

AN ACT

RELATING TO HEALTH; AMENDING SECTIONS OF THE CAREGIVERS
CRIMINAL HISTORY SCREENING ACT; CLARIFYING DEFINITIONS; ADDING
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, as amended) 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 or
hospital 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
Records Screening Act, whose employment or contractual service
with a care provider includes direct care or routine and
unsupervised physical or financial access to any care
recipient served by that provider;

C. "care provider" or "provider" means a skilled
nursing facility; an intermediate care facility; a care
facility for the mentally retarded; a general acute care
facility; a psychiatric facility; a rehabilitation facility; a
home health agency; a homemaker agency; a home for the aged or

disabled; a group home; an adult foster care home; a guardian service provider; a case management entity that provides services to people with developmental disabilities; a private residence that provides personal care, adult residential care or nursing care for two or more persons not related by blood or marriage to the facility's operator or owner; an adult daycare center; a boarding home; an adult residential care home; a residential service or habilitation service authorized to be reimbursed by medicaid; any licensed or medicaid-certified entity or any program funded by the aging and long-term services department that provides respite, companion or personal care services; or programs funded by the children, youth and families department that provide homemaker or adult daycare services. "Care provider" or "provider" does not include resident care facilities located at or performing services exclusively for any correctional facility, outpatient treatment facilities, diagnostic and treatment facilities, ambulatory surgical centers and facilities, end-stage renal dialysis and treatment facilities, rural health clinics, private physicians' offices or other clinics that operate in the same manner as private physicians' offices in group practice settings;

D. "care recipient" means any person under the care of a provider who has a physical or mental illness, injury or disability or who suffers from any cognitive

impairment that restricts or limits the person's activities;

E. "conviction" means a plea, judgment or verdict of guilty, a plea of nolo contendere, an Alford plea or any plea or judgment entered in connection with a suspended sentence, in this state or any other state or jurisdiction;

F. "hospital caregiver" means a person who provides direct unsupervised patient care in an inpatient setting and is not a licensed New Mexico health care professional practicing within the scope of a profession's license;

G. "nationwide criminal history screening" means a criminal history background investigation of an applicant, caregiver or hospital caregiver through the use of fingerprints collected by the department of public safety and submitted to the federal bureau of investigation, resulting in generation of a nationwide criminal history record for that applicant, caregiver or hospital caregiver;

H. "nationwide criminal history record" means information concerning a person's arrests, indictments or other formal criminal charges and any dispositions arising therefrom, including convictions, dismissals, acquittals, sentencing and correctional supervision and collected by criminal justice agencies; and

I. "statewide criminal history screening" means a criminal history background investigation of an applicant or

caregiver through the comparison of identifying information with the department of public safety's criminal record repository."

Section 2. 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 is authorized to receive an applicant's, caregiver's or hospital caregiver's nationwide criminal history record obtained by the department of public safety as a result of a nationwide criminal history screening pursuant to an applicant's, caregiver's or hospital caregiver's authorization for such nationwide criminal history screening. Providers shall submit a set of fingerprints of applicants, caregivers and hospital caregivers to the department of health for a nationwide criminal history screening, and the department of public safety shall accept from the department of health such fingerprints for the purpose of conducting a nationwide criminal history screening.

B. The department of health is authorized to promulgate rules to implement the Caregivers Criminal History Screening Act, including rules establishing a three-year phased implementation based upon provider type; fingerprint submission procedures; fees; confidentiality; time frames for an applicant's or caregiver's nationwide criminal history

screening; procedures for clarifying incomplete or confusing criminal history information; provider sanctions for noncompliance; and employment procedures pending the results of the nationwide criminal history screening relating to applicants and caregivers.

C. No caregiver or hospital caregiver may be employed by a care provider unless the caregiver or hospital caregiver first has submitted to a request for a nationwide criminal history screening prior to beginning employment in accordance with procedures established by rule by the departments of health and public safety. A caregiver or hospital caregiver shall apply for statewide criminal history screening when applying for employment with a care provider within twelve months of the caregiver's or hospital caregiver's most recent nationwide criminal history screening.

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

- (1) homicide;
- (2) trafficking controlled substances;
- (3) kidnapping, false imprisonment, aggravated assault or aggravated battery;
- (4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure or other related sexual offenses;

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

(6) crimes involving child abuse or neglect;

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

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

E. Upon receipt by the department of health of the results of the applicant's, caregiver's or hospital caregiver's nationwide criminal history screening, the department of health shall give notice to the submitting care provider whether 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, caregiver's or hospital caregiver's nationwide criminal history 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 or hospital caregiver whose nationwide criminal history screening 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, caregiver or hospital caregiver, stating with

specificity the convictions on which its decision is based and identifying the agency that provided the records.

F. An applicant, caregiver or hospital caregiver whose nationwide criminal history record, obtained through the applicant's, caregiver's or hospital caregiver's nationwide criminal history screening and other clarifying endeavors of the department of health, reflects a disqualifying conviction of a crime specified in Subsection D of this section may request from the department of health an administrative reconsideration. The care provider may, in its discretion, continue to employ such person during the pendency of the reconsideration. A care provider may employ the applicant or caregiver if the reconsideration proceeding results in a determination by the department of health that the applicant's, caregiver's or hospital caregiver's nationwide criminal history record inaccurately reflects a disqualifying conviction of a crime specified in Subsection D of this section or that the employment presents no risk of harm to a care recipient or that the conviction does not directly bear upon the applicant's, caregiver's or hospital caregiver's fitness for the employment.

G. The department of health is authorized to adopt rules for the administrative reconsideration proceeding available to an applicant or caregiver whose nationwide criminal history record reflects a disqualifying conviction.

The rules shall take into account the requirements of the Criminal Offender Employment Act.

H. A care provider shall maintain records evidencing compliance with the requirements of this section with respect to all applicants and caregivers employed on or after May 20, 1998.

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

J. The department of health shall maintain a registry of all applicants who are disqualified from employment or contractual service as caregivers or hospital

caregivers. An applicant's arrest record information shall not be released except upon request of the applicant as provided in the Arrest Record Information Act.

K. A care provider, including its administrators and employees, is not civilly liable to an applicant or a caregiver for a good faith decision to employ, not employ or terminate employment pursuant to the Caregivers Criminal History Screening Act.

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