient hospital caregiver as an “applicant”,
- Defines a statewide criminal history screening background investigation,
- Requires employees to submit to a nationwide criminal history screening within twelve months of their most recent screening,
- Changes Agency on Aging to ALTSD,
- Adds the definition of conviction and the conditions that constitute a conviction to the statute,
- Adds the crimes of burglary and fraud to the list of convictions that would disqualify an applicant from employment as a caregiver,
- Adds language to include attempt, solicitation or conspiracy to the felony convictions as disqualifying an applicant or caregiver from employment as a caregiver.

The statewide screening will reveal any criminal convictions that have occurred within the state during the previous year, which otherwise would not be recorded on the nationwide screen.

The AGO notes that negligent hiring is based on a duty flowing from the employer to the public to protect those whom the employer might reasonably anticipate would be injured as a result of the hiring. The Statute as it exists would permit an employer to hire a caregiver who has been convicted of a disqualifying felony without violating the CCHSA. The proposed amendment requiring statewide screening is necessary to clearly establish a duty of care for providers to adequately screen caregivers.

PERFORMANCE IMPLICATIONS

FBI regulations require legislative authority to conduct and obtain nationwide criminal records checks.

CYFD’s Dependent Care Providers and Client Service Agents are subject to a national criminal history screening conducted by DOH.

HB 627 is a DOH and Governor’s priority bill addressing his goal for zero tolerance of elder abuse.

FISCAL IMPLICATIONS

The DOH reports New Mexico’s federal grant of \$1.1 million to improve the criminal screening process requires than an individual be screened each time they seek new employment. The current Act allows for an initial screen that is good for twelve months. New Mexico’s federal grant may be at risk if the statute is not changed to eliminate the twelve-month window.

HB 627 adds acute care hospitals, requiring them to screen their employees providing services. It is estimated that 10,000 new screens will result annually. The fees for the additional number of screens will pay for an increase in 1-3 additional staff needed to process the requests. This assumes that the fees set will be at a level sufficient to cover the costs of administering the expanded program. The impact to the general fund is indeterminate as any unexpended revenue at the end of each fiscal year will be expected to revert to the general fund.

It may become a financial burden for small providers to screen all applicants if the cost is too high because of frequent staff turnover and use of part time caregivers.

ADMINISTRATIVE IMPLICATIONS

ALTSD anticipates the Medicaid Policy Manual Section, Personal Care Option Services, may require revisions to establish the relationship between the consumer (employer of record) and the fiscal intermediary under the Directed-Model to connect the “provider” definition under HB 627.

TECHNICAL ISSUES

ALTSD is concerned volunteers who provide direct care would not be excluded, as the language addresses “employment or contractual services”.

It is unclear if the PCO program is excluded from the Act as family members frequently serve as caregivers and may fail background checks.

The ALTSD notes that the definition of conviction includes “any plea or judgment entered in connection with a conditional discharge, a suspended sentence, a diversion or a deferment...”. In New Mexico, diversion means a suspect is placed in a program prior to the filing of criminal charges or that criminal proceedings are suspended if the individual participates in the program.

HSD notes out of date language. A skilled nursing facility is more accurately referenced as a nursing facility that provides Medicaid level of care services. A care facility for the mentally retarded is more accurately referenced as an intermediate care facility for the mentally retarded.

OTHER SUBSTANTIVE ISSUES

DOH has the following comment:

DOH has operated the Caregivers Criminal History Screening Program for over five years. Certain felony convictions prevent individuals from employment in health care facilities. DOH processes fingerprints for DPS (state) and FBI (national) criminal records. Employees are notified if they have a disqualifying conviction and may request a review of the department’s determination. The current screening application rate of \$65 includes fees to pay for Division of Health Improvement (DHI) staff, the national FBI screen and the DPS in-state screen. DHI has just received a two and a half year \$1.1 million grant to improve its screening processes and establish a registry. The program currently processes 20,000 applications a year.

HB 627 eliminates the requirement for no subsequent screens within one year of the initial screen. Requiring additional screens when a person seeks new employment within one year of initial screen will further assure that anyone committing a crime after the initial screen is pre-

vented from employment. This change is consistent with the new federal CMS grant requirement to DOH/Division of Health Improvement to improve the criminal screening process.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

Caregivers who commit disqualifying felonies in the State of New Mexico within 12 months of a successful nationwide criminal screen could still be employed as caregivers to vulnerable populations.

Hospitals will continue to be excluded from the Act and thus not required to submit fingerprint screens for unlicensed caregivers.

New Mexico's federal grant may be put at risk if the statute is not changed to close the twelve-month window.

AHO/sb:yr