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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

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29 | of background screening; amending s. 435.04, F.S.;

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.

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

58

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,

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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.

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
 92 435 is required for direct service providers. Background
 93 screening includes employment history checks as provided in s.
 94 435.03(1) and local criminal records checks through local law
 95 enforcement 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 ~~r~~ 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.

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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
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
129 July 31, 2011, must be screened by July 1, 2013. The department
130 may adopt rules to establish a schedule to stagger the
131 implementation of the required screening over a 1-year period,
132 beginning July 1, 2012, through July 1, 2013.

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

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141 Department of Law Enforcement in the federal fingerprint
142 retention program according to the procedures specified in s.
143 943.05.

144 (7)~~(4)~~ The background screening conducted pursuant to this
145 section must ensure that, in addition to the disqualifying
146 offenses listed in s. 435.04, no person subject to the
147 provisions of this section has an arrest awaiting final
148 disposition for, has been found guilty of, regardless of
149 adjudication, or entered a plea of nolo contendere or guilty to,
150 or has been adjudicated delinquent and the record has not been
151 sealed or expunged for, any offense prohibited under any of the
152 following provisions of state law or similar law of another
153 jurisdiction:

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

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

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

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

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

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

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

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

168 (h)~~(i)~~ Section 817.61, relating to fraudulent use of

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169 credit cards, if the offense was a felony.

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

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

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

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

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

180 435.04 Level 2 screening standards.—

181 (1)

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

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

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

189 (4) Fingerprints required for screening under this section
190 shall be retained for any person who is screened on or after
191 July 1, 2014.

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

194 435.06 Exclusion from employment.—

195 (2)

196 (d) An employer may hire an employee to a position that

197 requires background screening before the employee completes the
 198 screening process for training and orientation purposes.
 199 However, the employee may not have direct contact with
 200 vulnerable persons until the screening process is completed and
 201 the employee demonstrates that he or she exhibits no behaviors
 202 that warrant the denial or termination of employment.

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

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

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

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

216 408.809 Background screening; prohibited offenses.—

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

- 221 (a) The licensee, if an individual.
- 222 (b) The administrator or a similarly titled person who is
- 223 responsible for the day-to-day operation of the provider.
- 224 (c) The financial officer or similarly titled individual

225 | who is responsible for the financial operation of the licensee
 226 | or provider.

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

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

243 | (2) Every 5 years following his or her licensure,
 244 | employment, or entry into a contract in a capacity that under
 245 | subsection (1) would require level 2 background screening under
 246 | chapter 435, each such person must submit to level 2 background
 247 | rescreening as a condition of retaining such license or
 248 | continuing in such employment or contractual status. For any
 249 | such rescreening, the agency shall request the Department of Law
 250 | Enforcement to forward the person's fingerprints to the Federal
 251 | Bureau of Investigation for a national criminal history record
 252 | check. If the fingerprints of such a person are not retained by

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253 the Department of Law Enforcement under s. 943.05(2)(g), the
254 person must file a complete set of fingerprints with the agency
255 and the agency shall forward the fingerprints to the Department
256 of Law Enforcement for state processing, and the Department of
257 Law Enforcement shall forward the fingerprints to the Federal
258 Bureau of Investigation for a national criminal history record
259 check. The fingerprints may be retained by the Department of Law
260 Enforcement under s. 943.05(2)(g). The cost of the state and
261 national criminal history records checks required by level 2
262 screening may be borne by the licensee or the person
263 fingerprinted. Proof of compliance with level 2 screening
264 standards submitted within the previous 5 years to meet any
265 provider or professional licensure requirements of the agency,
266 the Department of Health, the Agency for Persons with
267 Disabilities, the Department of Children and Family Services, or
268 the Department of Financial Services for an applicant for a
269 certificate of authority or provisional certificate of authority
270 to operate a continuing care retirement community under chapter
271 651 satisfies the requirements of this section if the person
272 subject to screening has not been unemployed for more than 90
273 days and such proof is accompanied, under penalty of perjury, by
274 an affidavit of compliance with the provisions of chapter 435
275 and this section using forms provided by the agency.

276 (3) All fingerprints must be provided in electronic
277 format. Screening results shall be reviewed by the agency with
278 respect to the offenses specified in s. 435.04 and this section,
279 and the qualifying or disqualifying status of the person named
280 in the request shall be maintained in a database. The qualifying

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281 or disqualifying status of the person named in the request shall
282 be posted on a secure website for retrieval by the licensee or
283 designated agent on the licensee's behalf.

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

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

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

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

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

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

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

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

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

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

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

308 (k) Section 817.61, relating to fraudulent use of credit

309 cards, if the offense was a felony.

310 (l) Section 831.01, relating to forgery.

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

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

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

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

319 (q) Section 831.31, relating to the sale, manufacture,
320 delivery, or possession with the intent to sell, manufacture, or
321 deliver any counterfeit controlled substance, if the offense was
322 a felony.

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

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337 agency renders a decision on the application for exemption if
338 the person is eligible to apply for an exemption and the
339 exemption request is received by the agency within 30 days after
340 receipt of the rescreening results by the person. The
341 rescreening schedule shall be:

342 (a) Individuals for whom the last screening was conducted
343 on or before December 31, 2004, must be rescreened by July 31,
344 2014.

345 (b) Individuals for whom the last screening conducted was
346 between January 1, 2005, and December 31, 2008, must be
347 rescreened by July 31, 2015.

348 (c) Individuals for whom the last screening conducted was
349 between January 1, 2009, through July 31, 2011, must be
350 rescreened by July 31, 2016.

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

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

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

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

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

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

378 (9)~~(8)~~ There is no unemployment compensation or other
 379 monetary liability on the part of, and no cause of action for
 380 damages arising against, an employer that, upon notice of a
 381 disqualifying offense listed under chapter 435 or this section,
 382 terminates the person against whom the report was issued,
 383 whether or not that person has filed for an exemption with the
 384 Department of Health or the agency.

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

387 464.203 Certified nursing assistants; certification
 388 requirement.—

389 (1) The board shall issue a certificate to practice as a
 390 certified nursing assistant to any person who demonstrates a
 391 minimum competency to read and write and successfully passes the
 392 required background screening pursuant to s. 400.215. If the

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393 person has successfully passed the required background screening
 394 pursuant to s. 400.215 or s. 408.809 within 90 days before
 395 applying for a certificate to practice, the board shall waive
 396 the requirement that the applicant successfully pass an
 397 additional background screening pursuant to s. 400.215. The
 398 person must also meet ~~and meets~~ one of the following
 399 requirements:

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

406 (b) Has achieved a minimum score, established by rule of
 407 the board, on the nursing assistant competency examination,
 408 which consists of a written portion and skills-demonstration
 409 portion, approved by the board and administered at a site and by
 410 personnel approved by the department and:

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

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

417 (d) Has completed the curriculum developed by the
 418 Department of Education and achieved a minimum score,
 419 established by rule of the board, on the nursing assistant
 420 competency examination, which consists of a written portion and

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421 skills-demonstration portion, approved by the board and
422 administered at a site and by personnel approved by the
423 department.

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

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

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

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

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

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

448 (c) Standardized screening criteria.

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- 449 (d) Consistent criminal history information.
- 450 (e) Centralized exemptions.
- 451 (f) State and national retention of prints.
- 452 (g) National rescreens.
- 453 (h) Responsibility for retained prints and resubmission.
- 454 (i) Access to information.
- 455 (j) Fees.
- 456 (k) Screening turnaround time.
- 457 (l) The need for cooperative agreements among agencies
458 that may access information.
- 459 (m) Legal considerations and the need for legislative
460 action necessary for accessing information by participating
461 agencies.
- 462 (n) Guidelines for how the information shall be accessed,
463 used, and disseminated.
- 464 (o) The organizational level at which information may be
465 accessed and shared.
- 466 (p) The specific information to be maintained and shared
467 through the system.
- 468 (q) Registration of employee information regarding the
469 employment status of persons screened, including date of hire
470 and date of separation, to facilitate notifications of arrests
471 and dispositions to the appropriate provider.
- 472 (r) The costs of implementing the streamlined system to
473 the state, employers, employees, and volunteers.
- 474 Section 10. This act shall take effect July 1, 2012.