

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

FISCAL IMPACT REPORT

SPONSOR <u>House Judiciary Committee</u>	LAST UPDATED <u>03/11/2025</u>	ORIGINAL DATE <u>02/04/2025</u>
SHORT TITLE <u>Caregiver Background Checks</u>	BILL NUMBER <u>CS/House Bill 131/HJCS</u>	ANALYST <u>Rommel</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
HCA	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Relates to Senate Bill 266

Sources of Information

LFC Files

Agency Analysis Received From
 Health Care Authority (HCA)

Agency Analysis was Solicited but Not Received From
 Department of Health (DOH)

SUMMARY

Synopsis of HJC Substitute for House Bill 131

The House Judiciary Committee Substitute for House Bill 131 (HB131) amends Section 29-17-5 NMSA 1978, the Caregivers Criminal History Screening Act. The bill would transfer all functions, records and equipment for overseeing caregiver’s criminal history checks from the Department of Health (DOH) to the Health Care Authority (HCA).

The bill adds felony crimes of human trafficking, assault of a peace officer, identity theft, and cruelty to animals to the list of disqualifying felony convictions for caregivers. The bill also allows HCA to disqualify an applicant, caregiver, or hospital caregiver based on whether the person poses an unreasonable risk as a caregiver. “Unreasonable risk” means a level of risk that a reasonable person would be unwilling to take regarding the safety or welfare of a care recipient. The bill notes that HCA may only establish that an applicant, caregiver, or hospital caregiver poses an unreasonable risk if the preponderance of the evidence establishes an unreasonable risk due to the individual having two or more convictions related to abuse, neglect, or exploitation within the past ten years or a single conviction or pending charges related to the following crimes:

1. Abuse, neglect, or exploitation of a care recipient,
2. Human trafficking,
3. Criminal sexual penetration,
4. Battery of a household member, and
5. Child abuse.

The bill requires that HCA create an administrative reconsideration process for individuals determined to be an unreasonable risk and allows individuals the right of judicial review of any final decision.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

HCA indicates no fiscal impact to the agency. There may be indeterminate but minor costs associated with transfer of functions and rule promulgation in FY26 and future fiscal years.

SIGNIFICANT ISSUES

HCA notes the following:

In comparison to other states (Nevada, Mississippi, Michigan, Maine, Oklahoma, Georgia, and Idaho), New Mexico has significantly fewer disqualifying convictions [for caregivers]. Nearly every comparative state had at least five times more disqualifying convictions than the current amount listed in New Mexico's statute. Seven of the eight comparison states also included a list of misdemeanor crimes as disqualifying convictions while New Mexico's statute does not include any misdemeanor crimes.

The Health Care Authority supports HB131 as it will reduce the risk of abuse, neglect, and exploitation in New Mexico's most vulnerable populations. Adding to the screening criteria of caregivers and hospital caregivers will protect people from potential harm as a result of abuse, neglect, and exploitation. [Including] the use of the unreasonable risk standard to disqualify applicants who pose an unreasonable risk to care recipients is necessary to adequately close the gap in the current statute. Without making these changes to the statute, it is anticipated the increasing trend of abuse, neglect, and exploitation cases will increase each year.

Increasing the number of felony convictions that disqualify a caregiver may reduce the incidence of abuse, neglect, and exploitation in care provider settings. See Other Substantive Issues.

HCA notes that New Mexico Administrative Code (NMAC) 8.370.5.1 outlines procedures individuals may take to appeal denials to their application and specific circumstances required to appeal. In FY24, over 53,000 applications were processed, 340 appeals were submitted, and over 180 appeals were granted translating to over 50% of applicant appeals being granted.

ADMINISTRATIVE IMPLICATIONS

HCA will need to promulgate revised rules to add disqualifying convictions. The addition of

disqualifying convictions may increase the number of caregiver criminal history screenings that trigger an additional level of administrative review and legal reconsiderations.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to Senate Bill 266 (SB266), Criminal Offender Employment Act Exemptions. SB266 exempts an agency (i.e., HCA) for consideration of an applicant for employment as a caregiver or hospital caregiver subject to the Caregivers Criminal History Screening Act.

OTHER SUBSTANTIVE ISSUES

According to HCA there has been a 55 percent increase in abuse, neglect, and exploitation cases for individuals receiving developmental disabilities waiver services. Additionally, there has been a 76 percent increase of abuse, neglect, and exploitation cases in health care facilities (e.g., hospitals, nursing homes, and assisted living facilities). These increases equate to over 250 more abuse, neglect, and exploitation cases occurring in FY24 compared to FY22.

HLR/SL2/hj/SL2