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SENATE BILL 483

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

L. Skip Vernon

AN ACT

RELATING TO HEALTH; AMENDING SECTIONS OF THE CAREGIVERS
CRIMINAL HISTORY SCREENING ACT; CLARIFYING DEFINITIONS; ADDING
ADDITIONAL 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) 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 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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1 Records Screening Act [~~(32A-15-1 to 32A-15-4 NMSA 1978)~~],
2 whose employment or contractual service [~~or volunteer service~~]
3 with a care provider includes direct care or routine and
4 unsupervised physical or financial access to any care
5 recipient served by that provider;

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

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

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

10 E. "nationwide criminal history screening" means a
11 criminal history background investigation of an applicant or
12 caregiver through the use of fingerprints collected by the
13 [~~New Mexico~~] department of public safety and submitted to the
14 federal bureau of investigation, resulting in generation of a
15 nationwide criminal history record for that applicant or
16 caregiver; and

17 F. "nationwide criminal history record" means
18 information concerning a person's arrests, indictments or
19 other formal criminal charges and any dispositions arising
20 therefrom, including convictions, dismissals, acquittals,
21 sentencing and correctional supervision, collected by criminal
22 justice agencies and stored in the computerized databases of
23 the federal bureau of investigation, the national law
24 enforcement telecommunications system, the [~~New Mexico~~]
25 department of public safety or the repositories of criminal

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1 history information of other states. "

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

4 "29-17-5. CRIMINAL HISTORY SCREENING REQUIRED--
5 REGULATORY IMPLEMENTATION--APPEALS. --

6 A. The department of health is authorized to
7 receive an applicant's or caregiver's nationwide criminal
8 history record obtained by the [~~New Mexico~~] department of
9 public safety as a result of a nationwide criminal history
10 [~~records~~] screening pursuant to an applicant's or caregiver's
11 authorization for such nationwide criminal history [~~records~~]
12 screening. Providers shall submit a set of fingerprints of
13 applicants and caregivers to the [~~New Mexico~~] department of
14 [~~public safety~~] health for a nationwide criminal history
15 screening, and the [~~New Mexico~~] department of public safety
16 shall accept from the department of health such fingerprints
17 for the purpose of conducting a nationwide criminal history
18 screening.

19 B. The department of health is authorized to
20 promulgate regulations to implement [~~this~~] the Caregivers
21 Criminal History Screening Act, including [~~but not limited to~~]
22 regulations establishing a three-year phased implementation
23 based upon provider type; fingerprint submission procedures;
24 fees; confidentiality; timeframes for an applicant's or
25 caregiver's nationwide criminal history screening; procedures

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1 for clarifying incomplete or confusing criminal history
2 information; provider sanctions for noncompliance; and
3 employment procedures pending the results of the nationwide
4 criminal history screening relating to [~~volunteers~~] applicants
5 and caregivers.

6 C. No caregiver may be employed by a care provider
7 unless the caregiver first has submitted to a request for a
8 nationwide criminal history screening prior to beginning
9 employment in accordance with procedures established by
10 regulation by the departments of health and public safety or
11 unless the caregiver has submitted to a nationwide criminal
12 history screening and has been cleared within the previous
13 [~~12~~] twelve months.

14 D. The following felony convictions disqualify an
15 applicant or caregiver from employment as a caregiver:

- 16 (1) homicide;
- 17 (2) trafficking controlled substances;
- 18 (3) kidnapping, false imprisonment,
19 aggravated assault or aggravated battery;
- 20 (4) rape, criminal sexual penetration,
21 criminal sexual contact, incest, indecent exposure or other
22 related sexual offenses;
- 23 (5) crimes involving adult abuse, neglect or
24 financial exploitation;
- 25 (6) crimes involving child abuse or neglect;

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or
(7) robbery, larceny, extortion, forgery,
embezzlement, credit card fraud or receiving stolen property.

E. Upon receipt by the department of health of the results of the applicant's or caregiver's nationwide criminal history ~~[record]~~ screening, the department of health shall give notice to the submitting care provider whether or not the applicant or caregiver has a disqualifying conviction of a crime specified in Subsection D of this section. No other results of the applicant's or caregiver's nationwide criminal history ~~[records]~~ screening shall be provided to the care provider. Except as provided in Subsection F of this section, a care provider shall not employ an applicant or continue to employ a caregiver whose nationwide criminal history screening ~~[records reflect]~~ record reflects a disqualifying conviction. When the department of health provides notice to the care provider of a disqualifying conviction of a crime specified in Subsection D of this section, it shall also notify the applicant or caregiver, stating with specificity the convictions on which its decision is based and identifying the agency ~~[which]~~ that provided the records.

F. An applicant or caregiver whose nationwide criminal history record, obtained through the applicant's or caregiver's nationwide criminal history ~~[records]~~ screening and other clarifying endeavors of the department of health,

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

15 G. The department of health is authorized to adopt
16 regulations for the administrative reconsideration proceeding
17 available to [~~any~~] an applicant or caregiver whose nationwide
18 criminal history record reflects a disqualifying conviction.
19 The regulations shall take into account the requirements of
20 the Criminal Offender Employment Act [~~28-2-1 to 28-2-6, NMSA~~
21 ~~1978~~].

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

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

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

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

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

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1 FORTY- FOURTH LEGISLATURE

2 FIRST SESSION, 1999

3 SB 483/a

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6 March 8, 1999

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8 Mr. President:

9
10 Your JUDICIARY COMMITTEE, to whom has been referred

11
12 SENATE BILL 483

13
14 has had it under consideration and reports same with
15 recommendation that it DO PASS, amended as follows:

16
17
18 1. On page 2, line 11, after "home;" insert:

19
20 "a guardian service provider; a case management entity that
21 provides services to people with developmental disabilities;".,

22
23 and thence referred to the PUBLIC AFFAIRS COMMITTEE.

FORTY- FOURTH LEGI SLATURE
FIRST SESSI ON, 1999

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Respectfully submi tted,

Mi chael S. Sanchez, Chai rman

Adopted _____ Not

Adopted _____

(Chi ef Clerk)

(Chi ef Clerk)

Date _____

The roll call vote was 5 For 0 Against

Yes: 5

No: None

Excused: Aragon, Davi s, McSorley

Absent: None

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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1 FORTY- FOURTH LEGI SLATURE
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6 FORTY- FOURTH LEGI SLATURE
7 FIRST SESSI ON, 1999
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11
12 March 10, 1999

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14 Mr. President:

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16 Your PUBLIC AFFAIRS COMMI TTEE, to whom has been
17 referred

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19 SENATE BILL 483, as amended
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22 has had it under consideration and reports same with
23 recommendation that it DO PASS.
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Page 14

Respectfully submi tted,

Shannon Robi nson, Chai rman

Adopted _____ Not

Adopted _____

(Chi ef Clerk)

(Chi ef Clerk)

Date _____

The roll call vote was 5 For 0 Against

. 126710. 1

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FORTY- FOURTH LEGISLATURE
FIRST SESSION, 1999

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Page 15

Yes: 5

No: 0

Excused: Feldman, Ingle, Stockard, Smith

Absent: None

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