

NOTICE OF INSTRUCTION

West Central Florida
Area Agency on Aging, Inc.



Assistance. Advocacy. Answers on Aging.

#041912 – Background Screening Legislation Updates – kp

TO: All Providers/PSA 6
FROM: Katie Parkinson, Director of Program Management
DATE: April 19, 2012
SUBJECT: Background Screening Legislation Updates

On April 6, 2012, Governor Rick Scott signed into law House Bill 943, creating Chapter 2012-73, Laws of Florida. This legislation amends various sections of the Florida Statutes regarding background screening of professionals, lay persons, and volunteers who serve vulnerable populations within the State. A copy of Chapter 2012-73 is attached.

The purpose of this Notice of Instruction is to provide WCFAAA's providers with a brief overview of the pertinent changes contained in the law and a summary of the new requirements for the Department of Elder Affairs' ("Department") background screening process. This document contains the instructions and a copy of the forms that are required in the Department's screening process as of this date. As implementation of the legislation continues, you will be notified of updated procedures and forms as needed. The step-by-step instructions and forms are posted on the Department's website located at this address:
<http://elderaffairs.state.fl.us/doea/backgroundscreening.php>.

I. OVERVIEW OF CHAPTER 2012-73:

- A. Section 8 amends s. 430.0402, F.S. in significant ways:
- The definition of a "direct service provider" has been revised. Individuals currently must meet two criteria to be considered a direct service provider ("DSP"). To meet the new definition, an individual must: (1) have face-to-face

contact with a client while providing services to the client; *and*, (2) must have access to the client's living area, funds, personal property, or the client's personal identification information.

- Additional exceptions from screening by the Department have been identified for DSPs who are:
 1. Professionals licensed by the Department of Health who had fingerprinting and background screening as part of their licensure if they are providing a service within the scope of their license.
 2. Attorneys in good standing with the Florida Bar if they are providing a service within the scope of their license.
 3. Relatives of the client. *This does not include individuals who render care under the Consumer-Directed Care Program (see § 409.221(4)(i), Fla.Stat.).*
 4. Volunteers who assist on an intermittent basis for less than 20 hours per month and who are not listed on the FDLE Career Offender Search database or the Dru Sjodin National Sex Offender Public Website.
 - Enables the Department to forego additional level 2 screening if an individual is qualified for licensure or employment by AHCA pursuant to AHCA's level 2 background screening and if the individual is providing a service within the scope of his or her license or employment.
 - Allows the Department to establish a staggered screening schedule for certain individuals not currently screened.
 - Requires individuals screened by the Department to be rescreened every five years from initial screening or exemption until such time as the federal fingerprint retention program is operational.
- B. Section 9 amends s. 435.02, F.S. to add contractors, licensees, and volunteers specifically as persons required to be screened and defines "specified agency" by naming the state agencies participating in the Care Provider Background Screening Clearinghouse. The Department is included as a specified agency.

- C. Section 10 requires fingerprint vendors to supply a photograph of the applicant, which is taken at the time fingerprints are submitted.
- D. Section 11 amends s. 435.06, F.S. to allow an individual to be hired before the background screening process is completed for training and orientation purposes as long as the individual does not have direct contact with vulnerable persons.
- E. Section 12 creates the Care Provider Background Screening Clearinghouse, a secure web-based system, to be operational within AHCA by September 30, 2013. Once operational, specified agencies will share the results of criminal history checks for performing background screening.
- F. Section 17 amends s. 943.0585, F.S. stating that individuals who have an expunged criminal history record may not lawfully deny or fail to acknowledge to the Department the arrest covered by the expunged record.
- G. Section 18 amends s. 943.059, F.S. stating that individuals who have a sealed criminal history record may not lawfully deny or fail to acknowledge to the Department the arrest covered by the sealed record.

II. SUMMARY OF BACKGROUND SCREENING PROCESS

- A. **AUTHORITY.** The Department implements section 430.0402 and Chapter 435, Florida Statutes, for level 2 background screening.
- B. **PERSONS REQUIRING SCREENING.** As stated above, the definition of a DSP has changed, and additional exceptions from screening have been added to section 430.0402, Florida Statutes. Initially, it must be determined whether an individual meets the new definition of a DSP. Next, if an individual is a DSP, he or she may qualify for one of the exceptions to level 2 screening. The new definition and exceptions are described below.

1. **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 and has access to the client’s living areas, funds, personal property, or personal identification information as defined in s. 817.568. The term includes coordinators, managers, and supervisors of residential facilities and volunteers.” § 430.0402(1)(b), Fla. Stat. (emphasis added).

2. **Personal identification information** means “any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any:
 - a. Name, postal or electronic mail address, telephone number, social security number, date of birth, mother’s maiden name, official state-issued or United States-issued driver’s license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card;
 - b. Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;
 - c. Unique electronic identification number, address, or routing code;
 - d. Medical records;
 - e. Telecommunication identifying information or access device; or
 - f. Other number or information that can be used to access a person’s financial resources.” § 817.56(1)(f), Fla. Stat.

3. **Exceptions to Level 2 Background Screening by the Department:**

The following DSPs will not have to undergo level 2 screening by the Department if they meet any of the exceptions to screening now identified in sections 430.0402(2) and (3), Florida Statutes:

- a. **DOH Exception:** A physician, nurse, or other professional licensed by the Department of Health (“DOH”) who has undergone level 2 background screening as part of their licensure, if they are providing a service within the scope of their licensed practice. § 430.0402(2)(a)1., Fla. Stat. Verification of licensure status from the DOH is available from its website located at this address:
<http://ww2.doh.state.fl.us/IRM00PRAES/PRASLIST.ASP>

- b. **Attorney Exception:** Attorneys in good standing with the Florida Bar if they are providing a service within the scope of their licensed practice. § 430.0402(2)(a)2., Fla. Stat. This determination can be made by entering the attorney’s name in the “Find a Lawyer” tab at the Florida Bar’s website located at this address:
<http://www.floridabar.org>.

- c. **Relatives of the Client:** An individual who is the father, mother, stepfather, stepmother, son, daughter, brother, sister, grandmother, grandfather, great-grandmother, great-grandfather, grandson, granddaughter, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister of the client. § 430.0402(2)(b), Fla. Stat.

- d. **Volunteers:** Volunteers who assist on an intermittent basis for less than 20 hours per month and who are not listed on the FDLE Career Offender Search database or the Dru Sjodin National Sex Offender Public Website. § 430.0402(2)(c), Fla. Stat.

The Agency/Employer is responsible for verifying that the volunteer is not listed in either database. If the individual’s name appears in either database, the individual is not eligible for an exception and must undergo level 2 screening by the Department. The FDLE Career Offender database is located here:

<http://www.fdle.state.fl.us/coflyer/home.asp> and the Dru Sjodin

Website is located here:

<http://www.nsopw.gov/Core/Conditions.aspx?AspxAutoDetectCookieSupport=1>.

- e. **AHCA Exception:** Individuals qualified for licensure or employment by AHCA within the previous five years pursuant to AHCA's level 2 background screening standards under s. 408.809, F.S., if the individual is providing a service within the scope of their license or employment. § 430.0402(3), Fla. Stat. Verification of the qualification for licensure or employment may be evidenced by a copy of either the AHCA eligibility status final determination screen shot located at this website address:

http://ahca.myflorida.com/MCHQ/Long_Term_Care/Background_Screening/index.shtml or the individual's final determination letter from AHCA.

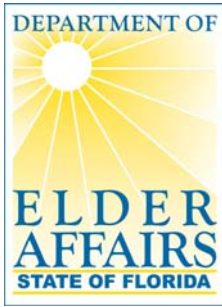
- f. The individual must complete and sign an Affidavit of Compliance - Employee form which the Agency/Employer should keep in the individual's file. A copy of the new form is attached to this Notice and may also be found at this website address:

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

The Affidavit of Compliance - Employee form replaces the Affidavit of Good Moral Character.

Please periodically check the Department's background screening process website for new forms and procedures as we move forward with implementing this new legislation.

Your assistance and cooperation in keeping the service provider network informed is very much appreciated. If you have any questions or concerns, please do not hesitate to contact your this writer, Katie Parkinson at 813-676-5574. Thank you



BACKGROUND SCREENING

Affidavit of Compliance - Employer

AUTHORITY: This form is required annually of all employers to comply with the attestation requirements set forth in section 435.05(3), Florida Statutes.

- The term “employer” means any person or entity required by law to conduct background screening, including but not limited to, Area Agencies on Aging, Aging Resource Centers, Aging and Disability Resource Centers, Lead Agencies, Long-Term Care Ombudsman Program, Serving Health Insurance Needs of Elders Program, Service Providers, Diversion Providers, and any other person or entity which hires employees or has volunteers in service who meet the definition of a direct service provider. See §§ 435.02, 430.0402, Fla. Stat.
- A direct service provider is “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 and has access to the client’s living area, funds, personal property, or personal identification information as defined in s. 817.568. The term includes coordinators, managers, and supervisors of residential facilities; and volunteers.” § 430.0402(1)(b), Fla. Stat.

ATTESTATION:

As the duly authorized representative of _____
Employer Name

located at _____
Street Address City State ZIP code

I, _____ do hereby affirm under penalty of perjury
Name of Representative

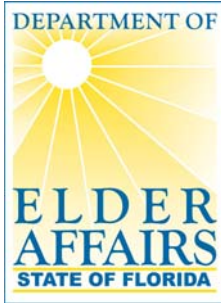
that the above named employer is in compliance with the provisions of Chapter 435 and section 430.0402, Florida Statutes, regarding level 2 background screening.

Signature of Representative Date

STATE OF FLORIDA, COUNTY OF _____

Sworn to (or affirmed) and subscribed before me this ____ day of _____, 20____, by _____ (Name of Representative) who is personally known to me or produced _____ as proof of identification.

Print, Type, or Stamp Commissioned Name of Notary Public Notary Public



BACKGROUND SCREENING

Affidavit of Compliance - Employee

AUTHORITY: This form is required of all employees who are direct service providers when claiming an exception to level 2 background screening set forth in sections 430.0402(2) and (3), Florida Statutes, or to comply with the attestation requirements set forth in section 435.05(2), Florida Statutes.

The term “employee” as used herein refers collectively to *all persons* required by law to undergo background screening. This includes, but is not limited to, persons who are determined to be a direct service provider. A direct service provider is a person at least 18 years of age who, pursuant to a program to provide services to the elderly, has direct face-to-face contact with a client while providing services and has access to the client’s living areas, funds, personal property, or personal identification information as defined in s. 817.568. A direct service provider also includes coordinators, managers, and supervisors of residential facilities and volunteers.

Personal identification information defined in s. 817.568(1)(f), F.S. means “any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any:

1. Name, postal or electronic mail address, telephone number, social security number, date of birth, mother’s maiden name, official state-issued or United States-issued driver’s license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card;
2. Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;
3. Unique electronic identification number, address, or routing code;
4. Medical records;
5. Telecommunication identifying information or access device; or
6. Other number or information that can be used to access a person’s financial resources.”

EMPLOYER: IF AN EMPLOYEE IS DETERMINED TO BE A DIRECT SERVICE PROVIDER, THIS COMPLETED FORM MUST BE RETAINED IN THE EMPLOYEE’S FILE. IF AN EXCEPTION TO BACKGROUND SCREENING IS CLAIMED, A COPY OF THE REQUIRED EVIDENCE MUST BE ATTACHED TO THIS FORM.

STEP ONE: Complete identification information.

_____	_____
Employee Name	Position Applied For

Employer	

STEP TWO: The employee must review the following list of disqualifying offenses set forth in Chapters 430 and 435, Florida Statutes.

You must attest to meeting the requirements for employment and you may not have been arrested for and awaiting final disposition of, have been found guilty of, regardless of adjudication, or have entered a plea of nolo contendere (no contest) or guilty to, or have 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:

Criminal offenses listed in section 435.04, F.S.

- (a) Section 393.135, relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.
- (b) Section 394.4593, relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.
- (c) Section 415.111, relating to adult abuse, neglect, or exploitation of aged persons or disabled adults.
- (d) Section 782.04, relating to murder.
- (e) Section 782.07, relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child.
- (f) Section 782.071, relating to vehicular homicide.
- (g) Section 782.09, relating to killing of an unborn quick child by injury to the mother.
- (h) Chapter 784, relating to assault, battery, and culpable negligence, if the offense was a felony.
- (i) Section 784.011, relating to assault, if the victim of the offense was a minor.
- (j) Section 784.03, relating to battery, if the victim of the offense was a minor.
- (k) Section 787.01, relating to kidnapping.
- (l) Section 787.02, relating to false imprisonment.
- (m) Section 787.025, relating to luring or enticing a child.
- (n) Section 787.04(2), relating to taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings.
- (o) Section 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.
- (p) Section 790.115(1), relating to exhibiting firearms or weapons within 1,000 feet of a school.
- (q) Section 790.115(2)(b), relating to possessing an electric weapon or device, destructive device, or other weapon on school property.
- (r) Section 794.011, relating to sexual battery.
- (s) Former s. 794.041, relating to prohibited acts of persons in familial or custodial authority.
- (t) Section 794.05, relating to unlawful sexual activity with certain minors.
- (u) Chapter 796, relating to prostitution.
- (v) Section 798.02, relating to lewd and lascivious behavior.
- (w) Chapter 800, relating to lewdness and indecent exposure.
- (x) Section 806.01, relating to arson.
- (y) Section 810.02, relating to burglary.
- (z) Section 810.14, relating to voyeurism, if the offense is a felony.
- (aa) Section 810.145, relating to video voyeurism, if the offense is a felony.
- (bb) Chapter 812, relating to theft, robbery, and related crimes, if the offense is a felony.
- (cc) Section 817.563, relating to fraudulent sale of controlled substances, only if the offense was a felony.

(dd) Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.

(ee) Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.

(ff) Section 825.103, relating to exploitation of an elderly person or disabled adult, if the offense was a felony.

(gg) Section 826.04, relating to incest.

(hh) Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.

(ii) Section 827.04, relating to contributing to the delinquency or dependency of a child.

(jj) Former s. 827.05, relating to negligent treatment of children.

(kk) Section 827.071, relating to sexual performance by a child.

(ll) Section 843.01, relating to resisting arrest with violence.

(mm) Section 843.025, relating to depriving a law enforcement, correctional, or correctional probation officer means of protection or communication.

(nn) Section 843.12, relating to aiding in an escape.

(oo) Section 843.13, relating to aiding in the escape of juvenile inmates in correctional institutions.

(pp) Chapter 847, relating to obscene literature.

(qq) Section 874.05(1), relating to encouraging or recruiting another to join a criminal gang.

(rr) Chapter 893, relating to drug abuse prevention and control to include the use, possession, sale, or manufacturing of illegal drugs, only if the offense was a felony or if any other person involved in the offense was a minor.

(ss) Section 916.1075, relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.

(tt) Section 944.35(3), relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.

(uu) Section 944.40, relating to escape.

(vv) Section 944.46, relating to harboring, concealing, or aiding an escaped prisoner.

(ww) Section 944.47, relating to introduction of contraband into a correctional facility.

(xx) Section 985.701, relating to sexual misconduct in juvenile justice programs.

(yy) Section 985.711, relating to contraband introduced into detention facilities.

(ZZ) Section 741.28 relating to domestic violence.

Criminal offenses found in section 430.0402, F.S.

(a) Section 409.920, relating to Medicaid provider fraud.

(b) Section 409.9201, relating to Medicaid fraud.

(c) Section 741.28, relating to domestic violence.

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

(e) Section 817.234, relating to false and fraudulent insurance claims.

(f) Section 817.505, relating to patient brokering.

(g) Section 817.568, relating to criminal use of personal identification information.

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

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

(j) Section 831.01, relating to forgery.

(k) Section 831.02, relating to uttering forged instruments.

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

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

Criminal offenses found in other sections.

(n) Section 775.21, sexual predator.

(o) Section 775.261, Career offender.

(p) Section 943.0435, Sexual offender; unless the requirement to register as a sexual offender has been removed pursuant to 943.04354.

STEP THREE: The employee must complete this section if claiming an exception to level 2 background screening conducted by the Department of Elder Affairs. If not claiming an exception, then skip to Step Four.

If you are claiming that you qualify for an exception to level 2 background screening pursuant to sections 430.0402(2) or (3), Florida Statutes, and thereby, you are not required to undergo background screening through the Department, please indicate the type of exception and attach the required evidence.

EXCEPTION:

- DOH - _____ (initials) A physician, nurse, or other professional licensed by the Department of Health (DOH) if you have undergone level 2 background screening as part of your licensure, and if you are providing a service within the scope of your licensed practice.
Evidence: A copy of your licensure eligibility letter or screen shot from DOH.
- Attorney - _____ (initials) An attorney in good standing with the Florida Bar if you are providing a service within the scope of your licensed practice.
Evidence: A copy of the screen shot of your membership in good standing with the Florida Bar.
- Relative - _____ (initials) A relative of the client.
Evidence: Circle your relationship to the client: husband, wife, father, mother, son, daughter, brother, sister, grandmother, grandfather, great-grandmother, great-grandfather, grandson, granddaughter, uncle, aunt, first cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.
- Volunteer - _____ (initials) A volunteer who assists for less than 20 hours per month and you are not listed on the FDLE Career Offender Search database or the Dru Sjodin National Sex Offender Public Website.
Evidence: A copy of your search results screen shot from each criminal database showing no records were found.
- AHCA - _____ (initials) An individual qualified for licensure or employment by the Agency for Health Care Administration (AHCA) pursuant to AHCA's level 2 background screening standards under s. 408.809, F.S., if you are providing a service within the scope of your license or employment. To be qualified, you must have received the qualification for licensure or employment from AHCA within the previous 5 years.
Evidence: A copy of your final determination letter or eligibility status screen shot from AHCA.

EMPLOYER: IT IS THE EMPLOYER'S RESPONSIBILITY TO VERIFY THE AUTHENTICITY AND ACCURACY OF ANY DOCUMENTATION REQUIRED AS EVIDENCE OF AN EMPLOYEE'S QUALIFICATION FOR AN EXCEPTION.

STEP FOUR: Each employee determined to be a direct service provider must complete this section.

Under penalty of perjury, I _____, hereby swear or affirm that I meet the requirements for qualifying for employment pursuant to the background screening standards set forth in Chapter 435 and Section 430.0402, Florida Statutes. In addition, I agree to immediately inform my employer if arrested or convicted of any of the disqualifying offenses while employed by my employer.

Employee Signature

Date

CHAPTER 2012-73

Committee Substitute for Committee Substitute for Committee Substitute for House Bill No. 943

An act relating to background screening; amending s. 394.4572, F.S.; providing that mental health personnel working in a facility licensed under ch. 395, F.S., who work on an intermittent basis for less than 15 hours per week of direct, face-to-face contact with patients are exempt from the fingerprinting and screening requirements under certain conditions; providing an exception; amending s. 408.809, F.S.; providing additional conditions for a person to satisfy screening requirements; eliminating a rule that requires the Agency for Health Care Administration to stagger rescreening schedules; providing a rescreening schedule; amending s. 409.1757, F.S.; adding law enforcement officers who have a good moral character to the list of professionals who are not required to be refingerprinted or rescreened; amending s. 409.221, F.S.; revising provisions relating to background screening for persons rendering care in the consumer-directed care program; amending s. 413.20, F.S., relating to general vocational rehabilitation programs; defining the term “service provider”; amending s. 413.208, F.S.; requiring registration of service providers; requiring background screening and rescreening of certain persons having contact with vulnerable persons; providing exemptions from background screening; providing disqualifying offenses; providing that the cost of screening shall be borne by the provider or the person being screened; providing conditions for the denial, suspension, termination, or revocation of registration or other agreements; providing for notice of denial, suspension, termination, or revocation; providing applicability; amending s. 430.0402, F.S.; including a person who has access to a client’s personal identification information within the definition of the term “direct service provider”; exempting certain professionals licensed by the Department of Health, attorneys in good standing, relatives of clients, and volunteers who assist on an intermittent basis for less than 20 hours per month from level 2 background screening; exempting certain licensed professionals and persons screened as a licensure requirement from further screening under certain circumstances; requiring direct service providers working as of a certain date to be screened within a specified period; providing a phase-in for screening direct service providers; requiring that employers of direct service providers and certain other individuals be rescreened every 5 years unless fingerprints are retained electronically by the Department of Law Enforcement; removing an offense from the list of disqualifying offenses for purposes of background screening; amending s. 435.02, F.S.; revising and providing definitions relating to employment screening; amending s. 435.04, F.S.; requiring vendors who submit fingerprints on behalf of employers to meet specified criteria; amending s. 435.06, F.S.; authorizing an employer to hire an employee to a position that otherwise requires background screening before the completion of the screening process for the purpose of training the employee;

prohibiting the employee from having direct contact with vulnerable persons until the screening process is complete; creating s. 435.12, F.S.; creating the Care Provider Background Screening Clearinghouse under the Agency for Health Care Administration, in consultation with the Department of Law Enforcement; providing rulemaking authority; providing for the implementation and operation of the clearinghouse; providing for the results of certain criminal history checks to be shared among specified agencies; providing for retention of fingerprints; providing for the registration of employers; providing an exemption for certain employees who have undergone a criminal history check before the clearinghouse is operational; creating s. 456.0135, F.S.; requiring an application for initial licensure in a profession regulated by the Department of Health to include fingerprints submitted by an approved vendor after a specified date; providing procedures and conditions for retention of fingerprints; requiring the applicant to pay the costs of fingerprint processing; amending s. 464.203, F.S.; requiring the Board of Nursing to waive background screening requirements for certain certified nursing assistants; amending s. 943.05, F.S.; providing procedures for qualified entities participating in the Criminal Justice Information Program that elect to participate in the fingerprint retention and search process; providing for the imposition of fees for processing fingerprints; authorizing the Department of Law Enforcement to exclude certain entities from participation for failure to timely remit fingerprint processing fees; amending s. 943.053, F.S.; providing procedures for the submission of fingerprints by private vendors, private entities, and public agencies for certain criminal history checks; requiring the vendor, entity, or agency to enter into an agreement with the Department of Law Enforcement specifying standards for electronic submission of fingerprints; exempting specified criminal justice agencies from the requirement for an agreement; providing procedures for the vendor, entity, or agency to collect certain fees and to remit those fees to the Department of Law Enforcement; authorizing the Department of Law Enforcement to exclude certain entities from participation for failure to timely remit fingerprint processing fees; amending s. 943.0585, F.S.; revising provisions relating to the court-ordered expunction of criminal history records; amending s. 943.059, F.S.; revising provisions relating to the court-ordered sealing of criminal history records; providing an effective date.

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

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

394.4572 Screening of mental health personnel.—

(1)

(d) Mental health personnel working in a facility licensed under chapter 395 who work on an intermittent basis for less than 15 hours per week of direct, face-to-face contact with patients, and who are not listed on the

Department of Law Enforcement Career Offender Search or the Dru Sjodin National Sex Offender Public Website, are exempt from the fingerprinting and screening requirements, except that persons working in a mental health facility where the primary purpose of the facility is the mental health treatment of minors must be fingerprinted and meet screening requirements.

Section 2. Section 408.809, Florida Statutes, is amended to read:

408.809 Background screening; prohibited offenses.—

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

- (a) The licensee, if an individual.
- (b) The administrator or a similarly titled person who is responsible for the day-to-day operation of the provider.
- (c) The financial officer or similarly titled individual who is responsible for the financial operation of the licensee or provider.
- (d) Any person who is a controlling interest if the agency has reason to believe that such person has been convicted of any offense prohibited by s. 435.04. For each controlling interest who has been convicted of any such offense, the licensee shall submit to the agency a description and explanation of the conviction at the time of license application.
- (e) Any person, as required by authorizing statutes, seeking employment with a licensee or provider who is expected to, or whose responsibilities may require him or her to, provide personal care or services directly to clients or have access to client funds, personal property, or living areas; and any person, as required by authorizing statutes, contracting with a licensee or provider whose responsibilities require him or her to provide personal care or personal services directly to clients. Evidence of contractor screening may be retained by the contractor's employer or the licensee.

(2) Every 5 years following his or her licensure, employment, or entry into a contract in a capacity that under subsection (1) would require level 2 background screening under chapter 435, each such person must submit to level 2 background rescreening as a condition of retaining such license or continuing in such employment or contractual status. For any such rescreening, the agency shall request the Department of Law Enforcement to forward the person's fingerprints to the Federal Bureau of Investigation for a national criminal history record check. If the fingerprints of such a person are not retained by the Department of Law Enforcement under s. 943.05(2)(g), the person must file a complete set of fingerprints with the agency and the agency shall forward the fingerprints to the Department of Law Enforcement for state processing, and the Department of Law

Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The fingerprints may be retained by the Department of Law Enforcement under s. 943.05(2)(g). The cost of the state and national criminal history records checks required by level 2 screening may be borne by the licensee or the person fingerprinted. Until the person’s background screening results are retained in the clearinghouse created under s. 435.12, the agency may accept as satisfying the requirements of this section proof of compliance with level 2 screening standards submitted within the previous 5 years to meet any provider or professional licensure requirements of the agency, the Department of Health, the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Children and Family Services, or the Department of Financial Services for an applicant for a certificate of authority or provisional certificate of authority to operate a continuing care retirement community under chapter 651, provided that:

(a) The screening standards and disqualifying offenses for the prior screening are equivalent to those specified in s. 435.04 and this section;

~~(b) satisfies the requirements of this section if~~ The person subject to screening has not had a break in service from a position that requires level 2 screening been unemployed for more than 90 days; and

(c) Such proof is accompanied, under penalty of perjury, by an affidavit of compliance with the provisions of chapter 435 and this section using forms provided by the agency.

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

(4) In addition to the offenses listed in s. 435.04, all persons required to undergo background screening pursuant to this part or authorizing statutes 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 or guilty to, and must not have been adjudicated delinquent and the record not have been sealed or expunged for any of the following offenses or any similar offense of another jurisdiction:

- (a) Any authorizing statutes, if the offense was a felony.
- (b) This chapter, if the offense was a felony.
- (c) Section 409.920, relating to Medicaid provider fraud.
- (d) Section 409.9201, relating to Medicaid fraud.

- (e) Section 741.28, relating to domestic violence.
- (f) Section 817.034, relating to fraudulent acts through mail, wire, radio, electromagnetic, photoelectronic, or photooptical systems.
- (g) Section 817.234, relating to false and fraudulent insurance claims.
- (h) Section 817.505, relating to patient brokering.
- (i) Section 817.568, relating to criminal use of personal identification information.
- (j) Section 817.60, relating to obtaining a credit card through fraudulent means.
- (k) Section 817.61, relating to fraudulent use of credit cards, if the offense was a felony.
- (l) Section 831.01, relating to forgery.
- (m) Section 831.02, relating to uttering forged instruments.
- (n) Section 831.07, relating to forging bank bills, checks, drafts, or promissory notes.
- (o) Section 831.09, relating to uttering forged bank bills, checks, drafts, or promissory notes.
- (p) Section 831.30, relating to fraud in obtaining medicinal drugs.
- (q) Section 831.31, relating to the sale, manufacture, delivery, or possession with the intent to sell, manufacture, or deliver any counterfeit controlled substance, if the offense was a felony.

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

(a) Individuals for whom the last screening was conducted on or before December 31, 2004, must be rescreened by July 31, 2013.

(b) Individuals for whom the last screening conducted was between January 1, 2005, and December 31, 2008, must be rescreened by July 31, 2014.

(c) Individuals for whom the last screening conducted was between January 1, 2009, through July 31, 2011, must be rescreened by July 31, 2015.

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

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

1. Does not have an active professional license or certification from the Department of Health; or
2. Has an active professional license or certification from the Department of Health but is not providing a service within the scope of that license or certification.

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

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

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

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

409.1757 Persons not required to be refingerprinted or rescreened.—Any ~~provision of law to the contrary notwithstanding~~, human resource personnel

who have been fingerprinted or screened pursuant to chapters 393, 394, 397, 402, and this chapter, ~~and teachers who have been fingerprinted pursuant to chapter 1012, and law enforcement officers who meet the requirements of s. 943.13,~~ who have not been unemployed for more than 90 days thereafter, and who under the penalty of perjury attest to the completion of such fingerprinting or screening and to compliance with ~~the provisions of this section and the standards for good moral character as contained in such provisions as ss. 110.1127(3), 393.0655(1), 394.457(6), 397.451, 402.305(2), and 409.175(6), and 943.13(7),~~ are shall not be required to be refingerprinted or rescreened in order to comply with any caretaker screening or fingerprinting requirements.

Section 4. Paragraph (i) of subsection (4) of section 409.221, Florida Statutes, is amended to read:

409.221 Consumer-directed care program.—

(4) CONSUMER-DIRECTED CARE.—

(i) Background screening requirements.—All persons who render care under this section must undergo level 2 background screening pursuant to chapter 435 and s. 408.809. The agency shall, as allowable, reimburse consumer-employed caregivers for the cost of conducting background screening as required by this section. For purposes of this section, a person who has undergone screening, who is qualified for employment under this section and applicable rule, and who has not been unemployed for more than 90 days following such screening is not required to be rescreened. Such person must attest under penalty of perjury to not having been convicted of a disqualifying offense since completing such screening.

Section 5. Present subsections (20) through (26) of section 413.20, Florida Statutes, are renumbered as subsections (21) through (27), respectively, and a new subsection (20) is added to that section to read:

413.20 Definitions.—As used in this part, the term:

(20) “Service provider” means a person or entity who provides, pursuant to this part, employment services, supported employment services, independent living services, self-employment services, personal assistance services, vocational evaluation or tutorial services, or rehabilitation technology services on a contractual or fee-for-service basis to vulnerable persons as defined in s. 435.02.

Section 6. Section 413.208, Florida Statutes, is amended to read:

413.208 Service providers; quality assurance; ~~and fitness for responsibilities; background screening.~~—

(1) Service providers must register with the division. To qualify for registration, the division must of Vocational Rehabilitation shall certify providers of direct service and ensure that the service provider maintains

~~they maintain an internal system of quality assurance, has have proven functional systems, and is are subject to a due-diligence inquiry as to its their fitness to undertake service responsibilities, regardless of whether a contract for services is procured competitively or noncompetitively.~~

(2)(a) As a condition of registration under this section, level 2 background screening pursuant to chapter 435 must be conducted by the division on each of the following persons:

1. The administrator or a similarly titled person who is responsible for the day-to-day operation of the service provider.

2. The financial officer or similarly titled person who is responsible for the financial operation of the service provider.

3. Any person employed by, or otherwise engaged on the behalf of, a service provider who is expected to have direct, face-to-face contact with a vulnerable person as defined in s. 435.02 while providing services to the vulnerable person and having access to that person's living areas, funds, personal property, or personal identification information as defined in s. 817.568.

4. A director of the service provider.

(b) Level 2 background screening pursuant to chapter 435 is not required for the following persons:

1. A licensed physician, nurse, or other professional who is licensed by the Department of Health and who has undergone fingerprinting and background screening as part of such licensure if providing a service that is within the scope of her or his licensed practice.

2. A relative of the vulnerable person receiving services. For purposes of this section, the term "relative" means an individual who is the father, mother, stepfather, stepmother, son, daughter, brother, sister, grandmother, grandfather, great-grandmother, great-grandfather, grandson, granddaughter, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister of the vulnerable person.

(c) Service providers are responsible for initiating and completing the background screening as a condition of registration.

(d)1. Every 5 years following the initial screening, each person subject to background screening under this section must submit to level 2 background rescreening as a condition of the service provider retaining such registration.

2. Until the person's background screening results are retained in the clearinghouse created under s. 435.12, the division may accept as satisfying the requirements of this section proof of compliance with level 2 screening

standards submitted within the previous 5 years to meet any provider or professional licensure requirements of the Agency for Health Care Administration, the Department of Health, the Department of Elderly Affairs, the Agency for Persons with Disabilities, or the Department of Children and Family Services, provided:

a. The screening standards and disqualifying offenses for the prior screening are equivalent to those specified in s. 435.04 and this section;

b. The person subject to screening has not had a break in service from a position that requires level 2 screening for more than 90 days; and

c. Such proof is accompanied, under penalty of perjury, by an affidavit of compliance with the provisions of chapter 435 and this section.

(e) In addition to the disqualifying offenses listed in s. 435.04, all persons subject to undergo background screening pursuant to this section 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 or guilty to, and must not have been adjudicated delinquent, and the record has not been expunged for, any offense prohibited under any of the following provisions or similar law of another jurisdiction:

1. Section 409.920, relating to Medicaid provider fraud.
2. Section 409.9201, relating to Medicaid fraud.
3. Section 741.28, relating to domestic violence.
4. Section 817.034, relating to fraudulent acts through mail, wire, radio, electromagnetic, photoelectronic, or photooptical systems.
5. Section 817.234, relating to false and fraudulent insurance claims.
6. Section 817.505, relating to patient brokering.
7. Section 817.568, relating to criminal use of personal identification information.
8. Section 817.60, relating to obtaining a credit card through fraudulent means.
9. Section 817.61, relating to fraudulent use of credit cards, if the offense was a felony.
10. Section 831.01, relating to forgery.
11. Section 831.02, relating to uttering forged instruments.
12. Section 831.07, relating to forging bank bills, checks, drafts, or promissory notes.

13. Section 831.09, relating to uttering forged bank bills, checks, drafts, or promissory notes.

14. Section 831.31, relating to the sale, manufacture, delivery, or possession with the intent to sell, manufacture, or deliver any counterfeit controlled substance, if the offense was a felony.

(f) The division may grant an exemption from disqualification from this section only as provided in s. 435.07.

(3) The cost of the state and national criminal history records checks required by level 2 screening and their retention shall be borne by the service provider or the person being screened.

(4)(a) The division shall deny, suspend, terminate, or revoke a registration, rate agreement, purchase order, referral, contract, or other agreement, or pursue other remedies in addition to or in lieu of denial, suspension, termination, or revocation, for failure to comply with this section.

(b) If the division has reasonable cause to believe that grounds for denial or termination of registration exist, it shall provide written notification to the person affected, identifying the specific record that indicates noncompliance with the standards established in this section.

(c) If a provider refuses to remove a person who is employed by, or otherwise engaged on behalf of, the provider and who is found to be not in compliance with the standards established in this section from contact with any vulnerable person, the service provider's registration and contract shall be revoked.

Section 7. The background screening requirements of s. 413.208, Florida Statutes, as amended by this act do not apply to existing registrants with the Division of Vocational Rehabilitation within the Department of Education in effect before October 1, 2012. Such requirements apply to all registrants with the division that are renewed or entered into on or after October 1, 2012.

Section 8. Section 430.0402, Florida Statutes, is amended to read:

430.0402 Screening of direct service providers.—

(1)(a) Except as provided in subsection (2), level 2 background screening pursuant to chapter 435 is required for direct service providers. Background screening includes employment history checks as provided in s. 435.03(1) and local criminal records checks through local law enforcement agencies.

(b) For purposes of this section, 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 ~~and~~ or has access to the client's living areas, ~~or to the client's funds, or personal property, or personal identification~~

information as defined in s. 817.568. The term includes coordinators, managers, and supervisors of residential facilities and volunteers.

(2) Level 2 background screening pursuant to chapter 435 and this section is not required for the following direct service providers:

(a)1. Licensed physicians, nurses, or other professionals licensed by the Department of Health who have been fingerprinted and undergone background screening as part of their licensure; and

2. Attorneys in good standing with The Florida Bar; are not subject to background screening

if they are providing a service that is within the scope of their licensed practice.

(b) Relatives. For purposes of this section, the term “relative” means an individual who is the father, mother, stepfather, stepmother, son, daughter, brother, sister, grandmother, grandfather, great-grandmother, great-grandfather, grandson, granddaughter, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister of the client.

(c) Volunteers who assist on an intermittent basis for less than 20 hours per month and who are not listed on the Department of Law Enforcement Career Offender Search or the Dru Sjodin National Sex Offender Public Website.

1. The program that provides services to the elderly is responsible for verifying that the volunteer is not listed on either database.

2. Once the department is participating as a specified agency in the clearinghouse created under s. 435.12, the provider shall forward the volunteer information to the Department of Elderly Affairs if the volunteer is not listed in either database specified in subparagraph 1. The department must then perform a check of the clearinghouse. If a disqualification is identified in the clearinghouse, the volunteer must undergo level 2 background screening pursuant to chapter 435 and this section.

(3) Until the department is participating as a specified agency in the clearinghouse created under s. 435.12, the department may not require additional level 2 screening if the individual is qualified for licensure or employment by the Agency for Health Care Administration pursuant to the agency’s background screening standards under s. 408.809 and the individual is providing a service that is within the scope of his or her licensed practice or employment.

(4)(3) Refusal on the part of an employer to dismiss a manager, supervisor, or direct service provider who has been found to be in noncompliance with standards of this section shall result in the automatic denial,

termination, or revocation of the license or certification, rate agreement, purchase order, or contract, in addition to any other remedies authorized by law.

(5) Individuals serving as direct service providers on July 31, 2011, must be screened by July 1, 2013. The department may adopt rules to establish a schedule to stagger the implementation of the required screening over a 1-year period, beginning July 1, 2012, through July 1, 2013.

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

(7)(4) The background screening conducted pursuant to this section must ensure that, in addition to the disqualifying offenses listed in s. 435.04, 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 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:

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 9. Section 435.02, Florida Statutes, is amended to read:

435.02 Definitions.—For the purposes of this chapter, the term:

(1) “Agency” means any state, county, or municipal agency that grants licenses or registration permitting the operation of an employer or is itself an employer or that otherwise facilitates the screening of employees pursuant to this chapter. If there is no state agency or the municipal or county agency chooses not to conduct employment screening, “agency” means the Department of Children and Family Services.

(2) “Employee” means any person required by law to be screened pursuant to this chapter, including, but not limited to, persons who are contractors, licensees, or volunteers.

(3) “Employer” means any person or entity required by law to conduct screening of employees pursuant to this chapter.

(4) “Employment” means any activity or service sought to be performed by an employee which requires the employee to be screened pursuant to this chapter.

(5) “Specified agency” means the Department of Health, the Department of Children and Family Services, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Department of Elderly Affairs, the Department of Juvenile Justice, and the Agency for Persons with Disabilities when these agencies are conducting state and national criminal history background screening on persons who work with children or persons who are elderly or disabled.

~~(6)~~(5) “Vulnerable person” means a minor as defined in s. 1.01 or a vulnerable adult as defined in s. 415.102.

Section 10. Paragraph (e) is added to subsection (1) of section 435.04, Florida Statutes, to read:

435.04 Level 2 screening standards.—

(1)

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

1. Meet the requirements of s. 943.053; and

2. Have the ability to communicate electronically with the state agency accepting screening results from the Department of Law Enforcement and provide a photograph of the applicant taken at the time the fingerprints are submitted.

Section 11. Paragraph (d) is added to subsection (2) of section 435.06, Florida Statutes, to read:

435.06 Exclusion from employment.—

(2)

(d) An employer may hire an employee to a position that requires background screening before the employee completes the screening process for training and orientation purposes. However, the employee may not have direct contact with vulnerable persons until the screening process is completed and the employee demonstrates that he or she exhibits no behaviors that warrant the denial or termination of employment.

Section 12. Section 435.12, Florida Statutes, is created to read:

435.12 Care Provider Background Screening Clearinghouse.—

(1) The Agency for Health Care Administration in consultation with the Department of Law Enforcement shall create a secure web-based system, which shall be known as the “Care Provider Background Screening Clearinghouse” or “clearinghouse,” and which shall be implemented to the full extent practicable no later than September 30, 2013, subject to the specified agencies being funded and equipped to participate in such program. The clearinghouse shall allow the results of criminal history checks provided to the specified agencies for screening of persons qualified as care providers under s. 943.0542 to be shared among the specified agencies when a person has applied to volunteer, be employed, be licensed, or enter into a contract that requires a state and national fingerprint-based criminal history check. The Agency for Health Care Administration and the Department of Law Enforcement may adopt rules to create forms or implement procedures needed to carry out this section.

(2)(a) To ensure that the information in the clearinghouse is current, the fingerprints of an employee required to be screened by a specified agency and included in the clearinghouse must be:

1. Retained by the Department of Law Enforcement pursuant to s. 943.05(2)(g) and (h) and (3), and the Department of Law Enforcement must report the results of searching those fingerprints against state incoming arrest fingerprint submissions to the Agency for Health Care Administration for inclusion in the clearinghouse.

2. Resubmitted for a Federal Bureau of Investigation national criminal history check every 5 years until such time as the fingerprints are retained by the Federal Bureau of Investigation.

3. Subject to retention on a 5-year renewal basis with fees collected at the time of initial submission or resubmission of fingerprints.

(b) Until such time as the fingerprints are retained at the Federal Bureau of Investigation, an employee with a break in service of more than 90 days from a position that requires screening by a specified agency must submit to a national screening if the person returns to a position that requires screening by a specified agency.

(c) An employer of persons subject to screening by a specified agency must register with the clearinghouse and maintain the employment status of all employees within the clearinghouse. Initial employment status and any changes in status must be reported within 10 business days.

(3) An employee who has undergone a fingerprint-based criminal history check by a specified agency before the clearinghouse is operational is not required to be checked again solely for the purpose of entry in the clearinghouse. Every employee who is or will become subject to fingerprint-based criminal history checks to be eligible to be licensed, have their license renewed, or meet screening or rescreening requirements by a specified agency once the specified agency participates in the clearinghouse shall be subject to the requirements of this section with respect to entry of records in the clearinghouse and retention of fingerprints for reporting the results of searching against state incoming arrest fingerprint submissions.

Section 13. Section 456.0135, Florida Statutes, is created to read:

456.0135 General background screening provisions.—

(1) An application for initial licensure received on or after January 1, 2013, under chapter 458, chapter 459, chapter 460, chapter 461, chapter 464, or s. 465.022 shall include fingerprints pursuant to procedures established by the department through a vendor approved by the Department of Law Enforcement and fees imposed for the initial screening and retention of fingerprints. Fingerprints must be submitted electronically to the Department of Law Enforcement for state processing and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing. Each board, or the department if there is no board, shall screen the results to determine if an applicant meets licensure requirements. For any subsequent renewal of the applicant's license that requires a national criminal history check, the department shall request the Department of Law Enforcement to forward the retained fingerprints of the applicant to the Federal Bureau of Investigation.

(2) All fingerprints submitted to the Department of Law Enforcement as required under subsection (1) shall be retained by the Department of Law Enforcement as provided under s. 943.05(2)(g) and (h) and (3). The department shall notify the Department of Law Enforcement regarding any person whose fingerprints have been retained but who is no longer licensed.

(3) The costs of fingerprint processing, including the cost for retaining fingerprints, shall be borne by the applicant subject to the background screening.

Section 14. Subsection (1) of section 464.203, Florida Statutes, is amended to read:

464.203 Certified nursing assistants; certification requirement.—

(1) The board shall issue a certificate to practice as a certified nursing assistant to any person who demonstrates a minimum competency to read and write and successfully passes the required background screening pursuant to s. 400.215. If the person has successfully passed the required background screening pursuant to s. 400.215 or s. 408.809 within 90 days before applying for a certificate to practice and the person's background screening results are not retained in the clearinghouse created under s. 435.12, the board shall waive the requirement that the applicant successfully pass an additional background screening pursuant to s. 400.215. The person must also meet and meets one of the following requirements:

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

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

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

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

(d) Has completed the curriculum developed by the Department of Education and achieved a minimum score, established by rule of the board, on the nursing assistant competency examination, which consists of a written portion and skills-demonstration portion, approved by the board and administered at a site and by personnel approved by the department.

Section 15. Paragraph (h) of subsection (2) of section 943.05, Florida Statutes, is amended to read:

943.05 Criminal Justice Information Program; duties; crime reports.—

(2) The program shall:

(h) For each agency or qualified entity that officially requests retention of fingerprints or for which retention is otherwise required by law, search all arrest fingerprint submissions received under s. 943.051 against the fingerprints retained in the statewide automated fingerprint identification system under paragraph (g).

1. Any arrest record that is identified with the retained fingerprints of a person subject to background screening as provided in paragraph (g) shall be reported to the appropriate agency or qualified entity.

2. To participate in this search process, agencies or qualified entities must notify each person fingerprinted that his or her fingerprints will be retained, pay an annual fee to the department, and inform the department of any change in the affiliation, employment, or contractual status of each person whose fingerprints are retained under paragraph (g) if such change removes or eliminates the agency or qualified entity's basis or need for receiving reports of any arrest of that person, so that the agency or qualified entity is not obligated to pay the upcoming annual fee for the retention and searching of that person's fingerprints to the department. The department shall adopt a rule setting the amount of the annual fee to be imposed upon each participating agency or qualified entity for performing these searches and establishing the procedures for the retention of fingerprints and the dissemination of search results. The fee may be borne by the agency, qualified entity, or person subject to fingerprint retention or as otherwise provided by law. Consistent with the recognition of criminal justice agencies expressed in s. 943.053(3), these services shall be provided to criminal justice agencies for criminal justice purposes free of charge. Qualified entities that elect to participate in the fingerprint retention and search process are required to timely remit the fee to the department by a payment mechanism approved by the department. If requested by the qualified entity, and with the approval of the department, such fees may be timely remitted to the department by a qualified entity upon receipt of an invoice for such fees from the department. Failure of a qualified entity to pay the amount due on a timely basis or as invoiced by the department may result in the refusal by the department to permit the qualified entity to continue to participate in the fingerprint retention and search process until all fees due and owing are paid.

3. Agencies that participate in the fingerprint retention and search process may adopt rules pursuant to ss. 120.536(1) and 120.54 to require employers to keep the agency informed of any change in the affiliation, employment, or contractual status of each person whose fingerprints are retained under paragraph (g) if such change removes or eliminates the agency's basis or need for receiving reports of any arrest of that person, so that the agency is not obligated to pay the upcoming annual fee for the retention and searching of that person's fingerprints to the department.

Section 16. Subsection (12) of section 943.053, Florida Statutes, is amended, and subsection (13) is added to that section, to read:

943.053 Dissemination of criminal justice information; fees.—

(12) Notwithstanding any other provision of law, when a criminal history check or a duty to disclose the absence of a criminal history check is mandated by state law, or when a privilege or benefit is conferred by state law in return for exercising an option of conducting a criminal history check, the referenced criminal history check, whether it is an initial or renewal check, shall include a Florida criminal history provided by the department as set forth in this section. Such Florida criminal history information may be provided by a private vendor only if that information is directly obtained from the department for each request. When a national criminal history check is required or authorized by state law, the national criminal history check shall be submitted by and through the department in the manner established by the department for such checks, unless otherwise required by federal law. The fee for criminal history information as established by state law or, in the case of national checks, by the Federal Government, shall be borne by the person or entity submitting the request, or as provided by law. Criminal history information provided by any other governmental entity of this state or any private entity shall not be substituted for criminal history information provided by the department when the criminal history check or a duty to disclose the absence of a criminal history check is required by statute or is made a condition of a privilege or benefit by law. When fingerprints are required or permitted to be used as a basis for identification in conducting such a criminal history check, the fingerprints must be taken by a law enforcement agency employee, a government agency employee, a qualified electronic fingerprint service provider, or a private employer. Fingerprints taken by the subject of the criminal history check may not be accepted or used for the purpose of identification in conducting the criminal history check.

(13)(a) For the department to accept an electronic fingerprint submission from:

1. A private vendor engaged in the business of providing electronic fingerprint submission; or

2. A private entity or public agency that submits the fingerprints of its own employees, volunteers, contractors, associates, or applicants for the purpose of conducting a required or permitted criminal history background check,

the vendor, entity, or agency submitting the fingerprints must enter into an agreement with the department that at a minimum obligates the vendor, entity, or agency to comply with certain specified standards to ensure that all persons having direct or indirect responsibility for taking, identifying, and electronically submitting fingerprints are qualified to do so and will ensure the integrity and security of all personal information gathered from the persons whose fingerprints are submitted.

(b) Such standards shall include, but need not be limited to, requiring that:

1. All persons responsible for taking fingerprints and collecting personal identifying information from the persons being fingerprinted to meet current written state and federal guidelines for identity verification and for recording legible fingerprints;

2. The department and the Federal Bureau of Investigation's technical standards for the electronic submission of fingerprints are satisfied;

3. The fingerprint images electronically submitted satisfy the department's and the Federal Bureau of Investigation's quality standards; and

4. A person may not take his or her own fingerprints for submission to the department.

(c) The requirement for entering into an agreement with the department for this purpose does not apply to criminal justice agencies as defined at s. 943.045(10).

(d) The agreement with the department must require the vendor, entity, or agency to collect from the person or entity on whose behalf the fingerprints are submitted the fees prescribed by state and federal law for processing the fingerprints for a criminal history check. The agreement must provide that such fees be timely remitted to the department by a payment mechanism approved by the department. If requested by the vendor, entity, or agency, and with the approval of the department, such fees may be timely remitted to the department by a vendor, entity, or agency upon receipt of an invoice for such fees from the department. Failure of a vendor, entity, or agency to pay the amount due on a timely basis or as invoiced by the department may result in the refusal by the department to accept future fingerprint submissions until all fees due and owing are paid.

Section 17. Paragraph (a) of subsection (4) of section 943.0585, Florida Statutes, is amended to read:

943.0585 Court-ordered expunction of criminal history records.—The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to expunge a criminal history record until the person seeking to expunge a criminal history record has applied for and received a certificate of eligibility for expunction pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without

regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may not be expunged, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, the offense as a delinquent act. The court may only order expunction of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the expunction of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the expunction of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not expunge any record pertaining to such additional arrests if the order to expunge does not articulate the intention of the court to expunge a record pertaining to more than one arrest. This section does not prevent the court from ordering the expunction of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to expunction, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the expunction of any criminal history record, and any request for expunction of a criminal history record may be denied at the sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any criminal history record of a minor or an adult which is ordered expunged by a court of competent jurisdiction pursuant to this section must be physically destroyed or obliterated by any criminal justice agency having custody of such record; except that any criminal history record in the custody of the department must be retained in all cases. A criminal history record ordered expunged that is retained by the department is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and not available to any person or entity except upon order of a court of competent jurisdiction. A criminal justice agency may retain a notation indicating compliance with an order to expunge.

(a) The person who is the subject of a criminal history record that is expunged under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the expunged record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;
2. Is a defendant in a criminal prosecution;
3. Concurrently or subsequently petitions for relief under this section or s. 943.059;

4. Is a candidate for admission to The Florida Bar;
5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly as provided in ~~s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(5), chapter 916, s. 985.644, chapter 400, or chapter 429;~~
6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities; or
7. Is seeking authorization from a seaport listed in s. 311.09 for employment within or access to one or more of such seaports pursuant to s. 311.12.

Section 18. Paragraph (a) of subsection (4) of section 943.059, Florida Statutes, is amended to read:

943.059 Court-ordered sealing of criminal history records.—The courts of this state shall continue to have jurisdiction over their own procedures, including the maintenance, sealing, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to seal the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to seal a criminal history record until the person seeking to seal a criminal history record has applied for and received a certificate of eligibility for sealing pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may not be sealed, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed or pled guilty or nolo contendere to committing the offense as a delinquent act. The court may only order sealing of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the sealing of a criminal

history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the sealing of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not seal any record pertaining to such additional arrests if the order to seal does not articulate the intention of the court to seal records pertaining to more than one arrest. This section does not prevent the court from ordering the sealing of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to sealing, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the sealing of any criminal history record, and any request for sealing a criminal history record may be denied at the sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal history record of a minor or an adult which is ordered sealed by a court of competent jurisdiction pursuant to this section is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and is available only to the person who is the subject of the record, to the subject's attorney, to criminal justice agencies for their respective criminal justice purposes, which include conducting a criminal history background check for approval of firearms purchases or transfers as authorized by state or federal law, to judges in the state courts system for the purpose of assisting them in their case-related decisionmaking responsibilities, as set forth in s. 943.053(5), or to those entities set forth in subparagraphs (a)1., 4., 5., 6., and 8. for their respective licensing, access authorization, and employment purposes.

(a) The subject of a criminal history record sealed under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the sealed record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;
2. Is a defendant in a criminal prosecution;
3. Concurrently or subsequently petitions for relief under this section or s. 943.0585;
4. Is a candidate for admission to The Florida Bar;
5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a

sensitive position having direct contact with children, the developmentally disabled, ~~the aged, or the elderly as provided in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(5), s. 415.103, chapter 916, s. 985.644, chapter 400, or chapter 429;~~

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities;

7. Is attempting to purchase a firearm from a licensed importer, licensed manufacturer, or licensed dealer and is subject to a criminal history check under state or federal law; or

8. Is seeking authorization from a Florida seaport identified in s. 311.09 for employment within or access to one or more of such seaports pursuant to s. 311.12.

Section 19. This act shall take effect upon becoming a law.

Approved by the Governor April 6, 2012.

Filed in Office Secretary of State April 6, 2012.