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SENATE BILL 222

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

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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 PROMULGATE RULES TO ESTABLISH ADDITIONAL
DISQUALIFYING CONVICTIONS FOR 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 ~~[department of]~~ health care authority is
authorized to receive an applicant's, caregiver's or hospital

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1 caregiver's nationwide criminal history record obtained by the
2 department of public safety as a result of a nationwide
3 criminal history screening pursuant to an applicant's,
4 caregiver's or hospital caregiver's authorization for such
5 nationwide criminal history screening. Providers shall submit
6 a set of fingerprints of applicants, caregivers and hospital
7 caregivers to the ~~[department of]~~ health care authority for a
8 nationwide criminal history screening, and the department of
9 public safety shall accept from the ~~[department of]~~ health care
10 authority such fingerprints for the purpose of conducting a
11 nationwide criminal history screening.

12 B. The ~~[department of]~~ health care authority is
13 authorized to promulgate rules to implement the Caregivers
14 Criminal History Screening Act, including rules establishing [~~a~~
15 ~~three-year phased implementation based upon provider type~~]
16 fingerprint submission procedures; fees; confidentiality; time
17 frames for an applicant's or caregiver's nationwide criminal
18 history screening; procedures for clarifying incomplete or
19 confusing criminal history information; provider sanctions for
20 noncompliance; disqualifying convictions; and employment
21 procedures pending the results of the nationwide criminal
22 history screening relating to applicants and caregivers.

23 C. No caregiver or hospital caregiver may be
24 employed by a care provider unless the caregiver or hospital
25 caregiver first has submitted to a request for a nationwide

1 criminal history screening prior to beginning employment in
2 accordance with procedures established by rule by the
3 ~~[departments of]~~ health care authority and department of public
4 safety. A caregiver or hospital caregiver shall apply for
5 statewide criminal history screening when applying for
6 employment with a care provider within twelve months of the
7 caregiver's or hospital caregiver's most recent nationwide
8 criminal history screening.

9 D. The following felony convictions disqualify an
10 applicant, caregiver or hospital caregiver from employment as a
11 caregiver:

12 (1) homicide;
13 (2) trafficking controlled substances;
14 (3) kidnapping, false imprisonment, aggravated
15 assault or aggravated battery, including battery of a household
16 member;

17 (4) rape, criminal sexual penetration,
18 criminal sexual contact, incest, indecent exposure or other
19 related sexual offenses;

20 (5) crimes involving adult abuse, neglect or
21 financial exploitation;

22 (6) crimes involving child abuse or neglect;

23 (7) robbery, larceny, burglary, fraud,
24 extortion, forgery, embezzlement, credit card fraud or
25 receiving stolen property; ~~[or]~~

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1 (8) an attempt, solicitation or conspiracy
2 involving any of the felonies in this subsection;

3 (9) sex trafficking;

4 (10) assault of a peace officer;

5 (11) identity theft; or

6 (12) cruelty to animals.

7 E. The health care authority may promulgate rules
8 to add additional types of convictions to the list of
9 convictions that disqualify an applicant, caregiver or hospital
10 caregiver from employment as a caregiver.

11 ~~[E.]~~ F. Upon receipt by the ~~[department of]~~ health
12 care authority of the results of the applicant's, caregiver's
13 or hospital caregiver's nationwide criminal history screening,
14 the ~~[department of health]~~ authority shall give notice to the
15 submitting care provider whether the applicant or caregiver has
16 a disqualifying conviction of a crime specified in Subsection D
17 of this section or as determined by the authority pursuant to
18 Subsection E of this section. No other results of the
19 applicant's, caregiver's or hospital caregiver's nationwide
20 criminal history screening shall be provided to the care
21 provider. Except as provided in Subsection ~~[F]~~ G of this
22 section, a care provider shall not employ an applicant or
23 continue to employ a caregiver or hospital caregiver whose
24 nationwide criminal history screening record reflects a
25 disqualifying conviction. When the ~~[department of]~~ health care

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1 authority provides notice to the care provider of a
2 disqualifying conviction of a crime specified in Subsection D
3 of this section or as determined by the authority pursuant to
4 Subsection E of this section, it shall also notify the
5 applicant, caregiver or hospital caregiver, stating with
6 specificity the convictions on which its decision is based and
7 identifying the agency that provided the records.

8 ~~[F.]~~ G. An applicant, caregiver or hospital
9 caregiver whose nationwide criminal history record, obtained
10 through the applicant's, caregiver's or hospital caregiver's
11 nationwide criminal history screening and other clarifying
12 endeavors of the ~~[department of]~~ health care authority,
13 reflects a disqualifying conviction of a crime specified in
14 Subsection D of this section or as determined by the authority
15 pursuant to Subsection E of this section, may request from the
16 ~~[department of health]~~ authority an administrative
17 reconsideration. The care provider may, in its discretion,
18 continue to employ such person during the pendency of the
19 reconsideration. A care provider may employ the applicant or
20 caregiver if the reconsideration proceeding results in a
21 determination by the ~~[department of health]~~ authority that the
22 applicant's, caregiver's or hospital caregiver's nationwide
23 criminal history record inaccurately reflects a disqualifying
24 conviction of a crime specified in Subsection D of this section
25 or as determined by the authority pursuant to Subsection E of

1 this section or that the employment presents no risk of harm to
2 a care recipient or that the conviction does not directly bear
3 upon the applicant's, caregiver's or hospital caregiver's
4 fitness for the employment.

5 ~~[G.]~~ H. The ~~[department of]~~ health care authority
6 is authorized to adopt rules for the administrative
7 reconsideration proceeding available to an applicant or
8 caregiver whose nationwide criminal history record reflects a
9 disqualifying conviction. The rules shall take into account
10 the requirements of the Criminal Offender Employment Act.

11 ~~[H.]~~ I. A care provider shall maintain records
12 evidencing compliance with the requirements of this section
13 with respect to all applicants and caregivers employed on or
14 after May 20, 1998.

15 ~~[I.]~~ J. All criminal history records obtained
16 pursuant to this section by the ~~[department of]~~ health care
17 authority are confidential. No criminal history records
18 obtained pursuant to this section shall be used for any purpose
19 other than determining whether an applicant, caregiver or
20 hospital caregiver has a criminal conviction that would
21 disqualify the applicant, caregiver or hospital caregiver from
22 employment as a caregiver or hospital caregiver. Except on
23 court order or with the written consent of the applicant,
24 caregiver or hospital caregiver, criminal records obtained
25 pursuant to this section and the information contained therein

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

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

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

17 ~~[L.]~~ M. Failure to comply with the requirements of
18 this section are grounds for the state agency having
19 enforcement authority with respect to the care provider to
20 impose appropriate administrative sanctions and penalties."

21 **SECTION 2. TEMPORARY PROVISION--TRANSFER OF FUNCTIONS.--**
22 On the effective date of this act, all functions, records and
23 equipment related to the oversight of caregiver criminal
24 history records shall be transferred from the department of
25 health to the health care authority.

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