

1 A bill to be entitled
2 An act relating to background screening; amending s.
3 394.4572, F.S.; exempting certain mental health personnel
4 from background screening requirements; amending s.
5 408.809, F.S.; revising provisions relating to background
6 screening of specified employees of health care providers;
7 removing a provision authorizing the Agency for Health
8 Care Administration to adopt rules establishing a
9 rescreening schedule; establishing a rescreening schedule;
10 amending s. 409.1757, F.S.; exempting certain law
11 enforcement officers from refingerprinting and rescreening
12 requirements under certain conditions; amending s.
13 430.0402, F.S.; revising the definition of the term
14 "direct service provider" for purposes of background
15 screening requirements; exempting a volunteer who meets
16 certain criteria, a client's relative or spouse, and an
17 attorney in good standing with The Florida Bar from
18 screening requirements; exempting persons screened as a
19 licensure requirement from further screening under certain
20 circumstances; requiring direct service providers working
21 as of a certain date to be screened within a specified
22 period; providing a phase-in for screening direct service
23 providers; providing rulemaking authority to the
24 Department of Elderly Affairs to implement the phase-in;
25 requiring that employers of direct service providers and
26 certain other individuals be rescreened every 5 years
27 unless fingerprints are retained electronically by the
28 Department of Law Enforcement; removing an offense from

29 | the list of disqualifying offenses for purposes of
 30 | background screening; amending s. 435.04, F.S.; providing
 31 | requirements for vendors who submit fingerprints on behalf
 32 | of employers; amending s. 435.07, F.S.; preserving
 33 | exemptions under certain circumstances; authorizing
 34 | personnel of qualified entities to apply for an exemption;
 35 | amending s. 464.203, F.S.; requiring the Board of Nursing
 36 | to waive background screening requirements for certain
 37 | certified nursing assistants; requiring certain state
 38 | agencies to evaluate barriers to efficient background
 39 | screening and issue recommendations to the Governor and
 40 | Legislature; providing an effective date.

41 |

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

43 |

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

46 | 394.4572 Screening of mental health personnel.—

47 | (1)

48 | (d) Mental health personnel employed by a facility
 49 | licensed under chapter 395 who have less than 15 hours per week
 50 | of direct contact with patients are exempt from the
 51 | fingerprinting and screening requirements.

52 | Section 2. Subsections (5) through (8) of section 408.809,
 53 | Florida Statutes, are renumbered as subsections (6) through (9),
 54 | respectively, and subsection (4) of that section is amended to
 55 | read:

56 | 408.809 Background screening; prohibited offenses.—

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57 (4) In addition to the offenses listed in s. 435.04, all
58 persons required to undergo background screening pursuant to
59 this part or authorizing statutes must not have an arrest
60 awaiting final disposition for, must not have been found guilty
61 of, regardless of adjudication, or entered a plea of nolo
62 contendere or guilty to, and must not have been adjudicated
63 delinquent and the record not have been sealed or expunged for
64 any of the following offenses or any similar offense of another
65 jurisdiction:

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

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

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

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

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

71 (f) Section 817.034, relating to fraudulent acts through
72 mail, wire, radio, electromagnetic, photoelectronic, or
73 photooptical systems.

74 (g) Section 817.234, relating to false and fraudulent
75 insurance claims.

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

77 (i) Section 817.568, relating to criminal use of personal
78 identification information.

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

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

83 (l) Section 831.01, relating to forgery.

84 (m) Section 831.02, relating to uttering forged

85 instruments.

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

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

90 (p) Section 831.30, relating to fraud in obtaining
91 medicinal drugs.

92 (q) Section 831.31, relating to the sale, manufacture,
93 delivery, or possession with the intent to sell, manufacture, or
94 deliver any counterfeit controlled substance, if the offense was
95 a felony.

96 (5) A person who serves as a controlling interest of, is
97 employed by, or contracts with a licensee on July 31, 2010, who
98 has been screened and qualified according to standards specified
99 in s. 435.03 or s. 435.04 must be rescreened by July 31, 2015,
100 in accordance with the schedule provided in this subsection. ~~The~~
101 ~~agency may adopt rules to establish a schedule to stagger the~~
102 ~~implementation of the required rescreening over the 5-year~~
103 ~~period, beginning July 31, 2010, through July 31, 2015.~~ If, upon
104 rescreening, such person has a disqualifying offense that was
105 not a disqualifying offense at the time of the last screening,
106 but is a current disqualifying offense and was committed before
107 the last screening, he or she may apply for an exemption from
108 the appropriate licensing agency and, if agreed to by the
109 employer, may continue to perform his or her duties until the
110 licensing agency renders a decision on the application for
111 exemption if the person is eligible to apply for an exemption
112 and the exemption request is received by the agency within 30

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113 days after receipt of the rescreening results by the person. The
114 rescreening schedule shall be as follows:

115 (a) A person whose last screening was conducted before
116 December 31, 2003, must be rescreened by July 31, 2013.

117 (b) A person whose last screening was conducted between
118 January 1, 2004, through December 31, 2007, must be rescreened
119 by July 31, 2014.

120 (c) A person whose last screening was conducted between
121 January 1, 2008, through July 31, 2010, must be rescreened by
122 July 31, 2015.

123 Section 3. Section 409.1757, Florida Statutes, is amended
124 to read:

125 409.1757 Persons not required to be refingerprinted or
126 rescreened.—Any provision of law to the contrary
127 notwithstanding, human resource personnel who have been
128 fingerprinted or screened pursuant to chapters 393, 394, 397,
129 402, and this chapter, and teachers who have been fingerprinted
130 pursuant to chapter 1012, who have not been unemployed for more
131 than 90 days thereafter, and law enforcement officers, as
132 defined in s. 943.10(1), who hold an active certification from
133 the Criminal Justice Standards and Training Commission, and who
134 under the penalty of perjury attest to the completion of such
135 fingerprinting or screening and to compliance with ~~the~~
136 ~~provisions of~~ this section and the standards for good moral
137 character as contained in such provisions as ss. 110.1127(3),
138 393.0655(1), 394.457(6), 397.451, 402.305(2), ~~and~~ 409.175(6),
139 and 943.13(7) shall not be required to be refingerprinted or
140 rescreened in order to comply with any caretaker screening or

141 fingerprinting requirements.

142 Section 4. Section 430.0402, Florida Statutes, is amended
 143 to read:

144 430.0402 Screening of direct service providers.—

145 (1) (a) Level 2 background screening pursuant to chapter
 146 435 is required for direct service providers. Background
 147 screening includes employment history checks as provided in s.
 148 435.03(1) and local criminal records checks through local law
 149 enforcement agencies.

150 (b) For purposes of this section, the term "direct service
 151 provider" means a person 18 years of age or older, including a
 152 volunteer, who, pursuant to a program to provide services to the
 153 elderly, has direct, face-to-face contact with a client while
 154 providing services to the client and ~~or~~ has access to the
 155 client's living areas or to the client's funds or personal
 156 property. The term does not include a volunteer who assists on
 157 an intermittent basis for less than 20 hours per month of
 158 direct, face-to-face contact with a client, an individual who is
 159 related by blood to a client, or a client's spouse ~~includes~~
 160 ~~coordinators, managers, and supervisors of residential~~
 161 ~~facilities and volunteers.~~

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

167 (3) Individuals qualified for employment by the Agency for
 168 Health Care Administration pursuant to the agency's background

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169 screening standards for licensure or employment contained in s.
170 408.809 are not subject to subsequent or additional level 2
171 screening pursuant to chapter 435, or to the unique screening
172 requirements of this section, by virtue of their employment as
173 direct service providers if they are providing a service that is
174 within the scope of their licensed practice.

175 (4)~~(3)~~ Refusal on the part of an employer to dismiss a
176 manager, supervisor, or direct service provider who has been
177 found to be in noncompliance with standards of this section
178 shall result in the automatic denial, termination, or revocation
179 of the license or certification, rate agreement, purchase order,
180 or contract, in addition to any other remedies authorized by
181 law.

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

187 (6) An employer of a direct service provider who
188 previously qualified for employment or volunteer work under
189 level 1 screening standards or an individual who is required to
190 be screened according to level 2 screening standards contained
191 in chapter 435, pursuant to this section, shall be rescreened
192 every 5 years following the date of his or her last background
193 screening or exemption, unless such individual's fingerprints
194 are continuously retained and monitored by the Department of Law
195 Enforcement in the federal fingerprint retention program
196 according to the procedures specified in s. 943.05.

197 (7)~~(4)~~ The background screening conducted pursuant to this
 198 section must ensure that, in addition to the disqualifying
 199 offenses listed in s. 435.04, no person subject to the
 200 provisions of this section has an arrest awaiting final
 201 disposition for, has been found guilty of, regardless of
 202 adjudication, or entered a plea of nolo contendere or guilty to,
 203 or has been adjudicated delinquent and the record has not been
 204 sealed or expunged for, any offense prohibited under any of the
 205 following provisions of state law or similar law of another
 206 jurisdiction:

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

208 (a)~~(b)~~ Section 409.920, relating to Medicaid provider
 209 fraud.

210 (b)~~(c)~~ Section 409.9201, relating to Medicaid fraud.

211 (c)~~(d)~~ Section 817.034, relating to fraudulent acts
 212 through mail, wire, radio, electromagnetic, photoelectronic, or
 213 photooptical systems.

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

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

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

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

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

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

224 (j)~~(k)~~ Section 831.02, relating to uttering forged

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225 instruments.

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

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

230 Section 5. Paragraph (e) is added to subsection (1) of
 231 section 435.04, Florida Statutes, to read:

232 435.04 Level 2 screening standards.—

233 (1)

234 (e) Vendors submitting fingerprints on behalf of employers
 235 must:

236 1. Use technology that is compliant with systems used by
 237 the Department of Law Enforcement.

238 2. Be able to communicate electronically with the state
 239 agency accepting screening results from the Department of Law
 240 Enforcement.

241 3. Capture two sets of fingerprint images for each
 242 individual. The first set of fingerprints shall be sent to the
 243 Department of Law Enforcement, and the second set shall be
 244 retained by the vendor for at least 60 days. If the first set of
 245 fingerprints is deemed illegible by the Department of Law
 246 Enforcement or the Federal Bureau of Investigation, the vendor
 247 shall submit the second set of fingerprints upon notification
 248 from the agency.

249 Section 6. Subsections (6) and (7) are added to section
 250 435.07, Florida Statutes, to read:

251 435.07 Exemptions from disqualification.—Unless otherwise
 252 provided by law, the provisions of this section apply to

253 exemptions from disqualification for disqualifying offenses
 254 revealed pursuant to background screenings required under this
 255 chapter, regardless of whether those disqualifying offenses are
 256 listed in this chapter or other laws.

257 (6) Exemptions granted by agencies remain valid through
 258 subsequent level 1 or level 2 screenings with the same agency
 259 that granted the exemption, if the person has no new or
 260 additional offenses identified through subsequent screenings and
 261 is otherwise qualified for the exemption. The issuing agency is
 262 responsible for communicating the continued eligibility for
 263 employment.

264 (7) Personnel of a qualified entity as defined in s.
 265 943.0542 who are required to be screened pursuant to s. 435.04
 266 may apply for an exemption pursuant to this section and this
 267 chapter.

268 Section 7. Subsection (1) of section 464.203, Florida
 269 Statutes, is amended to read:

270 464.203 Certified nursing assistants; certification
 271 requirement.—

272 (1) The board shall issue a certificate to practice as a
 273 certified nursing assistant to any person who demonstrates a
 274 minimum competency to read and write and successfully passes the
 275 required background screening pursuant to s. 400.215. If the
 276 person has successfully passed the required background screening
 277 pursuant to s. 400.215 or s. 408.809 within 90 days before the
 278 application for a certificate to practice, the board shall waive
 279 the requirement that the applicant successfully pass an
 280 additional background screening pursuant to s. 400.215. The

281 person must also meet ~~and meets~~ one of the following
 282 requirements:

283 (a) Has successfully completed an approved training
 284 program and achieved a minimum score, established by rule of the
 285 board, on the nursing assistant competency examination, which
 286 consists of a written portion and skills-demonstration portion
 287 approved by the board and administered at a site and by
 288 personnel approved by the department.

289 (b) Has achieved a minimum score, established by rule of
 290 the board, on the nursing assistant competency examination,
 291 which consists of a written portion and skills-demonstration
 292 portion, approved by the board and administered at a site and by
 293 personnel approved by the department and:

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

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

300 (d) Has completed the curriculum developed under the
 301 Enterprise Florida Jobs and Education Partnership Grant and
 302 achieved a minimum score, established by rule of the board, on
 303 the nursing assistant competency examination, which consists of
 304 a written portion and skills-demonstration portion, approved by
 305 the board and administered at a site and by personnel approved
 306 by the department.

307 Section 8. The Agency for Health Care Administration, the
 308 Department of Law Enforcement, the Department of Children and

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309 Family Services, the Department of Elderly Affairs, the
310 Department of Health, and the Agency for Persons with
311 Disabilities, working in consultation and coordination with one
312 another, shall evaluate state and federal regulations that pose
313 barriers to efficient background screening for persons working
314 or volunteering with vulnerable populations and issue
315 recommendations to the Governor, the President of the Senate,
316 and the Speaker of the House of Representatives by November 1,
317 2011, regarding findings and possible statutory amendments
318 necessary to eliminate duplicative screening and improve
319 processing time for screening requests.

320 Section 9. This act shall take effect July 1, 2011.