

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 131

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

AN ACT

RELATING TO PUBLIC SAFETY; SHIFTING RESPONSIBILITY FOR
OVERSEEING CAREGIVER BACKGROUND CHECKS FROM THE DEPARTMENT OF
HEALTH TO THE HEALTH CARE AUTHORITY; ADDING TO THE LIST OF
DISQUALIFYING CONVICTIONS FOR CAREGIVERS; ALLOWING THE HEALTH
CARE AUTHORITY TO DISQUALIFY CERTAIN CAREGIVERS; PROVIDING FOR
TRANSFER OF FUNCTIONS, RECORDS AND EQUIPMENT.

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

SECTION 1. Section 29-17-5 NMSA 1978 (being Laws 1998,
Chapter 68, Section 4, as amended) is amended to read:

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

A. The ~~[department of]~~ health care authority is
authorized to receive an applicant's, caregiver's or hospital
caregiver's nationwide criminal history record obtained by the

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1 department of public safety as a result of a nationwide
2 criminal history screening pursuant to an applicant's,
3 caregiver's or hospital caregiver's authorization for such
4 nationwide criminal history screening. Providers shall submit
5 a set of fingerprints of applicants, caregivers and hospital
6 caregivers to the [~~department of~~] health care authority for a
7 nationwide criminal history screening, and the department of
8 public safety shall accept from the [~~department of~~] health care
9 authority such fingerprints for the purpose of conducting a
10 nationwide criminal history screening.

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

22 C. No caregiver or hospital caregiver may be
23 employed by a care provider unless the caregiver or hospital
24 caregiver first has submitted to a request for a nationwide
25 criminal history screening prior to beginning employment in

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1 accordance with procedures established by rule by the
 2 [~~departments of~~] health care authority and department of public
 3 safety. 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, caregiver or hospital caregiver from employment as a
 10 caregiver:

11 (1) homicide;
 12 (2) trafficking controlled substances;
 13 (3) kidnapping, false imprisonment, aggravated
 14 assault or aggravated battery, including aggravated battery of
 15 a household member;

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

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

21 (6) crimes involving child abuse or neglect;

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

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1 involving any of the felonies in this subsection;

2 (9) human trafficking;

3 (10) assault of a peace officer;

4 (11) identity theft; or

5 (12) cruelty to animals.

6 E. The health care authority:

7 (1) may disqualify an applicant, caregiver or
8 hospital caregiver from employment as a caregiver if that
9 applicant, caregiver or hospital caregiver poses an
10 unreasonable risk to care recipients. In determining whether a
11 person poses an unreasonable risk as a caregiver, the health
12 care authority shall assess the totality of the circumstances
13 using reasonably reliable information, such as court records.
14 The health care authority may only find that an applicant,
15 caregiver or hospital caregiver poses an unreasonable risk if
16 the preponderance of the evidence establishes an unreasonable
17 risk due to the applicant, caregiver or hospital caregiver
18 having:

19 (a) two or more convictions related to
20 abuse, neglect or exploitation within the past ten years,
21 regardless of the degree of the crime; or

22 (b) a single conviction or pending
23 charges, regardless of the degree of the crime, if the crime is
24 related to: 1) abuse, neglect or exploitation of a care
25 recipient; 2) human trafficking; 3) criminal sexual penetration

1 or related sexual offenses; 4) battery of a household member;
2 or 5) child abuse; and

3 (2) shall provide an administrative
4 reconsideration process for applicants, caregivers and hospital
5 caregivers who are determined to be an unreasonable risk. The
6 burden of proof is on the health care authority to demonstrate
7 unreasonable risk by a preponderance of the evidence. An
8 applicant, caregiver or hospital caregiver shall have the right
9 to judicial review of any final decision made by the health
10 care authority pursuant to this subsection.

11 ~~[E.]~~ F. Upon receipt by the ~~[department of]~~ health
12 care authority of the results of the applicant's, caregiver's
13 or hospital caregiver's nationwide criminal history screening,
14 the ~~[department of health]~~ authority shall give notice to the
15 submitting care provider whether the applicant or caregiver
16 ~~[has a disqualifying conviction of a crime specified in~~
17 ~~Subsection D of this section]~~ is disqualified pursuant to
18 Subsection D or E of this section. No other results of the
19 applicant's, caregiver's or hospital caregiver's nationwide
20 criminal history screening shall be provided to the care
21 provider. Except as provided in Subsection ~~[F]~~ G of this
22 section, a care provider shall not employ an applicant or
23 continue to employ a caregiver or hospital caregiver whose
24 nationwide criminal history screening record reflects a
25 disqualifying conviction or an unreasonable risk. When the

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1 ~~[department of]~~ health care authority provides notice to the
2 care provider of a ~~[disqualifying conviction of a crime~~
3 ~~specified in Subsection D of this section]~~ disqualification
4 pursuant to Subsection D or E of this section, it shall also
5 notify the applicant, caregiver or hospital caregiver, stating
6 with specificity the ~~[convictions]~~ reasons on which its
7 decision is based and identifying the agency that provided the
8 records.

9 ~~[F.]~~ G. An applicant, caregiver or hospital
10 caregiver whose nationwide criminal history record, obtained
11 through the applicant's, caregiver's or hospital caregiver's
12 nationwide criminal history screening and other clarifying
13 endeavors of the ~~[department of]~~ health care authority,
14 ~~[reflects a disqualifying conviction of a crime specified in]~~
15 results in a disqualification pursuant to Subsection D or E of
16 this section, may request from the ~~[department of health]~~
17 authority an administrative reconsideration. The care provider
18 may, in its discretion, continue to employ such person during
19 the pendency of the reconsideration. A care provider may
20 employ the applicant or caregiver if the reconsideration
21 proceeding results in a ~~[determination by the department of~~
22 ~~health that the applicant's, caregiver's or hospital~~
23 ~~caregiver's nationwide criminal history record inaccurately~~
24 ~~reflects a disqualifying conviction of a crime specified in~~
25 ~~Subsection D of this section or that the employment presents no~~

1 ~~risk of harm to a care recipient or that the conviction does~~
2 ~~not directly bear upon the applicant's, caregiver's or hospital~~
3 ~~caregiver's fitness for the employment]~~ reversal of the health
4 care authority's decision.

5 [G.] H. The [~~department of~~] health care authority
6 is authorized to adopt rules for the administrative
7 reconsideration proceeding available to an applicant or
8 caregiver whose nationwide criminal history record reflects a
9 disqualifying conviction or an unreasonable risk. The rules
10 shall take into account the requirements of the Criminal
11 Offender Employment Act.

12 [H.] I. A care provider shall maintain records
13 evidencing compliance with the requirements of this section
14 with respect to all applicants and caregivers employed on or
15 after May 20, 1998.

16 [I.] J. All criminal history records obtained
17 pursuant to this section by the [~~department of~~] health care
18 authority are confidential. No criminal history records
19 obtained pursuant to this section shall be used for any purpose
20 other than determining whether an applicant, caregiver or
21 hospital caregiver [~~has a criminal conviction that would~~
22 ~~disqualify the applicant, caregiver or hospital caregiver from~~
23 ~~employment as a caregiver or hospital caregiver]~~ is
24 disqualified pursuant to Subsection D or E of this section.

25 Except on court order or with the written consent of the

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1 applicant, caregiver or hospital caregiver, criminal records
2 obtained pursuant to this section and the information contained
3 therein shall not be released or otherwise disclosed to any
4 other person or agency. A person who discloses confidential
5 records or information in violation of this section is guilty
6 of a misdemeanor and shall be sentenced pursuant to the
7 provisions of Subsection A of Section 31-19-1 NMSA 1978.

8 ~~[J.]~~ K. The ~~[department of]~~ health care authority
9 shall maintain a registry of all applicants who are
10 disqualified from employment or contractual service as
11 caregivers or hospital caregivers. An applicant's arrest
12 record information shall not be released except upon request of
13 the applicant as provided in the Arrest Record Information Act.

14 ~~[K.]~~ L. A care provider, including its
15 administrators and employees, is not civilly liable to an
16 applicant or a caregiver for a good faith decision to employ,
17 not employ or terminate employment pursuant to the Caregivers
18 Criminal History Screening Act.

19 ~~[L.]~~ M. Failure to comply with the requirements of
20 this section are grounds for the state agency having
21 enforcement authority with respect to the care provider to
22 impose appropriate administrative sanctions and penalties.

23 N. For the purposes of this section, "unreasonable
24 risk" means a level of risk that a reasonable person would be
25 unwilling to take regarding the safety or welfare of a care

1 recipient."

2 SECTION 2. TEMPORARY PROVISION--TRANSFER OF FUNCTIONS.--

3 On the effective date of this act, all functions, records and
4 equipment related to the oversight of caregiver criminal
5 history records shall be transferred from the department of
6 health to the health care authority.

7 SECTION 3. EFFECTIVE DATE.--The effective date of the

8 provisions of this act is July 1, 2025.

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