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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 health care authority is authorized to
receive an applicant's, caregiver's or hospital caregiver's
nationwide criminal history record obtained by the department
of public safety as a result of a nationwide criminal history
screening pursuant to an applicant's, caregiver's or hospital
caregiver's authorization for such nationwide criminal
history screening. Providers shall submit a set of
fingerprints of applicants, caregivers and hospital
caregivers to the health care authority for a nationwide
criminal history screening, and the department of public
safety shall accept from the health care authority such
fingerprints for the purpose of conducting a nationwide

1 criminal history screening.

2 B. The health care authority is authorized to
3 promulgate rules to implement the Caregivers Criminal History
4 Screening Act, including rules establishing fingerprint
5 submission procedures; fees; confidentiality; time frames for
6 an applicant's or caregiver's nationwide criminal history
7 screening; procedures for clarifying incomplete or confusing
8 criminal history information; provider sanctions for
9 noncompliance; and employment procedures pending the results
10 of the nationwide criminal history screening relating to
11 applicants and caregivers.

12 C. No caregiver or hospital caregiver may be
13 employed by a care provider unless the caregiver or hospital
14 caregiver first has submitted to a request for a nationwide
15 criminal history screening prior to beginning employment in
16 accordance with procedures established by rule by the health
17 care authority and department of public safety. A caregiver
18 or hospital caregiver shall apply for statewide criminal
19 history screening when applying for employment with a care
20 provider within twelve months of the caregiver's or hospital
21 caregiver's most recent nationwide criminal history
22 screening.

23 D. The following felony convictions disqualify an
24 applicant, caregiver or hospital caregiver from employment as
25 a caregiver:

- 1 (1) homicide;
- 2 (2) trafficking controlled substances;
- 3 (3) kidnapping, false imprisonment,
- 4 aggravated assault or aggravated battery, including
- 5 aggravated battery of a household member;
- 6 (4) rape, criminal sexual penetration,
- 7 criminal sexual contact, incest, indecent exposure or other
- 8 related sexual offenses;
- 9 (5) crimes involving adult abuse, neglect or
- 10 financial exploitation;
- 11 (6) crimes involving child abuse or neglect;
- 12 (7) robbery, larceny, burglary, fraud,
- 13 extortion, forgery, embezzlement, credit card fraud or
- 14 receiving stolen property;
- 15 (8) an attempt, solicitation or conspiracy
- 16 involving any of the felonies in this subsection;
- 17 (9) human trafficking;
- 18 (10) assault of a peace officer;
- 19 (11) identity theft; or
- 20 (12) cruelty to animals.

21 E. The health care authority:

- 22 (1) may disqualify an applicant, caregiver
- 23 or hospital caregiver from employment as a caregiver if that
- 24 applicant, caregiver or hospital caregiver poses an
- 25 unreasonable risk to care recipients. In determining whether

1 a person poses an unreasonable risk as a caregiver, the
2 health care authority shall assess the totality of the
3 circumstances using reasonably reliable information, such as
4 court records. The health care authority may only find that
5 an applicant, caregiver or hospital caregiver poses an
6 unreasonable risk if the preponderance of the evidence
7 establishes an unreasonable risk due to the applicant,
8 caregiver or hospital caregiver having:

9 (a) two or more convictions related to
10 abuse, neglect or exploitation within the past ten years,
11 regardless of the degree of the crime; or

12 (b) a single conviction or pending
13 charges, regardless of the degree of the crime, if the crime
14 is related to: 1) abuse, neglect or exploitation of a care
15 recipient; 2) human trafficking; 3) criminal sexual
16 penetration or related sexual offenses; 4) battery of a
17 household member; or 5) child abuse; and

18 (2) shall provide an administrative
19 reconsideration process for applicants, caregivers and
20 hospital caregivers who are determined to be an unreasonable
21 risk. The burden of proof is on the health care authority to
22 demonstrate unreasonable risk by a preponderance of the
23 evidence. An applicant, caregiver or hospital caregiver
24 shall have the right to judicial review of any final decision
25 made by the health care authority pursuant to this

1 subsection.

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

21 G. An applicant, caregiver or hospital caregiver
22 whose nationwide criminal history record, obtained through
23 the applicant's, caregiver's or hospital caregiver's
24 nationwide criminal history screening and other clarifying
25 endeavors of the health care authority, results in a

1 disqualification pursuant to Subsection D or E of this
2 section, may request from the authority an administrative
3 reconsideration. The care provider may, in its discretion,
4 continue to employ such person during the pendency of the
5 reconsideration. A care provider may employ the applicant or
6 caregiver if the reconsideration proceeding results in a
7 reversal of the health care authority's decision.

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

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

18 J. All criminal history records obtained pursuant
19 to this section by the health care authority are
20 confidential. No criminal history records obtained pursuant
21 to this section shall be used for any purpose other than
22 determining whether an applicant, caregiver or hospital
23 caregiver is disqualified pursuant to Subsection D or E of
24 this section. Except on court order or with the written
25 consent of the applicant, caregiver or hospital caregiver,

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

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

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

19 M. Failure to comply with the requirements of this
20 section are grounds for the state agency having enforcement
21 authority with respect to the care provider to impose
22 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
3 FUNCTIONS.--On the effective date of this act, all functions,
4 records and equipment related to the oversight of caregiver
5 criminal history records shall be transferred from the
6 department of 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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