

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

1 A bill to be entitled
2 An act relating to screening; amending s. 39.001, F.S.;
3 revising an exemption from screening requirements for
4 volunteers who assist providers under contract with the
5 Department of Children and Family Services; amending s.
6 39.821, F.S.; revising background screening requirements
7 for the Guardian Ad Litem Program; amending s. 215.5586,
8 F.S.; removing reference to ch. 435, F.S., for background
9 screening of hurricane mitigation inspectors; amending s.
10 393.0655, F.S.; revising an exemption from screening
11 requirements for volunteers; removing a temporary
12 exemption from screening requirements for direct service
13 providers awaiting completion of a background screening;
14 adding additional disqualifying offenses for the screening
15 of direct service providers for persons with developmental
16 disabilities; amending s. 394.4572, F.S.; revising
17 background screening requirements for mental health
18 personnel; amending s. 400.215, F.S.; revising background
19 screening requirements for nursing home personnel;
20 amending s. 400.506, F.S.; conforming provisions to
21 changes made by the act; amending s. 400.512, F.S.;
22 revising background screening requirements for home health
23 agency personnel, nurse registry personnel, and companions
24 and homemakers; amending s. 400.6065, F.S.; revising
25 background screening requirements for hospice personnel;
26 amending s. 400.801, F.S.; revising background screening
27 requirements for personnel at homes for special services;
28 amending s. 400.805, F.S.; revising background screening

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

29 requirements for transitional living facility personnel;
30 creating s. 400.9065, F.S.; providing background screening
31 requirements for prescribed pediatric extended care center
32 personnel; amending s. 400.934, F.S.; revising minimum
33 standards for home medical equipment providers; amending
34 s. 400.953, F.S.; revising background screening
35 requirements for home medical equipment provider
36 personnel; repealing s. 400.955, F.S., relating to the
37 procedures for screening of home medical equipment
38 provider personnel; amending s. 400.964, F.S.; revising
39 background screening requirements for personnel at
40 intermediate care facilities for developmentally disabled
41 persons; amending s. 400.980, F.S.; revising background
42 screening requirements for personnel at health care
43 services pools; amending s. 400.991, F.S.; revising
44 background screening requirements for applicants and
45 personnel at health care clinics; amending s. 408.806,
46 F.S.; adding a requirement for an affidavit relating to
47 background screening to the license application process
48 under the Agency for Health Care Administration; amending
49 s. 408.808, F.S.; conforming provisions to changes made by
50 the act; amending s. 408.809, F.S.; revising background
51 screening requirements under the Agency for Health Care
52 Administration; requiring electronic submission of
53 fingerprints; amending s. 402.302, F.S.; revising
54 exemptions from screening requirements for volunteers and
55 students; amending s. 409.175, F.S.; revising an exemption
56 from screening requirements for volunteers; revising

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

57 | background screening requirements for employees and
58 | volunteers in summer day camps and summer 24-hour camps;
59 | requiring periodic drug testing for licensed foster
60 | parents; requiring payment by the foster parent; amending
61 | s. 409.221, F.S.; revising background screening
62 | requirements for persons who render consumer-directed
63 | care; amending s. 409.907, F.S.; revising background
64 | screening requirements for Medicaid providers; amending s.
65 | 409.912, F.S.; requiring Medicaid providers to obtain a
66 | level 2 background screening for each provider employee in
67 | direct contact with or providing direct services to
68 | Medicaid recipients; amending s. 411.01, F.S.; requiring
69 | school districts to make a list of eligible substitute
70 | teachers available to early learning coalitions; amending
71 | s. 429.14, F.S.; revising administrative penalty
72 | provisions relating to assisted living facilities;
73 | amending s. 429.174, F.S.; revising background screening
74 | requirements for assisted living facility personnel;
75 | amending s. 429.67, F.S.; revising licensure requirements
76 | for adult family-care home personnel and household
77 | members; amending s. 429.69, F.S.; revising background
78 | screening requirements for adult family-care home
79 | personnel; amending s. 429.911, F.S.; revising
80 | administrative penalty provisions relating to adult day
81 | care centers; amending s. 429.919, F.S.; revising
82 | background screening requirements for adult day care
83 | center personnel; creating s. 430.0402, F.S.; providing
84 | background screening requirements for direct service

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

85 providers under the Department of Elderly Affairs;
86 amending s. 435.01, F.S.; revising provisions related to
87 the applicability of ch. 435, F.S., statutory references
88 to the chapter, and rulemaking; providing construction
89 with respect to the doctrine of incorporation by
90 reference; amending s. 435.02, F.S.; revising and adding
91 definitions; amending s. 435.03, F.S.; revising level 1
92 screening standards; adding disqualifying offenses;
93 amending s. 435.04, F.S.; revising level 2 screening
94 standards; requiring electronic submission of fingerprints
95 after a certain date; authorizing agencies to contract for
96 electronic fingerprinting; adding disqualifying offenses;
97 amending s. 435.05, F.S.; revising background check
98 requirements for covered employees and employers; amending
99 s. 435.06, F.S.; revising provisions relating to exclusion
100 from employment; providing that an employer may not hire,
101 select, or otherwise allow an employee contact with any
102 vulnerable person until the screening process is
103 completed; requiring removal of an employee arrested for
104 disqualifying offenses from roles requiring background
105 screening until the employee's eligibility for employment
106 is determined; amending s. 435.07, F.S.; revising
107 provisions relating to exemptions from disqualification;
108 amending s. 435.08, F.S.; revising provisions relating to
109 the payment for processing of fingerprints and criminal
110 history records checks; amending s. 464.203, F.S.;
111 conforming provisions to changes made by the act; amending
112 s. 489.115, F.S.; removing reference to ch. 435, F.S., for

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

113 background screening of construction contractors; amending
 114 s. 943.05, F.S.; revising provisions relating to the
 115 Criminal Justice Information Program under the Department
 116 of Law Enforcement; authorizing agencies to request the
 117 retention of certain fingerprints by the department;
 118 providing for rulemaking to require employers to keep the
 119 agencies informed of any change in the affiliation,
 120 employment, or contractual status of each person whose
 121 fingerprints are retained in certain circumstances;
 122 providing departmental duties upon notification that a
 123 federal fingerprint retention program is in effect;
 124 amending s. 943.053, F.S.; removing obsolete references
 125 relating to the dissemination of criminal justice
 126 information; amending s. 984.01, F.S.; revising an
 127 exemption from screening requirements for volunteers who
 128 assist with programs for children; amending s. 985.644,
 129 F.S.; revising background screening requirements for the
 130 Department of Juvenile Justice; authorizing rulemaking;
 131 amending ss. 381.60225, 409.912, 464.018, 468.3101,
 132 744.309, 744.474, and 985.04, F.S.; conforming provisions
 133 to changes made to ch. 435, F.S., by the act; repealing s.
 134 409.1758, F.S., relating to screening of summer camp
 135 personnel; repealing s. 456.039(4)(d), F.S., relating to
 136 information required for licensure of designated health
 137 care professionals; providing for prospective application
 138 of the act; providing an effective date.

139
 140 Be It Enacted by the Legislature of the State of Florida:

ENROLLED
 CS/HB 7069, Engrossed 2

2010 Legislature

141
 142 Section 1. Paragraph (a) of subsection (2) of section
 143 39.001, Florida Statutes, is amended to read:
 144 39.001 Purposes and intent; personnel standards and
 145 screening.—
 146 (2) DEPARTMENT CONTRACTS.—The department may contract with
 147 the Federal Government, other state departments and agencies,
 148 county and municipal governments and agencies, public and
 149 private agencies, and private individuals and corporations in
 150 carrying out the purposes of, and the responsibilities
 151 established in, this chapter.

152 (a) If ~~When~~ the department contracts with a provider for
 153 any program for children, all personnel, including owners,
 154 operators, employees, and volunteers, in the facility must be of
 155 good moral character. A volunteer who assists on an intermittent
 156 basis for less than 10 ~~40~~ hours per month need not be screened
 157 if a person who meets the screening requirement of this section
 158 is always present and has the volunteer within his or her line
 159 of sight ~~if the volunteer is under direct and constant~~
 160 ~~supervision by persons who meet the screening requirements.~~

161 Section 2. Subsection (1) of section 39.821, Florida
 162 Statutes, is amended to read:

163 39.821 Qualifications of guardians ad litem.—

164 (1) Because of the special trust or responsibility placed
 165 in a guardian ad litem, the Guardian Ad Litem Program may use
 166 any private funds collected by the program, or any state funds
 167 so designated, to conduct a security background investigation
 168 before certifying a volunteer to serve. A security background

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

169 investigation must include, but need not be limited to,
 170 employment history checks, checks of references, local criminal
 171 records checks through local law enforcement agencies, and
 172 statewide criminal records checks through the Department of Law
 173 Enforcement. Upon request, an employer shall furnish a copy of
 174 the personnel record for the employee or former employee who is
 175 the subject of a security background investigation conducted
 176 under this section. The information contained in the personnel
 177 record may include, but need not be limited to, disciplinary
 178 matters and the reason why the employee was terminated from
 179 employment. An employer who releases a personnel record for
 180 purposes of a security background investigation is presumed to
 181 have acted in good faith and is not liable for information
 182 contained in the record without a showing that the employer
 183 maliciously falsified the record. A security background
 184 investigation conducted under this section must ensure that a
 185 person is not certified as a guardian ad litem if the person has
 186 an arrest awaiting final disposition for, been convicted of,
 187 regardless of adjudication, ~~or~~ entered a plea of nolo contendere
 188 or guilty to, or been adjudicated delinquent and the record has
 189 not been sealed or expunged for, any offense prohibited under
 190 the provisions listed in s. 435.04. All applicants certified on
 191 or after August 1, 2010, must undergo a level 2 background
 192 screening pursuant to chapter 435 before being certified ~~the~~
 193 ~~provisions of the Florida Statutes specified in s. 435.04(2) or~~
 194 ~~under any similar law in another jurisdiction. Before certifying~~
 195 ~~an applicant to serve as a guardian ad litem, the Guardian Ad~~
 196 ~~Litem Program may request a federal criminal records check of~~

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

197 | ~~the applicant through the Federal Bureau of Investigation.~~ In
198 | analyzing and evaluating the information obtained in the
199 | security background investigation, the program must give
200 | particular emphasis to past activities involving children,
201 | including, but not limited to, child-related criminal offenses
202 | or child abuse. The program has ~~the~~ sole discretion in
203 | determining whether to certify a person based on his or her
204 | security background investigation. The information collected
205 | pursuant to the security background investigation is
206 | confidential and exempt from s. 119.07(1).

207 | Section 3. Paragraph (b) of subsection (1) of section
208 | 215.5586, Florida Statutes, is amended to read:

209 | 215.5586 My Safe Florida Home Program.—There is
210 | established within the Department of Financial Services the My
211 | Safe Florida Home Program. The department shall provide fiscal
212 | accountability, contract management, and strategic leadership
213 | for the program, consistent with this section. This section does
214 | not create an entitlement for property owners or obligate the
215 | state in any way to fund the inspection or retrofitting of
216 | residential property in this state. Implementation of this
217 | program is subject to annual legislative appropriations. It is
218 | the intent of the Legislature that the My Safe Florida Home
219 | Program provide trained and certified inspectors to perform
220 | inspections for owners of site-built, single-family, residential
221 | properties and grants to eligible applicants as funding allows.
222 | The program shall develop and implement a comprehensive and
223 | coordinated approach for hurricane damage mitigation that may
224 | include the following:

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

225 (1) HURRICANE MITIGATION INSPECTIONS.—

226 (b) To qualify for selection by the department as a wind

227 certification entity to provide hurricane mitigation

228 inspections, the entity shall, at a minimum, meet the following

229 requirements:

230 1. Use hurricane mitigation inspectors who:

231 a. Are certified as a building inspector under s. 468.607;

232 b. Are licensed as a general or residential contractor

233 under s. 489.111;

234 c. Are licensed as a professional engineer under s.

235 471.015 and who have passed the appropriate equivalency test of

236 the building code training program as required by s. 553.841;

237 d. Are licensed as a professional architect under s.

238 481.213; or

239 e. Have at least 2 years of experience in residential

240 construction or residential building inspection and have

241 received specialized training in hurricane mitigation

242 procedures. Such training may be provided by a class offered

243 online or in person.

244 2. Use hurricane mitigation inspectors who also:

245 a. Have undergone drug testing and a level 2 background

246 screening checks pursuant to s. 435.04. The department may

247 conduct criminal record checks of inspectors used by wind

248 certification entities. Inspectors must submit a set of the

249 fingerprints to the department for state and national criminal

250 history checks and must pay the fingerprint processing fee set

251 forth in s. 624.501. The fingerprints shall be sent by the

252 department to the Department of Law Enforcement and forwarded to

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

253 the Federal Bureau of Investigation for processing. The results
 254 shall be returned to the department for screening. The
 255 fingerprints shall be taken by a law enforcement agency,
 256 designated examination center, or other department-approved
 257 entity; and

258 b. Have been certified, in a manner satisfactory to the
 259 department, to conduct the inspections.

260 3. Provide a quality assurance program including a
 261 reinspection component.

262 Section 4. Paragraphs (a) and (e) of subsection (1) of
 263 section 393.0655, Florida Statutes, are amended, and subsection
 264 (5) is added to that section, to read:

265 393.0655 Screening of direct service providers.—

266 (1) MINIMUM STANDARDS.—The agency shall require level 2
 267 employment screening pursuant to chapter 435 for direct service
 268 providers who are unrelated to their clients, including support
 269 coordinators, and managers and supervisors of residential
 270 facilities or comprehensive transitional education programs
 271 licensed under this chapter and any other person, including
 272 volunteers, who provide care or services, who have access to a
 273 client's living areas, or who have access to a client's funds or
 274 personal property. Background screening shall include employment
 275 history checks as provided in s. 435.03(1) and local criminal
 276 records checks through local law enforcement agencies.

277 (a) A volunteer who assists on an intermittent basis for
 278 less than 10 ~~40~~ hours per month does not have to be screened if
 279 a person who meets the screening requirement of this section is
 280 always present and has the volunteer within his or her line of

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

281 ~~sight if the volunteer is under the direct and constant visual~~
 282 ~~supervision of persons who meet the screening requirements of~~
 283 ~~this section.~~

284 ~~(e) A direct service provider who is awaiting the~~
 285 ~~completion of background screening is temporarily exempt from~~
 286 ~~the screening requirements under this section if the provider is~~
 287 ~~under the direct and constant visual supervision of persons who~~
 288 ~~meet the screening requirements of this section. Such exemption~~
 289 ~~expires 90 days after the direct service provider first provides~~
 290 ~~care or services to clients, has access to a client's living~~
 291 ~~areas, or has access to a client's funds or personal property.~~

292 (5) DISQUALIFYING OFFENSES.—The background screening
 293 conducted under this section must ensure that, in addition to
 294 the disqualifying offenses listed in s. 435.04, no person
 295 subject to the provisions of this section has an arrest awaiting
 296 final disposition for, has been found guilty of, regardless of
 297 adjudication, or entered a plea of nolo contendere or guilty to,
 298 or has been adjudicated delinquent and the record has not been
 299 sealed or expunged for, any offense prohibited under any of the
 300 following provisions of state law or similar law of another
 301 jurisdiction:

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

303 (b) This chapter, if the offense was a felony.

304 (c) Section 409.920, relating to Medicaid provider fraud.

305 (d) Section 409.9201, relating to Medicaid fraud.

306 (e) Section 817.034, relating to fraudulent acts through
 307 mail, wire, radio, electromagnetic, photoelectronic, or
 308 phooptical systems.

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

309 (f) Section 817.234, relating to false and fraudulent
 310 insurance claims.

311 (g) Section 817.505, relating to patient brokering.

312 (h) Section 817.568, relating to criminal use of personal
 313 identification information.

314 (i) Section 817.60, relating to obtaining a credit card
 315 through fraudulent means.

316 (j) Section 817.61, relating to fraudulent use of credit
 317 cards, if the offense was a felony.

318 (k) Section 831.01, relating to forgery.

319 (l) Section 831.02, relating to uttering forged
 320 instruments.

321 (m) Section 831.07, relating to forging bank bills,
 322 checks, drafts, or promissory notes.

323 (n) Section 831.09, relating to uttering forged bank
 324 bills, checks, drafts, or promissory notes.

325 Section 5. Section 394.4572, Florida Statutes, is amended
 326 to read:

327 394.4572 Screening of mental health personnel.—

328 (1) (a) The department and the Agency for Health Care
 329 Administration shall require level 2 background employment
 330 screening pursuant to chapter 435 for mental health personnel
 331 ~~using the standards for level 2 screening set forth in chapter~~
 332 ~~435.~~ "Mental health personnel" includes all program directors,
 333 professional clinicians, staff members, and volunteers working
 334 in public or private mental health programs and facilities who
 335 have direct contact with individuals held for examination or
 336 admitted for mental health treatment ~~unmarried patients under~~

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

337 ~~the age of 18 years.~~ For purposes of this chapter, employment
 338 screening of mental health personnel ~~shall~~ also includes
 339 ~~include,~~ but is not limited to, employment screening as provided
 340 under chapter 435 and s. 408.809.

341 (b) Students in the health care professions who are
 342 interning in a mental health facility licensed under chapter
 343 395, where the primary purpose of the facility is not the
 344 treatment of minors, are exempt from the fingerprinting and
 345 screening requirements if, ~~provided~~ they are under direct
 346 supervision in the actual physical presence of a licensed health
 347 care professional.

348 ~~(c) Mental health personnel working in a facility licensed~~
 349 ~~under chapter 395 who have less than 15 hours per week of direct~~
 350 ~~contact with patients or who are health care professionals~~
 351 ~~licensed by the Agency for Health Care Administration or a board~~
 352 ~~thereunder are exempt from the fingerprinting and screening~~
 353 ~~requirements, except for persons working in mental health~~
 354 ~~facilities where the primary purpose of the facility is the~~
 355 ~~treatment of minors.~~

356 (c)(d) A volunteer who assists on an intermittent basis
 357 for less than 10 ~~40~~ hours per month is exempt from the
 358 fingerprinting and screening requirements if a person who meets
 359 the screening requirement of paragraph (a) is always present and
 360 has the volunteer within his or her line of sight, ~~provided the~~
 361 ~~volunteer is under direct and constant supervision by persons~~
 362 ~~who meet the screening requirements of paragraph (a).~~

363 (2) The department or the Agency for Health Care
 364 Administration may grant exemptions from disqualification as

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

365 provided in chapter 435 ~~s. 435.06.~~

366 ~~(3) Prospective mental health personnel who have~~
 367 ~~previously been fingerprinted or screened pursuant to this~~
 368 ~~chapter, chapter 393, chapter 397, chapter 402, or chapter 409,~~
 369 ~~or teachers who have been fingerprinted pursuant to chapter~~
 370 ~~1012, who have not been unemployed for more than 90 days~~
 371 ~~thereafter, and who under the penalty of perjury attest to the~~
 372 ~~completion of such fingerprinting or screening and to compliance~~
 373 ~~with the provisions of this section and the standards for level~~
 374 ~~1 screening contained in chapter 435, shall not be required to~~
 375 ~~be refingerprinted or rescreened in order to comply with any~~
 376 ~~screening requirements of this part.~~

377 Section 6. Section 400.215, Florida Statutes, is amended
 378 to read:

379 400.215 Personnel screening requirement.—

380 (1) The agency shall require level 2 background screening
 381 for personnel as required in s. 408.809(1)(e) pursuant to as
 382 ~~provided in chapter 435 and s. 408.809. for all employees or~~
 383 ~~prospective employees of facilities licensed under this part who~~
 384 ~~are expected to, or whose responsibilities may require them to:~~

- 385 ~~(a) Provide personal care or services to residents;~~
- 386 ~~(b) Have access to resident living areas; or~~
- 387 ~~(c) Have access to resident funds or other personal~~
 388 ~~property.~~

389 (2) ~~Employers and employees shall comply with the~~
 390 ~~requirements of s. 435.05.~~

391 ~~(a) Notwithstanding the provisions of s. 435.05(1),~~
 392 ~~facilities must have in their possession evidence that level 1~~

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

393 ~~screening has been completed before allowing an employee to~~
 394 ~~begin working with patients as provided in subsection (1). All~~
 395 ~~information necessary for conducting background screening using~~
 396 ~~level 1 standards as specified in s. 435.03 shall be submitted~~
 397 ~~by the nursing facility to the agency. Results of the background~~
 398 ~~screening shall be provided by the agency to the requesting~~
 399 ~~nursing facility.~~

400 ~~(b) Employees qualified under the provisions of paragraph~~
 401 ~~(a) who have not maintained continuous residency within the~~
 402 ~~state for the 5 years immediately preceding the date of request~~
 403 ~~for background screening must complete level 2 screening, as~~
 404 ~~provided in chapter 435. Such employees may work in a~~
 405 ~~conditional status up to 180 days pending the receipt of written~~
 406 ~~findings evidencing the completion of level 2 screening. Level 2~~
 407 ~~screening shall not be required of employees or prospective~~
 408 ~~employees who attest in writing under penalty of perjury that~~
 409 ~~they meet the residency requirement. Completion of level 2~~
 410 ~~screening shall require the employee or prospective employee to~~
 411 ~~furnish to the nursing facility a full set of fingerprints to~~
 412 ~~enable a criminal background investigation to be conducted. The~~
 413 ~~nursing facility shall submit the completed fingerprint card to~~
 414 ~~the agency. The agency shall establish a record of the request~~
 415 ~~in the database provided for in paragraph (c) and forward the~~
 416 ~~request to the Department of Law Enforcement, which is~~
 417 ~~authorized to submit the fingerprints to the Federal Bureau of~~
 418 ~~Investigation for a national criminal history records check. The~~
 419 ~~results of the national criminal history records check shall be~~
 420 ~~returned to the agency, which shall maintain the results in the~~

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

421 ~~database provided for in paragraph (c). The agency shall notify~~
422 ~~the administrator of the requesting nursing facility or the~~
423 ~~administrator of any other facility licensed under chapter 393,~~
424 ~~chapter 394, chapter 395, chapter 397, chapter 429, or this~~
425 ~~chapter, as requested by such facility, as to whether or not the~~
426 ~~employee has qualified under level 1 or level 2 screening. An~~
427 ~~employee or prospective employee who has qualified under level 2~~
428 ~~screening and has maintained such continuous residency within~~
429 ~~the state shall not be required to complete a subsequent level 2~~
430 ~~screening as a condition of employment at another facility.~~

431 ~~(c) The agency shall establish and maintain a database of~~
432 ~~background screening information which shall include the results~~
433 ~~of both level 1 and level 2 screening. The Department of Law~~
434 ~~Enforcement shall timely provide to the agency, electronically,~~
435 ~~the results of each statewide screening for incorporation into~~
436 ~~the database. The agency shall, upon request from any facility,~~
437 ~~agency, or program required by or authorized by law to screen~~
438 ~~its employees or applicants, notify the administrator of the~~
439 ~~facility, agency, or program of the qualifying or disqualifying~~
440 ~~status of the employee or applicant named in the request.~~

441 ~~(d) Applicants and employees shall be excluded from~~
442 ~~employment pursuant to s. 435.06.~~

443 ~~(3) The applicant is responsible for paying the fees~~
444 ~~associated with obtaining the required screening. Payment for~~
445 ~~the screening shall be submitted to the agency. The agency shall~~
446 ~~establish a schedule of fees to cover the costs of level 1 and~~
447 ~~level 2 screening. Facilities may reimburse employees for these~~
448 ~~costs. The Department of Law Enforcement shall charge the agency~~

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

449 ~~for a level 1 or level 2 screening a rate sufficient to cover~~
 450 ~~the costs of such screening pursuant to s. 943.053(3).~~ The
 451 agency shall, as allowable, reimburse nursing facilities for the
 452 cost of conducting background screening as required by this
 453 section. This reimbursement is ~~will~~ not be subject to any rate
 454 ceilings or payment targets in the Medicaid Reimbursement plan.

455 ~~(4)(a) As provided in s. 435.07, the agency may grant an~~
 456 ~~exemption from disqualification to an employee or prospective~~
 457 ~~employee who is subject to this section and who has not received~~
 458 ~~a professional license or certification from the Department of~~
 459 ~~Health.~~

460 ~~(b) As provided in s. 435.07, the appropriate regulatory~~
 461 ~~board within the Department of Health, or that department itself~~
 462 ~~when there is no board, may grant an exemption from~~
 463 ~~disqualification to an employee or prospective employee who is~~
 464 ~~subject to this section and who has received a professional~~
 465 ~~license or certification from the Department of Health or a~~
 466 ~~regulatory board within that department.~~

467 ~~(5) Any provision of law to the contrary notwithstanding,~~
 468 ~~persons who have been screened and qualified as required by this~~
 469 ~~section and who have not been unemployed for more than 180 days~~
 470 ~~thereafter, and who under penalty of perjury attest to not~~
 471 ~~having been convicted of a disqualifying offense since the~~
 472 ~~completion of such screening, shall not be required to be~~
 473 ~~rescreened. An employer may obtain, pursuant to s. 435.10,~~
 474 ~~written verification of qualifying screening results from the~~
 475 ~~previous employer or other entity which caused such screening to~~
 476 ~~be performed.~~

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

477 ~~(6) The agency and the Department of Health shall have~~
 478 ~~authority to adopt rules pursuant to the Administrative~~
 479 ~~Procedure Act to implement this section.~~

480 ~~(7) All employees shall comply with the requirements of~~
 481 ~~this section by October 1, 1998. No current employee of a~~
 482 ~~nursing facility as of the effective date of this act shall be~~
 483 ~~required to submit to rescreening if the nursing facility has in~~
 484 ~~its possession written evidence that the person has been~~
 485 ~~screened and qualified according to level 1 standards as~~
 486 ~~specified in s. 435.03(1). Any current employee who meets the~~
 487 ~~level 1 requirement but does not meet the 5-year residency~~
 488 ~~requirement as specified in this section must provide to the~~
 489 ~~employing nursing facility written attestation under penalty of~~
 490 ~~perjury that the employee has not been convicted of a~~
 491 ~~disqualifying offense in another state or jurisdiction. All~~
 492 ~~applicants hired on or after October 1, 1998, shall comply with~~
 493 ~~the requirements of this section.~~

494 ~~(8) There is no monetary or unemployment liability on the~~
 495 ~~part of, and no cause of action for damages arising against an~~
 496 ~~employer that, upon notice of a disqualifying offense listed~~
 497 ~~under chapter 435 or an act of domestic violence, terminates the~~
 498 ~~employee against whom the report was issued, whether or not the~~
 499 ~~employee has filed for an exemption with the Department of~~
 500 ~~Health or the Agency for Health Care Administration.~~

501 Section 7. Subsection (9) of section 400.506, Florida
 502 Statutes, is amended to read:

503 400.506 Licensure of nurse registries; requirements;
 504 penalties.—

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

505 (9) Each nurse registry must comply with the background
 506 screening requirements ~~procedures set forth~~ in s. 400.512 for
 507 ~~maintaining records of the work history of~~ all persons referred
 508 for contract and is subject to the standards and conditions set
 509 forth in that section. However, an initial screening may not be
 510 required for persons who have been continuously registered with
 511 the nurse registry since October 1, 2000.

512 Section 8. Section 400.512, Florida Statutes, is amended
 513 to read:

514 400.512 Screening of home health agency personnel; nurse
 515 registry personnel and contractors; and companions and
 516 homemakers.—The agency, registry, or service shall require level
 517 2 background screening for employees or contractors as required
 518 in s. 408.809(1)(e) pursuant to chapter 435 and s. 408.809
 519 ~~employment or contractor screening as provided in chapter 435,~~
 520 ~~using the level 1 standards for screening set forth in that~~
 521 ~~chapter, for home health agency personnel; persons referred for~~
 522 ~~employment by nurse registries; and persons employed by~~
 523 ~~companion or homemaker services registered under s. 400.509.~~

524 ~~(1)(a) The Agency for Health Care Administration may, upon~~
 525 ~~request, grant exemptions from disqualification from employment~~
 526 ~~or contracting under this section as provided in s. 435.07,~~
 527 ~~except for health care practitioners licensed by the Department~~
 528 ~~of Health or a regulatory board within that department.~~

529 ~~(b) The appropriate regulatory board within the Department~~
 530 ~~of Health, or that department itself when there is no board,~~
 531 ~~may, upon request of the licensed health care practitioner,~~
 532 ~~grant exemptions from disqualification from employment or~~

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

533 ~~contracting under this section as provided in s. 435.07.~~

534 ~~(2) The administrator of each home health agency, the~~
 535 ~~managing employee of each nurse registry, and the managing~~
 536 ~~employee of each companion or homemaker service registered under~~
 537 ~~s. 400.509 must sign an affidavit annually, under penalty of~~
 538 ~~perjury, stating that all personnel hired or contracted with or~~
 539 ~~registered on or after October 1, 2000, who enter the home of a~~
 540 ~~patient or client in their service capacity have been screened.~~

541 ~~(3) As a prerequisite to operating as a home health~~
 542 ~~agency, nurse registry, or companion or homemaker service under~~
 543 ~~s. 400.509, the administrator or managing employee,~~
 544 ~~respectively, must submit to the agency his or her name and any~~
 545 ~~other information necessary to conduct a complete screening~~
 546 ~~according to this section. The agency shall submit the~~
 547 ~~information to the Department of Law Enforcement for state~~
 548 ~~processing. The agency shall review the record of the~~
 549 ~~administrator or manager with respect to the offenses specified~~
 550 ~~in this section and shall notify the owner of its findings. If~~
 551 ~~disposition information is missing on a criminal record, the~~
 552 ~~administrator or manager, upon request of the agency, must~~
 553 ~~obtain and supply within 30 days the missing disposition~~
 554 ~~information to the agency. Failure to supply missing information~~
 555 ~~within 30 days or to show reasonable efforts to obtain such~~
 556 ~~information will result in automatic disqualification.~~

557 ~~(4) Proof of compliance with the screening requirements of~~
 558 ~~chapter 435 shall be accepted in lieu of the requirements of~~
 559 ~~this section if the person has been continuously employed or~~
 560 ~~registered without a breach in service that exceeds 180 days,~~

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

561 ~~the proof of compliance is not more than 2 years old, and the~~
 562 ~~person has been screened by the Department of Law Enforcement. A~~
 563 ~~home health agency, nurse registry, or companion or homemaker~~
 564 ~~service registered under s. 400.509 shall directly provide proof~~
 565 ~~of compliance to another home health agency, nurse registry, or~~
 566 ~~companion or homemaker service registered under s. 400.509. The~~
 567 ~~recipient home health agency, nurse registry, or companion or~~
 568 ~~homemaker service registered under s. 400.509 may not accept any~~
 569 ~~proof of compliance directly from the person who requires~~
 570 ~~screening. Proof of compliance with the screening requirements~~
 571 ~~of this section shall be provided upon request to the person~~
 572 ~~screened by the home health agencies; nurse registries; or~~
 573 ~~companion or homemaker services registered under s. 400.509.~~

574 ~~(5) There is no monetary liability on the part of, and no~~
 575 ~~cause of action for damages arises against, a licensed home~~
 576 ~~health agency, licensed nurse registry, or companion or~~
 577 ~~homemaker service registered under s. 400.509, that, upon notice~~
 578 ~~that the employee or contractor has been found guilty of,~~
 579 ~~regardless of adjudication, or entered a plea of nolo contendere~~
 580 ~~or guilty to, any offense prohibited under s. 435.03 or under~~
 581 ~~any similar statute of another jurisdiction, terminates the~~
 582 ~~employee or contractor, whether or not the employee or~~
 583 ~~contractor has filed for an exemption with the agency in~~
 584 ~~accordance with chapter 435 and whether or not the time for~~
 585 ~~filing has expired.~~

586 ~~(6) The costs of processing the statewide correspondence~~
 587 ~~criminal records checks must be borne by the home health agency;~~
 588 ~~the nurse registry; or the companion or homemaker service~~

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

589 ~~registered under s. 400.509, or by the person being screened, at~~
 590 ~~the discretion of the home health agency, nurse registry, or s.~~
 591 ~~400.509 registrant.~~

592 Section 9. Section 400.6065, Florida Statutes, is amended
 593 to read:

594 400.6065 Background screening.—The agency shall require
 595 level 2 background ~~employment or contractor~~ screening for
 596 personnel as required in s. 408.809(1)(e) pursuant to chapter
 597 435 and s. 408.809 as provided in chapter 435, using the level 1
 598 ~~standards for screening set forth in that chapter, for hospice~~
 599 ~~personnel.~~

600 Section 10. Subsection (2) of section 400.801, Florida
 601 Statutes, is amended to read:

602 400.801 Homes for special services.—

603 (2) (a) The requirements of part II of chapter 408 apply to
 604 the provision of services that require licensure pursuant to
 605 this section and part II of chapter 408 and entities licensed by
 606 or applying for ~~such~~ licensure from the agency pursuant to this
 607 section. A license issued by the agency is required in order to
 608 operate a home for special services in this state.

609 (b) The agency shall require level 2 background screening
 610 for personnel as required in s. 408.809(1)(e) pursuant to
 611 chapter 435 and s. 408.809.

612 Section 11. Paragraph (d) is added to subsection (2) of
 613 section 400.805, Florida Statutes, to read:

614 400.805 Transitional living facilities.—

615 (2)

616 (d) The agency shall require level 2 background screening

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

617 for personnel as required in s. 408.809(1) (e) pursuant to
 618 chapter 435 and s. 408.809.

619 Section 12. Section 400.9065, Florida Statutes, is created
 620 to read:

621 400.9065 Background screening.—The agency shall require
 622 level 2 background screening for personnel as required in s.
 623 408.809(1) (e) pursuant to chapter 435 and s. 408.809.

624 Section 13. Subsection (16) of section 400.934, Florida
 625 Statutes, is amended to read:

626 400.934 Minimum standards.—As a requirement of licensure,
 627 home medical equipment providers shall:

628 (16) Establish procedures for maintaining a record of the
 629 employment history, including background screening as required
 630 by ss. ~~s.~~ 400.953 and 408.809(1) and chapter 435, of all home
 631 medical equipment provider personnel. A home medical equipment
 632 provider must require its personnel to submit an employment
 633 history to the home medical equipment provider and must verify
 634 the employment history for at least the previous 5 years, unless
 635 through diligent efforts such verification is not possible.
 636 There is no monetary liability on the part of, and no cause of
 637 action for damages arising against a former employer, a
 638 prospective employee, or a prospective independent contractor
 639 with a licensed home medical equipment provider, who reasonably
 640 and in good faith communicates his or her honest opinions about
 641 a former employee's job performance. This subsection does not
 642 affect the official immunity of an officer or employee of a
 643 public corporation.

644 Section 14. Section 400.953, Florida Statutes, is amended

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

645 to read:

646 400.953 Background screening of home medical equipment
647 provider personnel.—The agency shall require level 2 background
648 screening for personnel as required in s. 408.809(1)(e) pursuant
649 to chapter 435 and s. 408.809 ~~employment screening as provided~~
650 ~~in chapter 435, using the level 1 standards for screening set~~
651 ~~forth in that chapter, for home medical equipment provider~~
652 ~~personnel.~~

653 ~~(1) The agency may grant exemptions from disqualification~~
654 ~~from employment under this section as provided in s. 435.07.~~

655 ~~(2) The general manager of each home medical equipment~~
656 ~~provider must sign an affidavit annually, under penalty of~~
657 ~~perjury, stating that all home medical equipment provider~~
658 ~~personnel hired on or after July 1, 1999, who enter the home of~~
659 ~~a patient in the capacity of their employment have been screened~~
660 ~~and that its remaining personnel have worked for the home~~
661 ~~medical equipment provider continuously since before July 1,~~
662 ~~1999.~~

663 ~~(3) Proof of compliance with the screening requirements of~~
664 ~~s. 110.1127, s. 393.0655, s. 394.4572, s. 397.451, s. 402.305,~~
665 ~~s. 402.313, s. 409.175, s. 464.008, or s. 985.644 or this part~~
666 ~~must be accepted in lieu of the requirements of this section if~~
667 ~~the person has been continuously employed in the same type of~~
668 ~~occupation for which he or she is seeking employment without a~~
669 ~~breach in service that exceeds 180 days, the proof of compliance~~
670 ~~is not more than 2 years old, and the person has been screened~~
671 ~~by the Department of Law Enforcement. An employer or contractor~~
672 ~~shall directly provide proof of compliance to another employer~~

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

673 ~~or contractor, and a potential employer or contractor may not~~
 674 ~~accept any proof of compliance directly from the person~~
 675 ~~requiring screening. Proof of compliance with the screening~~
 676 ~~requirements of this section shall be provided, upon request, to~~
 677 ~~the person screened by the home medical equipment provider.~~

678 ~~(4) There is no monetary liability on the part of, and no~~
 679 ~~cause of action for damages arising against, a licensed home~~
 680 ~~medical equipment provider that, upon notice that an employee~~
 681 ~~has been found guilty of, regardless of adjudication, or entered~~
 682 ~~a plea of nolo contendere or guilty to, any offense prohibited~~
 683 ~~under s. 435.03 or under any similar statute of another~~
 684 ~~jurisdiction, terminates the employee, whether or not the~~
 685 ~~employee has filed for an exemption with the agency and whether~~
 686 ~~or not the time for filing has expired.~~

687 ~~(5) The costs of processing the statewide correspondence~~
 688 ~~criminal records checks must be borne by the home medical~~
 689 ~~equipment provider or by the person being screened, at the~~
 690 ~~discretion of the home medical equipment provider.~~

691 ~~(6) Neither the agency nor the home medical equipment~~
 692 ~~provider may use the criminal records or juvenile records of a~~
 693 ~~person for any purpose other than determining whether that~~
 694 ~~person meets minimum standards of good moral character for home~~
 695 ~~medical equipment provider personnel.~~

696 ~~(7) (a) It is a misdemeanor of the first degree, punishable~~
 697 ~~as provided in s. 775.082 or s. 775.083, for any person~~
 698 ~~willfully, knowingly, or intentionally to:~~

699 ~~1. Fail, by false statement, misrepresentation,~~
 700 ~~impersonation, or other fraudulent means, to disclose in any~~

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

701 ~~application for paid employment a material fact used in making a~~
 702 ~~determination as to the person's qualifications to be an~~
 703 ~~employee under this section;~~

704 ~~2. Operate or attempt to operate an entity licensed under~~
 705 ~~this part with persons who do not meet the minimum standards for~~
 706 ~~good moral character as contained in this section; or~~

707 ~~3. Use information from the criminal records obtained~~
 708 ~~under this section for any purpose other than screening that~~
 709 ~~person for employment as specified in this section, or release~~
 710 ~~such information to any other person for any purpose other than~~
 711 ~~screening for employment under this section.~~

712 ~~(b) It is a felony of the third degree, punishable as~~
 713 ~~provided in s. 775.082, s. 775.083, or s. 775.084, for any~~
 714 ~~person willfully, knowingly, or intentionally to use information~~
 715 ~~from the juvenile records of a person obtained under this~~
 716 ~~section for any purpose other than screening for employment~~
 717 ~~under this section.~~

718 Section 15. Section 400.955, Florida Statutes, is
 719 repealed.

720 Section 16. Section 400.964, Florida Statutes, is amended
 721 to read:

722 400.964 Personnel screening requirement.—

723 ~~(1)~~ The agency shall require level 2 background screening
 724 for personnel as required in s. 408.809(1)(e) pursuant to
 725 chapter 435 and s. 408.809 ~~as provided in chapter 435 for all~~
 726 ~~employees or prospective employees of facilities licensed under~~
 727 ~~this part who are expected to be, or whose responsibilities are~~
 728 ~~such that they would be considered to be, a direct service~~

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

729 provider.

730 ~~(2) Employers and employees shall comply with the~~
 731 ~~requirements of chapter 435.~~

732 ~~(3) Applicants and employees shall be excluded from~~
 733 ~~employment pursuant to s. 435.06.~~

734 ~~(4) The applicant is responsible for paying the fees~~
 735 ~~associated with obtaining the required screening. Payment for~~
 736 ~~the screening must be submitted to the agency as prescribed by~~
 737 ~~the agency.~~

738 ~~(5) Notwithstanding any other provision of law, persons~~
 739 ~~who have been screened and qualified as required by this section~~
 740 ~~and who have not been unemployed for more than 180 days~~
 741 ~~thereafter, and who under penalty of perjury attest to not~~
 742 ~~having been convicted of a disqualifying offense since the~~
 743 ~~completion of such screening are not required to be rescreened.~~
 744 ~~An employer may obtain, pursuant to s. 435.10, written~~
 745 ~~verification of qualifying screening results from the previous~~
 746 ~~employer or other entity that caused such screening to be~~
 747 ~~performed.~~

748 ~~(6) The agency may adopt rules to administer this section.~~

749 ~~(7) All employees must comply with the requirements of~~
 750 ~~this section by October 1, 2000. A person employed by a facility~~
 751 ~~licensed pursuant to this part as of the effective date of this~~
 752 ~~act is not required to submit to rescreening if the facility has~~
 753 ~~in its possession written evidence that the person has been~~
 754 ~~screened and qualified according to level 1 standards as~~
 755 ~~specified in s. 435.03. Any current employee who meets the level~~
 756 ~~1 requirement but does not meet the 5-year residency requirement~~

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

757 ~~must provide to the employing facility written attestation under~~
 758 ~~penalty of perjury that the employee has not been convicted of a~~
 759 ~~disqualifying offense in another state or jurisdiction. All~~
 760 ~~applicants hired on or after October 1, 1999, must comply with~~
 761 ~~the requirements of this section.~~

762 ~~(8) There is no monetary or unemployment liability on the~~
 763 ~~part of, and no cause of action for damages arises against an~~
 764 ~~employer that, upon notice of a disqualifying offense listed~~
 765 ~~under chapter 435 or an act of domestic violence, terminates the~~
 766 ~~employee, whether or not the employee has filed for an exemption~~
 767 ~~with the Department of Health or the Agency for Health Care~~
 768 ~~Administration.~~

769 Section 17. Subsection (3) of section 400.980, Florida
 770 Statutes, is amended to read:

771 400.980 Health care services pools.—

772 (3) ~~Upon receipt of a completed, signed, and dated~~
 773 ~~application,~~ The agency shall require level 2 background
 774 screening for personnel as required in s. 408.809(1)(e) pursuant
 775 to chapter 435 and s. 408.809, ~~in accordance with the level 1~~
 776 ~~standards for screening set forth in chapter 435, of every~~
 777 ~~individual who will have contact with patients.~~

778 Section 18. Subsection (5) of section 400.991, Florida
 779 Statutes, is amended to read:

780 400.991 License requirements; background screenings;
 781 prohibitions.—

782 (5) ~~Each applicant for licensure shall comply with the~~
 783 ~~following requirements:~~

784 (a) As used in this subsection, the term "applicant" means

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

785 individuals owning or controlling, directly or indirectly, 5
786 percent or more of an interest in a clinic; the medical or
787 clinic director, or a similarly titled person who is responsible
788 for the day-to-day operation of the licensed clinic; the
789 financial officer or similarly titled individual who is
790 responsible for the financial operation of the clinic; and
791 licensed health care practitioners at the clinic.

792 ~~(b) Upon receipt of a completed, signed, and dated~~
793 ~~application,~~ The agency shall require level 2 background
794 screening for applicants and personnel as required in s.
795 408.809(1)(e) pursuant to chapter 435 and s. 408.809 ~~of the~~
796 ~~applicant, in accordance with the level 2 standards for~~
797 ~~screening set forth in chapter 435. Proof of compliance with the~~
798 ~~level 2 background screening requirements of chapter 435 which~~
799 ~~has been submitted within the previous 5 years in compliance~~
800 ~~with any other health care licensure requirements of this state~~
801 ~~is acceptable in fulfillment of this paragraph. Applicants who~~
802 ~~own less than 10 percent of a health care clinic are not~~
803 ~~required to submit fingerprints under this section.~~

804 (c) Each applicant must submit to the agency, with the
805 application, a description and explanation of any exclusions,
806 permanent suspensions, or terminations of an applicant from the
807 Medicare or Medicaid programs. Proof of compliance with the
808 requirements for disclosure of ownership and control interest
809 under the Medicaid or Medicare programs may be accepted in lieu
810 of this submission. The description and explanation may indicate
811 whether such exclusions, suspensions, or terminations were
812 voluntary or not voluntary on the part of the applicant.

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

813 ~~(d) A license may not be granted to a clinic if the~~
 814 ~~applicant has been found guilty of, regardless of adjudication,~~
 815 ~~or has entered a plea of nolo contendere or guilty to, any~~
 816 ~~offense prohibited under the level 2 standards for screening set~~
 817 ~~forth in chapter 435, or a violation of insurance fraud under s.~~
 818 ~~817.234, within the past 5 years. If the applicant has been~~
 819 ~~convicted of an offense prohibited under the level 2 standards~~
 820 ~~or insurance fraud in any jurisdiction, the applicant must show~~
 821 ~~that his or her civil rights have been restored prior to~~
 822 ~~submitting an application.~~

823 Section 19. Paragraph (h) is added to subsection (1) of
 824 section 408.806, Florida Statutes, to read:

825 408.806 License application process.—

826 (1) An application for licensure must be made to the
 827 agency on forms furnished by the agency, submitted under oath,
 828 and accompanied by the appropriate fee in order to be accepted
 829 and considered timely. The application must contain information
 830 required by authorizing statutes and applicable rules and must
 831 include:

832 (h) An affidavit, under penalty of perjury, as required in
 833 s. 435.05(3), stating compliance with the provisions of this
 834 section and chapter 435.

835 Section 20. Subsection (2) of section 408.808, Florida
 836 Statutes, is amended to read:

837 408.808 License categories.—

838 (2) PROVISIONAL LICENSE.—~~A provisional license may be~~
 839 ~~issued to an applicant pursuant to s. 408.809(3).~~ An applicant
 840 against whom a proceeding denying or revoking a license is

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

841 pending at the time of license renewal may be issued a
 842 provisional license effective until final action not subject to
 843 further appeal. A provisional license may also be issued to an
 844 applicant applying for a change of ownership. A provisional
 845 license must ~~shall~~ be limited in duration to a specific period
 846 of time, up not to ~~exceed~~ 12 months, as determined by the
 847 agency.

848 Section 21. Section 408.809, Florida Statutes, is amended
 849 to read:

850 408.809 Background screening; prohibited offenses.—

851 (1) Level 2 background screening pursuant to chapter 435
 852 must be conducted through the agency on each of the following
 853 persons, who are ~~shall be~~ considered employees ~~an employee~~ for
 854 the purposes of conducting screening under chapter 435:

- 855 (a) The licensee, if an individual.
- 856 (b) The administrator or a similarly titled person who is
 857 responsible for the day-to-day operation of the provider.
- 858 (c) The financial officer or similarly titled individual
 859 who is responsible for the financial operation of the licensee
 860 or provider.

861 (d) Any person who is a controlling interest if the agency
 862 has reason to believe that such person has been convicted of any
 863 offense prohibited by s. 435.04. For each controlling interest
 864 who has been convicted of any such offense, the licensee shall
 865 submit to the agency a description and explanation of the
 866 conviction at the time of license application.

867 (e) Any person, as required by authorizing statutes,
 868 seeking employment with a licensee or provider who is expected

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

869 to, or whose responsibilities may require him or her to, provide
 870 personal care or services directly to clients or have access to
 871 client funds, personal property, or living areas; and any
 872 person, as required by authorizing statutes, contracting with a
 873 licensee or provider whose responsibilities require him or her
 874 to provide personal care or personal services directly to
 875 clients. Evidence of contractor screening may be retained by the
 876 contractor's employer or the licensee.

877 (2) Every 5 years following his or her licensure,
 878 employment, or entry into a contract in a capacity that under
 879 subsection (1) would require level 2 background screening under
 880 chapter 435, each such person must submit to level 2 background
 881 rescreening as a condition of retaining such license or
 882 continuing in such employment or contractual status. For any
 883 such rescreening, the agency shall request the Department of Law
 884 Enforcement to forward the person's fingerprints to the Federal
 885 Bureau of Investigation for a national criminal history record
 886 check. If the fingerprints of such a person are not retained by
 887 the Department of Law Enforcement under s. 943.05(2)(g), the
 888 person must file a complete set of fingerprints with the agency
 889 and the agency shall forward the fingerprints to the Department
 890 of Law Enforcement for state processing, and the Department of
 891 Law Enforcement shall forward the fingerprints to the Federal
 892 Bureau of Investigation for a national criminal history record
 893 check. The fingerprints may be retained by the Department of Law
 894 Enforcement under s. 943.05(2)(g). The cost of the state and
 895 national criminal history records checks required by level 2
 896 screening may be borne by the licensee or the person

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

897 fingerprinted. Proof of compliance with level 2 screening
 898 standards submitted within the previous 5 years to meet any
 899 provider or professional licensure requirements of the agency,
 900 the Department of Health, the Agency for Persons with
 901 Disabilities, ~~or the Department of Children and Family Services,~~
 902 or the Department of Financial Services for an applicant for a
 903 certificate of authority or provisional certificate of authority
 904 to operate a continuing care retirement community under chapter
 905 651 satisfies the requirements of this section if the person
 906 subject to screening has not been unemployed for more than 90
 907 days and, ~~provided that~~ such proof is accompanied, under penalty
 908 of perjury, by an affidavit of compliance with the provisions of
 909 chapter 435 and this section using forms provided by the agency.
 910 ~~Proof of compliance with the background screening requirements~~
 911 ~~of the Department of Financial Services submitted within the~~
 912 ~~previous 5 years for an applicant for a certificate of authority~~
 913 ~~to operate a continuing care retirement community under chapter~~
 914 ~~651 satisfies the Department of Law Enforcement and Federal~~
 915 ~~Bureau of Investigation portions of a level 2 background check.~~

916 (3) All fingerprints must be provided in electronic
 917 format. Screening results shall be reviewed by the agency with
 918 respect to the offenses specified in s. 435.04 and this section,
 919 and the qualifying or disqualifying status of the person named
 920 in the request shall be maintained in a database. The qualifying
 921 or disqualifying status of the person named in the request shall
 922 be posted on a secure website for retrieval by the licensee or
 923 designated agent on the licensee's behalf. ~~A provisional license~~
 924 ~~may be granted to an applicant when each individual required by~~

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

925 ~~this section to undergo background screening has met the~~
 926 ~~standards for the Department of Law Enforcement background check~~
 927 ~~but the agency has not yet received background screening results~~
 928 ~~from the Federal Bureau of Investigation. A standard license may~~
 929 ~~be granted to the licensee upon the agency's receipt of a report~~
 930 ~~of the results of the Federal Bureau of Investigation background~~
 931 ~~screening for each individual required by this section to~~
 932 ~~undergo background screening that confirms that all standards~~
 933 ~~have been met or upon the granting of an exemption from~~
 934 ~~disqualification by the agency as set forth in chapter 435.~~

935 ~~(4) When a person is newly employed in a capacity that~~
 936 ~~requires screening under this section, the licensee must notify~~
 937 ~~the agency of the change within the time period specified in the~~
 938 ~~authorizing statute or rules and must submit to the agency~~
 939 ~~information necessary to conduct level 2 screening or provide~~
 940 ~~evidence of compliance with background screening requirements of~~
 941 ~~this section. The person may serve in his or her capacity~~
 942 ~~pending the agency's receipt of the report from the Federal~~
 943 ~~Bureau of Investigation if he or she has met the standards for~~
 944 ~~the Department of Law Enforcement background check. However, the~~
 945 ~~person may not continue to serve in his or her capacity if the~~
 946 ~~report indicates any violation of background screening standards~~
 947 ~~unless an exemption from disqualification has been granted by~~
 948 ~~the agency as set forth in chapter 435.~~

949 ~~(4)(5)~~ Effective October 1, 2009, In addition to the
 950 offenses listed in s. ss. 435.03 and 435.04, all persons
 951 required to undergo background screening pursuant to this part
 952 or authorizing statutes must not have an arrest awaiting final

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

953 disposition for, must not have been found guilty of, regardless
 954 of adjudication, or entered a plea of nolo contendere or guilty
 955 to, and must not have been adjudicated delinquent and the record
 956 not have been sealed or expunged for any of the following
 957 offenses or any similar offense of another jurisdiction:

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

959 (b) This chapter, if the offense was a felony.

960 (c) Section 409.920, relating to Medicaid provider fraud,
 961 ~~if the offense was a felony.~~

962 (d) Section 409.9201, relating to Medicaid fraud,~~if the~~
 963 ~~offense was a felony.~~

964 (e) Section 741.28, relating to domestic violence.

965 ~~(f) Chapter 784, relating to assault, battery, and~~
 966 ~~culpable negligence, if the offense was a felony.~~

967 ~~(g) Section 810.02, relating to burglary.~~

968 (f)~~(h)~~ Section 817.034, relating to fraudulent acts
 969 through mail, wire, radio, electromagnetic, photoelectronic, or
 970 photooptical systems.

971 (g)~~(i)~~ Section 817.234, relating to false and fraudulent
 972 insurance claims.

973 (h)~~(j)~~ Section 817.505, relating to patient brokering.

974 (i)~~(k)~~ Section 817.568, relating to criminal use of
 975 personal identification information.

976 (j)~~(l)~~ Section 817.60, relating to obtaining a credit card
 977 through fraudulent means.

978 (k)~~(m)~~ Section 817.61, relating to fraudulent use of
 979 credit cards, if the offense was a felony.

980 (l)~~(n)~~ Section 831.01, relating to forgery.

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

981 (m) ~~(e)~~ Section 831.02, relating to uttering forged
982 instruments.

983 (n) ~~(p)~~ Section 831.07, relating to forging bank bills,
984 checks, drafts, or promissory notes.

985 (o) ~~(q)~~ Section 831.09, relating to uttering forged bank
986 bills, checks, drafts, or promissory notes.

987 (p) ~~(r)~~ Section 831.30, relating to fraud in obtaining
988 medicinal drugs.

989 (q) ~~(s)~~ Section 831.31, relating to the sale, manufacture,
990 delivery, or possession with the intent to sell, manufacture, or
991 deliver any counterfeit controlled substance, if the offense was
992 a felony.

993
994 A person who serves as a controlling interest of, ~~or~~ is employed
995 by, or contracts with a licensee on July 31, 2010 ~~September 30,~~
996 ~~2009,~~ who has been screened and qualified according to standards
997 specified in s. 435.03 or s. 435.04 must be rescreened by July
998 31, 2015. The agency may adopt rules to establish a schedule to
999 stagger the implementation of the required rescreening over the
1000 5-year period, beginning July 31, 2010, through July 31, 2015.
1001 If, upon rescreening, ~~is not required by law to submit to~~
1002 ~~rescreening if that licensee has in its possession written~~
1003 ~~evidence that the person has been screened and qualified~~
1004 ~~according to the standards specified in s. 435.03 or s. 435.04.~~
1005 ~~However,~~ if such person has a disqualifying offense that was not
1006 a disqualifying offense at the time of the last screening, but
1007 is a current disqualifying offense and was committed before the
1008 last screening listed in this section, he or she may apply for

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

1009 an exemption from the appropriate licensing agency ~~before~~
 1010 ~~September 30, 2009,~~ and, if agreed to by the employer, may
 1011 continue to perform his or her duties until the licensing agency
 1012 renders a decision on the application for exemption if the
 1013 person is eligible to apply for an exemption and the exemption
 1014 request is received by the agency within 30 days after receipt
 1015 of the rescreening results by the person for offenses listed in
 1016 ~~this section. Exemptions from disqualification may be granted~~
 1017 ~~pursuant to s. 435.07.~~

1018 (5)(6) The costs associated with obtaining the required
 1019 screening must be borne by the licensee or the person subject to
 1020 screening. Licensees may reimburse persons for these costs. The
 1021 Department of Law Enforcement shall charge the agency for
 1022 screening pursuant to s. 943.053(3). The agency shall establish
 1023 a schedule of fees to cover the costs of screening ~~The~~
 1024 ~~attestations required under ss. 435.04(5) and 435.05(3) must be~~
 1025 ~~submitted at the time of license renewal, notwithstanding the~~
 1026 ~~provisions of ss. 435.04(5) and 435.05(3) which require annual~~
 1027 ~~submission of an affidavit of compliance with background~~
 1028 ~~screening requirements.~~

1029 (6) (a) As provided in chapter 435, the agency may grant an
 1030 exemption from disqualification to a person who is subject to
 1031 this section and who:

1032 1. Does not have an active professional license or
 1033 certification from the Department of Health; or

1034 2. Has an active professional license or certification
 1035 from the Department of Health but is not providing a service
 1036 within the scope of that license or certification.

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

1037 (b) As provided in chapter 435, the appropriate regulatory
 1038 board within the Department of Health, or the department itself
 1039 if there is no board, may grant an exemption from
 1040 disqualification to a person who is subject to this section and
 1041 who has received a professional license or certification from
 1042 the Department of Health or a regulatory board within that
 1043 department and that person is providing a service within the
 1044 scope of his or her licensed or certified practice.

1045 (7) The agency and the Department of Health may adopt
 1046 rules pursuant to ss. 120.536(1) and 120.54 to implement this
 1047 section, chapter 435, and authorizing statutes requiring
 1048 background screening and to implement and adopt criteria
 1049 relating to retaining fingerprints pursuant to s. 943.05(2).

1050 (8) There is no unemployment compensation or other
 1051 monetary liability on the part of, and no cause of action for
 1052 damages arising against, an employer that, upon notice of a
 1053 disqualifying offense listed under chapter 435 or this section,
 1054 terminates the person against whom the report was issued,
 1055 whether or not that person has filed for an exemption with the
 1056 Department of Health or the agency.

1057 Section 22. Subsection (3) of section 402.302, Florida
 1058 Statutes, is amended to read:

1059 402.302 Definitions.—

1060 (3) "Child care personnel" means all owners, operators,
 1061 employees, and volunteers working in a child care facility. The
 1062 term does not include persons who work in a child care facility
 1063 after hours when children are not present or parents of children
 1064 in a child care facility ~~Head Start~~. For purposes of screening,

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

1065 the term includes any member, over the age of 12 years, of a
 1066 child care facility operator's family, or person, over the age
 1067 of 12 years, residing with a child care facility operator if the
 1068 child care facility is located in or adjacent to the home of the
 1069 operator or if the family member of, or person residing with,
 1070 the child care facility operator has any direct contact with the
 1071 children in the facility during its hours of operation. Members
 1072 of the operator's family or persons residing with the operator
 1073 who are between the ages of 12 years and 18 years are ~~shall~~ not
 1074 ~~be~~ required to be fingerprinted but must ~~shall~~ be screened for
 1075 delinquency records. For purposes of screening, the term ~~shall~~
 1076 also includes ~~include~~ persons who work in child care programs
 1077 that ~~which~~ provide care for children 15 hours or more each week
 1078 in public or nonpublic schools, ~~summer day camps,~~ family day
 1079 care homes, or ~~those~~ programs otherwise exempted under s.
 1080 402.316. The term does not include public or nonpublic school
 1081 personnel who are providing care during regular school hours, or
 1082 after hours for activities related to a school's program for
 1083 grades kindergarten through 12. A volunteer who assists on an
 1084 intermittent basis for less than 10 ~~40~~ hours per month is not
 1085 included in the term "personnel" for the purposes of screening
 1086 and training if a person who meets the screening requirement of
 1087 s. 402.305(2) is always present and has the volunteer in his or
 1088 her line of sight, ~~provided that the volunteer is under direct~~
 1089 ~~and constant supervision by persons who meet the personnel~~
 1090 ~~requirements of s. 402.305(2).~~ Students who observe and
 1091 participate in a child care facility as a part of their required
 1092 coursework are ~~shall~~ not ~~be~~ considered child care personnel,

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

1093 provided such observation and participation are on an
 1094 intermittent basis and a person who meets the screening
 1095 requirement of s. 402.305(2) is always present and has the
 1096 student in his or her line of sight ~~the students are under~~
 1097 ~~direct and constant supervision of child care personnel.~~

1098 Section 23. Paragraphs (i) and (k) of subsection (2) of
 1099 section 409.175, Florida Statutes, are amended, present
 1100 paragraphs (b) and (c) of subsection (5) of that section are
 1101 redesignated as paragraphs (c) and (d), respectively, and a new
 1102 paragraph (b) is added to that section to read:

1103 409.175 Licensure of family foster homes, residential
 1104 child-caring agencies, and child-placing agencies; public
 1105 records exemption.—

1106 (2) As used in this section, the term:

1107 (i) "Personnel" means all owners, operators, employees,
 1108 and volunteers working in a child-placing agency, family foster
 1109 home, or residential child-caring agency who may be employed by
 1110 or do volunteer work for a person, corporation, or agency that
 1111 ~~which~~ holds a license as a child-placing agency or a residential
 1112 child-caring agency, but the term does not include those who do
 1113 not work on the premises where child care is furnished and
 1114 ~~either~~ have no direct contact with a child or have no contact
 1115 with a child outside of the presence of the child's parent or
 1116 guardian. For purposes of screening, the term includes ~~shall~~
 1117 ~~include~~ any member, over the age of 12 years, of the family of
 1118 the owner or operator or any person other than a client, over
 1119 the age of 12 years, residing with the owner or operator if the
 1120 agency or family foster home is located in or adjacent to the

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

1121 home of the owner or operator or if the family member of, or
 1122 person residing with, the owner or operator has any direct
 1123 contact with the children. Members of the family of the owner or
 1124 operator, or persons residing with the owner or operator, who
 1125 are between the ages of 12 years and 18 years are ~~shall not be~~
 1126 required to be fingerprinted, but must ~~shall~~ be screened for
 1127 delinquency records. For purposes of screening, the term
 1128 ~~"personnel"~~ shall also includes ~~include~~ owners, operators,
 1129 employees, and volunteers working in summer day camps, or summer
 1130 24-hour camps providing care for children. A volunteer who
 1131 assists on an intermittent basis for less than 10 ~~40~~ hours per
 1132 month shall not be included in the term "personnel" for the
 1133 purposes of screening if a person who meets the screening
 1134 requirement of this section is always present and has the
 1135 volunteer in his or her line of sight, ~~provided that the~~
 1136 ~~volunteer is under direct and constant supervision by persons~~
 1137 ~~who meet the personnel requirements of this section.~~

1138 (k) "Screening" means the act of assessing the background
 1139 of personnel and includes, but is not limited to, employment
 1140 history checks as provided in chapter 435, using the level 2
 1141 standards for screening set forth in that chapter. ~~Screening for~~
 1142 ~~employees and volunteers in summer day camps and summer 24-hour~~
 1143 ~~camps and screening for all volunteers included under the~~
 1144 ~~definition of "personnel" shall be conducted as provided in~~
 1145 ~~chapter 435, using the level 1 standards set forth in that~~
 1146 ~~chapter.~~

1147 (5)

1148 (b) The department shall randomly drug test a licensed

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

1149 foster parent if there is a reasonable suspicion that he or she
 1150 is using illegal drugs. The cost of testing shall be paid by the
 1151 foster parent but shall be reimbursed by the department if the
 1152 test is negative. The department may adopt rules necessary to
 1153 administer this paragraph.

1154 Section 24. Paragraph (i) of subsection (4) of section
 1155 409.221, Florida Statutes, is amended to read:

1156 409.221 Consumer-directed care program.—

1157 (4) CONSUMER-DIRECTED CARE.—

1158 (i) *Background screening requirements.*—All persons who
 1159 render care under this section must undergo level 2 background
 1160 screening pursuant to chapter 435 shall comply with the
 1161 ~~requirements of s. 435.05. Persons shall be excluded from~~
 1162 ~~employment pursuant to s. 435.06.~~

1163 ~~1. Persons excluded from employment may request an~~
 1164 ~~exemption from disqualification, as provided in s. 435.07.~~
 1165 ~~Persons not subject to certification or professional licensure~~
 1166 ~~may request an exemption from the agency. In considering a~~
 1167 ~~request for an exemption, the agency shall comply with the~~
 1168 ~~provisions of s. 435.07.~~

1169 ~~2.~~ The agency shall, as allowable, reimburse consumer-
 1170 employed caregivers for the cost of conducting background
 1171 screening as required by this section.

1172
 1173 For purposes of this section, a person who has undergone
 1174 screening, who is qualified for employment under this section
 1175 and applicable rule, and who has not been unemployed for more
 1176 than 90 ~~180~~ days following such screening is not required to be

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

1177 rescreened. Such person must attest under penalty of perjury to
 1178 not having been convicted of a disqualifying offense since
 1179 completing such screening.

1180 Section 25. Subsection (8) of section 409.907, Florida
 1181 Statutes, is amended to read:

1182 409.907 Medicaid provider agreements.—The agency may make
 1183 payments for medical assistance and related services rendered to
 1184 Medicaid recipients only to an individual or entity who has a
 1185 provider agreement in effect with the agency, who is performing
 1186 services or supplying goods in accordance with federal, state,
 1187 and local law, and who agrees that no person shall, on the
 1188 grounds of handicap, race, color, or national origin, or for any
 1189 other reason, be subjected to discrimination under any program
 1190 or activity for which the provider receives payment from the
 1191 agency.

1192 (8) (a) Each provider, or each principal of the provider if
 1193 the provider is a corporation, partnership, association, or
 1194 other entity, seeking to participate in the Medicaid program
 1195 must submit a complete set of his or her fingerprints to the
 1196 agency for the purpose of conducting a criminal history record
 1197 check. Principals of the provider include any officer, director,
 1198 billing agent, managing employee, or affiliated person, or any
 1199 partner or shareholder who has an ownership interest equal to 5
 1200 percent or more in the provider. However, a director of a not-
 1201 for-profit corporation or organization is not a principal for
 1202 purposes of a background investigation as required by this
 1203 section if the director: serves solely in a voluntary capacity
 1204 for the corporation or organization, does not regularly take

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

1205 part in the day-to-day operational decisions of the corporation
 1206 or organization, receives no remuneration from the not-for-
 1207 profit corporation or organization for his or her service on the
 1208 board of directors, has no financial interest in the not-for-
 1209 profit corporation or organization, and has no family members
 1210 with a financial interest in the not-for-profit corporation or
 1211 organization; and if the director submits an affidavit, under
 1212 penalty of perjury, to this effect to the agency and the not-
 1213 for-profit corporation or organization submits an affidavit,
 1214 under penalty of perjury, to this effect to the agency as part
 1215 of the corporation's or organization's Medicaid provider
 1216 agreement application. Notwithstanding the above, the agency may
 1217 require a background check for any person reasonably suspected
 1218 by the agency to have been convicted of a crime. This subsection
 1219 does ~~shall~~ not apply to:

- 1220 1. A hospital licensed under chapter 395;
- 1221 2. A nursing home licensed under chapter 400;
- 1222 3. A hospice licensed under chapter 400;
- 1223 4. An assisted living facility licensed under chapter 429;
- 1224 5. A unit of local government, except that requirements of
 1225 this subsection apply to nongovernmental providers and entities
 1226 ~~when~~ contracting with the local government to provide Medicaid
 1227 services. The actual cost of the state and national criminal
 1228 history record checks must be borne by the nongovernmental
 1229 provider or entity; or
- 1230 6. Any business that derives more than 50 percent of its
 1231 revenue from the sale of goods to the final consumer, and the
 1232 business or its controlling parent ~~either~~ is required to file a

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

1233 form 10-K or other similar statement with the Securities and
 1234 Exchange Commission or has a net worth of \$50 million or more.

1235 (b) Background screening shall be conducted in accordance
 1236 with chapter 435 and s. 408.809. ~~The agency shall submit the~~
 1237 ~~fingerprints to the Department of Law Enforcement. The~~
 1238 ~~department shall conduct a state criminal background~~
 1239 ~~investigation and forward the fingerprints to the Federal Bureau~~
 1240 ~~of Investigation for a national criminal history record check.~~
 1241 The cost of the state and national criminal record check shall
 1242 be borne by the provider.

1243 ~~(c) The agency may permit a provider to participate in the~~
 1244 ~~Medicaid program pending the results of the criminal record~~
 1245 ~~check. However, such permission is fully revocable if the record~~
 1246 ~~check reveals any crime-related history as provided in~~
 1247 ~~subsection (10).~~

1248 (c)-(d) Proof of compliance with the requirements of level
 1249 2 screening under chapter 435 s. 435.04 conducted within 12
 1250 months before ~~prior to~~ the date ~~that~~ the Medicaid provider
 1251 application is submitted to the agency fulfills ~~shall fulfill~~
 1252 the requirements of this subsection. ~~Proof of compliance with~~
 1253 ~~the requirements of level 1 screening under s. 435.03 conducted~~
 1254 ~~within 12 months prior to the date that the Medicaid provider~~
 1255 ~~application is submitted to the agency shall meet the~~
 1256 ~~requirement that the Department of Law Enforcement conduct a~~
 1257 ~~state criminal history record check.~~

1258 Section 26. Paragraph (b) of subsection (48) of section
 1259 409.912, Florida Statutes, is amended to read:

1260 409.912 Cost-effective purchasing of health care.—The

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

1261 agency shall purchase goods and services for Medicaid recipients
1262 in the most cost-effective manner consistent with the delivery
1263 of quality medical care. To ensure that medical services are
1264 effectively utilized, the agency may, in any case, require a
1265 confirmation or second physician's opinion of the correct
1266 diagnosis for purposes of authorizing future services under the
1267 Medicaid program. This section does not restrict access to
1268 emergency services or poststabilization care services as defined
1269 in 42 C.F.R. part 438.114. Such confirmation or second opinion
1270 shall be rendered in a manner approved by the agency. The agency
1271 shall maximize the use of prepaid per capita and prepaid
1272 aggregate fixed-sum basis services when appropriate and other
1273 alternative service delivery and reimbursement methodologies,
1274 including competitive bidding pursuant to s. 287.057, designed
1275 to facilitate the cost-effective purchase of a case-managed
1276 continuum of care. The agency shall also require providers to
1277 minimize the exposure of recipients to the need for acute
1278 inpatient, custodial, and other institutional care and the
1279 inappropriate or unnecessary use of high-cost services. The
1280 agency shall contract with a vendor to monitor and evaluate the
1281 clinical practice patterns of providers in order to identify
1282 trends that are outside the normal practice patterns of a
1283 provider's professional peers or the national guidelines of a
1284 provider's professional association. The vendor must be able to
1285 provide information and counseling to a provider whose practice
1286 patterns are outside the norms, in consultation with the agency,
1287 to improve patient care and reduce inappropriate utilization.
1288 The agency may mandate prior authorization, drug therapy

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

1289 management, or disease management participation for certain
 1290 populations of Medicaid beneficiaries, certain drug classes, or
 1291 particular drugs to prevent fraud, abuse, overuse, and possible
 1292 dangerous drug interactions. The Pharmaceutical and Therapeutics
 1293 Committee shall make recommendations to the agency on drugs for
 1294 which prior authorization is required. The agency shall inform
 1295 the Pharmaceutical and Therapeutics Committee of its decisions
 1296 regarding drugs subject to prior authorization. The agency is
 1297 authorized to limit the entities it contracts with or enrolls as
 1298 Medicaid providers by developing a provider network through
 1299 provider credentialing. The agency may competitively bid single-
 1300 source-provider contracts if procurement of goods or services
 1301 results in demonstrated cost savings to the state without
 1302 limiting access to care. The agency may limit its network based
 1303 on the assessment of beneficiary access to care, provider
 1304 availability, provider quality standards, time and distance
 1305 standards for access to care, the cultural competence of the
 1306 provider network, demographic characteristics of Medicaid
 1307 beneficiaries, practice and provider-to-beneficiary standards,
 1308 appointment wait times, beneficiary use of services, provider
 1309 turnover, provider profiling, provider licensure history,
 1310 previous program integrity investigations and findings, peer
 1311 review, provider Medicaid policy and billing compliance records,
 1312 clinical and medical record audits, and other factors. Providers
 1313 shall not be entitled to enrollment in the Medicaid provider
 1314 network. The agency shall determine instances in which allowing
 1315 Medicaid beneficiaries to purchase durable medical equipment and
 1316 other goods is less expensive to the Medicaid program than long-

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

1317 term rental of the equipment or goods. The agency may establish
 1318 rules to facilitate purchases in lieu of long-term rentals in
 1319 order to protect against fraud and abuse in the Medicaid program
 1320 as defined in s. 409.913. The agency may seek federal waivers
 1321 necessary to administer these policies.

1322 (48)

1323 (b) The agency shall limit its network of durable medical
 1324 equipment and medical supply providers. For dates of service
 1325 after January 1, 2009, the agency shall limit payment for
 1326 durable medical equipment and supplies to providers that meet
 1327 all the requirements of this paragraph.

1328 1. Providers must be accredited by a Centers for Medicare
 1329 and Medicaid Services deemed accreditation organization for
 1330 suppliers of durable medical equipment, prosthetics, orthotics,
 1331 and supplies. The provider must maintain accreditation and is
 1332 subject to unannounced reviews by the accrediting organization.

1333 2. Providers must provide the services or supplies
 1334 directly to the Medicaid recipient or caregiver at the provider
 1335 location or recipient's residence or send the supplies directly
 1336 to the recipient's residence with receipt of mailed delivery.
 1337 Subcontracting or consignment of the service or supply to a
 1338 third party is prohibited.

1339 3. Notwithstanding subparagraph 2., a durable medical
 1340 equipment provider may store nebulizers at a physician's office
 1341 for the purpose of having the physician's staff issue the
 1342 equipment if it meets all of the following conditions:

1343 a. The physician must document the medical necessity and
 1344 need to prevent further deterioration of the patient's

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

1345 respiratory status by the timely delivery of the nebulizer in
 1346 the physician's office.

1347 b. The durable medical equipment provider must have
 1348 written documentation of the competency and training by a
 1349 Florida-licensed registered respiratory therapist of any durable
 1350 medical equipment staff who participate in the training of
 1351 physician office staff for the use of nebulizers, including
 1352 cleaning, warranty, and special needs of patients.

1353 c. The physician's office must have documented the
 1354 training and competency of any staff member who initiates the
 1355 delivery of nebulizers to patients. The durable medical
 1356 equipment provider must maintain copies of all physician office
 1357 training.

1358 d. The physician's office must maintain inventory records
 1359 of stored nebulizers, including documentation of the durable
 1360 medical equipment provider source.

1361 e. A physician contracted with a Medicaid durable medical
 1362 equipment provider may not have a financial relationship with
 1363 that provider or receive any financial gain from the delivery of
 1364 nebulizers to patients.

1365 4. Providers must have a physical business location and a
 1366 functional landline business phone. The location must be within
 1367 the state or not more than 50 miles from the Florida state line.
 1368 The agency may make exceptions for providers of durable medical
 1369 equipment or supplies not otherwise available from other
 1370 enrolled providers located within the state.

1371 5. Physical business locations must be clearly identified
 1372 as a business that furnishes durable medical equipment or

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

1373 medical supplies by signage that can be read from 20 feet away.
 1374 The location must be readily accessible to the public during
 1375 normal, posted business hours and must operate at least ~~no less~~
 1376 ~~than~~ 5 hours per day and at least ~~no less than~~ 5 days per week,
 1377 with the exception of scheduled and posted holidays. The
 1378 location may not be located within or at the same numbered
 1379 street address as another enrolled Medicaid durable medical
 1380 equipment or medical supply provider or as an enrolled Medicaid
 1381 pharmacy that is also enrolled as a durable medical equipment
 1382 provider. A licensed orthotist or prosthetist that provides only
 1383 orthotic or prosthetic devices as a Medicaid durable medical
 1384 equipment provider is exempt from ~~the provisions in this~~
 1385 paragraph.

1386 6. Providers must maintain a stock of durable medical
 1387 equipment and medical supplies on site that is readily available
 1388 to meet the needs of the durable medical equipment business
 1389 location's customers.

1390 7. Providers must provide a surety bond of \$50,000 for
 1391 each provider location, up to a maximum of 5 bonds statewide or
 1392 an aggregate bond of \$250,000 statewide, as identified by
 1393 Federal Employer Identification Number. Providers who post a
 1394 statewide or an aggregate bond must identify all of their
 1395 locations in any Medicaid durable medical equipment and medical
 1396 supply provider enrollment application or bond renewal. Each
 1397 provider location's surety bond must be renewed annually and the
 1398 provider must submit proof of renewal even if the original bond
 1399 is a continuous bond. A licensed orthotist or prosthetist that
 1400 provides only orthotic or prosthetic devices as a Medicaid

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

1401 durable medical equipment provider is exempt from the provisions
 1402 in this paragraph.

1403 8. Providers must obtain a level 2 background screening,
 1404 in accordance with chapter 435 and s. 408.809 as provided under
 1405 s. 435.04, for each provider employee in direct contact with or
 1406 providing direct services to recipients of durable medical
 1407 equipment and medical supplies in their homes. This requirement
 1408 includes, but is not limited to, repair and service technicians,
 1409 fitters, and delivery staff. The provider shall pay for the cost
 1410 of the background screening.

1411 9. The following providers are exempt from ~~the~~
 1412 ~~requirements of~~ subparagraphs 1. and 7.:

1413 a. Durable medical equipment providers owned and operated
 1414 by a government entity.

1415 b. Durable medical equipment providers that are operating
 1416 within a pharmacy that is currently enrolled as a Medicaid
 1417 pharmacy provider.

1418 c. Active, Medicaid-enrolled orthopedic physician groups,
 1419 primarily owned by physicians, which provide only orthotic and
 1420 prosthetic devices.

1421 Section 27. Subsection (12) is added to section 411.01,
 1422 Florida Statutes, to read:

1423 411.01 School readiness programs; early learning
 1424 coalitions.—

1425 (12) SUBSTITUTE INSTRUCTORS.—Each school district shall
 1426 make a list of all individuals currently eligible to act as a
 1427 substitute teacher within the county pursuant to the rules
 1428 adopted by the school district pursuant to s. 1012.35 available

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

1429 to an early learning coalition serving students within the
 1430 school district. Child care facilities, as defined by s.
 1431 402.302, may employ individuals listed as substitute instructors
 1432 for the purpose of offering the school readiness program, the
 1433 Voluntary Prekindergarten Education Program, and all other
 1434 legally operating child care programs.

1435 Section 28. Subsection (1) of section 429.14, Florida
 1436 Statutes, is amended to read:

1437 429.14 Administrative penalties.—

1438 (1) In addition to the requirements of part II of chapter
 1439 408, the agency may deny, revoke, and suspend any license issued
 1440 under this part and impose an administrative fine in the manner
 1441 provided in chapter 120 against a licensee ~~of an assisted living~~
 1442 ~~facility~~ for a violation of any provision of this part, part II
 1443 of chapter 408, or applicable rules, or for any of the following
 1444 actions by a licensee ~~of an assisted living facility~~, for the
 1445 actions of any person subject to level 2 background screening
 1446 under s. 408.809, or for the actions of any facility employee:

1447 (a) An intentional or negligent act seriously affecting
 1448 the health, safety, or welfare of a resident of the facility.

1449 (b) The determination by the agency that the owner lacks
 1450 the financial ability to provide continuing adequate care to
 1451 residents.

1452 (c) Misappropriation or conversion of the property of a
 1453 resident of the facility.

1454 (d) Failure to follow the criteria and procedures provided
 1455 under part I of chapter 394 relating to the transportation,
 1456 voluntary admission, and involuntary examination of a facility

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

1457 resident.

1458 (e) A citation of any of the following deficiencies as

1459 specified in s. 429.19:

1460 1. One or more cited class I deficiencies.

1461 2. Three or more cited class II deficiencies.

1462 3. Five or more cited class III deficiencies that have

1463 been cited on a single survey and have not been corrected within

1464 the times specified.

1465 (f) Failure to comply with the ~~A determination that a~~

1466 ~~person subject to level 2 background screening under s. 408.809~~

1467 ~~does not meet the screening standards of this part, s.~~

1468 408.809(1), or chapter 435 s. 435.04 ~~or that the facility is~~

1469 ~~retaining an employee subject to level 1 background screening~~

1470 ~~standards under s. 429.174 who does not meet the screening~~

1471 ~~standards of s. 435.03 and for whom exemptions from~~

1472 ~~disqualification have not been provided by the agency.~~

1473 ~~(g) A determination that an employee, volunteer,~~

1474 ~~administrator, or owner, or person who otherwise has access to~~

1475 ~~the residents of a facility does not meet the criteria specified~~

1476 ~~in s. 435.03(2), and the owner or administrator has not taken~~

1477 ~~action to remove the person. Exemptions from disqualification~~

1478 ~~may be granted as set forth in s. 435.07. No administrative~~

1479 ~~action may be taken against the facility if the person is~~

1480 ~~granted an exemption.~~

1481 (g)(h) Violation of a moratorium.

1482 (h)(i) Failure of the license applicant, the licensee

1483 during relicensure, or a licensee that holds a provisional

1484 license to meet the minimum license requirements of this part,

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

1485 or related rules, at the time of license application or renewal.

1486 (i)~~(j)~~ An intentional or negligent life-threatening act in
 1487 violation of the uniform firesafety standards for assisted
 1488 living facilities or other firesafety standards that threatens
 1489 the health, safety, or welfare of a resident of a facility, as
 1490 communicated to the agency by the local authority having
 1491 jurisdiction or the State Fire Marshal.

1492 (j)~~(k)~~ Knowingly operating any unlicensed facility or
 1493 providing without a license any service that must be licensed
 1494 under this chapter or chapter 400.

1495 (k)~~(l)~~ Any act constituting a ground upon which
 1496 application for a license may be denied.

1497 Section 29. Section 429.174, Florida Statutes, is amended
 1498 to read:

1499 429.174 Background screening;~~exemptions.~~The agency shall
 1500 require level 2 background screening for personnel as required
 1501 in s. 408.809(1)(e) pursuant to chapter 435 and s. 408.809. The
 1502 ~~owner or administrator of an assisted living facility must~~
 1503 ~~conduct level 1 background screening, as set forth in chapter~~
 1504 ~~435, on all employees hired on or after October 1, 1998, who~~
 1505 ~~perform personal services as defined in s. 429.02(16).~~ The
 1506 ~~agency may exempt an individual from employment disqualification~~
 1507 ~~as set forth in chapter 435. Such persons shall be considered as~~
 1508 ~~having met this requirement if:~~

1509 ~~(1) Proof of compliance with level 1 screening~~
 1510 ~~requirements obtained to meet any professional license~~
 1511 ~~requirements in this state is provided and accompanied, under~~
 1512 ~~penalty of perjury, by a copy of the person's current~~

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

1513 ~~professional license and an affidavit of current compliance with~~
 1514 ~~the background screening requirements.~~

1515 ~~(2) The person required to be screened has been~~
 1516 ~~continuously employed in the same type of occupation for which~~
 1517 ~~the person is seeking employment without a breach in service~~
 1518 ~~which exceeds 180 days, and proof of compliance with the level 1~~
 1519 ~~screening requirement which is no more than 2 years old is~~
 1520 ~~provided. Proof of compliance shall be provided directly from~~
 1521 ~~one employer or contractor to another, and not from the person~~
 1522 ~~screened. Upon request, a copy of screening results shall be~~
 1523 ~~provided by the employer retaining documentation of the~~
 1524 ~~screening to the person screened.~~

1525 ~~(3) The person required to be screened is employed by a~~
 1526 ~~corporation or business entity or related corporation or~~
 1527 ~~business entity that owns, operates, or manages more than one~~
 1528 ~~facility or agency licensed under this chapter, and for whom a~~
 1529 ~~level 1 screening was conducted by the corporation or business~~
 1530 ~~entity as a condition of initial or continued employment.~~

1531 Section 30. Subsection (4) of section 429.67, Florida
 1532 Statutes, is amended to read:

1533 429.67 Licensure.—

1534 (4) ~~Upon receipt of a completed license application or~~
 1535 ~~license renewal, and the fee, The agency shall require level 2~~
 1536 ~~initiate a level 1 background screening for personnel as~~
 1537 ~~required in s. 408.809(1)(e), including as provided under~~
 1538 ~~chapter 435 on the adult family-care home provider, the~~
 1539 ~~designated relief person, and all adult household members,~~
 1540 ~~pursuant to chapter 435 and s. 408.809, and all staff members.~~

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

1541 ~~(a) Proof of compliance with level 1 screening standards~~
 1542 ~~which has been submitted within the previous 5 years to meet any~~
 1543 ~~facility or professional licensure requirements of the agency or~~
 1544 ~~the Department of Health satisfies the requirements of this~~
 1545 ~~subsection. Such proof must be accompanied, under penalty of~~
 1546 ~~perjury, by a copy of the person's current professional license~~
 1547 ~~and an affidavit of current compliance with the background~~
 1548 ~~screening requirements.~~

1549 ~~(b) The person required to be screened must have been~~
 1550 ~~continuously employed in the same type of occupation for which~~
 1551 ~~the person is seeking employment without a breach in service~~
 1552 ~~that exceeds 180 days, and proof of compliance with the level 1~~
 1553 ~~screening requirement which is no more than 2 years old must be~~
 1554 ~~provided. Proof of compliance shall be provided directly from~~
 1555 ~~one employer or contractor to another, and not from the person~~
 1556 ~~screened. Upon request, a copy of screening results shall be~~
 1557 ~~provided to the person screened by the employer retaining~~
 1558 ~~documentation of the screening.~~

1559 Section 31. Section 429.69, Florida Statutes, is amended
 1560 to read:

1561 429.69 Denial, revocation, and suspension of a license.—In
 1562 addition to the requirements of part II of chapter 408, the
 1563 agency may deny, suspend, and revoke a license for any of the
 1564 following reasons:

1565 (1) Failure to comply with the ~~of any of the persons~~
 1566 ~~required to undergo~~ background screening standards of this part,
 1567 s. 408.809(1), or chapter 435 under s. 429.67 to meet the level
 1568 ~~1 screening standards of s. 435.03, unless an exemption from~~

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

1569 ~~disqualification has been provided by the agency.~~

1570 (2) Failure to correct cited fire code violations that
1571 threaten the health, safety, or welfare of residents.

1572 Section 32. Paragraph (c) of subsection (2) of section
1573 429.911, Florida Statutes, is amended to read:

1574 429.911 Denial, suspension, revocation of license;
1575 emergency action; administrative fines; investigations and
1576 inspections.—

1577 (2) Each of the following actions by the owner of an adult
1578 day care center or by its operator or employee is a ground for
1579 action by the agency against the owner of the center or its
1580 operator or employee:

1581 (c) A Failure to comply with the ~~of persons subject to~~
1582 ~~level 2 background screening standards of this part, s.~~
1583 ~~408.809(1), or chapter 435 under s. 408.809 to meet the~~
1584 ~~screening standards of s. 435.04, or the retention by the center~~
1585 ~~of an employee subject to level 1 background screening standards~~
1586 ~~under s. 429.174 who does not meet the screening standards of s.~~
1587 ~~435.03 and for whom exemptions from disqualification have not~~
1588 ~~been provided by the agency.~~

1589 Section 33. Section 429.919, Florida Statutes, is amended
1590 to read:

1591 429.919 Background screening.—The agency shall require
1592 level 2 background screening for personnel as required in s.
1593 408.809(1) (e) pursuant to chapter 435 and s. 408.809. ~~The owner~~
1594 ~~or administrator of an adult day care center must conduct level~~
1595 ~~1 background screening as set forth in chapter 435 on all~~
1596 ~~employees hired on or after October 1, 1998, who provide basic~~

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

1597 ~~services or supportive and optional services to the~~
 1598 ~~participants. Such persons satisfy this requirement if:~~
 1599 ~~(1) Proof of compliance with level 1 screening~~
 1600 ~~requirements obtained to meet any professional license~~
 1601 ~~requirements in this state is provided and accompanied, under~~
 1602 ~~penalty of perjury, by a copy of the person's current~~
 1603 ~~professional license and an affidavit of current compliance with~~
 1604 ~~the background screening requirements.~~

1605 ~~(2) The person required to be screened has been~~
 1606 ~~continuously employed, without a breach in service that exceeds~~
 1607 ~~180 days, in the same type of occupation for which the person is~~
 1608 ~~seeking employment and provides proof of compliance with the~~
 1609 ~~level 1 screening requirement which is no more than 2 years old.~~
 1610 ~~Proof of compliance must be provided directly from one employer~~
 1611 ~~or contractor to another, and not from the person screened. Upon~~
 1612 ~~request, a copy of screening results shall be provided to the~~
 1613 ~~person screened by the employer retaining documentation of the~~
 1614 ~~screening.~~

1615 ~~(3) The person required to be screened is employed by a~~
 1616 ~~corporation or business entity or related corporation or~~
 1617 ~~business entity that owns, operates, or manages more than one~~
 1618 ~~facility or agency licensed under chapter 400 or this chapter,~~
 1619 ~~and for whom a level 1 screening was conducted by the~~
 1620 ~~corporation or business entity as a condition of initial or~~
 1621 ~~continued employment.~~

1622 Section 34. Section 430.0402, Florida Statutes, is created
 1623 to read:

1624 430.0402 Screening of direct service providers.-

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

1625 (1) (a) Level 2 background screening pursuant to chapter
 1626 435 is required for direct service providers. Background
 1627 screening includes employment history checks as provided in s.
 1628 435.03(1) and local criminal records checks through local law
 1629 enforcement agencies.

1630 (b) For purposes of this section, the term "direct service
 1631 provider" means a person 18 years of age or older who, pursuant
 1632 to a program to provide services to the elderly, has direct,
 1633 face-to-face contact with a client while providing services to
 1634 the client or has access to the client's living areas or to the
 1635 client's funds or personal property. The term includes
 1636 coordinators, managers, and supervisors of residential
 1637 facilities and volunteers.

1638 (2) Licensed physicians, nurses, or other professionals
 1639 licensed by the Department of Health are not subject to
 1640 background screening if they are providing a service that is
 1641 within the scope of their licensed practice.

1642 (3) Refusal on the part of an employer to dismiss a
 1643 manager, supervisor, or direct service provider who has been
 1644 found to be in noncompliance with standards of this section
 1645 shall result in the automatic denial, termination, or revocation
 1646 of the license or certification, rate agreement, purchase order,
 1647 or contract, in addition to any other remedies authorized by
 1648 law.

1649 (4) The background screening conducted pursuant to this
 1650 section must ensure that, in addition to the disqualifying
 1651 offenses listed in s. 435.04, no person subject to the
 1652 provisions of this section has an arrest awaiting final

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

1653 disposition for, has been found guilty of, regardless of
 1654 adjudication, or entered a plea of nolo contendere or guilty to,
 1655 or has been adjudicated delinquent and the record has not been
 1656 sealed or expunged for, any offense prohibited under any of the
 1657 following provisions of state law or similar law of another
 1658 jurisdiction:

1659 (a) Any authorizing statutes, if the offense was a felony.

1660 (b) Section 409.920, relating to Medicaid provider fraud.

1661 (c) Section 409.9201, relating to Medicaid fraud.

1662 (d) Section 817.034, relating to fraudulent acts through
 1663 mail, wire, radio, electromagnetic, photoelectronic, or
 1664 photooptical systems.

1665 (e) Section 817.234, relating to false and fraudulent
 1666 insurance claims.

1667 (f) Section 817.505, relating to patient brokering.

1668 (g) Section 817.568, relating to criminal use of personal
 1669 identification information.

1670 (h) Section 817.60, relating to obtaining a credit card
 1671 through fraudulent means.

1672 (i) Section 817.61, relating to fraudulent use of credit
 1673 cards, if the offense was a felony.

1674 (j) Section 831.01, relating to forgery.

1675 (k) Section 831.02, relating to uttering forged
 1676 instruments.

1677 (l) Section 831.07, relating to forging bank bills,
 1678 checks, drafts, or promissory notes.

1679 (m) Section 831.09, relating to uttering forged bank
 1680 bills, checks, drafts, or promissory notes.

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

1681 Section 35. Section 435.01, Florida Statutes, is amended
 1682 to read:

1683 435.01 Applicability of this chapter; statutory
 1684 references; rulemaking.—

1685 (1) (a) Unless otherwise provided by law, whenever a
 1686 background screening for employment or a background security
 1687 check is required by law to be conducted pursuant to this
 1688 chapter for employment, ~~unless otherwise provided by law,~~ the
 1689 provisions of this chapter ~~shall~~ apply.

1690 (b) Unless expressly provided otherwise, a reference in
 1691 any section of the Florida Statutes to chapter 435 or to any
 1692 section or sections or portion of a section of chapter 435
 1693 includes all subsequent amendments to chapter 435 or to the
 1694 referenced section or sections or portions of a section. The
 1695 purpose of this chapter is to facilitate uniform background
 1696 screening and, to this end, a reference to this chapter, or to
 1697 any section or subdivision within this chapter, constitutes a
 1698 general reference under the doctrine of incorporation by
 1699 reference.

1700 (2) Agencies may adopt rules to administer this chapter.

1701 Section 36. Section 435.02, Florida Statutes, is reordered
 1702 and amended to read:

1703 435.02 Definitions.—For the purposes of this chapter, the
 1704 term:

1705 (2) (1) "Employee" means any person required by law to be
 1706 screened pursuant to ~~the provisions of~~ this chapter.

1707 (3) (2) "Employer" means any person or entity required by
 1708 law to conduct screening of employees pursuant to this chapter.

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

1709 (1) ~~(3)~~ "Licensing Agency" means any state, ~~or~~ county, or
 1710 municipal agency that which grants licenses or registration
 1711 permitting the operation of an employer or is itself an employer
 1712 or that otherwise facilitates the screening of employees
 1713 pursuant to this chapter. If ~~When~~ there is no state licensing
 1714 agency or the municipal or county licensing agency chooses not
 1715 to conduct employment screening, "licensing agency" means the
 1716 Department of Children and Family Services.

1717 (4) "Employment" means any activity or service sought to
 1718 be performed by an employee which requires the employee to be
 1719 screened pursuant to this chapter.

1720 (5) "Vulnerable person" means a minor as defined in s.
 1721 1.01 or a vulnerable adult as defined in s. 415.102.

1722 Section 37. Section 435.03, Florida Statutes, is amended
 1723 to read:

1724 435.03 Level 1 screening standards.—

1725 (1) All employees required by law to be screened pursuant
 1726 to this section must ~~shall be required to~~ undergo background
 1727 screening as a condition of employment and continued employment
 1728 which includes. ~~For the purposes of this subsection, level 1~~
 1729 screenings ~~shall include~~, but need not be limited to, employment
 1730 history checks and statewide criminal correspondence checks
 1731 through the ~~Florida~~ Department of Law Enforcement, a check of
 1732 the Dru Sjodin National Sex Offender Public Website, and may
 1733 include local criminal records checks through local law
 1734 enforcement agencies.

1735 (2) Any person required by law to be screened pursuant to
 1736 this section must not have an arrest awaiting final disposition,

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

1737 ~~for whom employment screening is required by statute~~ must not
 1738 have been found guilty of, regardless of adjudication, or
 1739 entered a plea of nolo contendere or guilty to, and must not
 1740 have been adjudicated delinquent and the record has not been
 1741 sealed or expunged for, any offense prohibited under s.
 1742 435.04(2) ~~any of the following provisions of the Florida~~
 1743 ~~Statutes~~ or under any similar law statute of another
 1744 jurisdiction.÷

1745 ~~(a) Section 393.135, relating to sexual misconduct with~~
 1746 ~~certain developmentally disabled clients and reporting of such~~
 1747 ~~sexual misconduct.~~

1748 ~~(b) Section 394.4593, relating to sexual misconduct with~~
 1749 ~~certain mental health patients and reporting of such sexual~~
 1750 ~~misconduct.~~

1751 ~~(c) Section 415.111, relating to abuse, neglect, or~~
 1752 ~~exploitation of a vulnerable adult.~~

1753 ~~(d) Section 782.04, relating to murder.~~

1754 ~~(e) Section 782.07, relating to manslaughter, aggravated~~
 1755 ~~manslaughter of an elderly person or disabled adult, or~~
 1756 ~~aggravated manslaughter of a child.~~

1757 ~~(f) Section 782.071, relating to vehicular homicide.~~

1758 ~~(g) Section 782.09, relating to killing of an unborn quick~~
 1759 ~~child by injury to the mother.~~

1760 ~~(h) Section 784.011, relating to assault, if the victim of~~
 1761 ~~the offense was a minor.~~

1762 ~~(i) Section 784.021, relating to aggravated assault.~~

1763 ~~(j) Section 784.03, relating to battery, if the victim of~~
 1764 ~~the offense was a minor.~~

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

- 1765 ~~(k) Section 784.045, relating to aggravated battery.~~
- 1766 ~~(l) Section 787.01, relating to kidnapping.~~
- 1767 ~~(m) Section 787.02, relating to false imprisonment.~~
- 1768 ~~(n) Section 794.011, relating to sexual battery.~~
- 1769 ~~(o) Former s. 794.041, relating to prohibited acts of~~
 1770 ~~persons in familial or custodial authority.~~
- 1771 ~~(p) Chapter 796, relating to prostitution.~~
- 1772 ~~(q) Section 798.02, relating to lewd and lascivious~~
 1773 ~~behavior.~~
- 1774 ~~(r) Chapter 800, relating to lewdness and indecent~~
 1775 ~~exposure.~~
- 1776 ~~(s) Section 806.01, relating to arson.~~
- 1777 ~~(t) Chapter 812, relating to theft, robbery, and related~~
 1778 ~~crimes, if the offense was a felony.~~
- 1779 ~~(u) Section 817.563, relating to fraudulent sale of~~
 1780 ~~controlled substances, only if the offense was a felony.~~
- 1781 ~~(v) Section 825.102, relating to abuse, aggravated abuse,~~
 1782 ~~or neglect of an elderly person or disabled adult.~~
- 1783 ~~(w) Section 825.1025, relating to lewd or lascivious~~
 1784 ~~offenses committed upon or in the presence of an elderly person~~
 1785 ~~or disabled adult.~~
- 1786 ~~(x) Section 825.103, relating to exploitation of an~~
 1787 ~~elderly person or disabled adult, if the offense was a felony.~~
- 1788 ~~(y) Section 826.04, relating to incest.~~
- 1789 ~~(z) Section 827.03, relating to child abuse, aggravated~~
 1790 ~~child abuse, or neglect of a child.~~
- 1791 ~~(aa) Section 827.04, relating to contributing to the~~
 1792 ~~delinquency or dependency of a child.~~

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

1793 ~~(bb) Former s. 827.05, relating to negligent treatment of~~
 1794 ~~children.~~

1795 ~~(cc) Section 827.071, relating to sexual performance by a~~
 1796 ~~child.~~

1797 ~~(dd) Chapter 847, relating to obscene literature.~~

1798 ~~(ee) Chapter 893, relating to drug abuse prevention and~~
 1799 ~~control, only if the offense was a felony or if any other person~~
 1800 ~~involved in the offense was a minor.~~

1801 ~~(ff) Section 916.1075, relating to sexual misconduct with~~
 1802 ~~certain forensic clients and reporting of such sexual~~
 1803 ~~misconduct.~~

1804 (3) The security background investigations under this
 1805 section must ensure that no person subject to this section has
 1806 been found guilty of, regardless of adjudication, or entered a
 1807 plea of nolo contendere or guilty to, any offense that
 1808 constitutes domestic violence as defined in s. 741.28, whether
 1809 such act was committed in this state or in another jurisdiction.
 1810 ~~Standards must also ensure that the person:~~

1811 ~~(a) For employees and employers licensed or registered~~
 1812 ~~pursuant to chapter 400 or chapter 429, and for employees and~~
 1813 ~~employers of developmental disabilities centers as defined in s.~~
 1814 ~~393.063, intermediate care facilities for the developmentally~~
 1815 ~~disabled as defined in s. 400.960, and mental health treatment~~
 1816 ~~facilities as defined in s. 394.455, meets the requirements of~~
 1817 ~~this chapter.~~

1818 ~~(b) Has not committed an act that constitutes domestic~~
 1819 ~~violence as defined in s. 741.28.~~

1820 Section 38. Section 435.04, Florida Statutes, is amended

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

1821 to read:

1822 435.04 Level 2 screening standards.—

1823 (1) (a) All employees required by law to be screened

1824 pursuant to this section must ~~in positions designated by law as~~

1825 ~~positions of trust or responsibility shall be required to~~

1826 undergo security background investigations as a condition of

1827 employment and continued employment which includes. ~~For the~~

1828 ~~purposes of this subsection, security background investigations~~

1829 ~~shall include, but need not be limited to, fingerprinting for~~

1830 statewide criminal history records ~~all purposes and checks in~~

1831 ~~this subsection, statewide criminal and juvenile records checks~~

1832 through the ~~Florida~~ Department of Law Enforcement, and national

1833 ~~federal~~ criminal history records checks through the Federal

1834 Bureau of Investigation, and may include local criminal records

1835 checks through local law enforcement agencies.

1836 (b) Fingerprints submitted pursuant to this section on or

1837 after July 1, 2012, must be submitted electronically to the

1838 Department of Law Enforcement.

1839 (c) An agency may contract with one or more vendors to

1840 perform all or part of the electronic fingerprinting pursuant to

1841 this section. Such contracts must ensure that the owners and

1842 personnel of the vendor performing the electronic fingerprinting

1843 are qualified and will ensure the integrity and security of all

1844 personal information.

1845 (d) An agency may require by rule that fingerprints

1846 submitted pursuant to this section must be submitted

1847 electronically to the Department of Law Enforcement on a date

1848 earlier than July 1, 2012.

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

1849 (2) The security background investigations under this
 1850 section must ensure that no persons subject to the provisions of
 1851 this section have been arrested for and are awaiting final
 1852 disposition of, have been found guilty of, regardless of
 1853 adjudication, or entered a plea of nolo contendere or guilty to,
 1854 or have been adjudicated delinquent and the record has not been
 1855 sealed or expunged for, any offense prohibited under any of the
 1856 following provisions of state law ~~the Florida Statutes~~ or ~~under~~
 1857 ~~any~~ similar law ~~statute~~ of another jurisdiction:

1858 (a) Section 393.135, relating to sexual misconduct with
 1859 certain developmentally disabled clients and reporting of such
 1860 sexual misconduct.

1861 (b) Section 394.4593, relating to sexual misconduct with
 1862 certain mental health patients and reporting of such sexual
 1863 misconduct.

1864 (c) Section 415.111, relating to adult abuse, neglect, or
 1865 exploitation of aged persons or disabled adults.

1866 (d) Section 782.04, relating to murder.

1867 (e) Section 782.07, relating to manslaughter, aggravated
 1868 manslaughter of an elderly person or disabled adult, or
 1869 aggravated manslaughter of a child.

1870 (f) Section 782.071, relating to vehicular homicide.

1871 (g) Section 782.09, relating to killing of an unborn quick
 1872 child by injury to the mother.

1873 (h) Chapter 784, relating to assault, battery, and
 1874 culpable negligence, if the offense was a felony.

1875 (i) ~~(h)~~ Section 784.011, relating to assault, if the victim
 1876 of the offense was a minor.

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

- 1877 ~~(i) Section 784.021, relating to aggravated assault.~~
- 1878 (j) Section 784.03, relating to battery, if the victim of
- 1879 the offense was a minor.
- 1880 ~~(k) Section 784.045, relating to aggravated battery.~~
- 1881 ~~(l) Section 784.075, relating to battery on a detention or~~
- 1882 ~~commitment facility staff.~~
- 1883 (k) ~~(m)~~ Section 787.01, relating to kidnapping.
- 1884 (l) ~~(n)~~ Section 787.02, relating to false imprisonment.
- 1885 (m) Section 787.025, relating to luring or enticing a
- 1886 child.
- 1887 (n) ~~(o)~~ Section 787.04(2), relating to taking, enticing, or
- 1888 removing a child beyond the state limits with criminal intent
- 1889 pending custody proceedings.
- 1890 (o) ~~(p)~~ Section 787.04(3), relating to carrying a child
- 1891 beyond the state lines with criminal intent to avoid producing a
- 1892 child at a custody hearing or delivering the child to the
- 1893 designated person.
- 1894 (p) ~~(q)~~ Section 790.115(1), relating to exhibiting firearms
- 1895 or weapons within 1,000 feet of a school.
- 1896 (q) ~~(r)~~ Section 790.115(2)(b), relating to possessing an
- 1897 electric weapon or device, destructive device, or other weapon
- 1898 on school property.
- 1899 (r) ~~(s)~~ Section 794.011, relating to sexual battery.
- 1900 (s) ~~(t)~~ Former s. 794.041, relating to prohibited acts of
- 1901 persons in familial or custodial authority.
- 1902 (t) Section 794.05, relating to unlawful sexual activity
- 1903 with certain minors.
- 1904 (u) Chapter 796, relating to prostitution.

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

- 1905 (v) Section 798.02, relating to lewd and lascivious
- 1906 behavior.
- 1907 (w) Chapter 800, relating to lewdness and indecent
- 1908 exposure.
- 1909 (x) Section 806.01, relating to arson.
- 1910 (y) Section 810.02, relating to burglary.
- 1911 (z) Section 810.14, relating to voyeurism, if the offense
- 1912 is a felony.
- 1913 (aa) Section 810.145, relating to video voyeurism, if the
- 1914 offense is a felony.
- 1915 ~~(bb)(y)~~ Chapter 812, relating to theft, robbery, and
- 1916 related crimes, if the offense is a felony.
- 1917 ~~(cc)(z)~~ Section 817.563, relating to fraudulent sale of
- 1918 controlled substances, only if the offense was a felony.
- 1919 ~~(dd)(aa)~~ Section 825.102, relating to abuse, aggravated
- 1920 abuse, or neglect of an elderly person or disabled adult.
- 1921 ~~(ee)(bb)~~ Section 825.1025, relating to lewd or lascivious
- 1922 offenses committed upon or in the presence of an elderly person
- 1923 or disabled adult.
- 1924 ~~(ff)(ee)~~ Section 825.103, relating to exploitation of an
- 1925 elderly person or disabled adult, if the offense was a felony.
- 1926 ~~(gg)(dd)~~ Section 826.04, relating to incest.
- 1927 ~~(hh)(ee)~~ Section 827.03, relating to child abuse,
- 1928 aggravated child abuse, or neglect of a child.
- 1929 ~~(ii)(ff)~~ Section 827.04, relating to contributing to the
- 1930 delinquency or dependency of a child.
- 1931 ~~(jj)(gg)~~ Former s. 827.05, relating to negligent treatment
- 1932 of children.

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

- 1933 (kk)~~(hh)~~ Section 827.071, relating to sexual performance
- 1934 by a child.
- 1935 (ll)~~(ii)~~ Section 843.01, relating to resisting arrest with
- 1936 violence.
- 1937 (mm)~~(jj)~~ Section 843.025, relating to depriving a law
- 1938 enforcement, correctional, or correctional probation officer
- 1939 means of protection or communication.
- 1940 (nn)~~(kk)~~ Section 843.12, relating to aiding in an escape.
- 1941 (oo)~~(ll)~~ Section 843.13, relating to aiding in the escape
- 1942 of juvenile inmates in correctional institutions.
- 1943 (pp)~~(mm)~~ Chapter 847, relating to obscene literature.
- 1944 (qq)~~(nn)~~ Section 874.05(1), relating to encouraging or
- 1945 recruiting another to join a criminal gang.
- 1946 (rr)~~(oo)~~ Chapter 893, relating to drug abuse prevention
- 1947 and control, only if the offense was a felony or if any other
- 1948 person involved in the offense was a minor.
- 1949 (ss)~~(pp)~~ Section 916.1075, relating to sexual misconduct
- 1950 with certain forensic clients and reporting of such sexual
- 1951 misconduct.
- 1952 (tt)~~(qq)~~ Section 944.35(3), relating to inflicting cruel
- 1953 or inhuman treatment on an inmate resulting in great bodily
- 1954 harm.
- 1955 (uu) Section 944.40, relating to escape.
- 1956 (vv)~~(rr)~~ Section 944.46, relating to harboring,
- 1957 concealing, or aiding an escaped prisoner.
- 1958 (ww)~~(ss)~~ Section 944.47, relating to introduction of
- 1959 contraband into a correctional facility.
- 1960 (xx)~~(tt)~~ Section 985.701, relating to sexual misconduct in

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

1961 juvenile justice programs.

1962 (yy)~~(uu)~~ Section 985.711, relating to contraband

1963 introduced into detention facilities.

1964 (3) The security background investigations under this

1965 section must ensure that no person subject to this section has

1966 been found guilty of, regardless of adjudication, or entered a

1967 plea of nolo contendere or guilty to, any offense that

1968 constitutes domestic violence as defined in s. 741.28, whether

1969 such act was committed in this state or in another jurisdiction.

1970 ~~The security background investigations conducted under this~~

1971 ~~section for employees of the Department of Juvenile Justice must~~

1972 ~~ensure that no persons subject to the provisions of this section~~

1973 ~~have been found guilty of, regardless of adjudication, or~~

1974 ~~entered a plea of nolo contendere or guilty to, any offense~~

1975 ~~prohibited under any of the following provisions of the Florida~~

1976 ~~Statutes or under any similar statute of another jurisdiction:~~

1977 ~~(a) Section 784.07, relating to assault or battery of law~~

1978 ~~enforcement officers, firefighters, emergency medical care~~

1979 ~~providers, public transit employees or agents, or other~~

1980 ~~specified officers.~~

1981 ~~(b) Section 810.02, relating to burglary, if the offense~~

1982 ~~is a felony.~~

1983 ~~(c) Section 944.40, relating to escape.~~

1984

1985 ~~The Department of Juvenile Justice may not remove a~~

1986 ~~disqualification from employment or grant an exemption to any~~

1987 ~~person who is disqualified under this section for any offense~~

1988 ~~disposed of during the most recent 7-year period.~~

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

1989 ~~(4) Standards must also ensure that the person:~~
 1990 ~~(a) For employees or employers licensed or registered~~
 1991 ~~pursuant to chapter 400 or chapter 429, does not have a~~
 1992 ~~confirmed report of abuse, neglect, or exploitation as defined~~
 1993 ~~in s. 415.102(6), which has been uncontested or upheld under s.~~
 1994 ~~415.103.~~
 1995 ~~(b) Has not committed an act that constitutes domestic~~
 1996 ~~violence as defined in s. 741.30.~~
 1997 ~~(5) Under penalty of perjury, all employees in such~~
 1998 ~~positions of trust or responsibility shall attest to meeting the~~
 1999 ~~requirements for qualifying for employment and agreeing to~~
 2000 ~~inform the employer immediately if convicted of any of the~~
 2001 ~~disqualifying offenses while employed by the employer. Each~~
 2002 ~~employer of employees in such positions of trust or~~
 2003 ~~responsibilities which is licensed or registered by a state~~
 2004 ~~agency shall submit to the licensing agency annually or at the~~
 2005 ~~time of license renewal, under penalty of perjury, an affidavit~~
 2006 ~~of compliance with the provisions of this section.~~
 2007 Section 39. Section 435.05, Florida Statutes, is amended
 2008 to read:
 2009 435.05 Requirements for covered employees and employers.—
 2010 Except as otherwise provided by law, the following requirements
 2011 ~~shall~~ apply to covered employees and employers:
 2012 (1) (a) Every person required by law to be screened
 2013 pursuant to this chapter must ~~employed in a position for which~~
 2014 ~~employment screening is required must,~~ within 5 working days
 2015 ~~after starting to work,~~ submit to the employer a complete set of
 2016 information necessary to conduct a screening under this chapter

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

2017 ~~section.~~
 2018 (b) For level 1 screening, the employer must submit the
 2019 information necessary for screening to the ~~Florida~~ Department of
 2020 Law Enforcement within 5 working days after receiving it. The
 2021 ~~Florida~~ Department of Law Enforcement shall ~~will~~ conduct a
 2022 search of its records and ~~will~~ respond to the employer or
 2023 agency. The employer must ~~will~~ inform the employee whether
 2024 screening has revealed any disqualifying information.

2025 (c) For level 2 screening, the employer or ~~licensing~~
 2026 agency must submit the information necessary for screening to
 2027 the ~~Florida~~ Department of Law Enforcement within 5 working days
 2028 after receiving it. The ~~Florida~~ Department of Law Enforcement
 2029 shall perform a criminal history record check of its ~~will~~
 2030 ~~conduct a search of its criminal and juvenile records and will~~
 2031 request that the Federal Bureau of Investigation perform a
 2032 national criminal history record check ~~conduct a search~~ of its
 2033 records for each employee for whom the request is made. The
 2034 ~~Florida~~ Department of Law Enforcement shall ~~will~~ respond to the
 2035 employer or ~~licensing~~ agency, and the employer or ~~licensing~~
 2036 agency must ~~will~~ inform the employee whether screening has
 2037 revealed disqualifying information.

2038 (d) The person whose background is being checked must
 2039 supply any missing criminal or other necessary information upon
 2040 request to the requesting employer or agency within 30 days
 2041 after receiving the ~~employer makes a request for the information~~
 2042 ~~or be subject to automatic disqualification.~~

2043 (2) Every employee must attest, subject to penalty of
 2044 perjury, to meeting the requirements for qualifying for

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

2045 employment pursuant to this chapter and agreeing to inform the
 2046 employer immediately if arrested for any of the disqualifying
 2047 offenses while employed by the employer. Unless otherwise
 2048 ~~prohibited by state or federal law, new employees may be placed~~
 2049 ~~on probationary status pending a determination of compliance~~
 2050 ~~with minimum standards set forth in this chapter.~~

2051 (3) Each employer licensed or registered with an agency
 2052 must ~~required to~~ conduct level 2 background screening and must
 2053 submit to the agency sign an affidavit annually or at the time
 2054 of license renewal, under penalty of perjury, a signed affidavit
 2055 attesting to compliance with the provisions of this chapter
 2056 ~~stating that all covered employees have been screened or are~~
 2057 ~~newly hired and are awaiting the results of the required~~
 2058 ~~screening checks.~~

2059 Section 40. Section 435.06, Florida Statutes, is amended
 2060 to read:

2061 435.06 Exclusion from employment.—

2062 (1) If ~~When~~ an employer or ~~licensing~~ agency has reasonable
 2063 cause to believe that grounds exist for the denial or
 2064 termination of employment of any employee as a result of
 2065 background screening, it shall notify the employee in writing,
 2066 stating the specific record that ~~which~~ indicates noncompliance
 2067 with the standards in this chapter ~~section~~. It is ~~shall be~~ the
 2068 responsibility of the affected employee to contest his or her
 2069 disqualification or to request exemption from disqualification.
 2070 The only basis for contesting the disqualification is ~~shall be~~
 2071 proof of mistaken identity.

2072 (2) (a) An employer may not hire, select, or otherwise

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

2073 allow an employee to have contact with any vulnerable person
 2074 that would place the employee in a role that requires background
 2075 screening until the screening process is completed and
 2076 demonstrates the absence of any grounds for the denial or
 2077 termination of employment. If the screening process shows any
 2078 grounds for the denial or termination of employment, the
 2079 employer may not hire, select, or otherwise allow the employee
 2080 to have contact with any vulnerable person that would place the
 2081 employee in a role that requires background screening unless the
 2082 employee is granted an exemption for the disqualification by the
 2083 agency as provided under s. 435.07.

2084 (b) If an employer becomes aware that an employee has been
 2085 arrested for a disqualifying offense, the employer must remove
 2086 the employee from contact with any vulnerable person that places
 2087 the employee in a role that requires background screening until
 2088 the arrest is resolved in a way that the employer determines
 2089 that the employee is still eligible for employment under this
 2090 chapter.

2091 (c) The employer must ~~either~~ terminate the employment of
 2092 any of its personnel found to be in noncompliance with the
 2093 minimum standards of this chapter ~~for good moral character~~
 2094 ~~contained in this section~~ or place the employee in a position
 2095 for which background screening is not required unless the
 2096 employee is granted an exemption from disqualification pursuant
 2097 to s. 435.07.

2098 (3) Any ~~employee person who is required to undergo~~
 2099 ~~employment screening and who refuses to cooperate in such~~
 2100 screening or refuses to timely submit the information necessary

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

2101 to complete the screening, including fingerprints if ~~when~~
 2102 required, must ~~shall~~ be disqualified for employment in such
 2103 position or, if employed, must ~~shall~~ be dismissed.

2104 (4) There is no unemployment compensation or other
 2105 monetary liability on the part of, and no cause of action for
 2106 damages against, an employer that, upon notice of a conviction
 2107 or arrest for a disqualifying offense listed under this chapter,
 2108 terminates the person against whom the report was issued or who
 2109 was arrested, regardless of whether or not that person has filed
 2110 for an exemption pursuant to this chapter.

2111 Section 41. Section 435.07, Florida Statutes, is amended
 2112 to read:

2113 435.07 Exemptions from disqualification.—Unless otherwise
 2114 provided by law, the provisions of this section ~~shall~~ apply to
 2115 exemptions from disqualification for disqualifying offenses
 2116 revealed pursuant to background screenings required under this
 2117 chapter, regardless of whether those disqualifying offenses are
 2118 listed in this chapter or other laws.

2119 (1) The head of the appropriate ~~licensing~~ agency may grant
 2120 to any employee otherwise disqualified from employment an
 2121 exemption from disqualification for:

2122 (a) Felonies for which at least 3 years have elapsed since
 2123 the applicant for the exemption has completed or been lawfully
 2124 released from confinement, supervision, or sanction for the
 2125 disqualifying felony ~~committed more than 3 years prior to the~~
 2126 ~~date of disqualification;~~

2127 (b) Misdemeanors prohibited under any of the Florida
 2128 statutes cited in this chapter or under similar statutes of

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

2129 | other jurisdictions for which the applicant for the exemption
 2130 | has completed or been lawfully released from confinement,
 2131 | supervision, or sanction;

2132 | (c) Offenses that were felonies when committed but that
 2133 | are now misdemeanors and for which the applicant for the
 2134 | exemption has completed or been lawfully released from
 2135 | confinement, supervision, or sanction; or

2136 | (d) Findings of delinquency. For offenses that would be
 2137 | felonies if committed by an adult and the record has not been
 2138 | sealed or expunged, the exemption may not be granted until at
 2139 | least 3 years have elapsed since the applicant for the exemption
 2140 | has completed or been lawfully released from confinement,
 2141 | supervision, or sanction for the disqualifying offense; ~~or~~

2142 | ~~(e) Commissions of acts of domestic violence as defined in~~
 2143 | ~~s. 741.30.~~

2144 |
 2145 | For the purposes of this subsection, the term "felonies" means
 2146 | both felonies prohibited under any of the ~~Florida~~ statutes cited
 2147 | in this chapter or under similar statutes of other
 2148 | jurisdictions.

2149 | (2) Persons employed, or applicants for employment, by
 2150 | treatment providers who treat adolescents 13 years of age and
 2151 | older who are disqualified from employment solely because of
 2152 | crimes under s. 817.563, s. 893.13, or s. 893.147 may be
 2153 | exempted from disqualification from employment pursuant to this
 2154 | chapter section without application of the 3-year waiting period
 2155 | in paragraph (1) (a).

2156 | (3) (a) In order for the head of an agency a ~~licensing~~

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

2157 ~~department~~ to grant an exemption to any employee, the employee
 2158 must demonstrate by clear and convincing evidence that the
 2159 employee should not be disqualified from employment. Employees
 2160 seeking an exemption have the burden of setting forth clear and
 2161 convincing ~~sufficient~~ evidence of rehabilitation, including, but
 2162 not limited to, the circumstances surrounding the criminal
 2163 incident for which an exemption is sought, the time period that
 2164 has elapsed since the incident, the nature of the harm caused to
 2165 the victim, and the history of the employee since the incident,
 2166 or any other evidence or circumstances indicating that the
 2167 employee will not present a danger if employment or continued
 2168 employment is allowed.

2169 (b) The agency may consider as part of its deliberations
 2170 of the employee's rehabilitation the fact that the employee has,
 2171 subsequent to the conviction for the disqualifying offense for
 2172 which the exemption is being sought, been arrested for or
 2173 convicted of another crime, even if that crime is not a
 2174 disqualifying offense.

2175 (c) The decision of the head of an agency ~~licensing~~
 2176 ~~department~~ regarding an exemption may be contested through the
 2177 hearing procedures set forth in chapter 120. The standard of
 2178 review by the administrative law judge is whether the agency's
 2179 intended action is an abuse of discretion.

2180 (4) (a) Disqualification from employment under this chapter
 2181 ~~subsection (1)~~ may not be removed from, nor may an exemption be
 2182 granted to, any personnel who is found guilty of, regardless of
 2183 adjudication, or who has entered a plea of nolo contendere or
 2184 guilty to, any felony covered by s. 435.03 or s. 435.04 solely

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

2185 by reason of any pardon, executive clemency, or restoration of
 2186 civil rights.

2187 (b) Disqualification from employment under this chapter
 2188 may not be removed from, nor may an exemption be granted to, any
 2189 person who is a:

- 2190 1. Sexual predator as designated pursuant to s. 775.21;
- 2191 2. Career offender pursuant to s. 775.261; or
- 2192 3. Sexual offender pursuant to s. 943.0435, unless the
 2193 requirement to register as a sexual offender has been removed
 2194 pursuant to s. 943.04354.

2195 (5) Exemptions granted by one ~~licensing~~ agency shall be
 2196 considered by subsequent ~~licensing~~ agencies, but are not binding
 2197 on the subsequent ~~licensing~~ agency.

2198 Section 42. Section 435.08, Florida Statutes, is amended
 2199 to read:

2200 435.08 Payment for processing of fingerprints and state
 2201 criminal records checks. ~~Either~~ The employer or the employee is
 2202 responsible for paying the costs of screening. Payment shall be
 2203 submitted to the ~~Florida~~ Department of Law Enforcement with the
 2204 request for screening. The appropriate agency is responsible for
 2205 collecting and paying any fee related to fingerprints retained
 2206 on its behalf to the Department of Law Enforcement for costs
 2207 resulting from the fingerprint information retention services.
 2208 The amount of the annual fee and procedures for the submission
 2209 and retention of fingerprint information and for the
 2210 dissemination of search results shall be established by rule of
 2211 the Department of Law Enforcement.

2212 Section 43. Subsection (1) of section 464.203, Florida

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

2213 Statutes, is amended to read:

2214 464.203 Certified nursing assistants; certification
2215 requirement.—

2216 (1) The board shall issue a certificate to practice as a
2217 certified nursing assistant to any person who demonstrates a
2218 minimum competency to read and write and successfully passes the
2219 required background ~~Level I or Level II~~ screening pursuant to s.
2220 400.215 and meets one of the following requirements:

2221 (a) Has successfully completed an approved training
2222 program and achieved a minimum score, established by rule of the
2223 board, on the nursing assistant competency examination, which
2224 consists of a written portion and skills-demonstration portion
2225 approved by the board and administered at a site and by
2226 personnel approved by the department.

2227 (b) Has achieved a minimum score, established by rule of
2228 the board, on the nursing assistant competency examination,
2229 which consists of a written portion and skills-demonstration
2230 portion, approved by the board and administered at a site and by
2231 personnel approved by the department and:

- 2232 1. Has a high school diploma, or its equivalent; or
- 2233 2. Is at least 18 years of age.

2234 (c) Is currently certified in another state; is listed on
2235 that state's certified nursing assistant registry; and has not
2236 been found to have committed abuse, neglect, or exploitation in
2237 that state.

2238 (d) Has completed the curriculum developed under the
2239 Enterprise Florida Jobs and Education Partnership Grant and
2240 achieved a minimum score, established by rule of the board, on

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

2241 the nursing assistant competency examination, which consists of
 2242 a written portion and skills-demonstration portion, approved by
 2243 the board and administered at a site and by personnel approved
 2244 by the department.

2245 Section 44. Subsection (9) of section 489.115, Florida
 2246 Statutes, is amended to read:

2247 489.115 Certification and registration; endorsement;
 2248 reciprocity; renewals; continuing education.—

2249 (9) An initial applicant shall submit, along with the
 2250 application, a complete set of fingerprints to ~~in a form and~~
 2251 ~~manner required by~~ the department. The fingerprints shall be
 2252 submitted to the Department of Law Enforcement for state
 2253 processing, and the Department of Law Enforcement shall forward
 2254 them to the Federal Bureau of Investigation for national
 2255 processing for the purpose of determining if the applicant has a
 2256 criminal history record ~~conducting a level 2 background check~~
 2257 ~~pursuant to s. 435.04~~. The department shall and the board may
 2258 review the background results to determine if an applicant meets
 2259 licensure requirements. The cost for the fingerprint processing
 2260 shall be borne by the person subject to the background
 2261 screening. These fees are to be collected by the authorized
 2262 agencies or vendors. The authorized agencies or vendors are
 2263 responsible for paying the processing costs to the Department of
 2264 Law Enforcement.

2265 Section 45. Paragraphs (g) and (h) of subsection (2) of
 2266 section 943.05, Florida Statutes, are amended, and subsection
 2267 (4) is added to that section, to read:

2268 943.05 Criminal Justice Information Program; duties; crime

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

2269 reports.—

2270 (2) The program shall:

2271 (g) Upon official written request, and subject to the

2272 department having sufficient funds and equipment to participate

2273 in such request, from the agency executive director or

2274 secretary, or designee, or from qualified entities participating

2275 in the volunteer and employee criminal history screening system

2276 under s. 943.0542, or as otherwise required ~~As authorized by~~

2277 law, retain fingerprints submitted by criminal and noncriminal

2278 justice agencies to the department for a criminal history

2279 background screening as ~~in a manner~~ provided by rule and enter

2280 the fingerprints in the statewide automated fingerprint

2281 identification system authorized by paragraph (b). Such

2282 fingerprints shall thereafter be available for all purposes and

2283 uses authorized for arrest fingerprint submissions ~~cards~~ entered

2284 into the statewide automated fingerprint identification system

2285 pursuant to s. 943.051.

2286 (h) ~~1.~~ For each agency or qualified entity that officially

2287 requests retention of fingerprints or for which retention is

2288 otherwise required ~~As authorized by law,~~ search all arrest

2289 fingerprint submissions ~~cards~~ received under s. 943.051 against

2290 the fingerprints retained in the statewide automated fingerprint

2291 identification system under paragraph (g).

2292 1. Any arrest record that is identified with the retained

2293 fingerprints of a person subject to background screening as

2294 provided in paragraph (g) shall be reported to the appropriate

2295 agency or qualified entity.

2296 2. ~~To Agencies may~~ participate in this search process,

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

2297 agencies or qualified entities must notify each person
 2298 fingerprinted that his or her fingerprints will be retained, pay
 2299 ~~by payment of~~ an annual fee to the department, and inform by
 2300 ~~informing~~ the department of any change in the affiliation,
 2301 employment, or contractual status ~~or place of affiliation,~~
 2302 ~~employment, or contracting~~ of each person ~~the persons~~ whose
 2303 fingerprints are retained under paragraph (g) if such change
 2304 removes or eliminates the agency or qualified entity's basis or
 2305 need for receiving reports of any arrest of that person, so that
 2306 the agency or qualified entity is not obligated to pay the
 2307 upcoming annual fee for the retention and searching of that
 2308 person's fingerprints to the department. The department shall
 2309 adopt a rule setting the amount of the annual fee to be imposed
 2310 upon each participating agency or qualified entity for
 2311 performing these searches and establishing the procedures for
 2312 the retention of fingerprints and the dissemination of search
 2313 results. The fee may be borne by the agency, qualified entity,
 2314 or person subject to fingerprint retention or as otherwise
 2315 ~~provided by law. Fees may be waived or reduced by the executive~~
 2316 ~~director for good cause shown.~~ Consistent with the recognition
 2317 of criminal justice agencies expressed in s. 943.053(3), these
 2318 services shall ~~will~~ be provided to criminal justice agencies for
 2319 criminal justice purposes free of charge.

2320 3. Agencies that participate in the fingerprint retention
 2321 and search process may adopt rules to require employers to keep
 2322 the agency informed of any change in the affiliation,
 2323 employment, or contractual status of each person whose
 2324 fingerprints are retained under paragraph (g) if such change

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

2325 removes or eliminates the agency's basis or need for receiving
 2326 reports of any arrest of that person, so that the agency is not
 2327 obligated to pay the upcoming annual fee for the retention and
 2328 searching of that person's fingerprints to the department.

2329 (4) Upon notification that a federal fingerprint retention
 2330 program is in effect, and subject to the department being funded
 2331 and equipped to participate in such program, the department
 2332 shall, if state and national criminal history records checks and
 2333 retention of submitted prints are authorized or required by law,
 2334 retain the fingerprints as provided in paragraphs (2) (g) and (h)
 2335 and advise the Federal Bureau of Investigation to retain the
 2336 fingerprints at the national level for searching against arrest
 2337 fingerprint submissions received at the national level.

2338 Section 46. Subsections (6) and (11) of section 943.053,
 2339 Florida Statutes, are amended to read:

2340 943.053 Dissemination of criminal justice information;
 2341 fees.—

2342 (6) Notwithstanding any other provision of law, the
 2343 department shall provide to the ~~Florida~~ Department of Revenue
 2344 ~~Child Support Enforcement~~ access to Florida criminal records
 2345 that ~~which~~ are not exempt from disclosure under chapter 119, and
 2346 to such information as may be lawfully available from other
 2347 states via the National Law Enforcement Telecommunications
 2348 System, for the purpose of locating subjects who owe or
 2349 potentially owe support, as defined in s. 409.2554, or to whom
 2350 such obligation is owed pursuant to Title IV-D of the Social
 2351 Security Act. Such information may be provided to child support
 2352 enforcement authorities in other states for these specific

ENROLLED
 CS/HB 7069, Engrossed 2

2010 Legislature

2353 | purposes.

2354 | (11) A criminal justice agency that is authorized under

2355 | federal rules or law to conduct a criminal history background

2356 | check on an agency employee who is not certified by the Criminal

2357 | Justice Standards and Training Commission under s. 943.12 may

2358 | submit to the department the fingerprints of the noncertified

2359 | employee to obtain state and national criminal history

2360 | information. ~~Effective January 15, 2007,~~ The fingerprints

2361 | ~~submitted~~ shall be retained and entered in the statewide

2362 | automated fingerprint identification system authorized by s.

2363 | 943.05 and shall be available for all purposes and uses

2364 | authorized for arrest fingerprint submissions ~~cards~~ entered in

2365 | the statewide automated fingerprint identification system

2366 | pursuant to s. 943.051. The department shall search all arrest

2367 | fingerprint submissions ~~cards~~ received pursuant to s. 943.051

2368 | against the fingerprints retained in the statewide automated

2369 | fingerprint identification system pursuant to this section. In

2370 | addition to all purposes and uses authorized for arrest

2371 | fingerprint submissions ~~cards~~ for which submitted fingerprints

2372 | may be used, any arrest record that is identified with the

2373 | retained employee fingerprints must be reported to the

2374 | submitting employing agency.

2375 | Section 47. Paragraph (a) of subsection (2) of section

2376 | 984.01, Florida Statutes, is amended to read:

2377 | 984.01 Purposes and intent; personnel standards and

2378 | screening.—

2379 | (2) The Department of Juvenile Justice or the Department

2380 | of Children and Family Services, as appropriate, may contract

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

2381 with the Federal Government, other state departments and
 2382 agencies, county and municipal governments and agencies, public
 2383 and private agencies, and private individuals and corporations
 2384 in carrying out the purposes of, and the responsibilities
 2385 established in, this chapter.

2386 (a) If ~~When~~ the department of ~~Juvenile Justice or the~~
 2387 ~~Department of Children and Family Services~~ contracts with a
 2388 provider for any program for children, all personnel, including
 2389 owners, operators, employees, and volunteers, in the facility
 2390 must be of good moral character. Each contract entered into by
 2391 either department for services delivered on an appointment or
 2392 intermittent basis by a provider that does not have regular
 2393 custodial responsibility for children and each contract with a
 2394 school for before or aftercare services must ensure that the
 2395 owners, operators, and all personnel who have direct contact
 2396 with children are of good moral character. A volunteer who
 2397 assists on an intermittent basis for less than 10 ~~40~~ hours per
 2398 month need not be screened if a person who meets the screening
 2399 requirement of this section is always present and has the
 2400 volunteer in his or her line of sight ~~the volunteer is under~~
 2401 ~~direct and constant supervision by persons who meet the~~
 2402 ~~screening requirements.~~

2403 Section 48. Section 985.644, Florida Statutes, is amended
 2404 to read:

2405 985.644 Departmental contracting powers; personnel
 2406 standards and screening.—

2407 (1) The department of ~~Juvenile Justice or the Department~~
 2408 ~~of Children and Family Services, as appropriate,~~ may contract

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

2409 with the Federal Government, other state departments and
 2410 agencies, county and municipal governments and agencies, public
 2411 and private agencies, and private individuals and corporations
 2412 in carrying out the purposes of, and the responsibilities
 2413 established in, this chapter.

2414 (a) ~~When the Department of Juvenile Justice or the~~
 2415 ~~Department of Children and Family Services contracts with a~~
 2416 ~~provider for any program for children, all personnel, including~~
 2417 ~~owners, operators, employees, and volunteers, in the facility~~
 2418 ~~must be of good moral character.~~ Each contract entered into by
 2419 the either department for services delivered on an appointment
 2420 or intermittent basis by a provider that does not have regular
 2421 custodial responsibility for children and each contract with a
 2422 school for before or aftercare services must ensure that all the
 2423 owners, operators, and ~~all~~ personnel who have direct contact
 2424 with children are subject to level 2 background screening
 2425 pursuant to chapter 435 of good moral character.

2426 (b) A volunteer who assists the department or any program
 2427 for children on an intermittent basis for less than 10 ~~40~~ hours
 2428 per month need not be screened if a person who meets the
 2429 screening requirement of this section is always present and has
 2430 the volunteer in his or her line of sight ~~the volunteer is under~~
 2431 ~~direct and constant supervision by persons who meet the~~
 2432 ~~screening requirements.~~

2433 (b) ~~The Department of Juvenile Justice and the Department~~
 2434 ~~of Children and Family Services shall require employment~~
 2435 ~~screening pursuant to chapter 435, using the level 2 standards~~
 2436 ~~set forth in that chapter for personnel in programs for children~~

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

2437 ~~or youths.~~

2438 ~~(c) The Department of Juvenile Justice or the Department~~

2439 ~~of Children and Family Services may grant exemptions from~~

2440 ~~disqualification from working with children as provided in s.~~

2441 ~~435.07.~~

2442 ~~(2) The department may contract with the Federal~~

2443 ~~Government, other state departments and agencies, county and~~

2444 ~~municipal governments and agencies, public and private agencies,~~

2445 ~~and private individuals and corporations in carrying out the~~

2446 ~~purposes and the responsibilities of the delinquency services~~

2447 ~~and programs of the department.~~

2448 ~~(2)~~(3) The department shall adopt a rule pursuant to

2449 ~~chapter 120~~ establishing a procedure to provide notice of policy

2450 changes that affect contracted delinquency services and

2451 programs. A policy is defined as an operational requirement that

2452 applies to only the specified contracted delinquency service or

2453 program. The procedure must ~~shall~~ include:

2454 (a) Public notice of policy development.

2455 (b) Opportunity for public comment on the proposed policy.

2456 (c) Assessment for fiscal impact upon the department and

2457 providers.

2458 (d) The department's response to comments received.

2459 ~~(4) When the department contracts with a provider for any~~

2460 ~~delinquency service or program, all personnel, including all~~

2461 ~~owners, operators, employees, and volunteers in the facility or~~

2462 ~~providing the service or program shall be of good moral~~

2463 ~~character. A volunteer who assists on an intermittent basis for~~

2464 ~~less than 40 hours per month is not required to be screened if~~

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

2465 ~~the volunteer is under direct and constant supervision by~~
 2466 ~~persons who meet the screening requirements.~~

2467 (3)-(5) (a) All employees of the department and all
 2468 personnel of contract providers for any program for children,
 2469 including all owners, operators, employees, persons who have
 2470 access to confidential juvenile records, and volunteers, must
 2471 complete ~~For any person employed by the department, or by a~~
 2472 ~~provider under contract with the department, in delinquency~~
 2473 ~~facilities, services, or programs, the department shall require:~~

2474 1. A level 2 employment screening pursuant to chapter 435
 2475 before ~~prior to~~ employment. The security background
 2476 investigation conducted under this section must ensure that, in
 2477 addition to the disqualifying offenses listed in s. 435.04, no
 2478 person subject to the background screening provisions of this
 2479 section has an arrest awaiting final disposition for, been found
 2480 guilty of, regardless of adjudication, or entered a plea of nolo
 2481 contendere or guilty to, or been adjudicated delinquent and the
 2482 record has not been sealed or expunged for, any offense
 2483 prohibited under the following provisions of state law or
 2484 similar laws of another jurisdiction:

2485 a. Section 784.07, relating to assault or battery of law
 2486 enforcement officers, firefighters, emergency medical care
 2487 providers, public transit employees or agents, or other
 2488 specified officers.

2489 b. Section 817.568, relating to criminal use of personal
 2490 identification information.

2491 2. A national ~~federal~~ criminal records check by the
 2492 Federal Bureau of Investigation every 5 years following the date

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

2493 | of the person's employment.

2494 | (b) Except for law enforcement, correctional, and
 2495 | correctional probation officers, to whom s. 943.13(5) applies,
 2496 | the department shall electronically submit to the Department of
 2497 | Law Enforcement:

2498 | 1. Fingerprint information obtained during the employment
 2499 | screening required by subparagraph (a)1.

2500 | 2. ~~Beginning on December 15, 2005,~~ Fingerprint information
 2501 | for all persons employed by the department, or by a provider
 2502 | under contract with the department, in delinquency facilities,
 2503 | services, or programs if such fingerprint information has not
 2504 | previously been electronically submitted to the Department of
 2505 | Law Enforcement under this paragraph.

2506 | (c) All fingerprint information electronically submitted
 2507 | to the Department of Law Enforcement under paragraph (b) shall
 2508 | be retained by the Department of Law Enforcement and entered
 2509 | into the statewide automated fingerprint identification system
 2510 | authorized by s. 943.05(2)(b). Thereafter, such fingerprint
 2511 | information shall be available for all purposes and uses
 2512 | authorized for arrest fingerprint information entered into the
 2513 | statewide automated fingerprint identification system pursuant
 2514 | to s. 943.051 until the fingerprint information is removed
 2515 | pursuant to paragraph (e). The Department of Law Enforcement
 2516 | shall search all arrest fingerprint information received
 2517 | pursuant to s. 943.051 against the fingerprint information
 2518 | entered into the statewide automated fingerprint system pursuant
 2519 | to this subsection. Any arrest records identified as a result of
 2520 | the search shall be reported to the department in the manner and

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

2521 | timeframe established by the Department of Law Enforcement by
 2522 | rule.

2523 | (d) The department shall pay an annual fee to the
 2524 | Department of Law Enforcement for its costs resulting from the
 2525 | fingerprint information retention services required by this
 2526 | subsection. The amount of the annual fee and procedures for the
 2527 | submission and retention of fingerprint information and for the
 2528 | dissemination of search results shall be established by the
 2529 | Department of Law Enforcement by a rule that is applicable to
 2530 | the department individually pursuant to this subsection or that
 2531 | is applicable to the department and other employing agencies
 2532 | pursuant to rulemaking authority otherwise provided by law.

2533 | (e) The department shall notify the Department of Law
 2534 | Enforcement when a person whose fingerprint information is
 2535 | retained by the Department of Law Enforcement under this
 2536 | subsection is no longer employed by the department, or by a
 2537 | provider under contract with the department, in a delinquency
 2538 | facility, service, or program. This notice shall be provided by
 2539 | the department to the Department of Law Enforcement within ~~no~~
 2540 | ~~later than~~ 6 months after the date of the change in the person's
 2541 | employment status. Fingerprint information for persons
 2542 | identified by the department in the notice shall be removed from
 2543 | the statewide automated fingerprint system.

2544 | (6) The department may grant exemptions from
 2545 | disqualification from working with children as provided in s.
 2546 | 435.07.

2547 | (7) The department may adopt rules to describe the
 2548 | procedure and requirements necessary to administer the

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

2549 employment screening and fingerprint retention services for all
 2550 employees of the department and all personnel of contract
 2551 providers for any program for children, including all owners,
 2552 operators, employees, and volunteers, including the collection
 2553 of associated fees.

2554 Section 49. Paragraph (a) of subsection (1) of section
 2555 381.60225, Florida Statutes, is amended to read:

2556 381.60225 Background screening.—

2557 (1) Each applicant for certification must comply with the
 2558 following requirements:

2559 (a) Upon receipt of a completed, signed, and dated
 2560 application, the Agency for Health Care Administration shall
 2561 require background screening, in accordance with the level 2
 2562 standards for screening set forth in chapter 435, of the
 2563 managing employee, or other similarly titled individual
 2564 responsible for the daily operation of the organization, agency,
 2565 or entity, and financial officer, or other similarly titled
 2566 individual who is responsible for the financial operation of the
 2567 organization, agency, or entity, including billings for
 2568 services. The applicant must comply with the procedures for
 2569 level 2 background screening as set forth in chapter 435, ~~as~~
 2570 ~~well as the requirements of s. 435.03(3).~~

2571 Section 50. Subsection (32) of section 409.912, Florida
 2572 Statutes, is amended to read:

2573 409.912 Cost-effective purchasing of health care.—The
 2574 agency shall purchase goods and services for Medicaid recipients
 2575 in the most cost-effective manner consistent with the delivery
 2576 of quality medical care. To ensure that medical services are

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

2577 | effectively utilized, the agency may, in any case, require a
2578 | confirmation or second physician's opinion of the correct
2579 | diagnosis for purposes of authorizing future services under the
2580 | Medicaid program. This section does not restrict access to
2581 | emergency services or poststabilization care services as defined
2582 | in 42 C.F.R. part 438.114. Such confirmation or second opinion
2583 | shall be rendered in a manner approved by the agency. The agency
2584 | shall maximize the use of prepaid per capita and prepaid
2585 | aggregate fixed-sum basis services when appropriate and other
2586 | alternative service delivery and reimbursement methodologies,
2587 | including competitive bidding pursuant to s. 287.057, designed
2588 | to facilitate the cost-effective purchase of a case-managed
2589 | continuum of care. The agency shall also require providers to
2590 | minimize the exposure of recipients to the need for acute
2591 | inpatient, custodial, and other institutional care and the
2592 | inappropriate or unnecessary use of high-cost services. The
2593 | agency shall contract with a vendor to monitor and evaluate the
2594 | clinical practice patterns of providers in order to identify
2595 | trends that are outside the normal practice patterns of a
2596 | provider's professional peers or the national guidelines of a
2597 | provider's professional association. The vendor must be able to
2598 | provide information and counseling to a provider whose practice
2599 | patterns are outside the norms, in consultation with the agency,
2600 | to improve patient care and reduce inappropriate utilization.
2601 | The agency may mandate prior authorization, drug therapy
2602 | management, or disease management participation for certain
2603 | populations of Medicaid beneficiaries, certain drug classes, or
2604 | particular drugs to prevent fraud, abuse, overuse, and possible

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

2605 | dangerous drug interactions. The Pharmaceutical and Therapeutics
2606 | Committee shall make recommendations to the agency on drugs for
2607 | which prior authorization is required. The agency shall inform
2608 | the Pharmaceutical and Therapeutics Committee of its decisions
2609 | regarding drugs subject to prior authorization. The agency is
2610 | authorized to limit the entities it contracts with or enrolls as
2611 | Medicaid providers by developing a provider network through
2612 | provider credentialing. The agency may competitively bid single-
2613 | source-provider contracts if procurement of goods or services
2614 | results in demonstrated cost savings to the state without
2615 | limiting access to care. The agency may limit its network based
2616 | on the assessment of beneficiary access to care, provider
2617 | availability, provider quality standards, time and distance
2618 | standards for access to care, the cultural competence of the
2619 | provider network, demographic characteristics of Medicaid
2620 | beneficiaries, practice and provider-to-beneficiary standards,
2621 | appointment wait times, beneficiary use of services, provider
2622 | turnover, provider profiling, provider licensure history,
2623 | previous program integrity investigations and findings, peer
2624 | review, provider Medicaid policy and billing compliance records,
2625 | clinical and medical record audits, and other factors. Providers
2626 | shall not be entitled to enrollment in the Medicaid provider
2627 | network. The agency shall determine instances in which allowing
2628 | Medicaid beneficiaries to purchase durable medical equipment and
2629 | other goods is less expensive to the Medicaid program than long-
2630 | term rental of the equipment or goods. The agency may establish
2631 | rules to facilitate purchases in lieu of long-term rentals in
2632 | order to protect against fraud and abuse in the Medicaid program

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

2633 as defined in s. 409.913. The agency may seek federal waivers
 2634 necessary to administer these policies.

2635 (32) Each managed care plan that is under contract with
 2636 the agency to provide health care services to Medicaid
 2637 recipients shall annually conduct a background check with the
 2638 ~~Florida~~ Department of Law Enforcement of all persons with
 2639 ownership interest of 5 percent or more or executive management
 2640 responsibility for the managed care plan and shall submit to the
 2641 agency information concerning any such person who has been found
 2642 guilty of, regardless of adjudication, or has entered a plea of
 2643 nolo contendere or guilty to, any of the offenses listed in s.
 2644 435.04 ~~435.03~~.

2645 Section 51. Paragraph (e) of subsection (1) of section
 2646 464.018, Florida Statutes, is amended to read:

2647 464.018 Disciplinary actions.—

2648 (1) The following acts constitute grounds for denial of a
 2649 license or disciplinary action, as specified in s. 456.072(2):

2650 (e) Having been found guilty of, regardless of
 2651 adjudication, or entered a plea of nolo contendere or guilty to,
 2652 any offense prohibited under s. 435.04 ~~435.03~~ or ~~under any~~
 2653 similar statute of another jurisdiction; or having committed an
 2654 act which constitutes domestic violence as defined in s. 741.28.

2655 Section 52. Paragraph (m) of subsection (1) of section
 2656 468.3101, Florida Statutes, is amended to read:

2657 468.3101 Disciplinary grounds and actions.—

2658 (1) The department may make or require to be made any
 2659 investigations, inspections, evaluations, and tests, and require
 2660 the submission of any documents and statements, which it

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

2661 | considers necessary to determine whether a violation of this
 2662 | part has occurred. The following acts shall be grounds for
 2663 | disciplinary action as set forth in this section:

2664 | (m) Having been found guilty of, regardless of
 2665 | adjudication, or pleading guilty or nolo contendere to, any
 2666 | offense prohibited under s. 435.04 ~~435.03~~ or ~~under any~~ similar
 2667 | statute of another jurisdiction.

2668 | Section 53. Subsection (3) of section 744.309, Florida
 2669 | Statutes, is amended to read:

2670 | 744.309 Who may be appointed guardian of a resident ward.—

2671 | (3) DISQUALIFIED PERSONS.—No person who has been convicted
 2672 | of a felony or who, from any incapacity or illness, is incapable
 2673 | of discharging the duties of a guardian, or who is otherwise
 2674 | unsuitable to perform the duties of a guardian, shall be
 2675 | appointed to act as guardian. Further, no person who has been
 2676 | judicially determined to have committed abuse, abandonment, or
 2677 | neglect against a child as defined in s. 39.01 or s. 984.03(1),
 2678 | (2), and (37), or who has been found guilty of, regardless of
 2679 | adjudication, or entered a plea of nolo contendere or guilty to,
 2680 | any offense prohibited under s. 435.04 ~~435.03~~ or ~~under any~~
 2681 | similar statute of another jurisdiction, shall be appointed to
 2682 | act as a guardian. Except as provided in subsection (5) or
 2683 | subsection (6), a person who provides substantial services to
 2684 | the proposed ward in a professional or business capacity, or a
 2685 | creditor of the proposed ward, may not be appointed guardian and
 2686 | retain that previous professional or business relationship. A
 2687 | person may not be appointed a guardian if he or she is in the
 2688 | employ of any person, agency, government, or corporation that

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

2689 provides service to the proposed ward in a professional or
 2690 business capacity, except that a person so employed may be
 2691 appointed if he or she is the spouse, adult child, parent, or
 2692 sibling of the proposed ward or the court determines that the
 2693 potential conflict of interest is insubstantial and that the
 2694 appointment would clearly be in the proposed ward's best
 2695 interest. The court may not appoint a guardian in any other
 2696 circumstance in which a conflict of interest may occur.

2697 Section 54. Subsection (12) of section 744.474, Florida
 2698 Statutes, is amended to read:

2699 744.474 Reasons for removal of guardian.—A guardian may be
 2700 removed for any of the following reasons, and the removal shall
 2701 be in addition to any other penalties prescribed by law:

2702 (12) Having been found guilty of, regardless of
 2703 adjudication, or entered a plea of nolo contendere or guilty to,
 2704 any offense prohibited under s. 435.04 ~~435.03~~ or ~~under any~~
 2705 similar statute of another jurisdiction.

2706 Section 55. Paragraph (a) of subsection (6) of section
 2707 985.04, Florida Statutes, is amended to read:

2708 985.04 Oaths; records; confidential information.—

2709 (6) (a) Records maintained by the department, including
 2710 copies of records maintained by the court, which pertain to a
 2711 child found to have committed a delinquent act which, if
 2712 committed by an adult, would be a crime specified in s. 985.04
 2713 ~~435.03~~ and 435.04 may not be destroyed under this section for a
 2714 ~~period of~~ 25 years after the youth's final referral to the
 2715 department, except in cases of the death of the child. Such
 2716 records, however, shall be sealed by the court for use only in

ENROLLED

CS/HB 7069, Engrossed 2

2010 Legislature

2717 meeting the screening requirements for personnel in s. 402.3055
 2718 and the other sections cited above, or under departmental rule;
 2719 however, current criminal history information must be obtained
 2720 from the Department of Law Enforcement in accordance with s.
 2721 943.053. The information shall be released to those persons
 2722 specified in the above cited sections for the purposes of
 2723 complying with those sections. The court may punish by contempt
 2724 any person who releases or uses the records for any unauthorized
 2725 purpose.

2726 Section 56. Section 409.1758, Florida Statutes, is
 2727 repealed.

2728 Section 57. Paragraph (d) of subsection (4) of section
 2729 456.039, Florida Statutes, is repealed.

2730 Section 58. The changes made by this act are intended to
 2731 be prospective in nature. It is not intended that persons who
 2732 are employed or licensed on the effective date of this act be
 2733 rescreened until such time as they are otherwise required to be
 2734 rescreened pursuant to law, at which time they must meet the
 2735 requirements for screening as set forth in this act.

2736 Section 59. This act shall take effect August 1, 2010.