

1 A bill to be entitled
2 An act relating to background screening; amending s.
3 394.4572, F.S.; providing that mental health personnel
4 working in a facility licensed under ch. 395, F.S.,
5 who work on an intermittent basis for less than 15
6 hours per week of direct, face-to-face contact with
7 patients are exempt from the fingerprinting and
8 screening requirements; providing an exception;
9 amending s. 409.1757, F.S.; adding law enforcement
10 officers who have a good moral character to the list
11 of professionals who are not required to be
12 refingerprinted or rescreened; amending s. 430.0402,
13 F.S.; including a person who has access to a client's
14 personal identification information within the
15 definition of the term "direct service provider";
16 exempting attorneys in good standing, relatives of
17 clients, and volunteers who assist on an intermittent
18 basis for less than 20 hours per month from level 2
19 background screening; excepting certain licensed
20 professionals and persons screened as a licensure
21 requirement from further screening under certain
22 circumstances; requiring direct service providers
23 working as of a certain date to be screened within a
24 specified period; providing a phase-in for screening
25 direct service providers; requiring that employers of
26 direct service providers and certain other individuals
27 be rescreened every 5 years unless fingerprints are
28 retained electronically by the Department of Law

29 Enforcement; removing an offense from the list of
30 disqualifying offenses for purposes of background
31 screening; amending s. 435.04, F.S.; requiring vendors
32 who submit fingerprints on behalf of employers to meet
33 specified criteria; requiring that fingerprints be
34 retained for any person screened by a certain date;
35 amending s. 435.06, F.S.; authorizing an employer to
36 hire an employee to a position that otherwise requires
37 background screening before the completion of the
38 screening process for the purpose of training the
39 employee; prohibiting the employee from having direct
40 contact with vulnerable persons until the screening
41 process is complete; amending s. 435.07, F.S.;
42 providing that personnel of a qualified entity as
43 defined in ch. 943, F.S., may apply for an exemption
44 from screening; amending s. 408.809, F.S.; eliminating
45 a rule that requires the Agency for Health Care
46 Administration to stagger rescreening schedules;
47 providing a rescreening schedule; amending s. 464.203,
48 F.S.; requiring the Board of Nursing to waive
49 background screening requirements for certain
50 certified nursing assistants; requiring the
51 establishment of a statewide interagency workgroup
52 relating to statewide background screening procedures
53 and information sharing; providing for membership;
54 requiring the workgroup to submit a report to the
55 Legislature by a specified date; setting forth the
56 topics that, at a minimum, the workgroup must address

57 | in its work plan; providing an effective date.

58 |

59 | Be It Enacted by the Legislature of the State of Florida:

60 |

61 | Section 1. Paragraph (d) is added to subsection (1) of
62 | section 394.4572, Florida Statutes, to read:

63 | 394.4572 Screening of mental health personnel.—

64 | (1)

65 | (d) Mental health personnel working in a facility licensed
66 | under chapter 395 who work on an intermittent basis for less
67 | than 15 hours per week of direct, face-to-face contact with
68 | patients are exempt from the fingerprinting and screening
69 | requirements, except that persons working in a mental health
70 | facility where the primary purpose of the facility is the mental
71 | health treatment of minors must be fingerprinted and meet
72 | screening requirements.

73 | Section 2. Section 409.1757, Florida Statutes, is amended
74 | to read:

75 | 409.1757 Persons not required to be refingerprinted or
76 | rescreened.—Any ~~provision of law to the contrary~~
77 | notwithstanding, human resource personnel who have been
78 | fingerprinted or screened pursuant to chapters 393, 394, 397,
79 | 402, and this chapter, ~~and~~ teachers who have been fingerprinted
80 | pursuant to chapter 1012, and law enforcement officers who meet
81 | the requirements of s. 943.13, who have not been unemployed for
82 | more than 90 days thereafter, and who under the penalty of
83 | perjury attest to the completion of such fingerprinting or
84 | screening and to compliance with ~~the provisions of~~ this section

CS/HB 943

2012

85 and the standards for good moral character as contained in such
 86 provisions as ss. 110.1127(3), 393.0655(1), 394.457(6), 397.451,
 87 402.305(2), ~~and~~ 409.175(6), and 943.13(7), are ~~shall not be~~
 88 required to be refingerprinted or rescreened in order to comply
 89 with any caretaker screening or fingerprinting requirements.

90 Section 3. Section 430.0402, Florida Statutes, is amended
 91 to read:

92 430.0402 Screening of direct service providers.-

93 (1) (a) Except as provided in subsection (2), level 2
 94 background screening pursuant to chapter 435 is required for
 95 direct service providers. Background screening includes
 96 employment history checks as provided in s. 435.03(1) and local
 97 criminal records checks through local law enforcement agencies.

98 (b) For purposes of this section, the term "direct service
 99 provider" means a person 18 years of age or older who, pursuant
 100 to a program to provide services to the elderly, has direct,
 101 face-to-face contact with a client while providing services to
 102 the client and ~~or~~ has access to the client's living areas, ~~or to~~
 103 ~~the client's funds, or personal property, or personal~~
 104 identification information as defined in s. 817.568. The term
 105 includes coordinators, managers, and supervisors of residential
 106 facilities and volunteers.

107 (2) Level 2 background screening pursuant to chapter 435
 108 is not required for the following direct service providers:

109 (a) Licensed physicians, nurses, or other professionals
 110 licensed by the Department of Health or attorneys in good
 111 standing with The Florida Bar ~~are not subject to background~~
 112 ~~screening~~ if they are providing a service that is within the

113 scope of their licensed practice.

114 (b) Relatives. For purposes of this section, the term
 115 "relative" means an individual who is the father, mother,
 116 stepfather, stepmother, son, daughter, brother, sister,
 117 grandmother, grandfather, great-grandmother, great-grandfather,
 118 grandson, granddaughter, uncle, aunt, first cousin, nephew,
 119 niece, husband, wife, father-in-law, mother-in-law, son-in-law,
 120 daughter-in-law, brother-in-law, sister-in-law, stepson,
 121 stepdaughter, stepbrother, stepsister, half-brother, or half-
 122 sister of the client.

123 (c) Volunteers who assist on an intermittent basis for
 124 less than 20 hours per month and who are not listed on the
 125 Department of Law Enforcement Career Offender Search or the Dru
 126 Sjodin National Sex Offender Public Website (NSOPW). The program
 127 that provides services to the elderly is responsible for
 128 verifying that the volunteer is not listed on the databases.

129 (3) Individuals qualified for employment by the Agency for
 130 Health Care Administration pursuant to the agency's background
 131 screening standards for licensure or employment contained in s.
 132 408.809 are not subject to subsequent or additional Level 2
 133 screening pursuant to chapter 435, or to the unique screening
 134 requirements of this section, by virtue of their employment as a
 135 direct service provider if they are providing a service that is
 136 within the scope of their licensed practice.

137 (4)-(3) Refusal on the part of an employer to dismiss a
 138 manager, supervisor, or direct service provider who has been
 139 found to be in noncompliance with standards of this section
 140 shall result in the automatic denial, termination, or revocation

141 of the license or certification, rate agreement, purchase order,
 142 or contract, in addition to any other remedies authorized by
 143 law.

144 (5) Individuals serving as direct service providers on
 145 July 31, 2011, must be screened by July 1, 2013. The department
 146 may adopt rules to establish a schedule to stagger the
 147 implementation of the required screening over a 1-year period,
 148 beginning July 1, 2012, through July 1, 2013.

149 (6) An employer of a direct service provider who
 150 previously qualified for employment or volunteer work under
 151 Level 1 screening standards or an individual who is required to
 152 be screened according to the Level 2 screening standards
 153 contained in chapter 435, pursuant to this section, shall be
 154 rescreened every 5 years following the date of his or her last
 155 background screening or exemption, unless such individual's
 156 fingerprints are continuously retained and monitored by the
 157 Department of Law Enforcement in the federal fingerprint
 158 retention program according to the procedures specified in s.
 159 943.05.

160 (7)(4) The background screening conducted pursuant to this
 161 section must ensure that, in addition to the disqualifying
 162 offenses listed in s. 435.04, no person subject to the
 163 provisions of this section has an arrest awaiting final
 164 disposition for, has been found guilty of, regardless of
 165 adjudication, or entered a plea of nolo contendere or guilty to,
 166 or has been adjudicated delinquent and the record has not been
 167 sealed or expunged for, any offense prohibited under any of the
 168 following provisions of state law or similar law of another

169 jurisdiction:

170 ~~(a) Any authorizing statutes, if the offense was a felony.~~

171 (a)~~(b)~~ Section 409.920, relating to Medicaid provider
172 fraud.

173 (b)~~(e)~~ Section 409.9201, relating to Medicaid fraud.

174 (c)~~(d)~~ Section 817.034, relating to fraudulent acts
175 through mail, wire, radio, electromagnetic, photoelectronic, or
176 photooptical systems.

177 (d)~~(e)~~ Section 817.234, relating to false and fraudulent
178 insurance claims.

179 (e)~~(f)~~ Section 817.505, relating to patient brokering.

180 (f)~~(g)~~ Section 817.568, relating to criminal use of
181 personal identification information.

182 (g)~~(h)~~ Section 817.60, relating to obtaining a credit card
183 through fraudulent means.

184 (h)~~(i)~~ Section 817.61, relating to fraudulent use of
185 credit cards, if the offense was a felony.

186 (i)~~(j)~~ Section 831.01, relating to forgery.

187 (j)~~(k)~~ Section 831.02, relating to uttering forged
188 instruments.

189 (k)~~(l)~~ Section 831.07, relating to forging bank bills,
190 checks, drafts, or promissory notes.

191 (l)~~(m)~~ Section 831.09, relating to uttering forged bank
192 bills, checks, drafts, or promissory notes.

193 Section 4. Paragraph (e) is added to subsection (1) of
194 section 435.04, Florida Statutes, and subsection (4) is added to
195 that section, to read:

196 435.04 Level 2 screening standards.—

- 197 (1)
- 198 (e) Vendors who submit fingerprints on behalf of employers
- 199 must:
- 200 1. Use technology that is compliant with systems used by
- 201 the Department of Law Enforcement; and
- 202 2. Have the ability to communicate electronically with the
- 203 state agency accepting screening results from the Department of
- 204 Law Enforcement.
- 205 (4) Fingerprints required for screening under this section
- 206 shall be retained for any person who is screened on or after
- 207 July 1, 2014.

208 Section 5. Paragraph (d) is added to subsection (2) of

209 section 435.06, Florida Statutes, to read:

210 435.06 Exclusion from employment.—

- 211 (2)
- 212 (d) An employer may hire an employee to a position that
- 213 requires background screening before the employee completes the
- 214 screening process for training and orientation purposes.
- 215 However, the employee may not have direct contact with
- 216 vulnerable persons until the screening process is completed and
- 217 the employee demonstrates that he or she exhibits no behaviors
- 218 that warrant the denial or termination of employment.

219 Section 6. Subsection (6) is added to section 435.07,

220 Florida Statutes, to read:

221 435.07 Exemptions from disqualification.—Unless otherwise

222 provided by law, the provisions of this section apply to

223 exemptions from disqualification for disqualifying offenses

224 revealed pursuant to background screenings required under this

225 | chapter, regardless of whether those disqualifying offenses are
 226 | listed in this chapter or other laws.

227 | (6) Personnel of a qualified entity as described in s.
 228 | 943.0542, who are required to be screened pursuant to s. 435.04,
 229 | may apply for an exemption pursuant to this chapter.

230 | Section 7. Section 408.809, Florida Statutes, is amended
 231 | to read:

232 | 408.809 Background screening; prohibited offenses.—

233 | (1) Level 2 background screening pursuant to chapter 435
 234 | must be conducted through the agency on each of the following
 235 | persons, who are considered employees for the purposes of
 236 | conducting screening under chapter 435:

237 | (a) The licensee, if an individual.

238 | (b) The administrator or a similarly titled person who is
 239 | responsible for the day-to-day operation of the provider.

240 | (c) The financial officer or similarly titled individual
 241 | who is responsible for the financial operation of the licensee
 242 | or provider.

243 | (d) Any person who is a controlling interest if the agency
 244 | has reason to believe that such person has been convicted of any
 245 | offense prohibited by s. 435.04. For each controlling interest
 246 | who has been convicted of any such offense, the licensee shall
 247 | submit to the agency a description and explanation of the
 248 | conviction at the time of license application.

249 | (e) Any person, as required by authorizing statutes,
 250 | seeking employment with a licensee or provider who is expected
 251 | to, or whose responsibilities may require him or her to, provide
 252 | personal care or services directly to clients or have access to

CS/HB 943

2012

253 client funds, personal property, or living areas; and any
254 person, as required by authorizing statutes, contracting with a
255 licensee or provider whose responsibilities require him or her
256 to provide personal care or personal services directly to
257 clients. Evidence of contractor screening may be retained by the
258 contractor's employer or the licensee.

259 (2) Every 5 years following his or her licensure,
260 employment, or entry into a contract in a capacity that under
261 subsection (1) would require level 2 background screening under
262 chapter 435, each such person must submit to level 2 background
263 rescreening as a condition of retaining such license or
264 continuing in such employment or contractual status. For any
265 such rescreening, the agency shall request the Department of Law
266 Enforcement to forward the person's fingerprints to the Federal
267 Bureau of Investigation for a national criminal history record
268 check. If the fingerprints of such a person are not retained by
269 the Department of Law Enforcement under s. 943.05(2)(g), the
270 person must file a complete set of fingerprints with the agency
271 and the agency shall forward the fingerprints to the Department
272 of Law Enforcement for state processing, and the Department of
273 Law Enforcement shall forward the fingerprints to the Federal
274 Bureau of Investigation for a national criminal history record
275 check. The fingerprints may be retained by the Department of Law
276 Enforcement under s. 943.05(2)(g). The cost of the state and
277 national criminal history records checks required by level 2
278 screening may be borne by the licensee or the person
279 fingerprinted. Proof of compliance with level 2 screening
280 standards submitted within the previous 5 years to meet any

281 provider or professional licensure requirements of the agency,
282 the Department of Health, the Agency for Persons with
283 Disabilities, the Department of Children and Family Services, or
284 the Department of Financial Services for an applicant for a
285 certificate of authority or provisional certificate of authority
286 to operate a continuing care retirement community under chapter
287 651 satisfies the requirements of this section if the person
288 subject to screening has not been unemployed for more than 90
289 days and such proof is accompanied, under penalty of perjury, by
290 an affidavit of compliance with the provisions of chapter 435
291 and this section using forms provided by the agency.

292 (3) All fingerprints must be provided in electronic
293 format. Screening results shall be reviewed by the agency with
294 respect to the offenses specified in s. 435.04 and this section,
295 and the qualifying or disqualifying status of the person named
296 in the request shall be maintained in a database. The qualifying
297 or disqualifying status of the person named in the request shall
298 be posted on a secure website for retrieval by the licensee or
299 designated agent on the licensee's behalf.

300 (4) In addition to the offenses listed in s. 435.04, all
301 persons required to undergo background screening pursuant to
302 this part or authorizing statutes must not have an arrest
303 awaiting final disposition for, must not have been found guilty
304 of, regardless of adjudication, or entered a plea of nolo
305 contendere or guilty to, and must not have been adjudicated
306 delinquent and the record not have been sealed or expunged for
307 any of the following offenses or any similar offense of another
308 jurisdiction:

- 309 (a) Any authorizing statutes, if the offense was a felony.
- 310 (b) This chapter, if the offense was a felony.
- 311 (c) Section 409.920, relating to Medicaid provider fraud.
- 312 (d) Section 409.9201, relating to Medicaid fraud.
- 313 (e) Section 741.28, relating to domestic violence.
- 314 (f) Section 817.034, relating to fraudulent acts through
- 315 mail, wire, radio, electromagnetic, photoelectronic, or
- 316 photooptical systems.
- 317 (g) Section 817.234, relating to false and fraudulent
- 318 insurance claims.
- 319 (h) Section 817.505, relating to patient brokering.
- 320 (i) Section 817.568, relating to criminal use of personal
- 321 identification information.
- 322 (j) Section 817.60, relating to obtaining a credit card
- 323 through fraudulent means.
- 324 (k) Section 817.61, relating to fraudulent use of credit
- 325 cards, if the offense was a felony.
- 326 (l) Section 831.01, relating to forgery.
- 327 (m) Section 831.02, relating to uttering forged
- 328 instruments.
- 329 (n) Section 831.07, relating to forging bank bills,
- 330 checks, drafts, or promissory notes.
- 331 (o) Section 831.09, relating to uttering forged bank
- 332 bills, checks, drafts, or promissory notes.
- 333 (p) Section 831.30, relating to fraud in obtaining
- 334 medicinal drugs.
- 335 (q) Section 831.31, relating to the sale, manufacture,
- 336 delivery, or possession with the intent to sell, manufacture, or

CS/HB 943

2012

337 deliver any counterfeit controlled substance, if the offense was
338 a felony.

339 (5) A person who serves as a controlling interest of, is
340 employed by, or contracts with a licensee on July 31, 2010, who
341 has been screened and qualified according to standards specified
342 in s. 435.03 or s. 435.04 must be rescreened by July 31, 2015 in
343 compliance with the following schedule. ~~The agency may adopt~~
344 ~~rules to establish a schedule to stagger the implementation of~~
345 ~~the required rescreening over the 5-year period, beginning July~~
346 ~~31, 2010, through July 31, 2015.~~ If, upon rescreening, such
347 person has a disqualifying offense that was not a disqualifying
348 offense at the time of the last screening, but is a current
349 disqualifying offense and was committed before the last
350 screening, he or she may apply for an exemption from the
351 appropriate licensing agency and, if agreed to by the employer,
352 may continue to perform his or her duties until the licensing
353 agency renders a decision on the application for exemption if
354 the person is eligible to apply for an exemption and the
355 exemption request is received by the agency within 30 days after
356 receipt of the rescreening results by the person. The
357 rescreening schedule shall be:

358 (a) Individuals for whom the last screening was conducted
359 on or before December 31, 2004, must be rescreened by July 31,
360 2013.

361 (b) Individuals for whom the last screening conducted was
362 between January 1, 2005, and December 31, 2008, must be
363 rescreened by July 31, 2014.

364 (c) Individuals for whom the last screening conducted was

365 between January 1, 2009, through July 31, 2011, must be
 366 rescreened by July 31, 2015.

367 (6)~~(5)~~ The costs associated with obtaining the required
 368 screening must be borne by the licensee or the person subject to
 369 screening. Licensees may reimburse persons for these costs. The
 370 Department of Law Enforcement shall charge the agency for
 371 screening pursuant to s. 943.053(3). The agency shall establish
 372 a schedule of fees to cover the costs of screening.

373 (7)~~(6)~~(a) As provided in chapter 435, the agency may grant
 374 an exemption from disqualification to a person who is subject to
 375 this section and who:

376 1. Does not have an active professional license or
 377 certification from the Department of Health; or

378 2. Has an active professional license or certification
 379 from the Department of Health but is not providing a service
 380 within the scope of that license or certification.

381 (b) As provided in chapter 435, the appropriate regulatory
 382 board within the Department of Health, or the department itself
 383 if there is no board, may grant an exemption from
 384 disqualification to a person who is subject to this section and
 385 who has received a professional license or certification from
 386 the Department of Health or a regulatory board within that
 387 department and that person is providing a service within the
 388 scope of his or her licensed or certified practice.

389 (8)~~(7)~~ The agency and the Department of Health may adopt
 390 rules pursuant to ss. 120.536(1) and 120.54 to implement this
 391 section, chapter 435, and authorizing statutes requiring
 392 background screening and to implement and adopt criteria

393 relating to retaining fingerprints pursuant to s. 943.05(2).

394 ~~(9)~~ There is no unemployment compensation or other
 395 monetary liability on the part of, and no cause of action for
 396 damages arising against, an employer that, upon notice of a
 397 disqualifying offense listed under chapter 435 or this section,
 398 terminates the person against whom the report was issued,
 399 whether or not that person has filed for an exemption with the
 400 Department of Health or the agency.

401 Section 8. Subsection (1) of section 464.203, Florida
 402 Statutes, is amended to read:

403 464.203 Certified nursing assistants; certification
 404 requirement.—

405 (1) The board shall issue a certificate to practice as a
 406 certified nursing assistant to any person who demonstrates a
 407 minimum competency to read and write and successfully passes the
 408 required background screening pursuant to s. 400.215. If the
 409 person has successfully passed the required background screening
 410 pursuant to s. 400.215 or s. 408.809 within 90 days before
 411 applying for a certificate to practice, the board shall waive
 412 the requirement that the applicant successfully pass an
 413 additional background screening pursuant to s. 400.215. The
 414 person must also meet ~~and meets~~ one of the following
 415 requirements:

416 (a) Has successfully completed an approved training
 417 program and achieved a minimum score, established by rule of the
 418 board, on the nursing assistant competency examination, which
 419 consists of a written portion and skills-demonstration portion
 420 approved by the board and administered at a site and by

CS/HB 943

2012

421 personnel approved by the department.

422 (b) Has achieved a minimum score, established by rule of
423 the board, on the nursing assistant competency examination,
424 which consists of a written portion and skills-demonstration
425 portion, approved by the board and administered at a site and by
426 personnel approved by the department and:

427 1. Has a high school diploma, or its equivalent; or

428 2. Is at least 18 years of age.

429 (c) Is currently certified in another state; is listed on
430 that state's certified nursing assistant registry; and has not
431 been found to have committed abuse, neglect, or exploitation in
432 that state.

433 (d) Has completed the curriculum developed by the
434 Department of Education and achieved a minimum score,
435 established by rule of the board, on the nursing assistant
436 competency examination, which consists of a written portion and
437 skills-demonstration portion, approved by the board and
438 administered at a site and by personnel approved by the
439 department.

440 Section 9. The Department of Children and Family Services,
441 the Agency for Health Care Administration, the Department of
442 Elderly Affairs, the Department of Health, the Agency for
443 Persons with Disabilities, the Department of Juvenile Justice,
444 and the Department of Law Enforcement shall create a statewide
445 interagency background screening workgroup for the purpose of
446 developing a work plan for implementing a statewide system for
447 streamlining background screening processes and sharing
448 background screening information.

449 (1) The interagency workgroup shall be coordinated through
450 the Agency for Health Care Administration and shall include
451 representatives from each of the state agencies required to
452 create the workgroup.

453 (2) The interagency workgroup shall submit a work plan for
454 implementing a streamlined background screening system to the
455 President of the Senate and the Speaker of the House of
456 Representatives by November 1, 2012.

457 (3) The interagency workgroup work plan shall, at a
458 minimum, address the following:

459 (a) The feasibility of creating a single statewide
460 database that is accessible by all agencies participating on the
461 workgroup.

462 (b) The feasibility of collocating or consolidating
463 current screening processes.

464 (c) Standardized screening criteria.

465 (d) Consistent criminal history information.

466 (e) Centralized exemptions.

467 (f) State and national retention of prints.

468 (g) National rescreens.

469 (h) Responsibility for retained prints and resubmission.

470 (i) Access to information.

471 (j) Fees.

472 (k) Screening turnaround time.

473 (l) The need for cooperative agreements among agencies
474 that may access information.

475 (m) Legal considerations and the need for legislative
476 action necessary for accessing information by participating

477 agencies.

478 (n) Guidelines for how the information shall be accessed,
 479 used, and disseminated.

480 (o) The organizational level at which information may be
 481 accessed and shared.

482 (p) The specific information to be maintained and shared
 483 through the system.

484 (q) Registration of employee information regarding the
 485 employment status of persons screened, including date of hire
 486 and date of separation, to facilitate notifications of arrests
 487 and dispositions to the appropriate provider.

488 (r) The costs of implementing the streamlined system to
 489 the state, employers, employees, and volunteers.

490 Section 10. This act shall take effect July 1, 2012.