

Hospital Guidance: Hospital Compliance with 7.1.9 NMAC Caregivers Criminal History Screening Requirements

Applicability

The guidelines set forth herein apply to all departments of a general acute care hospital in the State of New Mexico. They also apply to any services conducted off the main campus if the individual providing service is acting as an agent, either as a contractor or an employee of the general acute care hospital. If a general acute care hospital also provides long-term services than all long-term care provisions of 7.1.9 NMAC apply to those long-term care units.

Policy: Determining who is included as a “hospital caregiver”.

A “hospital caregiver” is defined as any person whose employment or contractual service with a care provider includes direct care or routine and unsupervised physical or financial access to any care recipient serviced by that care provider in an inpatient setting who is not a licensed New Mexico health care professional practicing within the scope of a profession’s license. 7.1.9.7.H NMAC

Determining who is and who is not required to receive a criminal history screening from the Caregivers Criminal History Screening Program is the responsibility of the care provider. The Caregivers Criminal History Screening statute and administrative rule allow for each care provider to examine and determine within its own organization and staff compliance standards using the requirements set forth in the “hospital caregiver” definition.

The “hospital caregiver” definition has two key levels of requirements for inclusion and one exclusion; the first level for inclusion pertains to the individuals association with the care provider. The second level pertains to the individual’s job duties and access to the care recipients by that individual. The individual must meet both levels to be considered a “hospital caregiver” but an exclusion exists for licensed New Mexico health care professionals practicing within the scope of their professional licensure eliminating them from the scope of this requirement.

The following steps can be utilized to determine if personnel associated with a care provider are required to receive a criminal history screening by the New Mexico Department of Health.

Steps for determining a “hospital caregiver”

1. Is the individual an employee or provides a contractual service to the care provider?
 - a. Is the individual a direct employee of the care provider?
 - b. Does the individual provide a contractual service to the care provider?
 - i. Contractual service includes, but is not limited to:

1. Any contract service provider providing services to the care provider
 2. Students participating in clinical practicum training
 3. Volunteer Auxiliary Groups
 - c. If it is determined by the care provider that the individual falls into either category then this individual meets the first requirement level set by the “hospital caregiver” definition.
2. Does the individual provide direct care or have “routine and unsupervised physical or financial access” to a care recipient serviced by the care provider?
 - a. Direct care means any level of service which an individual provides to a care recipient.
 - b. Routine and unsupervised physical access is comprised of the following elements:
 - i. Routine is defined as being non-episodic and regularly scheduled or assigned,
 - ii. Unsupervised is defined as occurring without the on-site, visual or physical presence of another caregiver or hospital caregiver or a family member of the care recipient or of another individual representing the care provider 7.1.9.7.R NMAC,
 - iii. Physical access is determined as any tangible interaction between an applicant, caregiver or hospital caregiver and the care recipient.
 - iv. Financial access is the direct access to the care recipient’s financial accounts or access to any records or documents by which an observer can determine the care recipient’s pertinent identifying information in which identity theft, fraud, credit card fraud or any other felony enumerated with 7.1.9 NMCA can be perpetrated.
 - v. The hospital caregiver must meet both “routine” and “unsupervised” criteria apply to in concert with financial and physical access.
3. If the individual meets this second level requirement and has met the first this individual would be considered a “hospital caregiver” by the New Mexico Department of Health. If the individual’s duties do not include routine and unsupervised physical or financial access than the individual is not a “hospital caregiver”.
4. If the individual meets both levels of requirements set forth in the “hospital caregiver” definition but is a licensed professional practicing within the scope of their licensure than the care provider may elect to exclude them from the criminal history screening requirement.

If the care provider concludes an employee or contract employee does not meet both levels of requirements of the “hospital caregiver” definition then the care provider is required to document that this decision under the following stipulation in 7.1.9.8 G NMAC:

G. Maintenance of Records: Care providers shall maintain documentation relating to all employees and contractors evidencing compliance with the act and these rules.

(1) During the term of employment, care providers shall maintain evidence of each applicant, caregiver or hospital caregiver' clearance, pending reconsideration, or disqualification.

(2) Care providers shall maintain documented evidence showing the basis for any determination by the care provider that an employee or contractor performs job functions that do not fall within the scope of the requirement for nationwide or statewide criminal history screening. A memorandum in an employee's file stating, "This employee does not provide direct care or have routine unsupervised physical or financial access to care recipients served by [name of care provider]", together with the employee's job description, shall suffice for record keeping purposes.

Policy: Students and the use of their clearance while in their educational program.

Students on a professional licensure or certification educational track meet both levels of requirements established in the "hospital caregiver" and "caregiver" definitions of 7.1.9 NMAC and are subject to the Caregivers Criminal History Screening requirements. They are required to submit an application for the criminal history screening but they may begin their training upon submission of that application, the students do not have to wait for the actual clearance from the Caregivers Criminal History Screening Program to begin. The educational institution in partnership with the care provider must ensure the student remains under "conditional supervised employment" while awaiting clearance from the New Mexico Department of Health.

The care provider or the accredited educational institution may submit the New Mexico Department of Health's Criminal History Screening Application to the Caregivers Criminal History Screening Program for processing and clearance determination. The Caregivers Criminal History Screening Program recommends that the educational institution submit the criminal history screening application to expedite the processing and to ensure that the clearance determination indicates that the applicant is a student and thus receives the associated allowance for use at multiple facilities. It is responsibility of the care provider and educational institution to determine how they will submit the criminal history screening applications on the students receiving the training.

If the student was submitted by the educational institution and upon clearance by Caregivers Criminal History Screening Program, the student would be able to use the criminal history screening determination for the duration of their educational program at all applicable facilities in which they receive training. If the student was submitted by the care provider that clearance determination would only be applicable for use by the care provider that submitted the application. Once the student has completed their educational program they must follow all required licensure steps determined by the appropriate New Mexico Licensing Board.

Policy: Screening volunteers and determining their job duties.

All applicants, caregivers, and hospital caregivers are required to consent to a nationwide and statewide criminal history screening upon offer of employment or at the time of entering into a contractual relationship with the care provider. Volunteers associated with an Auxiliary volunteer group are included in the Caregivers Criminal History Screening requirement through an actual contract or implied contract between the care provider and the Auxiliary volunteer group. Although volunteers are included in the criminal history screening requirement, but due to the limited nature of their duties and limited access to care recipients in general acute care hospitals the Department of Health recognizes that the actual required number of volunteers who need to be screened is extremely small. The requirement for screening is narrowed to only those providing direct care or having the routine and unsupervised physical and financial access to care recipients. If the care provider does ensure the volunteer is supervised during the course of their duties than the care provider will not need to submit that individual for a criminal history screening.

The Department of Health recognizes that a limited number of volunteers within a general acute care hospital actually require criminal history screening. The general acute care hospital may elect to list those volunteers within that limited scope of applicability and document their criminal history screenings. In the event the volunteer's duties change and they now provide direct care or have routine and unsupervised physical or financial access the general acute care hospital may submit them for a clearance without penalty from the Department of Health.

General acute care hospital must maintain documentation that they have reviewed the volunteer's job duties and have determined they do not meet the stipulations in 7.1.9.7.H NMAC. This ensures the care provider is in compliance with the Maintenance of Records clause in 7.1.9.8.G NMAC.

If you have further questions on these guidelines please contact the Caregivers Criminal History Screening Program at (505) 476-0801.