

TITLE 9 HUMAN RIGHTS
CHAPTER 2 AGE
PART 26 CRIMINAL HISTORY RECORDS CHECK

9.2.26.1 ISSUING AGENCY: Aging and Long-Term Services Department (ALTSD).
[9.2.26.1 NMAC - N, 11/04/2025]

9.2.26.2 SCOPE: These regulations apply to all employees, selected applicants, and volunteers of the adult protective services division, long-term care ombudsman program, and consumer and elder rights division of ALTSD.
[9.2.26.2 NMAC - N, 11/04/2025]

9.2.26.3 STATUTORY AUTHORITY: The statutory authority for these regulations is contained in the Criminal Offender Employment Act, Sections 28-2-1 to 28-2-6 NMSA 1978; Subsections A and E of Section 9-23-6 NMSA 1978; Section 9-23-11 NMSA 1978; and Section 9-23-14 NMSA 1978.
[9.2.26.3 NMAC - N, 11/04/2025]

9.2.26.4 DURATION: Permanent.
[9.2.26.4 NMAC - N, 11/04/2025]

9.2.26.5 EFFECTIVE DATE: November 4, 2025, unless a later date is cited at the end of a section.
[9.2.26.5 NMAC - N, 11/04/2025]

9.2.26.6 OBJECTIVE:
A. The purpose of these regulations is to set out general provisions regarding background checks required in settings to which these regulations apply.
B. Background checks are conducted in order to identify information in individuals' backgrounds bearing on their employment eligibility.
[9.2.26.6 NMAC - N, 11/04/2025]

9.2.26.7 DEFINITIONS:
A. **"Background check"** means a screen of ALTSD's information databases, state and federal criminal records and any other reasonably reliable information about an applicant.
B. **"Criminal history"** means information possessed by law enforcement agencies of arrests, indictments, or other formal charges, as well as dispositions arising from these charges.
C. **"Eligible"** means the determination that an applicant is qualified for employment or volunteer service in the adult protective services division, the long-term care ombudsman program, or the consumer and elder rights division.
D. **"Unreasonable risk"** means the quantum of risk that a reasonable person would be unwilling to take with the safety or welfare of others in settings to which these regulations apply.
[9.2.26.7 NMAC - N, 11/04/2025]

9.2.26.8 INVESTIGATION:
A. Compliance with these regulations is a condition of employment or volunteer work in the adult protective services division, long-term care ombudsman program, and consumer and elder rights division.
B. The employee, selected applicant, or volunteer is required to submit a set of electronic fingerprints, as directed by the department, to the department of public safety for processing pursuant to the Criminal Offender Employment Act, Article 2 of Chapter 28 NMSA 1978.
C. Upon receipt of the results of the background check, ALTSD shall use all of the information compiled as a result of the background check to investigate and determine whether an employee, selected applicant, or volunteer is eligible.
D. ALTSD may, in its discretion, use all reasonably reliable information about an applicant and weigh the evidence about an applicant to determine whether the applicant is eligible.

E. Any person who knowingly makes a materially false statement in connection with these requirements will be denied eligibility.

F. ALTSD shall not make an inquiry regarding a conviction on an initial application for employment and shall only take into consideration a conviction after the applicant has been selected as a finalist for the position.

G. Criminal history records obtained pursuant to the provisions of this section shall:

(1) be confidential;

(2) not be a public record for purposes of the Inspection of Public Records Act, Article 3 of Chapter 14 NMSA 1978;

(3) not be used for any purpose other than determining the eligibility of employees, selected applicants, or volunteers; and

(4) not be released or disclosed to any other person, except pursuant to a court order or with the written consent of the person who is the subject of the records.

[9.2.26.8 NMAC - N, 11/04/2025]

9.2.26.9 ELIGIBILITY:

A. ALTSD shall determine an applicant is not eligible if he or she poses an unreasonable risk to others in settings to which these rules apply.

B. In determining whether an employee, selected applicant, or volunteer poses an unreasonable risk, the department shall comply with the requirements of the Criminal Offender Employment Act, Article 2 of Chapter 28 NMSA 1978.

C. Any ALTSD employee, selected applicant, or volunteer who violates these regulations is subject to denial of employment, suspension, or disciplinary action up to and including termination of employment or volunteer service.

D. If ALTSD determines that an employee, selected applicant, or volunteer is ineligible for employment, the department will provide written findings as required by the Criminal Offenders Employment Act.
[9.2.26.9 NMAC - N, 11/04/2025]

9.2.26.10 REHABILITATION PETITION:

A. Any employee, selected applicant, or volunteer whom ALTSD concludes is ineligible may submit to ALTSD a rehabilitation petition describing with specificity all information that tends to demonstrate that the individual is not ineligible. The petition may include, but need not be limited to, a description of what actions the individual has taken subsequent to any events revealed by the background check to reduce the risk that the same or a similar circumstance will recur. The petitioner shall submit the rehabilitation petition within 15 days of receipt of ALTSD's written findings.

B. The department will review the petition and provide a written determination of whether the petitioner will be deemed eligible based on the information provided in the rehabilitation petition.

[9.2.26.10 NMAC - N, 11/04/2025]

History of 9.2.26 NMAC: [RESERVED]