

NOTICE OF INSTRUCTION

West Central Florida
Area Agency on Aging, Inc.



Assistance. Advocacy. Answers on Aging.

#081910 – Background Screening Clarification– kp

TO: All Providers/PSA 6
FROM: Katie Parkinson, Director of Program Management
DATE: August 19, 2010
SUBJECT: Clarification on the changes to background screening requirements

The purpose of this notice is to provide clarification on Notice of Instruction (NOI) #061410-Background Screening-sa. The notice provided guidance for implementing the requirements of Chapter 2010-114, Laws of Florida, addressing background screening. Since release of the above referenced NOI, the West Central Florida Area Agency on Aging (WCFAAA) has received further policy and procedural guidance from the Department of Elder Affairs (DOEA) on the implementation of the background screening requirements.

This policy and procedural guidance is included in the attached copy of the DOEA's Notice of Emergency Rule and the department's Background Screening Policies and Procedures.

WCFAAA must ensure that all providers receiving WCFAAA grant funding, through either direct or indirect contracting, are in compliance with the background screening requirements.

Please submit a plan to WCFAAA providing assurance that at least 20% of your direct service providers will be screened within the first 120 days of August 1, 2010, and an additional 20% will be screened every 90 calendars thereafter until all direct service providers have successfully satisfied the screening standards of Chapter

435, F.S. If your agency has fewer than 5 direct service providers, all are to be screened within the initial 120 calendar day window. WCFAAA must receive this plan no later than Noon, Thursday, September 2.

The DOEA's Notice of Instruction, applicable forms and instructions, can be found on the DOEA's web site:

<http://elderaffairs.state.fl.us/english/backgroundscreening.php>

Thank you for your assistance implementing these statutory changes. If you have questions, please contact Katie Parkinson, Director of Program Management at 813-676-5574 or parkinsonk@elderaffairs.org.

AFFIDAVIT OF GOOD MORAL CHARACTER

Florida Department of Elder Affairs

I understand that to work as a paid employee or to volunteer for a direct service provider agency employer, or to participate as a caregiver or employee (if applicable) in the HCE Program, I must undergo a Level 2 background screening as required by Chapter 435, and Section 430.0402, Florida Statutes. I also understand that I must complete and sign this affidavit form before the direct service provider agency employer signs it. By signing this form below, I am affirming that I have listed all disqualifying offenses or that I do not have any disqualifying offenses. I also affirm that I meet all the requirements of Chapter 435, F.S. I also affirm that I understand each of the conditions below as indicated by my initials.

I understand that if I am notified by the Florida Department of Elder Affairs (DOEA) that my background screening contained a disqualifying offense, I can request a copy of my own criminal record. However, I understand that the record may not be used for any purpose other than to request that the Department of Elder Affairs consider granting me an exemption that would permit me to work or volunteer despite disqualifying offenses in my criminal record. I understand that the DOEA is required by law to keep the results of my criminal background check confidential. I understand that I may share information from my criminal record with the direct service provider agency employer; however, this record may not be used in lieu of a background screening by any organization other than direct service provider agency employer. _____ (initial)

I understand that my fingerprints will be retained in the Florida Department of Law Enforcement's Automated Fingerprint Identification System (AFIS) which sends out an arrest notification to the direct service provider agency employer and the DOEA if I am charged with any crime. I affirm that I will notify the direct service provider agency employer and the DOEA if I am charged with a new disqualifying crime while employed by a direct service provider agency employer. I am aware that I will be charged a retention fee each year and that the fee may increase. _____ (initial)

I understand that under some conditions, if I have committed a disqualifying offense, I may request an exemption. If the Florida Department of Elder Affairs approves a request for exemption, I, as an employee or volunteer may be approved to work despite my criminal record. I understand that if my record reveals disqualifying offenses that meet certain conditions, and I choose to request an exemption, I must complete the Application for Exemption from Disqualification form and provide all required information. I must provide clear and convincing evidence that an exemption should be granted and that I am not a threat to the safety and well being of the clients or their property. I understand that denial of an exemption request by the Secretary of the Department of Elder Affairs may be contested through a hearing requested under the provisions of Chapter 120, Florida Statutes. I understand that the Florida Department of Elder Affairs may consider, as part of its disqualifying offense exemption deliberations, any arrests or convictions for another crime, even if that crime is not a disqualifying offense. _____ (initial)

I understand that I must acknowledge the existence of any criminal records relating to the following list regardless of whether or not those records have been sealed or expunged. I understand that if I have a juvenile delinquency record that is similar to any of the offenses listed below I must disclose this. I also understand that I must not have an arrest awaiting final disposition for, must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere (no contest) or guilty to, and must not have been adjudicated delinquent and the record not have been sealed or expunged for any of the offenses in the following list or any similar offense in another jurisdiction or else I must disclose this on the signature page. _____ (initial)

FDLE LEVEL II DISQUALIFYING OFFENSES
(Chapter 435 and Section 430.0402, F.S.)

*FLORIDA STATUTE	CHARGE/OFFENSE
	No person subject to the provisions of this section has an arrest awaiting final disposition for, has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere (no contest) or guilty to, or has been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under any of the following provisions of state law or similar law of another jurisdiction:
393.135	Relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.
394.4593	Relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.
409.920	Relating to Medicaid provider fraud.
409.9201	Relating to Medicaid fraud.
415.111	Relating to abuse, neglect, or exploitation of a vulnerable adult.
741.28	Relating to domestic violence.
782.04	Relating to murder.
782.07	Relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child.
782.071	Relating to vehicular homicide.
782.09	Relating to killing of an unborn quick child by injury to the mother.
784 – All	All of Chapter 784 offenses relating to assault, battery, and culpable negligence, if offense was a felony.
784.011	Relating to assault, if the victim of the offense was a minor.
784.03	Relating to battery, if the victim of the offense was a minor.
784.011	Relating to assault, if the victim of the offense was a minor.
784.03	Relating to battery, if the victim of the offense was a minor.
787.01	Relating to kidnapping.
787.02	Relating to false imprisonment.
787.025	Relating to luring or enticing a child.
787.04(2)	Relating to taking, enticing, or removing a child beyond state limits with criminal intent pending custody proceedings.
787.04(3)	Relating to carrying a child beyond the state lines with criminal intent to avoid producing a child at a custody hearing or delivering the child to the designated person.
790.115(1)	Relating to exhibiting firearms or weapons within 1,000 feet of a school.
790.115(2)(b)	Relating to possessing an electric weapon or device, destructive device, or other weapon on school property.
794.011	Relating to sexual battery.
794.041	Relating to prohibited acts of persons in familial or custodial authority.
794.05	Relating to unlawful sexual activity with certain minors.
796 - All	All Chapter 796 offenses relating to prostitution.
798.02	Relating to lewd and lascivious behavior.
800 - All	All Chapter 800 relating to lewdness and indecent exposure.
806.01	Relating to arson.
810.02	Relating to burglary.
810.14	Relating to voyeurism, if the offense is a felony.
810.145	Relating to video voyeurism, if the offense is a felony.
812 - All	All Chapter 812 offenses relating to theft, robbery, and related crimes, if the offense was a felony.
817.034	Relating to fraudulent acts through mail, wire, radio, electromagnetic, photoelectronic, or photooptical systems.
817.234	Relating to false and fraudulent insurance claims.
817.505	Relating to patient brokering.
817.563	Relating to fraudulent sale of controlled substances, only if the offense was a felony.
817.568	Relating to criminal use of personal identification information.

817.60	Relating to obtaining a credit card through fraudulent means.
817.61	Relating to fraudulent use of credit cards, if the offense was a felony.
825.102	Relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
825.1025	Relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.
825.103	Relating to the exploitation of an elderly person or disabled adult, if the offense was a felony.
826.04	Relating to incest.
827.03	Relating to child abuse, aggravated child abuse, or neglect of a child.
827.04	Relating to contributing to the delinquency or dependency of a child.
827.05	Relating to negligent treatment of children.
827.071	Relating to sexual performance by a child.
831.01	Relating to forgery.
831.02	Relating to uttering forged instruments.
831.07	Relating to forging bank bills, checks, drafts, or promissory notes.
831.09	Relating to uttering forged bank bills, checks.
843.01	Relating to resisting arrest with violence.
843.025	Relating to depriving a law enforcement, correctional, or correctional probation officer means of protection or communication.
843.12	Relating to aiding in an escape.
843.13	Relating to aiding in the escape of juvenile inmates in correctional institutions.
847 – All	All Chapter 847 offenses relating to obscene literature.
874.05(1)	Relating to encouraging or recruiting another to join a criminal gang.
893 – All	All Chapter 893 offenses relating to drug abuse prevention and control, only if the offense was a felony or if any other person involved in the offense was a minor.
916.1075	Relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.
944.35(3)	Relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.
944.40	Relating to escape.
944.46	Relating to harboring, concealing, or aiding an escaped prisoner.
944.47	Relating to introduction of contraband into a correctional facility.
985.701	Relating to sexual misconduct in juvenile justice programs.
985.711	Relating to contraband introduced into detention facilities.

*Or any similar statute of another jurisdiction.

*** NO EXEMPTIONS CAN BE GRANTED FOR THE FOLLOWING OFFENSES REGARDLESS OF THE TIME ELAPSED SINCE ANY CONFINEMENT, SUPERVISION OR SANCTION:**

775.21	Sexual Predator
775.261	Career Offender
943.0435	Sexual Offender – unless the requirement to register as a sexual offender has been removed pursuant to 943.04354

*Or any similar statute of another jurisdiction.

Requests for Exemption

Section 435.07, Florida Statutes, states that if offenses meet all of the following conditions, a potential employee may apply for consideration of an exemption that would permit him or her to work despite a record of one or more disqualifying offenses. In order to apply for an exemption, one of the following conditions must be met:

- For disqualifying felonies, at least three years must have passed since release from confinement, supervision, or sanction prior to applying for the exemption.
- For juvenile delinquency offenses that would be felonies if committed by an adult, for which the record has not been sealed or expunged, at least three years must have passed since release from confinement, supervision, or sanction prior to applying for the exemption.
- For offenses that were felonies when committed but are now misdemeanors, you must have been released from confinement, supervision, or sanction prior to applying for the exemption.
- For disqualifying misdemeanors, you must have been released from confinement, supervision, or sanction prior to applying for the exemption.

You must attest to one of the following:

1. I attest that I have read the foregoing, and I do not have any disqualifying offenses in my record. I understand that, should my background screen reveal disqualifying offenses that I have not listed I will not be eligible for an exemption and I will not be able to start work or if currently working will be terminated immediately. If I am a volunteer, I will no longer be able to volunteer for the direct service provider agency/ employer.

Signature of Applicant: _____ Date: _____

OR

2. To the best of my knowledge and belief, my record may contain one or more of the disqualifying offenses listed above. I understand that having disqualifying offenses on my background screening may make me ineligible to work as an employee or to be a volunteer in the direct service provider agency employer. If I have listed all disqualifying offenses, I may be eligible to file for an exemption to disqualification pursuant to s.435.07. If I have not listed all disqualifying offenses that the background screening reveals, I will not be able to start work or if currently working will be terminated from employment immediately. If I am a volunteer, I will no longer be able to volunteer in the direct service provider agency/employer.

Disqualifying Offense(s):

Signature of Applicant: _____ Date: _____

As the direct service provider program agency/employer, I will inform the Department of any disqualifying offenses I become aware of the applicant committing while serving as an employee or volunteer. If the Department informs me that this applicant cannot serve, I will terminate use of the applicant's services immediately.

Signature of Direct Service Provider Agency/Employer _____ Date _____

The section below should also be completed if the applicant disclosed disqualifying offenses:

I understand that this applicant has a record of offenses that may be disqualifying. I affirm that I have discussed the nature of those offenses with the applicant and I support the application for an exemption.

Signature Direct Service Provider Agency/Employer _____ Date _____

Direct Service Provider Agency/Employer: Please sign this form after the applicant signs.

Background Screening Appointment Form for Direct Service Providers

Applicant: Please bring this form with you to your background screening appointment and give it to the person who conducts the screening and ask the person to complete the form and give it back to you.

Screeener : This Department of Elder Affairs (DOEA) Origination Code (ORI) number FL924310Z is specific to Direct Service Provider Agency/Employer, including Area Agencies on Aging/Aging (and Disability) Resource Centers, Lead Agencies, Service Providers, and Diversion Providers that contract directly or indirectly with DOEA. Agencies must use this form to request background screening for employees, volunteers (not SHINE and Ombudsman), and caregivers and employees (if applicable) in the HCE program. If you need to confirm the ORI, please call (850) 414-2368. Please write the Transaction Control Number (TCN) and answer the following:

Date of screening: _____ TCN#: _____ Screener's name: _____

Background Screening Service Provider: _____ Phone number: _____

Screeener: Give this form back to the person you screened along with any printed evidence of the screening.

APPLICANT	(Please Print) Last Name: _____	First Name: _____
	Middle (or Maiden) Name: _____	Date of Birth: _____
	Address: _____	Phone: _____
	_____	Email Address: _____
Below, please print the last four digits of your Social Security number and your initials. This will become your unique screening ID #:		

Applicant: Please return this form to the Agency Contact listed below as soon as possible after screening is complete!

Agency/Employer Requesting Screening:

Scan and email to doeainetwork@elderaffairs.org or fax to 850-414-2006.
Please include the TCN# and applicant's name in the subject line.
If you do not have access to a scanner or a fax machine, please mail to:
Florida Department of Elder Affairs
Background Screening Unit
4040 Esplanade Way, Suite315
Tallahassee, Florida 32399-7000

Agency/Employer Requesting Screening:

Agency Contact:

Agency Name:

Agency Address:

Agency Phone Number and Email:

Federal Tax ID #:



Florida Department of Elder Affairs
Direct Service Provider Attestation Form

The Department of Elder Affairs Direct Service Attestation form is required by Chapter 430 and 435, Florida Statutes. Each employee or volunteer who is a direct service provider must sign an attestation form as of August 1, 2010 attesting he/she has not committed any of the FDLE Level 2 disqualifying offenses.

The term "direct service provider" means a person 18 years of age or older who, pursuant to a program to provide services to the elderly, has direct, face-to-face contact with a client while providing services to the client or has access to the client's living areas or to the client's funds or personal property. The term includes coordinators, managers, and supervisors of residential facilities and volunteers as required by s. 430.0402(1) (b), Florida Statutes.

The direct service provider must attest:

I attest that I have read the FDLE list of disqualifying offenses as required by Chapter 435 and Section 430.0402, F.S and I have not committed any disqualifying offenses. I understand that, should any future background screening or rescreening requirement reveal disqualifying offenses, I will be terminated immediately. I affirm that I will immediately notify my employer if I am arrested for a disqualifying offense while working or volunteering for this organization. I understand I may be eligible to apply for an exemption from disqualification in the event that I am disqualified from working or volunteering due to a disqualifying offense. If I am an employee terminated due to conviction or arrest for a disqualifying offense, I will not receive unemployment compensation or other monetary liability.

Printed name of direct service provider: _____

Signature of direct service provider: _____ Date: _____

The employer must attest:

As the Employer, I will inform the Department of Elder Affairs if I become aware that a direct service provider has been arrested for a disqualifying offense and I will immediately terminate that employee's or volunteer's face-to-face contact with clients while providing services to clients or access to the clients' living areas or to the clients' funds or personal property. I understand the individual may be eligible to apply for an exemption. Also, if the Department of Elder Affairs informs me that this direct service provider cannot serve I will immediately terminate the individual's face-to-face contact with clients while providing services to clients or access to the clients' living areas or to the clients' funds or personal property. I understand the individual may be eligible to apply for an exemption.

Printed Name of Employer: _____

Signature of Employer: _____ Date: _____

Employer: Please sign this form after the applicant signs. This attestation must be retained in the employee and volunteer files and will be verified upon monitoring.

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Purpose and Scope

The purpose of this policy directive is to provide guidance for the implementation of Level 2 Background Screening for direct service providers.

I. Policy Statement

The mission of the Florida Department of Elder Affairs (DOEA) is to foster optimal quality of life for elder Floridians. In keeping with that mission, the safety and protection of potentially vulnerable elders is a priority. On May 26, 2010, Governor Charlie Crist signed into law House Bill (HB) 7069, creating Chapter 2010-114, Laws of Florida. This legislation amends sections of Florida Statutes in regard to background screening.

Pursuant to Chapter 435 and Section 430.0402, Florida Statutes, beginning August 1, 2010, the Department requires a Level 2 background screening of all direct service providers. The screening is required to help ensure the safety of elders receiving program services. Screened applicants with disqualifying offenses who are statutorily eligible to apply for an exemption may do so through the DOEA Application for Exemption from Disqualification process.

Screening and re-screening will occur as indicated in Section (3) (a) (b) (c) and (d) of the Department's Emergency Rule, 58ER 10-1.

- Each employer must develop and implement a plan to ensure staff working or volunteering who have not been previously screened receive Level 2 background screening. The plan must detail a prioritized phase-in methodology.
- Each employer must develop and implement a plan to ensure staff working or volunteering who have been previously screened at Level 1 or applicants who are being newly screened at Level 2 are re-screened.
- If an applicant is screened or re-screened and found to have a disqualifying offense, then the individual may submit a DOEA Application for Exemption from Disqualification. The applicant is not allowed to work or volunteer as a direct service provider due to the disqualifying offense, unless granted an exemption.

II. Authority

Level 2 background screening and employment history checks are required in accordance with Section 430.0402 and Chapter 435, Florida Statutes.

III. Definitions

Affidavit of Good Moral Character – This form includes a list of disqualifying offenses and requires the applicant to disclose any disqualifying offenses committed before the applicant signs the form. The form allows the applicant to discuss the disqualifying

offenses expected to appear on the background screening report with the employer whose signature indicates a willingness to have the applicant serve despite an offense.

Applicant – Employees, volunteers and HCE caregivers requesting background screening, or individuals applying for an Exemption from Disqualification.

Assistant General Counsel for Background Screening Division – A Department staff member designated with the task to review negative criminal history indicators and determine, via due diligence, disqualifying offenses. Offer legal advice to Department staff regarding the background screening process.

Background Screening Coordinator – A DOEA staff member designated to administer the background screening process. This includes coordinating and tracking the background screenings required of employees, volunteers and HCE caregivers.

Background Screening Exemption Review Committee – A committee of DOEA staff, including a representative from the Legal Office. The committee will review Applications for Exemption from Disqualification and make a recommendation to the Secretary.

Case Manager – A direct service provider who will also assist the HCE client in meeting the requirements of background screening.

Client – An elder enrolled in programs and services to receive assistance from direct service providers.

Direct Service Provider – A person 18 years of age or older who pursuant to a program to provide services to the elderly, has direct face-to-face contact with a client while providing services to the client or has access to the client's living area or to the client's funds or personal property. The term includes coordinators, managers, supervisors of residential facilities and volunteers. {Section 430.0402, F.S. (1) (b)}

Direct Service Provider Agency/Employer – Area Agencies on Aging/Aging (and Disability) Resource Centers, Lead Agencies, Service Providers, and Diversion Providers that contract directly or indirectly with DOEA and employ workers or have volunteers in service.

Electronic Fingerprinting Livescan Service Provider – A Livescan service provider included on FDLE's Livescan device vendor list (LiveScan vendors: <http://www.fdle.state.fl.us/Content/getdoc/04833e12-3fc6-4c03-9993-379244e0da50/livescan.aspx>). The vendor's equipment and electronic fingerprint data submissions must have been evaluated by FDLE to verify compliance with both FDLE

and Federal Bureau of Investigation (FBI) regulations and standards. A local law enforcement entity equipped with Livescan to perform Level 2 screening may also be utilized as long as the vendor's equipment and electronic fingerprint data submission have been evaluated by FDLE to verify compliance with both FDLE and FBI regulations and standards. In either instance, the employer must coordinate with the Department Background Screening Coordinator to ensure applicant fingerprint retention by FDLE in the Applicant Fingerprint Retention and Notification Program, whereby, in the event of a direct service provider's subsequent arrest, notification is automatically sent to the Department Background Screening Coordinator.

Employee – An individual at least 18 years of age hired by a direct service provider agency employer. The employee pursuant to a program to provide services to the elderly, has direct face-to-face contact with a client while providing services to the client or has access to the client's living area or to the client's funds or personal property. {Section 430.0402, F.S. (1) (b)}

Exemption – Permission granted to an applicant whose background screening results contain one or more disqualifying offenses, to provide services, despite the presence of a disqualifying offense. Exemption may be granted under certain statutorily defined conditions, when the individual applies to DOEA for an Exemption from Disqualification. An exemption has no impact on criminal history. Only the Department Secretary can grant an exemption.

FBI Fingerprint Quality Rejection and Second Screen Rejection – A failed Livescan fingerprint due to poor image quality, resulting in a Transaction Control Reference (TCR) number being sent to the appropriate DOEA ORI number. The TCR number, TCN number and applicant's name on the initial screening appointment form, is forwarded to the agency/employer and applicant. The applicant will present this information to FDLE and FBI for credit towards the cost of a second screening. The applicant or employer pays any Livescan service provider rescreening charges.

ORI Number – An Origination number is a unique identifier provided by FDLE and FBI that directs a Livescan notification to a specific email listed on the ORI request letter. An email message provides the name of the person screened and a link to an FDLE webpage where the screening result can be found.

Personal Property – Privately owned items, including personal effects, such as name, identification or social security cards and numbers.

Re-screen – Re-screening occurs 5 years from the date of the previous background screening.

Retention – FDLE’s continuous monitoring of direct service providers in the Applicant Fingerprint Retention and Notification Program (AFRNP) with FDLE. In the event of an arrest, notification is automatically sent to the DOEA Background Screening Coordinator. An annual retention fee must be paid by the employee/volunteer or employer/agency.

Transaction Control Number (TCN) – A number given to the applicant at the time of screening.

Transaction Control Reference (TCR) – A number sent to the ORI email address to be forwarded to the applicant for an FBI fingerprint quality rejection rescreen.

Unique Screening ID # - A number located on the Background Screening Appointment Form, consisting of the last four digits of the applicant’s Social Security number and initials.

Volunteer – An individual serving as a direct service provider, who pursuant to a program to provide services to the elderly, has direct face-to-face contact with a client while providing services to the client or has access to the client’s living area or to the client’s funds or personal property.

IV. Procedure

1. Direct Service Provider Agency/Employer Responsibilities

The direct service provider agency/employer is responsible for providing background screening information and forms to employee, volunteer or HCE caregiver applicants. The direct service provider agency/employer or the individual being screened is responsible for the cost of screening and retention. The fee for screening is paid to the selected Livescan Service Provider. Note: Pearson Vue charges a fee if an applicant does not show up for a set screening appointment. Other vendors may charge a no-show fee as well. The retention fee is paid to FDLE.

The direct service provider agency/employer is required to:

- Determine in consultation with the direct service provider agency’s legal counsel, if necessary, which employees, volunteers, vendors or subcontractors need to be screened under the provisions of Section 430.0402, F.S.;

- Ensure each direct service provider employed or volunteering prior to August 1, 2010, receives and reviews the FDLE Level II Disqualifying Offenses referenced in Chapter 435 and Section 430.0402, F.S. and completes the Direct Service Provider Attestation Form;
- Retain the Direct Service Provider Attestation Form from the direct service provider employed or volunteering prior to August 1, 2010 in the applicant file;
- Ensure Level 2 background screening and rescreening occur as indicated in Section (3) (a) (b) (c) and (d) of the Department's Emergency Rule, 58ER 10-1;
- Provide applicants the Background Screening Appointment Form with the Department's ORI # and employer contact information to present to the screening vendor;
- Scan and email the completed Background Screening Appointment Form to the Department after the screening is conducted;
- Ensure the applicant completes the Affidavit of Good Moral Character and retain it in the applicant file, unless an exemption is necessary;
- Complete the employer section of the Affidavit and if necessary decide if the employer wants the employee or volunteer with a disqualifying offense to apply for an exemption and sign the approval line on the Affidavit and forward the form to the Department;
- Ensure FDLE listed LiveScan background screening vendors meet the requirement listed in Section (6) of the Department's Emergency Rule, 58ER 10-1;
- Inform the Department if the employer becomes aware that an employee has been arrested for a disqualifying offense in any state;
- Dismiss any employee or volunteer that DOEA staff require to be terminated;
- Conduct an employment history check as provided in Section 430.0402(1)(a), F.S.;
- Ensure that employees and volunteers (if applicable) submit updated contact information;
- Contact the Department immediately when an applicant is no longer serving so that the individual can be removed from the annual retention list. Failure to do so will result in the annual fee being paid by the employer.

2. Case Manager Responsibilities: For purposes of background screening in the HCE Program, the case manager is responsible for:

- Ensuring existing HCE caregivers prior to August 1, 2010, receive and review the FDLE Level II Disqualifying Offenses referenced in Chapter 435 and Section 430.0402, F.S. and complete the Direct Service Provider Attestation Form;

- Providing DOEA background screening information and the Appointment form to the HCE caregiver and potential employee (if applicable);
- Routing the original signed appointment and affidavit forms to the employer for routing to DOEA Background Screening Coordinator in a timely manner;
- Placing the HCE client services on hold (client will not be terminated from the program for up to 120 days) if the caregiver or potential employee becomes ineligible to serve due to disqualifying offenses in their background screening;
- Encouraging the client, caregiver and employee (if applicable) to discuss any potentially disqualifying offenses to ensure they understand that signing the affidavit with the list of offenses option indicates they would like to pursue an exemption; and
- Ensuring payment of screening and annual retention fees for HCE caregivers.

3. Background Screening Coordinator Responsibilities:

- Receive the Background Screening Appointment forms by email and US mail from the Direct Service Provider Agency/Employer;
- Receive FDLE email notifications at appropriate email addresses, dependent upon ORI number;
- Review the FDLE screening results and the Direct Service Provider Agency **Background Screening Appointment Form** to ensure applicant information matches. The background screening coordinator will open a record in the data base using the Transaction Control Number (TCN);
- (If necessary) - Notify employer (of failed screening due to unreadable prints) by phone, email and US postal service of need for re-screening. If a second screening attempt fails, then the background screening coordinator will notify employer and applicant by phone, email or US postal service of potential for more extensive delay because the DOEA had to submit the screening request for a "name screening";
- (If necessary) - Send a Rejected Fingerprint Quality Re-Screen form when the FBI rejects the quality of the first screening. Place the FBI generated Transaction Control Reference (TCR) number on the Rejected Fingerprint Quality Re-Appointment Form and email and US mail to the employer and applicant;
- (If necessary) - Forward an FBI fingerprint quality rejection rescreen TCR number to the applicant as soon as it is received; and
- (If necessary) - Fax the CJIS Name Search Request Form to the FBI after receiving a second FBI fingerprint quality rejection;
- Receive and review information, i.e. screening results and the completed **Background Screening Appointment Form** from FDLE and employer and determine if there is a potential disqualifying offense and refer to Assistant General Counsel for Background Screening Division (hereinafter "Legal") if there

are potential disqualifying offenses. If Legal determines offense are not disqualifying then continue with procedure as noted below;

- Contact the employer by phone, email and US postal service if the screening results indicate applicant can work or serve. Contact applicant via email or US postal service if the screening results indicate applicant can work or serve;
- Notify the direct service provider agency/employer when the annual retention fee is due and track payments;
- Receive and process retention notifications, which are processed the same as any criminal history background screening result;
- Maintain a list of applicants to be removed from the FDLE retention list before the annual screening date. Missing the deadline results in the Department being charged the annual fee.

4. Assistant General Counsel for Background Screening Division Responsibilities:

- Receive information from Background Screening Coordinator when possible disqualifying offense(s) have been found. Determine, via due diligence, whether offense(s) are truly disqualifying. If offense(s) are not disqualifying, then return information to Background Screening Coordinator and send an email to the Coordinator indicating the name of the applicant and the determination;
- If the offense(s) are disqualifying, send a due process letter to the employer via US Mail, email, and phone call and notify employee via email or US Mail. In addition to the due process letter, send a copy of the procedure for Application for Exemption to employee along with accompanying forms via US Mail ;
- Offer legal advice to Department employees regarding the background screening process;
- Convene the Background Screening Exemption Review Committee, when an application for exemption is received;
- Route the committee's recommendation to the Secretary for approval; and
- Notify the Background Screening Coordinator of the Secretary's decision.

5. Exemption Review Committee Responsibilities:

- Review the materials in the Application for Exemption packet received from the Background Screening Manager;
- Consult with the Background Screening Manager as needed; and
- Route a recommendation to the Background Screening Manager.

V: Exemptions from Disqualification

It is the responsibility of the disqualified applicant to request an exemption from disqualification from the Department. Applicants seeking exemption have the burden of setting forth clear and convincing evidence to ensure that they are not a danger to the health or safety of the consumer. Further information regarding the exemption process

may be obtained by viewing the Department's Application for Exemption from Disqualification.

VI: Retention

The FDLE retention fee is due each year two weeks before the date the applicant was originally screened. At least 60 days before this date, the DOEA will provide the applicant or employer notification of this charge. Failure to pay for retention 30 days before the original screen date may result in retention coverage being dropped which will require rescreening within 30 days of the original screen date.

VII: Maintaining Criminal History Background Screening Files

All correspondence and results related to criminal history background screening for an applicant should be maintained in a locked file or in a secure location. These records should be retained for the duration of the applicant's employment or volunteer status with the employer or for five years, whichever is greater. Records will then be destroyed in accordance with the Department's record retention schedule.

Extraneous, unverified, or unofficial information concerning an employee shall not be placed in the background screening files. Criminal history background screening information is confidential and is not part of the official participant file or the employee personnel file.

VIII: Confidentiality

Because criminal history information is confidential, appropriate security measures must be used if material containing criminal history information is mailed or faxed. If material is mailed, the envelope must be sealed and marked "confidential" and if mailed through interoffice mail, the material should be placed in a separate sealed envelope marked "confidential" before being placed in an interoffice envelope. Information faxed must have a cover sheet indicating that the material is "confidential" and the sender and receiver must coordinate when the material is faxed.

Notice of Emergency Rule

DEPARTMENT OF ELDER AFFAIRS

Rule No.: Rule Title:

58ER10-1 Background Screening Requirements.

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: The Florida Legislature passed Chapter 2010-114, L.O.F., during the 2010 legislative session. This new law requires that effective August 1, 2010, all individuals seeking employment or volunteerism, which will require direct contact with individuals receiving services under the jurisdiction of the Department, must undergo a level 2 background screening prior to employment or volunteerism. For this reason, the Department is publishing this emergency rule to protect the health, safety and welfare of its recipients, thus eliminating the threat of immediate danger by reducing the potential for physical, mental or sexual abuse, or financial exploitation.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: This emergency rule establishes criteria for complying with level 2 background screening requirements pursuant to Chapter 2010-114, L.O.F., and more specifically, pursuant to Section 430.0402, F.S. Section 435.01(2), F.S., provides rulemaking authority to individual agencies affected by the new background screening requirements. In addition, Section 430.08, F.S., provides the Department with rulemaking authority to establish rules to implement the provisions of Chapter 430, F.S. Due to the August 1, 2010 effective date of this new requirement, it is not possible to adopt rules through the regular rulemaking process due to time constraints.

SUMMARY: This emergency rule establishes criteria and procedures for complying with the new requirement of a level 2 background screening for all potential employees, who will have direct contact with Department recipients, prior to employment or volunteerism.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Jim Crochet, Department of Elder Affairs, Office of the General Counsel, 4040 Esplanade Way, Suite 315, Tallahassee, FL 32399-7000; Telephone No.: 850-414-2113; Email address: crochethj@elderaffairs.org

THE FULL TEXT OF THE EMERGENCY RULE IS:

58ER10-1

(1) DEFINITIONS.

In addition to the term “direct service provider,” as defined in Section 430.0402(1)(b), F.S., the following definitions are included in this rule:

(a) “Agency” means the Agency for Health Care Administration.

(b) “Disqualifying Offense” means any criminal offense prohibited in Sections 430.0402 or 435.04, F.S.

(c) “DOEA” or “Department” means the Florida Department of Elder Affairs.

(d) “FBI” means the Federal Bureau of Investigation.

(e) “FDLE” means the Florida Department of Law Enforcement.

(f) “Level 1 Screening” means an assessment of employment history checks, statewide criminal correspondence checks, local criminal history checks and a check of the Dru Sjodin National Sex Offender Public Website coordinated through FDLE to determine whether screened individuals have any disqualifying offenses pursuant to Sections 430.0402 or 435.04, F.S.

(g) “Level 2 Screening” means an assessment of the criminal history record obtained through a fingerprint search coordinated through FDLE and the FBI to determine whether screened individuals have any disqualifying offenses pursuant to Sections 430.0402 or 435.04, F.S.

(2) BACKGROUND SCREENING REQUIRED.

Pursuant to Section 430.0402(1)(a), F.S., Level 2 background screening consistent with the requirements of Chapter 435, F.S., is required for all direct service providers.

(3) IMPLEMENTATION AND RETENTION.

Pursuant to Section 430.0402, F.S., beginning August 1, 2010:

(a) All newly-hired direct service providers shall be required to undergo Level 2 background screening pursuant to Chapter 435 as a condition of employment or volunteerism and continued employment or volunteerism. Such screening shall ensure that a direct service provider has not been arrested awaiting final disposition of, has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or has been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under Sections 430.0402 or 435.04, F.S., or a similar law of another jurisdiction.

(b) Employers of direct service providers who have not been previously screened according to the screening standards of Chapter 435, F.S., must ensure that at least twenty percent (20%) of the available population of such individuals are screened pursuant to the Level 2 screening standards of Chapter 435, F.S., must be screened within 120 calendar days of August 1, 2010, and an additional twenty percent (20%) every 90 calendar days thereafter, until all direct service providers have successfully satisfied the screening standards of Chapter 435, F.S., or have applied for and received an exemption pursuant to Section 435.07, F.S. Employers with fewer than 5 direct service providers must ensure that all such direct service providers are screened within the initial 120 calendar day window.

(c) Thereafter, employers of direct service providers are responsible for coordinating with the Department to ensure applicant fingerprint retention by FDLE in the Applicant Fingerprint Retention and Notification Program, whereby, in the event of a direct service provider's subsequent arrest, notification is automatically sent to the Department's Background Screening Coordinator, according to the procedures specified in Section 943.05, F.S.

(d) Employers of direct service providers previously qualified for employment or volunteer work under Level 1 screening standards and individuals required to be screened according to the Level 2 screening standards contained in Chapter 435, F.S., pursuant to Section 430.0402, F.S., shall be required to be rescreened every 5 years from the date of their last background screening or exemption, unless such individual's fingerprints are continuously retained and monitored by FDLE in the Applicant Fingerprint Retention and Notification Program, according to the procedures specified in Section 943.05, F.S.

(4) EXCEPTIONS.

The following are exceptions to the background screening requirements specified in this rule:

(a) Licensed physicians, nurses, or other professionals licensed by the Department of Health are not subject to the background screening requirements of Chapter 435, F.S, if they are providing a service that is within the scope of their licensed practice.

(b) Individuals qualified for employment by the Agency for Health Care Administration pursuant to the Agency's background screening standards for licensure or employment contained in Section 408.809, F.S., are not subject to subsequent or additional Level 2 background screening pursuant to Chapter 435, F.S., or the unique screening requirements of Section 430.0402, F.S., by virtue of their employment as a direct service provider, if they are providing a service that is within the scope of their licensed practice.

(5) ELECTRONIC SUBMISSION OF FINGERPRINTS.

Beginning August 1, 2010, fingerprints submitted pursuant to Chapter 435, F.S., must be submitted electronically to FDLE, pursuant to subsection (6) of this rule, unless there exists a hardship as acknowledged by the Department, which prevents an individual's fingerprints from being submitted electronically. In such instances, ink-based fingerprints are sufficient to satisfy the provisions of this rule, but only until July 1, 2012, when all must be submitted electronically pursuant to Section 435.04, F.S.

(6) SCREENERS.

Any screening company listed on the FDLE website as authorized to perform Level 2 LiveScan background screenings may be utilized to provide screening pursuant to this rule, so long as such screening company verifies in writing to the employer that all screeners have been subject to, and passed, a Level 1 background screening under the standards set forth in Chapter 435, F.S.

(7) SHARING OF SCREENING RESULTS.

The information that a particular direct service provider has successfully passed a Level 2 background screening may be shared among DOEA programs and providers. In addition, passage of a Level 2 background screening for one program or provider shall constitute passage for all programs and providers. However, the use of a Level 2 background screening by a subsequent program or provider shall not affect the applicable date for rescreening pursuant to subsection (3)(d) of this rule, if any. No information other than the fact that the applicant passed Level 2 screening may be shared.

Rulemaking Authority 430.08, 435.01(2) FS. Law Implemented 430.0402 F.S. History—New 8-2-10.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

Direct Service Provider Rejected Fingerprint Re-Appointment Form

Applicant: Please bring this form with you to your background screening re-appointment and give it to the person who conducts the screening and ask the person to complete the first section of the form and give it back to you.

Screener: This Department of Elder Affairs (DOEA) Origination Code (ORI) number FL924310Z is specific to the Direct Service Provider Agency/Employer, including Area Agencies on Aging/Aging (and Disability) Resource Centers, Lead Agencies, Service Providers, and Diversion Providers that contract directly or indirectly with DOEA. **This applicant's first TCN#** was: _____. This applicant Transaction Control Reference (TCR) number is: _____. **On the first screening the applicant's name was listed exactly as:** _____. Please write the New Transaction Control Number (TCN) and answer the following:

Date of screening: _____ New TCN#: _____ Screener's name: _____

Background Screening Service Provider: _____ Phone number: _____

Screener: Give this form back to the person you screened along with any printed evidence of the screening.

APPLICANT	(Please Print) Last Name: _____	First Name: _____
	Middle (or Maiden) Name: _____	Date of Birth: _____
	Address: _____	Phone: _____
	_____	Email Address: _____
	Below, please print the last four digits of your Social Security number and your initials. This will become your unique screening ID #: _____	
	Enter date of last screening: _____ Write previous TCN# here: _____	

Applicant: Please scan and email this form to CDC+ as soon as possible after screening is complete!

Scan and email to doeainetwork@elderaffairs.org with TCN# and applicant's name in the subject line. You may also fax to 850-414-2006.

If you do not have access to a scanner please mail to:

Florida Department of Elder Affairs
Background Screening
4040 Esplanade Way, Suite 315
Tallahassee, Florida 32399-7000

Agency/Employer Requesting Screening:

Agency Contact:

Agency Name:

Agency Address:

Agency Phone Number and Email:

Federal Tax ID #: