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1 A bill to be entitled
2 An act relating to background screening; amending s.
3 394.4572, F.S.; providing that mental health personnel
4 working in a facility licensed under ch. 395, F.S.,
5 who work on an intermittent basis for less than 15
6 hours per week of direct, face-to-face contact with
7 patients are exempt from the fingerprinting and
8 screening requirements; providing an exception;
9 amending s. 409.1757, F.S.; adding law enforcement
10 officers who have a good moral character to the list
11 of professionals who are not required to be
12 refingerprinted or rescreened; amending s. 430.0402,
13 F.S.; including volunteers within the definition of
14 the term "direct service provider" for purposes of
15 required background screening; exempting a volunteer
16 who meets certain criteria and a client's relative or
17 spouse from the screening requirement; excepting
18 certain licensed professionals and persons screened as
19 a licensure requirement from further screening under
20 certain circumstances; requiring direct service
21 providers working as of a certain date to be screened
22 within a specified period; providing a phase-in for
23 screening direct service providers; requiring that
24 employers of direct service providers and certain
25 other individuals be rescreened every 5 years unless
26 fingerprints are retained electronically by the
27 Department of Law Enforcement; removing an offense
28 from the list of disqualifying offenses for purposes
29 of background screening; amending s. 435.04, F.S.;

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

56
57 Be It Enacted by the Legislature of the State of Florida:
58

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59 Section 1. Paragraph (d) is added to subsection (1) of
60 section 394.4572, Florida Statutes, to read:

61 394.4572 Screening of mental health personnel.—

62 (1)

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

71 Section 2. Section 409.1757, Florida Statutes, is amended
72 to read:

73 409.1757 Persons not required to be refingerprinted or
74 rescreened.—Any provision of law to the contrary
75 notwithstanding, human resource personnel who have been
76 fingerprinted or screened pursuant to chapters 393, 394, 397,
77 402, and this chapter, ~~and~~ teachers who have been fingerprinted
78 pursuant to chapter 1012, and law enforcement officers who meet
79 the requirements of s. 943.13, who have not been unemployed for
80 more than 90 days thereafter, and who under the penalty of
81 perjury attest to the completion of such fingerprinting or
82 screening and to compliance with ~~the provisions of~~ this section
83 and the standards for good moral character as contained in such
84 provisions as ss. 110.1127(3), 393.0655(1), 394.457(6), 397.451,
85 402.305(2), ~~and~~ 409.175(6), and 943.13(7), are shall not be
86 required to be refingerprinted or rescreened in order to comply
87 with any caretaker screening or fingerprinting requirements.

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88 Section 3. Section 430.0402, Florida Statutes, is amended
89 to read:

90 430.0402 Screening of direct service providers.-

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

96 (b) For purposes of this section, the term "direct service
97 provider" means a person 18 years of age or older, including a
98 volunteer, who, pursuant to a program to provide services to the
99 elderly, has direct, face-to-face contact with a client while
100 providing services to the client and ~~or~~ has access to the
101 client's living areas or to the client's funds or personal
102 property. The term does not include ~~includes coordinators,~~
103 ~~managers, and supervisors of residential facilities and~~
104 volunteers who assist on an intermittent basis for less than 20
105 hours of direct, face-to-face contact with a client per month,
106 individuals who are related by blood to the client, or the
107 client's spouse.

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

113 (3) Individuals qualified for employment by the Agency for
114 Health Care Administration pursuant to the agency's background
115 screening standards for licensure or employment contained in s.
116 408.809 are not subject to subsequent or additional Level 2

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117 screening pursuant to chapter 435, or to the unique screening
118 requirements of this section, by virtue of their employment as a
119 direct service provider if they are providing a service that is
120 within the scope of their licensed practice.

121 (4)~~(3)~~ Refusal on the part of an employer to dismiss a
122 manager, supervisor, or direct service provider who has been
123 found to be in noncompliance with standards of this section
124 shall result in the automatic denial, termination, or revocation
125 of the license or certification, rate agreement, purchase order,
126 or contract, in addition to any other remedies authorized by
127 law.

128 (5) Individuals serving as direct service providers on July
129 31, 2010, must be screened by July 1, 2012. The department may
130 adopt rules to establish a schedule to stagger the
131 implementation of the required screening over a 1-year period,
132 beginning July 1, 2011, through July 1, 2012.

133 (6) An employer of a direct service provider who previously
134 qualified for employment or volunteer work under Level 1
135 screening standards or an individual who is required to be
136 screened according to the Level 2 screening standards contained
137 in chapter 435, pursuant to this section, shall be rescreened
138 every 5 years following the date of his or her last background
139 screening or exemption, unless such individual's fingerprints
140 are continuously retained and monitored by the Department of Law
141 Enforcement in the federal fingerprint retention program
142 according to the procedures specified in s. 943.05.

143 (7)~~(4)~~ The background screening conducted pursuant to this
144 section must ensure that, in addition to the disqualifying
145 offenses listed in s. 435.04, no person subject to the

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146 provisions of this section has an arrest awaiting final
147 disposition for, has been found guilty of, regardless of
148 adjudication, or entered a plea of nolo contendere or guilty to,
149 or has been adjudicated delinquent and the record has not been
150 sealed or expunged for, any offense prohibited under any of the
151 following provisions of state law or similar law of another
152 jurisdiction:

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

154 (a)~~(b)~~ Section 409.920, relating to Medicaid provider
155 fraud.

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

157 (c)~~(d)~~ Section 817.034, relating to fraudulent acts through
158 mail, wire, radio, electromagnetic, photoelectronic, or
159 photooptical systems.

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

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

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

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

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

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

170 (j)~~(k)~~ Section 831.02, relating to uttering forged
171 instruments.

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

174 (l)~~(m)~~ Section 831.09, relating to uttering forged bank

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175 bills, checks, drafts, or promissory notes.

176 Section 4. Paragraph (e) is added to subsection (1) of
177 section 435.04, Florida Statutes, and subsection (4) is added to
178 that section, to read:

179 435.04 Level 2 screening standards.—

180 (1)

181 (e) Vendors who submit fingerprints on behalf of employers
182 must:

183 1. Use technology that is compliant with systems used by
184 the Department of Law Enforcement; and

185 2. Have the ability to communicate electronically with the
186 state agency accepting screening results from the Department of
187 Law Enforcement.

188 (4) Fingerprints required for screening under this section
189 shall be retained for any person who is screened on or after
190 July 1, 2013.

191 Section 5. Paragraph (d) is added to subsection (2) of
192 section 435.06, Florida Statutes, to read:

193 435.06 Exclusion from employment.—

194 (2)

195 (d) An employer may hire an employee to a position that
196 requires background screening before the employee completes the
197 screening process for training and orientation purposes.

198 However, the employee may not have direct contact with
199 vulnerable persons until the screening process is completed and
200 the employee demonstrates that he or she exhibits no behaviors
201 that warrant the denial or termination of employment.

202 Section 6. Subsection (6) is added to section 435.07,
203 Florida Statutes, to read:

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204 435.07 Exemptions from disqualification.—Unless otherwise
205 provided by law, the provisions of this section apply to
206 exemptions from disqualification for disqualifying offenses
207 revealed pursuant to background screenings required under this
208 chapter, regardless of whether those disqualifying offenses are
209 listed in this chapter or other laws.

210 (6) Personnel of a qualified entity as described in s.
211 943.0542, who are required to be screened pursuant to s. 435.04,
212 may apply for an exemption pursuant to this chapter.

213 Section 7. Section 408.809, Florida Statutes, is amended to
214 read:

215 408.809 Background screening; prohibited offenses.—

216 (1) Level 2 background screening pursuant to chapter 435
217 must be conducted through the agency on each of the following
218 persons, who are considered employees for the purposes of
219 conducting screening under chapter 435:

220 (a) The licensee, if an individual.

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

223 (c) The financial officer or similarly titled individual
224 who is responsible for the financial operation of the licensee
225 or provider.

226 (d) Any person who is a controlling interest if the agency
227 has reason to believe that such person has been convicted of any
228 offense prohibited by s. 435.04. For each controlling interest
229 who has been convicted of any such offense, the licensee shall
230 submit to the agency a description and explanation of the
231 conviction at the time of license application.

232 (e) Any person, as required by authorizing statutes,

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233 seeking employment with a licensee or provider who is expected
234 to, or whose responsibilities may require him or her to, provide
235 personal care or services directly to clients or have access to
236 client funds, personal property, or living areas; and any
237 person, as required by authorizing statutes, contracting with a
238 licensee or provider whose responsibilities require him or her
239 to provide personal care or personal services directly to
240 clients. Evidence of contractor screening may be retained by the
241 contractor's employer or the licensee.

242 (2) Every 5 years following his or her licensure,
243 employment, or entry into a contract in a capacity that under
244 subsection (1) would require level 2 background screening under
245 chapter 435, each such person must submit to level 2 background
246 rescreening as a condition of retaining such license or
247 continuing in such employment or contractual status. For any
248 such rescreening, the agency shall request the Department of Law
249 Enforcement to forward the person's fingerprints to the Federal
250 Bureau of Investigation for a national criminal history record
251 check. If the fingerprints of such a person are not retained by
252 the Department of Law Enforcement under s. 943.05(2)(g), the
253 person must file a complete set of fingerprints with the agency
254 and the agency shall forward the fingerprints to the Department
255 of Law Enforcement for state processing, and the Department of
256 Law Enforcement shall forward the fingerprints to the Federal
257 Bureau of Investigation for a national criminal history record
258 check. The fingerprints may be retained by the Department of Law
259 Enforcement under s. 943.05(2)(g). The cost of the state and
260 national criminal history records checks required by level 2
261 screening may be borne by the licensee or the person

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262 fingerprinted. Proof of compliance with level 2 screening
263 standards submitted within the previous 5 years to meet any
264 provider or professional licensure requirements of the agency,
265 the Department of Health, the Agency for Persons with
266 Disabilities, the Department of Children and Family Services, or
267 the Department of Financial Services for an applicant for a
268 certificate of authority or provisional certificate of authority
269 to operate a continuing care retirement community under chapter
270 651 satisfies the requirements of this section if the person
271 subject to screening has not been unemployed for more than 90
272 days and such proof is accompanied, under penalty of perjury, by
273 an affidavit of compliance with the provisions of chapter 435
274 and this section using forms provided by the agency.

275 (3) All fingerprints must be provided in electronic format.
276 Screening results shall be reviewed by the agency with respect
277 to the offenses specified in s. 435.04 and this section, and the
278 qualifying or disqualifying status of the person named in the
279 request shall be maintained in a database. The qualifying or
280 disqualifying status of the person named in the request shall be
281 posted on a secure website for retrieval by the licensee or
282 designated agent on the licensee's behalf.

283 (4) In addition to the offenses listed in s. 435.04, all
284 persons required to undergo background screening pursuant to
285 this part or authorizing statutes must not have an arrest
286 awaiting final disposition for, must not have been found guilty
287 of, regardless of adjudication, or entered a plea of nolo
288 contendere or guilty to, and must not have been adjudicated
289 delinquent and the record not have been sealed or expunged for
290 any of the following offenses or any similar offense of another

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291 jurisdiction:

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

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

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

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

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

297 (f) Section 817.034, relating to fraudulent acts through
298 mail, wire, radio, electromagnetic, photoelectronic, or
299 photooptical systems.

300 (g) Section 817.234, relating to false and fraudulent
301 insurance claims.

302 (h) Section 817.505, relating to patient brokering.

303 (i) Section 817.568, relating to criminal use of personal
304 identification information.

305 (j) Section 817.60, relating to obtaining a credit card
306 through fraudulent means.

307 (k) Section 817.61, relating to fraudulent use of credit
308 cards, if the offense was a felony.

309 (l) Section 831.01, relating to forgery.

310 (m) Section 831.02, relating to uttering forged
311 instruments.

312 (n) Section 831.07, relating to forging bank bills, checks,
313 drafts, or promissory notes.

314 (o) Section 831.09, relating to uttering forged bank bills,
315 checks, drafts, or promissory notes.

316 (p) Section 831.30, relating to fraud in obtaining
317 medicinal drugs.

318 (q) Section 831.31, relating to the sale, manufacture,
319 delivery, or possession with the intent to sell, manufacture, or

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320 deliver any counterfeit controlled substance, if the offense was
321 a felony.

322 (5) A person who serves as a controlling interest of, is
323 employed by, or contracts with a licensee on July 31, 2010, who
324 has been screened and qualified according to standards specified
325 in s. 435.03 or s. 435.04 must be rescreened by July 31, 2015 in
326 compliance with the following schedule. ~~The agency may adopt~~
327 rules to establish a schedule to stagger the implementation of
328 the required rescreening over the 5-year period, beginning July
329 31, 2010, through July 31, 2015. If, upon rescreening, such
330 person has a disqualifying offense that was not a disqualifying
331 offense at the time of the last screening, but is a current
332 disqualifying offense and was committed before the last
333 screening, he or she may apply for an exemption from the
334 appropriate licensing agency and, if agreed to by the employer,
335 may continue to perform his or her duties until the licensing
336 agency renders a decision on the application for exemption if
337 the person is eligible to apply for an exemption and the
338 exemption request is received by the agency within 30 days after
339 receipt of the rescreening results by the person. The
340 rescreening schedule shall be:

341 (a) Individuals for whom the last screening was conducted
342 on or before December 31, 2003, must be rescreened by July 31,
343 2013.

344 (b) Individuals for whom the last screening conducted was
345 between January 1, 2004, and December 31, 2007, must be
346 rescreened by July 31, 2014.

347 (c) Individuals for whom the last screening conducted was
348 between January 1, 2008, through July 31, 2010, must be

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349 rescreened by July 31, 2015.

350 (6)~~(5)~~ The costs associated with obtaining the required
351 screening must be borne by the licensee or the person subject to
352 screening. Licensees may reimburse persons for these costs. The
353 Department of Law Enforcement shall charge the agency for
354 screening pursuant to s. 943.053(3). The agency shall establish
355 a schedule of fees to cover the costs of screening.

356 (7)~~(6)~~(a) As provided in chapter 435, the agency may grant
357 an exemption from disqualification to a person who is subject to
358 this section and who:

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

361 2. Has an active professional license or certification from
362 the Department of Health but is not providing a service within
363 the scope of that license or certification.

364 (b) As provided in chapter 435, the appropriate regulatory
365 board within the Department of Health, or the department itself
366 if there is no board, may grant an exemption from
367 disqualification to a person who is subject to this section and
368 who has received a professional license or certification from
369 the Department of Health or a regulatory board within that
370 department and that person is providing a service within the
371 scope of his or her licensed or certified practice.

372 (8)~~(7)~~ The agency and the Department of Health may adopt
373 rules pursuant to ss. 120.536(1) and 120.54 to implement this
374 section, chapter 435, and authorizing statutes requiring
375 background screening and to implement and adopt criteria
376 relating to retaining fingerprints pursuant to s. 943.05(2).

377 (9)~~(8)~~ There is no unemployment compensation or other

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378 monetary liability on the part of, and no cause of action for
379 damages arising against, an employer that, upon notice of a
380 disqualifying offense listed under chapter 435 or this section,
381 terminates the person against whom the report was issued,
382 whether or not that person has filed for an exemption with the
383 Department of Health or the agency.

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

386 464.203 Certified nursing assistants; certification
387 requirement.—

388 (1) The board shall issue a certificate to practice as a
389 certified nursing assistant to any person who demonstrates a
390 minimum competency to read and write and successfully passes the
391 required background screening pursuant to s. 400.215. If the
392 person has successfully passed the required background screening
393 pursuant to s. 400.215 or s. 408.809 within 90 days before
394 applying for a certificate to practice, the board shall waive
395 the requirement that the applicant successfully pass an
396 additional background screening pursuant to s. 400.215. The
397 person must also meet ~~and meets~~ one of the following
398 requirements:

399 (a) Has successfully completed an approved training program
400 and achieved a minimum score, established by rule of the board,
401 on the nursing assistant competency examination, which consists
402 of a written portion and skills-demonstration portion approved
403 by the board and administered at a site and by personnel
404 approved by the department.

405 (b) Has achieved a minimum score, established by rule of
406 the board, on the nursing assistant competency examination,

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407 which consists of a written portion and skills-demonstration
408 portion, approved by the board and administered at a site and by
409 personnel approved by the department and:

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

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

416 (d) Has completed the curriculum developed under the
417 Enterprise Florida Jobs and Education Partnership Grant and
418 achieved a minimum score, established by rule of the board, on
419 the nursing assistant competency examination, which consists of
420 a written portion and skills-demonstration portion, approved by
421 the board and administered at a site and by personnel approved
422 by the department.

423 Section 9. The Department of Children and Family Services,
424 the Agency for Health Care Administration, the Department of
425 Elderly Affairs, the Department of Health, the Agency for
426 Persons with Disabilities, the Department of Juvenile Justice,
427 and the Department of Law Enforcement shall create a statewide
428 interagency background screening workgroup for the purpose of
429 developing a work plan for implementing a statewide system for
430 streamlining background screening processes and sharing
431 background screening information.

432 (1) The interagency workgroup shall be coordinated through
433 the Agency for Health Care Administration and shall include
434 representatives from each of the state agencies required to
435 create the workgroup.

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436 (2) The interagency workgroup shall submit a work plan for
437 implementing a streamlined background screening system to the
438 President of the Senate and the Speaker of the House of
439 Representatives by November 1, 2011.

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

442 (a) The feasibility of creating a single statewide database
443 that is accessible by all agencies participating on the
444 workgroup.

445 (b) The feasibility of collocating or consolidating current
446 screening processes.

447 (c) Standardized screening criteria.

448 (d) Consistent criminal history information.

449 (e) Centralized exemptions.

450 (f) State and national retention of prints.

451 (g) National rescreens.

452 (h) Responsibility for retained prints and resubmission.

453 (i) Access to information.

454 (j) Fees.

455 (k) Screening turnaround time.

456 (l) The need for cooperative agreements among agencies that
457 may access information.

458 (m) Legal considerations and the need for legislative
459 action necessary for accessing information by participating
460 agencies.

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

463 (o) The organizational level at which information may be
464 accessed and shared.

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465 (p) The specific information to be maintained and shared
466 through the system.

467 (q) Registration of employee information regarding the
468 employment status of persons screened, including date of hire
469 and date of separation, to facilitate notifications of arrests
470 and dispositions to the appropriate provider.

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

473 Section 10. This act shall take effect July 1, 2011.