

HB 7233

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1 A bill to be entitled
2 An act relating to background screening; amending s.
3 430.0402, F.S.; revising the definition of the term
4 "direct service provider" for purposes of required
5 background screening; exempting a volunteer who meets
6 certain criteria and a client's relative or spouse from
7 the screening requirement; exempting persons screened as a
8 licensure requirement from further screening under certain
9 circumstances; requiring direct service providers working
10 as of a certain date to be screened within a specified
11 period; providing a phase-in for screening direct service
12 providers; providing rulemaking authority to the
13 Department of Elderly Affairs to implement the phase-in;
14 requiring that employers of direct service providers and
15 certain other individuals be rescreened every 5 years
16 unless fingerprints are retained electronically by the
17 Department of Law Enforcement; removing an offense from
18 the list of disqualifying offenses for purposes of
19 background screening; amending s. 464.203, F.S.; requiring
20 the Board of Nursing to waive background screening
21 requirements for certain certified nursing assistants;
22 providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Section 430.0402, Florida Statutes, is amended
27 to read:

28 430.0402 Screening of direct service providers.—

29 (1) (a) Level 2 background screening pursuant to chapter
 30 435 is required for direct service providers. Background
 31 screening includes employment history checks as provided in s.
 32 435.03(1) and local criminal records checks through local law
 33 enforcement agencies.

34 (b) For purposes of this section, the term "direct service
 35 provider" means a person 18 years of age or older, including a
 36 volunteer, who, pursuant to a program to provide services to the
 37 elderly, has direct, face-to-face contact with a client while
 38 providing services to the client and ~~or~~ has access to the
 39 client's living areas or to the client's funds or personal
 40 property. The term does not include a volunteer who assists on
 41 an intermittent basis for less than 20 hours per month of
 42 direct, face-to-face contact with a client, an individual who is
 43 related by blood to a client, or a client's spouse ~~includes~~
 44 ~~coordinators, managers, and supervisors of residential~~
 45 ~~facilities and volunteers.~~

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

50 (3) Individuals qualified for employment by the Agency for
 51 Health Care Administration pursuant to the agency's background
 52 screening standards for licensure or employment contained in s.
 53 408.809 are not subject to subsequent or additional level 2
 54 screening pursuant to chapter 435, or to the unique screening
 55 requirements of this section, by virtue of their employment as
 56 direct service providers if they are providing a service that is

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57 within the scope of their licensed practice.

58 ~~(4)(3)~~ Refusal on the part of an employer to dismiss a
59 manager, supervisor, or direct service provider who has been
60 found to be in noncompliance with standards of this section
61 shall result in the automatic denial, termination, or revocation
62 of the license or certification, rate agreement, purchase order,
63 or contract, in addition to any other remedies authorized by
64 law.

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

70 (6) An employer of a direct service provider who
71 previously qualified for employment or volunteer work under
72 level 1 screening standards or an individual who is required to
73 be screened according to level 2 screening standards contained
74 in chapter 435, pursuant to this section, shall be rescreened
75 every 5 years following the date of his or her last background
76 screening or exemption, unless such individual's fingerprints
77 are continuously retained and monitored by the Department of Law
78 Enforcement in the federal fingerprint retention program
79 according to the procedures specified in s. 943.05.

80 ~~(7)(4)~~ The background screening conducted pursuant to this
81 section must ensure that, in addition to the disqualifying
82 offenses listed in s. 435.04, no person subject to the
83 provisions of this section has an arrest awaiting final
84 disposition for, has been found guilty of, regardless of

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85 adjudication, or entered a plea of nolo contendere or guilty to,
86 or has been adjudicated delinquent and the record has not been
87 sealed or expunged for, any offense prohibited under any of the
88 following provisions of state law or similar law of another
89 jurisdiction:

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

91 (a)~~(b)~~ Section 409.920, relating to Medicaid provider
92 fraud.

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

94 (c)~~(d)~~ Section 817.034, relating to fraudulent acts
95 through mail, wire, radio, electromagnetic, photoelectronic, or
96 photooptical systems.

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

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

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

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

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

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

107 (j)~~(k)~~ Section 831.02, relating to uttering forged
108 instruments.

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

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

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113 Section 2. Subsection (1) of section 464.203, Florida
114 Statutes, is amended to read:

115 464.203 Certified nursing assistants; certification
116 requirement.—

117 (1) The board shall issue a certificate to practice as a
118 certified nursing assistant to any person who demonstrates a
119 minimum competency to read and write and successfully passes the
120 required background screening pursuant to s. 400.215. If the
121 person has successfully passed the required background screening
122 pursuant to s. 400.215 or s. 408.809 within 90 days before the
123 application for a certificate to practice, the board shall waive
124 the requirement that the applicant successfully pass an
125 additional background screening pursuant to s. 400.215. The
126 person must also meet ~~and meets~~ one of the following
127 requirements:

128 (a) Has successfully completed an approved training
129 program and achieved a minimum score, established by rule of the
130 board, on the nursing assistant competency examination, which
131 consists of a written portion and skills-demonstration portion
132 approved by the board and administered at a site and by
133 personnel approved by the department.

134 (b) Has achieved a minimum score, established by rule of
135 the board, on the nursing assistant competency examination,
136 which consists of a written portion and skills-demonstration
137 portion, approved by the board and administered at a site and by
138 personnel approved by the department and:

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

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

145 (d) Has completed the curriculum developed under the
146 Enterprise Florida Jobs and Education Partnership Grant and
147 achieved a minimum score, established by rule of the board, on
148 the nursing assistant competency examination, which consists of
149 a written portion and skills-demonstration portion, approved by
150 the board and administered at a site and by personnel approved
151 by the department.

152 Section 3. This act shall take effect July 1, 2011.