

LFC Requester:

Harry Rommel

**AGENCY BILL ANALYSIS - 2025 REGULAR SESSION****WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO****[AgencyAnalysis.nmlegis.gov](https://www.legis.nm.gov/AgencyAnalysis) and email to [billanalysis@dfa.nm.gov](mailto:billanalysis@dfa.nm.gov)****(Analysis must be uploaded as a PDF)****SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}***Date Prepared:** 3/11/25*Check all that apply:***Bill Number:** HB131HJCSUBOriginal ☐ Correction ☐Amendment ☐ Substitute ☒**Agency Name****and Code**HCA 630**Number:****Sponsor:** Rep. Liz Thomson**Short** Caregiver Criminal Background**Person Writing** Danny Maxwell**Title:** Checks**Phone:** 505-205-6506 **Email** danny.maxwell@hca.nm.gov**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
None	None	N/A	N/A

(Parenthesis ( ) indicate expenditure decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
None	None	None	None	None

(Parenthesis ( ) indicate revenue decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	-	\$0.0	\$0.0	\$0.0	-	-

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

House Bill 131 (HB131) would transfer the authority for overseeing caregiver's criminal history checks from the Department of Health (DOH) to the Health Care Authority (HCA) and add to the list of disqualifying felony convictions (e.g. **aggravated** battery of a household member, sex trafficking, cruelty to animals) for employment as a caregiver. ~~It further allows the HCA to promulgate rules to establish additional disqualifying convictions for caregivers~~ **The substitute amendment removes the language for the Health Care Authority to promulgate rules in subsection E, replacing it with new language that creates a new standard based on whether the person poses an unreasonable risk as a caregiver. It assures the Health Care Authority assesses the totality of the circumstances using reasonable reliable information, such as court documents based upon the preponderance of the evidence to establish if the applicant is an unreasonable risk based upon the following: (a) two or more convictions related to abuse, neglect or exploitation with in the past ten years, regardless of the degree of the crime: or (b) a single convictions or pending charges, regardless of the degree of the crime if the crime is related to: 1) abuse, neglect or exploitation of a care recipient; 2) human trafficking; 3) criminal sexual penetration or related sexual offenses; 4) battery of a household member; or 5) child abuse. It provides for an administrative reconsiderations process for applicants who are determined to be an unreasonable risk, with the burden of proof upon the Health Care Authority based upon a preponderance of the evidence. An applicant shall also have the right to judicial review of any final decision made by the Health Care Authority pursuant to subsection E** and provides for the transfer of functions, records and equipment.

Enacting this amendment would:

- Address gaps of protection missing in current statute; and
- Reduce potential risk of abuse, neglect, and exploitation (ANE) for New Mexicans receiving health care caregiver services.
- **Adds a judicial review process to ensure workforce protection.**
- **Provide consistent language regarding human trafficking crime throughout the bill.**

#### **FISCAL IMPLICATIONS**

None for the HCA.

#### **SIGNIFICANT ISSUES**

Current statute includes only a limited number of disqualifying convictions for caregiver or hospital caregiver applicants, thus increasing the risk of ANE for healthcare recipients. For example, since FY22, there has been a **55% increase** in ANE cases for individuals receiving developmental disabilities waiver services. Additionally, there has been a **76% increase** of ANE 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.

In comparison to other states (Nevada, Mississippi, Michigan, Maine, Oklahoma, Georgia, and Idaho), New Mexico has significantly less disqualifying convictions. Nearly every comparative state had at least 10 times more disqualifying convictions than the current amount listed in New Mexico's statute. Six of the seven comparison states also included a list of misdemeanor crimes as disqualifying convictions while New Mexico's statute does not include any misdemeanor

crimes. Adopting a more comprehensive list of disqualifying convictions ~~and the ability to add to that list by rule~~ **including the use of the unreasonable risk standard to disqualify applicants who pose an unreasonable risk to care recipients** aligns with national best practices for protecting vulnerable populations. This amendment brings NM closer to recognized standards.

## PERFORMANCE IMPLICATIONS

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. Both expanding the list of felonies ~~and HCA promulgating rule for additional disqualifying convictions~~ **and 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.

It is not expected that individual caregiver and provider groups will be negatively impacted. It is not anticipated that an expansion of the list of disqualifying convictions will result in a meaningful reduction in the caregiver workforce nor will result in individuals being placed unfairly. [NMAC 8.370.5.1](#) outlines procedures individuals are able to 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 in accordance with NMAC 8.370.5.1.

## ADMINISTRATIVE IMPLICATIONS

~~The Health Care Authority will need to promulgate revised rules to add to the criteria of 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.~~

Operation of the Caregiver Criminal History Screening Program (CCHSP) IT system is managed by DHI via a third-party contract. This bill does not require any changes to CCHSP. ~~The only IT impact is additional equipment and software for the specified FTEs.~~

## CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

~~This amendment has a relationship with [2025-SB66](#) (Criminal Offender Employment Act Exemptions). Specifically, SB66, as proposed, states that the Act is not applicable to "an agency for consideration of an applicant for employment as a caregiver or hospital caregiver subject to the Caregivers Criminal History Screening Act." The HCA Division of Health Improvement is an agency that would fall in within this exemption.~~

~~SB66 advances the mission of the Caregiver Criminal History Screening Program by clarifying the HCA may fully enforce and implement its disqualifying conviction protocols, thus allowing the HCA to thoroughly review and address high-risk criminal histories without being constrained by the broader provisions of the Criminal Offender Employment Act.~~

## TECHNICAL ISSUES

None for the HCA.

## OTHER SUBSTANTIVE ISSUES

As a new agency, the HCA is charged with ensuring New Mexicans attain their highest level of health. The gaps in the Caregiver Criminal History Screening Program were made visible to HCA leaders in [December 2024](#) when the HCA learned the NM DOJ charged four people with abuse of assisted living residents across NM. If this proposed amendment had been enacted, the HCA would have had the statutory authority to implement and enforce stricter screening measures, disqualifying these high-risk caregivers before they could harm vulnerable individuals. This amendment could have provided the HCA increased oversight to better protect New Mexicans residing in these assisted living settings.

By strengthening and clarifying the Caregiver Criminal History Screening Program, this amendment helps protect vulnerable New Mexicans—such as older adults, hospital patients, and individuals with disabilities—from potential harm and exploitation. It ensures that caregivers and hospital caregivers undergo nationwide criminal history screenings, disqualifying applicants with serious convictions. New Mexicans benefit from a higher standard of care and greater peace of mind, knowing that caregivers are more properly vetted and that there is a clearer process for maintaining accountability.

While this legislation prioritizes patient safety and well-being, it has been carefully crafted to target only those convictions that clearly indicate a high risk to vulnerable populations. As previously **stated**, most qualified healthcare workers will continue to meet eligibility requirements, and the appeals process ensures that any inaccuracies or unique circumstances can be appropriately addressed. Consequently, the HCA does not anticipate a meaningful reduction in the overall pool of eligible healthcare professionals; rather, this law reinforces the integrity and trustworthiness of those who care for New Mexicans. By maintaining a balance between comprehensive screenings and procedural fairness, the legislative amendment safeguards New Mexicans without unduly constraining the state's vital healthcare workforce.

## **ALTERNATIVES**

None suggested.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Failure to enact this bill would leave the new HCA without critical statutory tools to thoroughly screen caregivers, potentially allowing individuals with serious or recently identified disqualifying convictions to continue providing health care to New Mexicans. Without the proposed amendments, the HCA would lack the authority to update and enforce a comprehensive list of disqualifying offenses, limiting the agency's ability to quickly address emerging risks. This gap in oversight increases the likelihood of ANE going undetected, thereby placing New Mexicans at greater risk. It also hinders the HCA's broader goal of ensuring patient safety and restoring public confidence in the caregiving system across the state.

## **AMENDMENTS**

None