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SENATE BILL 651

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

L. SKIP VERNON

AN ACT

RELATING TO LONG-TERM CARE; REQUIRING CRIMINAL BACKGROUND CHECKS
FOR CAREGIVERS EMPLOYED BY LONG-TERM CARE PROVIDERS; PROVIDING A
PENALTY; DECLARING AN EMERGENCY.

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

Section 1. CRIMINAL RECORDS SCREENING FOR CAREGIVERS
EMPLOYED BY LONG-TERM CARE PROVIDERS. --

A. As used in this section:

(1) "applicant" means any person who seeks
employment or volunteer service as a caregiver with a long-term
care provider;

(2) "caregiver" means any person whose
employment or volunteer service with a long-term care provider
may or does allow physical or financial access to any long-term
care recipient served by that provider;

Underscored material = new
[bracketed material] = delete

1 (3) "conviction" means any conviction of a
2 felony or a misdemeanor, including a conviction on a plea of
3 nolo contendere, of any crime specified in Subsection D of this
4 section;

5 (4) "long-term care provider" or "provider"
6 means a skilled nursing facility; intermediate care facility;
7 care facility for the mentally retarded; psychiatric facility;
8 rehabilitation facility; kidney disease treatment facility; home
9 health agency; homemaker agency; ambulatory surgical or
10 outpatient facility; home for the aged or disabled; group home;
11 adult foster care home; private residence that provides personal
12 care, sheltered care or nursing care for one or more persons not
13 related by blood or marriage to the facility's operator or
14 owner; adult daycare center; boarding home; adult residential
15 shelter care home; any entity that provides respite, companion
16 or personal care services; and any other health or resident-
17 care-related facility not a care facility located at or
18 performing services for any correctional facility;

19 (5) "long-term care recipient" means any person
20 under the care of a long-term care provider who has a physical
21 or mental illness, injury or disability or who suffers from any
22 cognitive impairment that restricts or limits the person's
23 activities;

24 (6) "nationwide criminal records check" means:
25 (a) fingerprinting on federal-bureau-of-

1 investigation-approved fingerprint cards, submitting the cards
2 to the bureau and obtaining the nationwide conviction record of
3 an applicant or caregiver; or

4 (b) submitting an applicant's or
5 caregiver's authorization-for-release form to the federal bureau
6 of investigation for the purpose of obtaining the nationwide
7 conviction record of an applicant or caregiver; and

8 (7) "statewide criminal records check" means
9 fingerprinting on federal-bureau-of-investigation-approved
10 fingerprint cards, submitting the cards to the department of
11 public safety and obtaining the statewide conviction and felony-
12 arrest history of an applicant or caregiver.

13 B. A long-term care provider that seeks to employ
14 any caregiver shall conduct statewide and nationwide criminal
15 records checks of the applicant before an offer of employment is
16 made. The costs of the criminal records checks shall be paid by
17 either the provider or the applicant.

18 C. A long-term care provider that employs any
19 caregiver as of the effective date of this act shall conduct
20 statewide and nationwide criminal records checks of each such
21 caregiver within ninety days of the effective date of this act.
22 The costs of the criminal records checks shall be paid by either
23 the provider or the employee.

24 D. Any of the following convictions disqualify an
25 applicant or caregiver from employment as a caregiver:

- 1 (1) homicide;
- 2 (2) assault or battery;
- 3 (3) aggravated assault or aggravated battery;
- 4 (4) kidnapping or false imprisonment;
- 5 (5) rape, criminal sexual penetration, criminal
6 sexual contact, incest or other non-consensual or forcible
7 sexual acts;
- 8 (6) domestic violence;
- 9 (7) any crime involving adult abuse, neglect or
10 financial exploitation;
- 11 (8) any crime involving child abuse;
- 12 (9) indecent exposure;
- 13 (10) felony larceny, robbery, burglary or
14 aggravated burglary;
- 15 (11) felony trafficking controlled substances;
- 16 (12) arson; or
- 17 (13) any crime involving criminal fraud.

18 E. A long-term care provider shall not employ an
19 applicant, or continue to employ a caregiver, whose criminal
20 records reflect conviction of a crime specified in Subsection D
21 of this section.

22 F. A long-term care provider may refuse to employ an
23 applicant, or to continue to employ a caregiver, whose criminal
24 records reflect conviction of a crime other than those specified
25 in Subsection D of this section or a felony arrest if, in the

1 provider's discretion, employment or continued employment is
2 inadvisable.

3 G. If a long-term care provider refuses to employ an
4 applicant, or to continue to employ a caregiver, pursuant to
5 Subsection E or F of this section, the provider shall so notify
6 the applicant or caregiver, stating with specificity the
7 convictions and arrests on which refusal to employ is based and
8 identifying the agency which provided the records.

9 H. A long-term care provider shall afford an
10 applicant or caregiver refused employment or continued
11 employment a reasonable opportunity to demonstrate that the
12 criminal records are inaccurate, including an opportunity to
13 contact the agency that provided the records.

14 I. A long-term care provider shall maintain records
15 evidencing compliance with the requirements of this section with
16 respect to all applicants and caregivers employed on or after
17 the effective date of this act. These records shall be subject
18 to inspection by any governmental agency with regulatory
19 jurisdiction over the provider, including the department of
20 health, state agency on aging, attorney general's medicaid fraud
21 unit and children, youth and families department. Criminal
22 records maintained by the provider shall be destroyed one year
23 after an applicant is rejected or a caregiver's employment is
24 terminated, as applicable.

25 J. All criminal records obtained pursuant to this

Underscored material = new
[bracketed material] = delete

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

13 K. A long-term care provider is not civilly liable
14 for a good-faith decision to employ, not employ or terminate
15 employment pursuant to this section.

16 L. Failure to comply with the requirements of this
17 section are grounds for any state agency having jurisdiction of
18 the long-term care provider, including the department of health,
19 state agency on aging, attorney general's medicaid fraud unit
20 and children, youth and families department, to impose
21 administrative sanctions and penalties, including suspension or
22 revocation of the provider's license and imposition of fines.

23 Section 2. EMERGENCY. --It is necessary for the public
24 peace, health and safety that this act take effect immediately.

1 FORTY-THIRD LEGISLATURE
2 FIRST SESSION, 1997

3
4
5 February 28, 1997

6
7 Mr. President:

8
9 Your PUBLIC AFFAIRS COMMITTEE, to whom has been
10 referred

11
12 SENATE BILL 651

13
14 has had it under consideration and reports same with
15 recommendation that it DO NOT PASS, but that

16
17 SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE
18 FOR SENATE BILL 651

19 DO PASS, and thence referred to the JUDICIARY COMMITTEE.
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22 Respectfully submitted,
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Shannon Robinson, Chairman

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Adair, Ingle, Vernon, Smith

Absent: None

S0651PA1

Underscored material = new
[bracketed material] = delete

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 651

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

AN ACT

RELATING TO LONG-TERM CARE; REQUIRING CRIMINAL BACKGROUND CHECKS
FOR CAREGIVERS EMPLOYED BY CARE PROVIDERS; DECLARING AN
EMERGENCY.

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

Section 1. CRIMINAL RECORDS SCREENING FOR CAREGIVERS
EMPLOYED BY CARE PROVIDERS. --

A. As used in this section:

(1) "applicant" means any person who seeks
employment, contractual service or volunteer service as a
caregiver with a care provider;

(2) "caregiver" means any person whose
employment, contractual service or volunteer service with a care
provider includes routine and unsupervised physical or financial
access to any care recipient served by that provider;

1 (3) "care provider" or "provider" means a skilled
2 nursing facility; intermediate care facility; care facility for
3 the mentally retarded; psychiatric facility; rehabilitation
4 facility; kidney disease treatment facility; home health agency;
5 homemaker agency; ambulatory surgical or outpatient facility;
6 home for the aged or disabled; group home; adult foster care
7 home; private residence that provides personal care, sheltered
8 care or nursing care for one or more persons not related by
9 blood or marriage to the facility's operator or owner; adult
10 daycare center; boarding home; adult residential shelter care
11 home; any entity that provides respite, companion or personal
12 care services; and any other health or resident care related
13 facility not a care facility located at or performing services
14 for any correctional facility;

15 (4) "care recipient" means any person under the
16 care of a provider who has a physical or mental illness, injury
17 or disability or who suffers from any cognitive impairment that
18 restricts or limits the person's activities;

19 (5) "conviction" means any conviction of a felony
20 or a misdemeanor, including a conviction on a plea of nolo
21 contendere, of any crime specified in Subsection D of this
22 section;

23 (6) "nationwide criminal records check" means:

24 (a) fingerprinting on federal bureau of
25 investigation approved fingerprint cards, submitting the

1 fingerprint cards to the bureau and obtaining the nationwide
2 conviction record of an applicant or caregiver; or

3 (b) submitting an applicant's or caregiver's
4 authorization for release form to the federal bureau of
5 investigation for the purpose of obtaining the nationwide
6 conviction record of an applicant or caregiver; and

7 (7) "statewide criminal records check" means
8 fingerprinting on federal bureau of investigation approved
9 fingerprint cards, submitting the cards to the department of public
10 safety and obtaining the statewide conviction and felony arrest
11 history of an applicant or caregiver.

12 B. A care provider that seeks to employ any caregiver
13 shall initiate statewide and nationwide criminal records checks of
14 the applicant before an offer of permanent employment is made. A
15 care provider may make a temporary offer of employment to an
16 applicant pending the results of the criminal records checks, and
17 shall initiate these checks within five days of making the
18 temporary offer of employment. A care provider may employ a person
19 prior to receiving and reviewing the results of the criminal
20 records checks for that person for a period not to exceed sixty
21 days. A care provider may accept the results of an applicant's
22 criminal records checks less than one year old, provided the
23 results are obtained from the applicant's previous employer
24 pursuant to the applicant's written consent. An applicant whose
25 profession requires statewide and nationwide criminal records

1 checks as a prerequisite for professional licensure may disclose
2 the results of any such records checks to the care provider in lieu
3 of undergoing the records checks required by this section. The
4 costs of the criminal records checks shall be paid by either the
5 provider or the applicant.

6 C. A care provider that employs any caregiver as of the
7 effective date of this act shall initiate statewide and nationwide
8 criminal records checks of each such caregiver within ninety days
9 of the effective date of this act. A care provider may continue to
10 employ a caregiver pending the results of the criminal records
11 checks for a period not to exceed sixty days. A care provider may
12 accept the results of a caregiver's criminal records checks less
13 than one year old, provided the results are obtained from the
14 caregiver's previous employer pursuant to the caregiver's written
15 consent. A caregiver whose profession requires statewide and
16 nationwide criminal records checks as prerequisite for professional
17 licensure may disclose the results of any such records checks to
18 the care provider in lieu of undergoing the records checks required
19 by this section. A care provider that has conducted criminal
20 records checks within the last two years as required in this
21 section may use the results of such checks to meet the requirements
22 of this section. The costs of the criminal records checks shall be
23 paid by either the provider or the caregiver.

24 D. Except as otherwise provided for in Subsection E of
25 this section, any of the following convictions disqualify an

1 applicant or caregiver from employment as a caregiver:

- 2 (1) homicide;
- 3 (2) assault or battery;
- 4 (3) aggravated assault or aggravated battery;
- 5 (4) kidnapping or false imprisonment;
- 6 (5) rape, criminal sexual penetration, criminal
- 7 sexual contact, incest or other non-consensual or forcible sexual
- 8 acts;
- 9 (6) domestic violence;
- 10 (7) any crime involving adult abuse, neglect or
- 11 financial exploitation;
- 12 (8) any crime involving child abuse or neglect;
- 13 (9) indecent exposure;
- 14 (10) felony larceny, robbery, burglary or aggravated
- 15 burglary;
- 16 (11) felony trafficking controlled substances;
- 17 (12) arson; or
- 18 (13) any criminal offense involving fraud.

19 E. A care provider shall not employ an applicant, or
 20 continue to employ a caregiver, whose criminal records reflect
 21 conviction of a crime specified in Subsection D of this section,
 22 unless the applicant or caregiver requests reconsideration and
 23 demonstrates to the provider that his employment poses no risk of
 24 harm to a care recipient or does not directly bear upon his fitness
 25 to have responsibility for the safety and well-being of the care

1 recipient. To determine whether to employ an applicant or
2 caregiver despite an otherwise disqualifying conviction, the care
3 provider must consider all of the following factors:

- 4 (1) level and seriousness of the crime;
- 5 (2) date of the crime;
- 6 (3) age of the applicant or caregiver at the time of
7 the conviction;
- 8 (4) circumstances surrounding the commission of the
9 crime, if known;
- 10 (5) nexus between the applicant's or caregiver's
11 criminal conduct and the job duties of the position to be filled;
- 12 (6) applicant's or caregiver's prison, jail,
13 probation, parole, rehabilitation and employment records since the
14 date the crime was committed; and
- 15 (7) subsequent commission by the applicant or
16 caregiver of a relevant offense.

17 F. A care provider may refuse to employ an applicant, or
18 to continue to employ a caregiver, whose criminal records reflect
19 conviction of a crime other than those specified in Subsection D of
20 this section or a felony arrest if, in the provider's discretion,
21 employment or continued employment is inadvisable.

22 G. If a care provider refuses to employ an applicant, or
23 to continue to employ a caregiver, pursuant to Subsection E or F of
24 this section, the provider shall so notify the applicant or
25 caregiver, stating with specificity the convictions and arrests on

1 which refusal to employ is based and identifying the agency which
2 provided the records.

3 H. A care provider shall afford an applicant or caregiver
4 refused employment or continued employment a reasonable opportunity
5 to demonstrate that the criminal records are inaccurate, including
6 an opportunity to contact the agency that provided the records.

7 I. A care provider shall maintain records evidencing
8 compliance with the requirements of this section with respect to
9 all applicants and caregivers employed on or after the effective
10 date of this act. These records shall be subject to inspection by
11 any governmental agency with regulatory jurisdiction over the
12 provider, including the department of health, the state agency on
13 aging, the attorney general's medicaid fraud control unit and the
14 children, youth and families department. Criminal records
15 maintained by the provider shall be destroyed one year after an
16 applicant is rejected or a caregiver's employment is terminated, as
17 applicable.

18 J. All criminal records obtained pursuant to this section
19 and the information contained therein are confidential. No
20 criminal records obtained pursuant to this section shall be used
21 for any purpose other than determining whether an applicant or
22 caregiver has criminal records that disqualify him from employment
23 as a caregiver. Except on court order or with the written consent
24 of the applicant or caregiver, criminal records obtained pursuant
25 to this section and the information contained therein shall not be

1 released or otherwise disclosed to any other person or agency. Any
2 person who discloses confidential records or information in
3 violation of this section is guilty of a misdemeanor and shall be
4 sentenced pursuant to the provisions of Subsection A of 31-19-1
5 NMSA 1978.

6 K. A care provider, including its administrators and/or
7 employees, is not civilly liable for a good faith decision to:

8 (1) employ, not employ or terminate employment
9 pursuant to this section; and

10 (2) rely on the results of criminal records checks
11 required by this section in making decisions or taking action
12 regarding placement or other personnel decisions.

13 L. Failure to comply with the requirements of this
14 section are grounds for the state agency having jurisdiction of the
15 care provider to impose administrative sanctions and penalties,
16 including suspension or revocation of the provider's license and
17 imposition of fines. This subsection neither limits any existing
18 and independent sanctioning authority nor grants any additional
19 sanctioning authority.

20 Section 2. EMERGENCY.--It is necessary for the public peace,
21 health and safety that this act take effect immediately.

1 FORTY-THIRD LEGISLATURE
2 FIRST SESSION, 1997

SB 651/a

5 March 13, 1997

6
7 Mr. President:

8
9 Your JUDICIARY COMMITTEE, to whom has been referred

10
11 SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
12 SENATE BILL 651

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

16
17 1. On page 1, line 24, after "includes" insert "direct care
18 or".

19
20 2. On page 3, line 6, strike "and".

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22 3. On page 3, line 11, strike the period and insert in lieu
23 thereof "; and".

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25 4. On page 3, between lines 11 and 12, insert the following new
paragraph:

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

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"(8) "volunteer service" means the performance of work for a care provider by a person who is not financially compensated for that work and does not receive a stipend, and who assists the care provider by filling a position that would otherwise be held by an employee or independent contractor."

5. On page 3, line 20, strike "sixty" and insert in lieu thereof "one hundred".

6. On page 4, line 8, strike "ninety" and insert in lieu thereof "one hundred eighty".

7. On page 4, line 11, strike "sixty" and insert in lieu thereof "one hundred".

8. On page 6, lines 17 through 22, strike Subsection F in its entirety and insert in lieu thereof:

"F. This section does not preclude a care facility or administrator or supervisory personnel from using other convictions or information revealed by criminal records checks as a basis for

Underscored material = new
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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

SJC/SPAC/SB 651

Page 19

employment or personnel placement or other personnel decisions or actions, including termination of employment. "

9. On page 8, line 11, strike "and" and insert in lieu thereof "or".

10. On page 8, line 19, after the period insert the following:

"Until January 1, 1998 a care provider shall not be subject to administrative sanctions or penalties for health facilities survey deficiencies or for continuing to employ a care giver for whom the provider has not received the results of criminal records checks during the one hundred day period of temporary employment provided for in Subsections B and C of this section. "

Respectfully submitted,

Fernando R. Macias, Chairman

SPAC/SB 651

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

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SJC/SPAC/SB 651

Page 20

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

No: 0

Excused: Sanchez

Absent: None

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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

SJC/SPAC/SB 651

Page 21

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

March 20, 1997

SENATE FLOOR AMENDMENT number _____ to SENATE PUBLIC AFFAIRS
COMMITTEE SUBSTITUTE FOR SENATE BILL 651, as amended, with emergency
clause

AMENDMENT sponsored by SENATOR VERNON

1. Strike Item No. 10 of Senate Judiciary Committee amendment
and insert in lieu thereof the following:

"Until January 1, 1998 a care provider shall not be subject to

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SPAC/SB 651

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

SJC/SPAC/SB 651

Page 22

administrative sanctions or penalties for health facilities survey
deficiencies for continuing to employ a care giver for whom the
provider has not received the results of criminal records checks
during the one hundred day period of temporary employment provided
for in Subsections B and C of this section. "

Senator L. Skip Vernon

Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

SJC/SPAC/SB 651

Page 23

Date _____

S0651FS1

Underscored material = new
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State of New Mexico
House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 20, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred
SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 651, as amended

has had it under consideration and reports same with
recommendation that it DO PASS.

Respectfully submitted,

Thomas P. Foy, Chairman

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

Excused: Alwin, Luna, Mallory, Rios, Sanchez, Stewart

Absent: None

M \S0651

Underscored material = new
[bracketed material] = delete