

AN ACT

RELATING TO HEALTH CARE PROVIDERS; ESTABLISHING CRIMINAL HISTORY SCREENING REQUIREMENTS FOR CAREGIVERS; REPEALING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

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

Section 1. TITLE. -- Sections 1 through 5 of this act may be cited as the "Caregivers Criminal History Screening Act".

Section 2. PURPOSE. -- The purpose of the Caregivers Criminal History Screening Act and its requirement that caregivers undergo a nationwide criminal history screening is to ensure to the highest degree possible the prevention of abuse, neglect or financial exploitation of care recipients.

Section 3. 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 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 (32A-15-1 to 32A-15-4 NMSA 1978), whose employment, contractual service or volunteer 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; intermediate care facility; care facility for the mentally retarded; psychiatric facility; rehabilitation facility; home health agency; homemaker agency; home for the aged or disabled; group home; adult foster care home; 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; adult daycare center; boarding home; adult residential care home; residential service or habilitation service providers authorized to be reimbursed by Medicaid; any licensed or Medicaid certified entity, programs funded by the state agency on aging, 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; however, it does not include general acute care hospitals, and resident care facilities located at or performing services exclusively for any correctional facility;

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

F. "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, collected by criminal justice agencies and stored in the computerized databases of the federal bureau of investigation, the national law enforcement telecommunications system, the New Mexico department of public safety, or the repositories of criminal history information of other states.

**Section 4. CRIMINAL HISTORY SCREENING REQUIRED--
REGULATORY IMPLEMENTATION--APPEALS.--**

A. The department of health is authorized to receive an applicant's or caregiver's nationwide criminal history record obtained by the New Mexico department of public safety as a result of a nationwide criminal history records screening pursuant to an applicant's or caregiver's authorization for such criminal history records screening.

Providers shall submit a set of fingerprints of applicants and caregivers to the New Mexico department of public safety for a nationwide criminal history screening, and the New Mexico department of public safety shall accept such fingerprints for the purpose of conducting a nationwide criminal history screening.

B. The department of health is authorized to promulgate regulations to implement this act, including but not limited to regulations establishing a three year phased implementation based upon provider type; fingerprint submission procedures; fees; confidentiality; timeframes 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 volunteers, applicants, and caregivers.

C. No caregiver may be employed by a care provider unless the caregiver first has submitted to a request for a nationwide criminal history screening prior to beginning employment in accordance with procedures established by regulation by the departments of health and public safety, or unless the caregiver has submitted to a nationwide criminal history screening and has been cleared within the previous 12 months.

D. The following felony convictions disqualify an applicant or 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;

E. Upon receipt by the department of health of the results of the applicant's or caregiver's nationwide criminal history record, the department of health shall give notice to the submitting care provider whether or not 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 or caregiver's criminal history records 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, whose criminal history screening records reflect 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 or caregiver, stating with specificity the convictions on which its decision is based and identifying the agency which provided the records.

F. An applicant or caregiver whose nationwide criminal history record, obtained through the applicant's or caregiver's criminal history records 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 agency on aging that the applicant's or 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 or caregiver's fitness for the employment.

G. The department of health is authorized to adopt regulations for the administrative reconsideration

proceeding available to any applicant or caregiver whose nationwide criminal history record reflects a disqualifying conviction. The regulations shall take into account the requirements of the Criminal Offender Employment Act, 28-2-1 to 28-2-6, NMSA 1978.

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 the effective date of this act.

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 or caregiver has criminal records that disqualify him from employment as a caregiver. Except on court order or with the written consent of the applicant or 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. Any 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. 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 this 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.

Section 5. CONSTRUCTION--SEVERABILITY.--If any provision of the Caregivers Criminal History Screening Act or the application thereof to any person or entity or in any circumstances is held invalid, the remainder of that act and the application of such provision to others or in other circumstances shall not be affected thereby.

Section 6. REPEAL.--Section 29-17-1 NMSA 1978 (being Laws 1997, Chapter 202) is repealed. _____