

CHAPTER 2010-114

Council Substitute for House Bill No. 7069

An act relating to screening; amending s. 39.001, F.S.; revising an exemption from screening requirements for volunteers who assist providers under contract with the Department of Children and Family Services; amending s. 39.821, F.S.; revising background screening requirements for the Guardian Ad Litem Program; amending s. 215.5586, F.S.; removing reference to ch. 435, F.S., for background screening of hurricane mitigation inspectors; amending s. 393.0655, F.S.; revising an exemption from screening requirements for volunteers; removing a temporary exemption from screening requirements for direct service providers awaiting completion of a background screening; adding additional disqualifying offenses for the screening of direct service providers for persons with developmental disabilities; amending s. 394.4572, F.S.; revising background screening requirements for mental health personnel; amending s. 400.215, F.S.; revising background screening requirements for nursing home personnel; amending s. 400.506, F.S.; conforming provisions to changes made by the act; amending s. 400.512, F.S.; revising background screening requirements for home health agency personnel, nurse registry personnel, and companions and homemakers; amending s. 400.6065, F.S.; revising background screening requirements for hospice personnel; amending s. 400.801, F.S.; revising background screening requirements for personnel at homes for special services; amending s. 400.805, F.S.; revising background screening requirements for transitional living facility personnel; creating s. 400.9065, F.S.; providing background screening requirements for prescribed pediatric extended care center personnel; amending s. 400.934, F.S.; revising minimum standards for home medical equipment providers; amending s. 400.953, F.S.; revising background screening requirements for home medical equipment provider personnel; repealing s. 400.955, F.S., relating to the procedures for screening of home medical equipment provider personnel; amending s. 400.964, F.S.; revising background screening requirements for personnel at intermediate care facilities for developmentally disabled persons; amending s. 400.980, F.S.; revising background screening requirements for personnel at health care services pools; amending s. 400.991, F.S.; revising background screening requirements for applicants and personnel at health care clinics; amending s. 408.806, F.S.; adding a requirement for an affidavit relating to background screening to the license application process under the Agency for Health Care Administration; amending s. 408.808, F.S.; conforming provisions to changes made by the act; amending s. 408.809, F.S.; revising background screening requirements under the Agency for Health Care Administration; requiring electronic submission of fingerprints; amending s. 402.302, F.S.; revising exemptions from screening requirements for volunteers and students; amending s. 409.175, F.S.; revising an exemption from screening requirements for volunteers; revising background screening requirements for employees and volunteers in summer day camps and

summer 24-hour camps; requiring periodic drug testing for licensed foster parents; requiring payment by the foster parent; amending s. 409.221, F.S.; revising background screening requirements for persons who render consumer-directed care; amending s. 409.907, F.S.; revising background screening requirements for Medicaid providers; amending s. 409.912, F.S.; requiring Medicaid providers to obtain a level 2 background screening for each provider employee in direct contact with or providing direct services to Medicaid recipients; amending s. 411.01, F.S.; requiring school districts to make a list of eligible substitute teachers available to early learning coalitions; amending s. 429.14, F.S.; revising administrative penalty provisions relating to assisted living facilities; amending s. 429.174, F.S.; revising background screening requirements for assisted living facility personnel; amending s. 429.67, F.S.; revising licensure requirements for adult family-care home personnel and household members; amending s. 429.69, F.S.; revising background screening requirements for adult family-care home personnel; amending s. 429.911, F.S.; revising administrative penalty provisions relating to adult day care centers; amending s. 429.919, F.S.; revising background screening requirements for adult day care center personnel; creating s. 430.0402, F.S.; providing background screening requirements for direct service providers under the Department of Elderly Affairs; amending s. 435.01, F.S.; revising provisions related to the applicability of ch. 435, F.S., statutory references to the chapter, and rulemaking; providing construction with respect to the doctrine of incorporation by reference; amending s. 435.02, F.S.; revising and adding definitions; amending s. 435.03, F.S.; revising level 1 screening standards; adding disqualifying offenses; amending s. 435.04, F.S.; revising level 2 screening standards; requiring electronic submission of fingerprints after a certain date; authorizing agencies to contract for electronic fingerprinting; adding disqualifying offenses; amending s. 435.05, F.S.; revising background check requirements for covered employees and employers; amending s. 435.06, F.S.; revising provisions relating to exclusion from employment; providing that an employer may not hire, select, or otherwise allow an employee contact with any vulnerable person until the screening process is completed; requiring removal of an employee arrested for disqualifying offenses from roles requiring background screening until the employee's eligibility for employment is determined; amending s. 435.07, F.S.; revising provisions relating to exemptions from disqualification; amending s. 435.08, F.S.; revising provisions relating to the payment for processing of fingerprints and criminal history records checks; amending s. 464.203, F.S.; conforming provisions to changes made by the act; amending s. 489.115, F.S.; removing reference to ch. 435, F.S., for background screening of construction contractors; amending s. 943.05, F.S.; revising provisions relating to the Criminal Justice Information Program under the Department of Law Enforcement; authorizing agencies to request the retention of certain fingerprints by the department; providing for rulemaking to require employers to keep the agencies informed of any change in the affiliation, employment, or contractual status of each person whose fingerprints are retained in certain circumstances; providing departmental duties upon notification that a federal

fingerprint retention program is in effect; amending s. 943.053, F.S.; removing obsolete references relating to the dissemination of criminal justice information; amending s. 984.01, F.S.; revising an exemption from screening requirements for volunteers who assist with programs for children; amending s. 985.644, F.S.; revising background screening requirements for the Department of Juvenile Justice; authorizing rule-making; amending ss. 381.60225, 409.912, 464.018, 468.3101, 744.309, 744.474, and 985.04, F.S.; conforming provisions to changes made to ch. 435, F.S., by the act; repealing s. 409.1758, F.S., relating to screening of summer camp personnel; repealing s. 456.039(4)(d), F.S., relating to information required for licensure of designated health care professionals; providing for prospective application of the act; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) of section 39.001, Florida Statutes, is amended to read:

39.001 Purposes and intent; personnel standards and screening.—

(2) DEPARTMENT CONTRACTS.—The department may contract with the Federal Government, other state departments and agencies, county and municipal governments and agencies, public and private agencies, and private individuals and corporations in carrying out the purposes of, and the responsibilities established in, this chapter.

(a) ~~If~~ ~~When~~ the department contracts with a provider for any program for children, all personnel, including owners, operators, employees, and volunteers, in the facility must be of good moral character. A volunteer who assists on an intermittent basis for less than 10 ~~40~~ hours per month need not be screened if a person who meets the screening requirement of this section is always present and has the volunteer within his or her line of sight if the volunteer is under direct and constant supervision by persons who meet the screening requirements.

Section 2. Subsection (1) of section 39.821, Florida Statutes, is amended to read:

39.821 Qualifications of guardians ad litem.—

(1) Because of the special trust or responsibility placed in a guardian ad litem, the Guardian Ad Litem Program may use any private funds collected by the program, or any state funds so designated, to conduct a security background investigation before certifying a volunteer to serve. A security background investigation must include, but need not be limited to, employment history checks, checks of references, local criminal records checks through local law enforcement agencies, and statewide criminal records checks through the Department of Law Enforcement. Upon request, an employer shall furnish a copy of the personnel record for the employee or former employee who is the subject of a security background investigation

conducted under this section. The information contained in the personnel record may include, but need not be limited to, disciplinary matters and the reason why the employee was terminated from employment. An employer who releases a personnel record for purposes of a security background investigation is presumed to have acted in good faith and is not liable for information contained in the record without a showing that the employer maliciously falsified the record. A security background investigation conducted under this section must ensure that a person is not certified as a guardian ad litem if the person has an arrest awaiting final disposition for, been convicted of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under the provisions listed in s. 435.04. All applicants certified on or after August 1, 2010, must undergo a level 2 background screening pursuant to chapter 435 before being certified the provisions of the Florida Statutes specified in s. 435.04(2) or under any similar law in another jurisdiction. Before certifying an applicant to serve as a guardian ad litem, the Guardian Ad Litem Program may request a federal criminal records check of the applicant through the Federal Bureau of Investigation. In analyzing and evaluating the information obtained in the security background investigation, the program must give particular emphasis to past activities involving children, including, but not limited to, child-related criminal offenses or child abuse. The program has the sole discretion in determining whether to certify a person based on his or her security background investigation. The information collected pursuant to the security background investigation is confidential and exempt from s. 119.07(1).

Section 3. Paragraph (b) of subsection (1) of section 215.5586, Florida Statutes, is amended to read:

215.5586 My Safe Florida Home Program.—There is established within the Department of Financial Services the My Safe Florida Home Program. The department shall provide fiscal accountability, contract management, and strategic leadership for the program, consistent with this section. This section does not create an entitlement for property owners or obligate the state in any way to fund the inspection or retrofitting of residential property in this state. Implementation of this program is subject to annual legislative appropriations. It is the intent of the Legislature that the My Safe Florida Home Program provide trained and certified inspectors to perform inspections for owners of site-built, single-family, residential properties and grants to eligible applicants as funding allows. The program shall develop and implement a comprehensive and coordinated approach for hurricane damage mitigation that may include the following:

(1) HURRICANE MITIGATION INSPECTIONS.—

(b) To qualify for selection by the department as a wind certification entity to provide hurricane mitigation inspections, the entity shall, at a minimum, meet the following requirements:

1. Use hurricane mitigation inspectors who:
 - a. Are certified as a building inspector under s. 468.607;
 - b. Are licensed as a general or residential contractor under s. 489.111;
 - c. Are licensed as a professional engineer under s. 471.015 and who have passed the appropriate equivalency test of the building code training program as required by s. 553.841;
 - d. Are licensed as a professional architect under s. 481.213; or
 - e. Have at least 2 years of experience in residential construction or residential building inspection and have received specialized training in hurricane mitigation procedures. Such training may be provided by a class offered online or in person.
2. Use hurricane mitigation inspectors who also:
 - a. Have undergone drug testing and a level-2 background screening checks pursuant to s. 435.04. The department may conduct criminal record checks of inspectors used by wind certification entities. Inspectors must submit a set of the fingerprints to the department for state and national criminal history checks and must pay the fingerprint processing fee set forth in s. 624.501. The fingerprints shall be sent by the department to the Department of Law Enforcement and forwarded to the Federal Bureau of Investigation for processing. The results shall be returned to the department for screening. The fingerprints shall be taken by a law enforcement agency, designated examination center, or other department-approved entity; and
 - b. Have been certified, in a manner satisfactory to the department, to conduct the inspections.
3. Provide a quality assurance program including a reinspection component.

Section 4. Paragraphs (a) and (e) of subsection (1) of section 393.0655, Florida Statutes, are amended, and subsection (5) is added to that section, to read:

393.0655 Screening of direct service providers.—

(1) MINIMUM STANDARDS.—The agency shall require level 2 employment screening pursuant to chapter 435 for direct service providers who are unrelated to their clients, including support coordinators, and managers and supervisors of residential facilities or comprehensive transitional education programs licensed under this chapter and any other person, including volunteers, who provide care or services, who have access to a client’s living areas, or who have access to a client’s funds or personal property. Background screening shall include employment history checks as provided in s.

435.03(1) and local criminal records checks through local law enforcement agencies.

(a) A volunteer who assists on an intermittent basis for less than 10 40 hours per month does not have to be screened if a person who meets the screening requirement of this section is always present and has the volunteer within his or her line of sight if the volunteer is under the direct and constant visual supervision of persons who meet the screening requirements of this section.

~~(e) A direct service provider who is awaiting the completion of background screening is temporarily exempt from the screening requirements under this section if the provider is under the direct and constant visual supervision of persons who meet the screening requirements of this section. Such exemption expires 90 days after the direct service provider first provides care or services to clients, has access to a client's living areas, or has access to a client's funds or personal property.~~

(5) DISQUALIFYING OFFENSES.—The background screening conducted under 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.
- (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 817.034, relating to fraudulent acts through mail, wire, radio, electromagnetic, photoelectronic, or photooptical systems.
- (f) Section 817.234, relating to false and fraudulent insurance claims.
- (g) Section 817.505, relating to patient brokering.
- (h) Section 817.568, relating to criminal use of personal identification information.
- (i) Section 817.60, relating to obtaining a credit card through fraudulent means.
- (j) Section 817.61, relating to fraudulent use of credit cards, if the offense was a felony.
- (k) Section 831.01, relating to forgery.

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

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

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

Section 5. Section 394.4572, Florida Statutes, is amended to read:

394.4572 Screening of mental health personnel.—

(1)(a) ~~The department and the Agency for Health Care Administration shall require level 2 background employment screening pursuant to chapter 435 for mental health personnel using the standards for level 2 screening set forth in chapter 435. “Mental health personnel” includes all program directors, professional clinicians, staff members, and volunteers working in public or private mental health programs and facilities who have direct contact with individuals held for examination or admitted for mental health treatment unmarried patients under the age of 18 years. For purposes of this chapter, employment screening of mental health personnel shall also include include, but is not limited to, employment screening as provided under chapter 435 and s. 408.809.~~

(b) Students in the health care professions who are interning in a mental health facility licensed under chapter 395, where the primary purpose of the facility is not the treatment of minors, are exempt from the fingerprinting and screening requirements ~~if, provided they are under direct supervision in the actual physical presence of a licensed health care professional.~~

~~(c)—Mental health personnel working in a facility licensed under chapter 395 who have less than 15 hours per week of direct contact with patients or who are health care professionals licensed by the Agency for Health Care Administration or a board thereunder are exempt from the fingerprinting and screening requirements, except for persons working in mental health facilities where the primary purpose of the facility is the treatment of minors.~~

~~(c)(d) A volunteer who assists on an intermittent basis for less than 10 40 hours per month is exempt from the fingerprinting and screening requirements if a person who meets the screening requirement of paragraph (a) is always present and has the volunteer within his or her line of sight, provided the volunteer is under direct and constant supervision by persons who meet the screening requirements of paragraph (a).~~

(2) The department or the Agency for Health Care Administration may grant exemptions from disqualification as provided in chapter 435 s. 435.06.

~~(3) Prospective mental health personnel who have previously been fingerprinted or screened pursuant to this chapter, chapter 393, chapter 397, chapter 402, or chapter 409, or teachers who have been fingerprinted pursuant to chapter 1012, 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 level 1 screening contained in chapter 435, shall not be required to be reprinted or rescreened in order to comply with any screening requirements of this part.~~

Section 6. Section 400.215, Florida Statutes, is amended to read:

400.215 Personnel screening requirement.—

~~(1) The agency shall require level 2 background screening for personnel as required in s. 408.809(1)(e) pursuant to as provided in chapter 435 and s. 408.809, for all employees or prospective employees of facilities licensed under this part who are expected to, or whose responsibilities may require them to:~~

~~(a) Provide personal care or services to residents;~~

~~(b) Have access to resident living areas; or~~

~~(c) Have access to resident funds or other personal property.~~

~~(2) Employers and employees shall comply with the requirements of s. 435.05.~~

~~(a) Notwithstanding the provisions of s. 435.05(1), facilities must have in their possession evidence that level 1 screening has been completed before allowing an employee to begin working with patients as provided in subsection (1). All information necessary for conducting background screening using level 1 standards as specified in s. 435.03 shall be submitted by the nursing facility to the agency. Results of the background screening shall be provided by the agency to the requesting nursing facility.~~

~~(b) Employees qualified under the provisions of paragraph (a) who have not maintained continuous residency within the state for the 5 years immediately preceding the date of request for background screening must complete level 2 screening, as provided in chapter 435. Such employees may work in a conditional status up to 180 days pending the receipt of written findings evidencing the completion of level 2 screening. Level 2 screening shall not be required of employees or prospective employees who attest in writing under penalty of perjury that they meet the residency requirement. Completion of level 2 screening shall require the employee or prospective employee to furnish to the nursing facility a full set of fingerprints to enable a criminal background investigation to be conducted. The nursing facility shall submit the completed fingerprint card to the agency. The agency shall establish a record of the request in the database provided for in paragraph (c) and forward the request to the Department of Law Enforcement, which is authorized to submit the fingerprints to the Federal Bureau of Investigation for a national criminal history records check. The results of the national criminal history records check shall be returned to the agency, which shall maintain the results in the database provided for in paragraph (c). The~~

agency shall notify the administrator of the requesting nursing facility or the administrator of any other facility licensed under chapter 393, chapter 394, chapter 395, chapter 397, chapter 429, or this chapter, as requested by such facility, as to whether or not the employee has qualified under level 1 or level 2 screening. An employee or prospective employee who has qualified under level 2 screening and has maintained such continuous residency within the state shall not be required to complete a subsequent level 2 screening as a condition of employment at another facility.

(c) ~~The agency shall establish and maintain a database of background screening information which shall include the results of both level 1 and level 2 screening. The Department of Law Enforcement shall timely provide to the agency, electronically, the results of each statewide screening for incorporation into the database. The agency shall, upon request from any facility, agency, or program required by or authorized by law to screen its employees or applicants, notify the administrator of the facility, agency, or program of the qualifying or disqualifying status of the employee or applicant named in the request.~~

(d) ~~Applicants and employees shall be excluded from employment pursuant to s. 435.06.~~

(3) ~~The applicant is responsible for paying the fees associated with obtaining the required screening. Payment for the screening shall be submitted to the agency. The agency shall establish a schedule of fees to cover the costs of level 1 and level 2 screening. Facilities may reimburse employees for these costs. The Department of Law Enforcement shall charge the agency for a level 1 or level 2 screening a rate sufficient to cover the costs of such screening pursuant to s. 943.053(3). The agency shall, as allowable, reimburse nursing facilities for the cost of conducting background screening as required by this section. This reimbursement is will not be subject to any rate ceilings or payment targets in the Medicaid Reimbursement plan.~~

(4)(a) ~~As provided in s. 435.07, the agency may grant an exemption from disqualification to an employee or prospective employee who is subject to this section and who has not received a professional license or certification from the Department of Health.~~

(b) ~~As provided in s. 435.07, the appropriate regulatory board within the Department of Health, or that department itself when there is no board, may grant an exemption from disqualification to an employee or prospective employee 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.~~

(5) ~~Any provision of law to the contrary notwithstanding, persons who have been screened and qualified as required by this section and who have not been unemployed for more than 180 days thereafter, and who under penalty of perjury attest to not having been convicted of a disqualifying offense since the completion of such screening, shall not be required to be~~

~~rescreened. An employer may obtain, pursuant to s. 435.10, written verification of qualifying screening results from the previous employer or other entity which caused such screening to be performed.~~

~~(6) The agency and the Department of Health shall have authority to adopt rules pursuant to the Administrative Procedure Act to implement this section.~~

~~(7) All employees shall comply with the requirements of this section by October 1, 1998. No current employee of a nursing facility as of the effective date of this act shall be required to submit to rescreening if the nursing facility has in its possession written evidence that the person has been screened and qualified according to level 1 standards as specified in s. 435.03(1). Any current employee who meets the level 1 requirement but does not meet the 5-year residency requirement as specified in this section must provide to the employing nursing facility written attestation under penalty of perjury that the employee has not been convicted of a disqualifying offense in another state or jurisdiction. All applicants hired on or after October 1, 1998, shall comply with the requirements of this section.~~

~~(8) There is no monetary or unemployment 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 an act of domestic violence, terminates the employee against whom the report was issued, whether or not the employee has filed for an exemption with the Department of Health or the Agency for Health Care Administration.~~

Section 7. Subsection (9) of section 400.506, Florida Statutes, is amended to read:

400.506 Licensure of nurse registries; requirements; penalties.—

(9) Each nurse registry must comply with the background screening requirements procedures set forth in s. 400.512 for maintaining records of the work history of all persons referred for contract and is subject to the standards and conditions set forth in that section. However, an initial screening may not be required for persons who have been continuously registered with the nurse registry since October 1, 2000.

Section 8. Section 400.512, Florida Statutes, is amended to read:

400.512 Screening of home health agency personnel; nurse registry personnel and contractors; and companions and homemakers.—The agency, registry, or service shall require level 2 background screening for employees or contractors as required in s. 408.809(1)(e) pursuant to chapter 435 and s. 408.809 employment or contractor screening as provided in chapter 435, using the level 1 standards for screening set forth in that chapter, for home health agency personnel; persons referred for employment by nurse registries; and persons employed by companion or homemaker services registered under s. 400.509.

~~(1)(a) The Agency for Health Care Administration may, upon request, grant exemptions from disqualification from employment or contracting under this section as provided in s. 435.07, except for health care practitioners licensed by the Department of Health or a regulatory board within that department.~~

~~(b) The appropriate regulatory board within the Department of Health, or that department itself when there is no board, may, upon request of the licensed health care practitioner, grant exemptions from disqualification from employment or contracting under this section as provided in s. 435.07.~~

~~(2) The administrator of each home health agency, the managing employee of each nurse registry, and the managing employee of each companion or homemaker service registered under s. 400.509 must sign an affidavit annually, under penalty of perjury, stating that all personnel hired or contracted with or registered on or after October 1, 2000, who enter the home of a patient or client in their service capacity have been screened.~~

~~(3) As a prerequisite to operating as a home health agency, nurse registry, or companion or homemaker service under s. 400.509, the administrator or managing employee, respectively, must submit to the agency his or her name and any other information necessary to conduct a complete screening according to this section. The agency shall submit the information to the Department of Law Enforcement for state processing. The agency shall review the record of the administrator or manager with respect to the offenses specified in this section and shall notify the owner of its findings. If disposition information is missing on a criminal record, the administrator or manager, upon request of the agency, must obtain and supply within 30 days the missing disposition information to the agency. Failure to supply missing information within 30 days or to show reasonable efforts to obtain such information will result in automatic disqualification.~~

~~(4) Proof of compliance with the screening requirements of chapter 435 shall be accepted in lieu of the requirements of this section if the person has been continuously employed or registered without a breach in service that exceeds 180 days, the proof of compliance is not more than 2 years old, and the person has been screened by the Department of Law Enforcement. A home health agency, nurse registry, or companion or homemaker service registered under s. 400.509 shall directly provide proof of compliance to another home health agency, nurse registry, or companion or homemaker service registered under s. 400.509. The recipient home health agency, nurse registry, or companion or homemaker service registered under s. 400.509 may not accept any proof of compliance directly from the person who requires screening. Proof of compliance with the screening requirements of this section shall be provided upon request to the person screened by the home health agencies; nurse registries; or companion or homemaker services registered under s. 400.509.~~

~~(5) There is no monetary liability on the part of, and no cause of action for damages arises against, a licensed home health agency, licensed nurse~~

~~registry, or companion or homemaker service registered under s. 400.509, that, upon notice that the employee or contractor has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under s. 435.03 or under any similar statute of another jurisdiction, terminates the employee or contractor, whether or not the employee or contractor has filed for an exemption with the agency in accordance with chapter 435 and whether or not the time for filing has expired.~~

~~(6) The costs of processing the statewide correspondence criminal records checks must be borne by the home health agency; the nurse registry; or the companion or homemaker service registered under s. 400.509, or by the person being screened, at the discretion of the home health agency, nurse registry, or s. 400.509 registrant.~~

Section 9. Section 400.6065, Florida Statutes, is amended to read:

400.6065 Background screening.—The agency shall require level 2 background employment or contractor screening for personnel as required in s. 408.809(1)(e) pursuant to chapter 435 and s. 408.809 as provided in chapter 435, using the level 1 standards for screening set forth in that chapter, for hospice personnel.

Section 10. Subsection (2) of section 400.801, Florida Statutes, is amended to read:

400.801 Homes for special services.—

(2)(a) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to this section and part II of chapter 408 and entities licensed by or applying for such licensure from the agency pursuant to this section. A license issued by the agency is required in order to operate a home for special services in this state.

(b) The agency shall require level 2 background screening for personnel as required in s. 408.809(1)(e) pursuant to chapter 435 and s. 408.809.

Section 11. Paragraph (d) is added to subsection (2) of section 400.805, Florida Statutes, to read:

400.805 Transitional living facilities.—

(2)

(d) The agency shall require level 2 background screening for personnel as required in s. 408.809(1)(e) pursuant to chapter 435 and s. 408.809.

Section 12. Section 400.9065, Florida Statutes, is created to read:

400.9065 Background screening.—The agency shall require level 2 background screening for personnel as required in s. 408.809(1)(e) pursuant to chapter 435 and s. 408.809.

Section 13. Subsection (16) of section 400.934, Florida Statutes, is amended to read:

400.934 Minimum standards.—As a requirement of licensure, home medical equipment providers shall:

(16) Establish procedures for maintaining a record of the employment history, including background screening as required by ss. s. 400.953 and 408.809(1) and chapter 435, of all home medical equipment provider personnel. A home medical equipment provider must require its personnel to submit an employment history to the home medical equipment provider and must verify the employment history for at least the previous 5 years, unless through diligent efforts such verification is not possible. There is no monetary liability on the part of, and no cause of action for damages arising against a former employer, a prospective employee, or a prospective independent contractor with a licensed home medical equipment provider, who reasonably and in good faith communicates his or her honest opinions about a former employee's job performance. This subsection does not affect the official immunity of an officer or employee of a public corporation.

Section 14. Section 400.953, Florida Statutes, is amended to read:

400.953 Background screening of home medical equipment provider personnel.—~~The agency shall require level 2 background screening for personnel as required in s. 408.809(1)(e) pursuant to chapter 435 and s. 408.809 employment screening as provided in chapter 435, using the level 1 standards for screening set forth in that chapter, for home medical equipment provider personnel.~~

(1) ~~The agency may grant exemptions from disqualification from employment under this section as provided in s. 435.07.~~

(2) ~~The general manager of each home medical equipment provider must sign an affidavit annually, under penalty of perjury, stating that all home medical equipment provider personnel hired on or after July 1, 1999, who enter the home of a patient in the capacity of their employment have been screened and that its remaining personnel have worked for the home medical equipment provider continuously since before July 1, 1999.~~

(3) ~~Proof of compliance with the screening requirements of s. 110.1127, s. 393.0655, s. 394.4572, s. 397.451, s. 402.305, s. 402.313, s. 409.175, s. 464.008, or s. 985.644 or this part must be accepted in lieu of the requirements of this section if the person has been continuously employed in the same type of occupation for which he or she is seeking employment without a breach in service that exceeds 180 days, the proof of compliance is not more than 2 years old, and the person has been screened by the~~

~~Department of Law Enforcement. An employer or contractor shall directly provide proof of compliance to another employer or contractor, and a potential employer or contractor may not accept any proof of compliance directly from the person requiring screening. Proof of compliance with the screening requirements of this section shall be provided, upon request, to the person screened by the home medical equipment provider.~~

~~(4) There is no monetary liability on the part of, and no cause of action for damages arising against, a licensed home medical equipment provider that, upon notice that an employee has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under s. 435.03 or under any similar statute of another jurisdiction, terminates the employee, whether or not the employee has filed for an exemption with the agency and whether or not the time for filing has expired.~~

~~(5) The costs of processing the statewide correspondence criminal records checks must be borne by the home medical equipment provider or by the person being screened, at the discretion of the home medical equipment provider.~~

~~(6) Neither the agency nor the home medical equipment provider may use the criminal records or juvenile records of a person for any purpose other than determining whether that person meets minimum standards of good moral character for home medical equipment provider personnel.~~

~~(7)(a) It is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, for any person willfully, knowingly, or intentionally to:~~

~~1. Fail, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose in any application for paid employment a material fact used in making a determination as to the person's qualifications to be an employee under this section;~~

~~2. Operate or attempt to operate an entity licensed under this part with persons who do not meet the minimum standards for good moral character as contained in this section; or~~

~~3. Use information from the criminal records obtained under this section for any purpose other than screening that person for employment as specified in this section, or release such information to any other person for any purpose other than screening for employment under this section.~~

~~(b) It is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, for any person willfully, knowingly, or intentionally to use information from the juvenile records of a person obtained under this section for any purpose other than screening for employment under this section.~~

Section 15. Section 400.955, Florida Statutes, is repealed.

Section 16. Section 400.964, Florida Statutes, is amended to read:

400.964 Personnel screening requirement.—

~~(1) The agency shall require level 2 background screening for personnel as required in s. 408.809(1)(e) pursuant to chapter 435 and s. 408.809 as provided in chapter 435 for all employees or prospective employees of facilities licensed under this part who are expected to be, or whose responsibilities are such that they would be considered to be, a direct service provider.~~

~~(2) Employers and employees shall comply with the requirements of chapter 435.~~

~~(3) Applicants and employees shall be excluded from employment pursuant to s. 435.06.~~

~~(4) The applicant is responsible for paying the fees associated with obtaining the required screening. Payment for the screening must be submitted to the agency as prescribed by the agency.~~

~~(5) Notwithstanding any other provision of law, persons who have been screened and qualified as required by this section and who have not been unemployed for more than 180 days thereafter, and who under penalty of perjury attest to not having been convicted of a disqualifying offense since the completion of such screening are not required to be rescreened. An employer may obtain, pursuant to s. 435.10, written verification of qualifying screening results from the previous employer or other entity that caused such screening to be performed.~~

~~(6) The agency may adopt rules to administer this section.~~

~~(7) All employees must comply with the requirements of this section by October 1, 2000. A person employed by a facility licensed pursuant to this part as of the effective date of this act is not required to submit to rescreening if the facility has in its possession written evidence that the person has been screened and qualified according to level 1 standards as specified in s. 435.03. Any current employee who meets the level 1 requirement but does not meet the 5-year residency requirement must provide to the employing facility written attestation under penalty of perjury that the employee has not been convicted of a disqualifying offense in another state or jurisdiction. All applicants hired on or after October 1, 1999, must comply with the requirements of this section.~~

~~(8) There is no monetary or unemployment liability on the part of, and no cause of action for damages arises against an employer that, upon notice of a disqualifying offense listed under chapter 435 or an act of domestic violence, terminates the employee, whether or not the employee has filed for an exemption with the Department of Health or the Agency for Health Care Administration.~~

Section 17. Subsection (3) of section 400.980, Florida Statutes, is amended to read:

400.980 Health care services pools.—

~~(3) Upon receipt of a completed, signed, and dated application, The agency shall require level 2 background screening for personnel as required in s. 408.809(1)(e) pursuant to chapter 435 and s. 408.809, in accordance with the level 1 standards for screening set forth in chapter 435, of every individual who will have contact with patients.~~

Section 18. Subsection (5) of section 400.991, Florida Statutes, is amended to read:

400.991 License requirements; background screenings; prohibitions.—

~~(5) Each applicant for licensure shall comply with the following requirements:~~

~~(a) As used in this subsection, the term “applicant” means individuals owning or controlling, directly or indirectly, 5 percent or more of an interest in a clinic; the medical or clinic director, or a similarly titled person who is responsible for the day-to-day operation of the licensed clinic; the financial officer or similarly titled individual who is responsible for the financial operation of the clinic; and licensed health care practitioners at the clinic.~~

~~(b) Upon receipt of a completed, signed, and dated application, The agency shall require level 2 background screening for applicants and personnel as required in s. 408.809(1)(e) pursuant to chapter 435 and s. 408.809 of the applicant, in accordance with the level 2 standards for screening set forth in chapter 435. Proof of compliance with the level 2 background screening requirements of chapter 435 which has been submitted within the previous 5 years in compliance with any other health care licensure requirements of this state is acceptable in fulfillment of this paragraph. Applicants who own less than 10 percent of a health care clinic are not required to submit fingerprints under this section.~~

~~(c) Each applicant must submit to the agency, with the application, a description and explanation of any exclusions, permanent suspensions, or terminations of an applicant from the Medicare or Medicaid programs. Proof of compliance with the requirements for disclosure of ownership and control interest under the Medicaid or Medicare programs may be accepted in lieu of this submission. The description and explanation may indicate whether such exclusions, suspensions, or terminations were voluntary or not voluntary on the part of the applicant.~~

~~(d) A license may not be granted to a clinic if the applicant has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to, any offense prohibited under the level 2 standards for screening set forth in chapter 435, or a violation of insurance fraud under s. 817.234, within the past 5 years. If the applicant has been convicted of an offense~~

~~prohibited under the level 2 standards or insurance fraud in any jurisdiction, the applicant must show that his or her civil rights have been restored prior to submitting an application.~~

Section 19. Paragraph (h) is added to subsection (1) of section 408.806, Florida Statutes, to read:

408.806 License application process.—

(1) An application for licensure must be made to the agency on forms furnished by the agency, submitted under oath, and accompanied by the appropriate fee in order to be accepted and considered timely. The application must contain information required by authorizing statutes and applicable rules and must include:

(h) An affidavit, under penalty of perjury, as required in s. 435.05(3), stating compliance with the provisions of this section and chapter 435.

Section 20. Subsection (2) of section 408.808, Florida Statutes, is amended to read:

408.808 License categories.—

(2) PROVISIONAL LICENSE.—~~A provisional license may be issued to an applicant pursuant to s. 408.809(3).~~ An applicant against whom a proceeding denying or revoking a license is pending at the time of license renewal may be issued a provisional license effective until final action not subject to further appeal. A provisional license may also be issued to an applicant applying for a change of ownership. A provisional license must shall be limited in duration to a specific period of time, up not to exceed 12 months, as determined by the agency.

Section 21. 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 shall be considered employees ~~an employee~~ 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. 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 Agency for Persons with Disabilities, or 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 satisfies the requirements of this section if the person subject to screening has not been unemployed for more than 90 days and, provided that 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. Proof of compliance with the background screening requirements of the Department of Financial Services submitted within the previous 5 years for an applicant for a certificate of authority to operate a continuing care retirement community under chapter 651 satisfies the Department of Law Enforcement and Federal Bureau of Investigation portions of a level 2 background check.

(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. A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for the Department of Law Enforcement background check but the agency has not yet received background screening results from the Federal Bureau of Investigation. A standard license may be granted to the licensee upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening that confirms that all standards have been met or upon the granting of an exemption from disqualification by the agency as set forth in chapter 435.

~~(4) When a person is newly employed in a capacity that requires screening under this section, the licensee must notify the agency of the change within the time period specified in the authorizing statute or rules and must submit to the agency information necessary to conduct level 2 screening or provide evidence of compliance with background screening requirements of this section. The person may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation if he or she has met the standards for the Department of Law Enforcement background check. However, the person may not continue to serve in his or her capacity if the report indicates any violation of background screening standards unless an exemption from disqualification has been granted by the agency as set forth in chapter 435.~~

(4)(5) Effective October 1, 2009, In addition to the offenses listed in s. ss. 435.03 and 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, if the offense was a felony.~~
- ~~(d) Section 409.9201, relating to Medicaid fraud, if the offense was a felony.~~
- ~~(e) Section 741.28, relating to domestic violence.~~
- ~~(f) Chapter 784, relating to assault, battery, and culpable negligence, if the offense was a felony.~~

~~(g)~~—Section 810.02, relating to burglary.

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

~~(g)(i)~~ Section 817.234, relating to false and fraudulent insurance claims.

~~(h)(j)~~ Section 817.505, relating to patient brokering.

~~(i)(k)~~ Section 817.568, relating to criminal use of personal identification information.

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

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

~~(l)(n)~~ Section 831.01, relating to forgery.

~~(m)(o)~~ Section 831.02, relating to uttering forged instruments.

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

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

~~(p)(r)~~ Section 831.30, relating to fraud in obtaining medicinal drugs.

~~(q)(s)~~ 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.

A person who serves as a controlling interest of, or is employed by, or contracts with a licensee on July 31, 2010 September 30, 2009, 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. 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, is not required by law to submit to rescreening if that licensee has in its possession written evidence that the person has been screened and qualified according to the standards specified in s. 435.03 or s. 435.04. However, if 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 listed in this section, he or she may apply for an exemption from the appropriate licensing agency before September 30, 2009, 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 for offenses listed in this section. Exemptions from disqualification may be granted pursuant to s. 435.07.

(5)(6) 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. The attestations required under ss. 435.04(5) and 435.05(3) must be submitted at the time of license renewal, notwithstanding the provisions of ss. 435.04(5) and 435.05(3) which require annual submission of an affidavit of compliance with background screening requirements.

(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.

(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).

(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 22. Subsection (3) of section 402.302, Florida Statutes, is amended to read:

402.302 Definitions.—

(3) “Child care personnel” means all owners, operators, employees, and volunteers working in a child care facility. The term does not include persons

who work in a child care facility after hours when children are not present or parents of children in a child care facility ~~Head Start~~. For purposes of screening, the term includes any member, over the age of 12 years, of a child care facility operator's family, or person, over the age of 12 years, residing with a child care facility operator if the child care facility is located in or adjacent to the home of the operator or if the family member of, or person residing with, the child care facility operator has any direct contact with the children in the facility during its hours of operation. Members of the operator's family or persons residing with the operator who are between the ages of 12 years and 18 years ~~are shall~~ not be required to be fingerprinted but ~~must shall~~ be screened for delinquency records. For purposes of screening, the term ~~shall also includes include~~ persons who work in child care programs ~~that which~~ provide care for children 15 hours or more each week in public or nonpublic schools, ~~summer day camps~~, family day care homes, or ~~those~~ programs otherwise exempted under s. 402.316. The term does not include public or nonpublic school personnel who are providing care during regular school hours, or after hours for activities related to a school's program for grades kindergarten through 12. A volunteer who assists on an intermittent basis for less than 10 ~~40~~ hours per month is not included in the term "personnel" for the purposes of screening and training if a person who meets the screening requirement of s. 402.305(2) is always present and has the volunteer in his or her line of sight, provided that the volunteer is under direct and constant supervision by persons who meet the personnel requirements of s. 402.305(2). Students who observe and participate in a child care facility as a part of their required coursework ~~are shall~~ not be considered child care personnel, provided such observation and participation are on an intermittent basis and a person who meets the screening requirement of s. 402.305(2) is always present and has the student in his or her line of sight ~~the students are under direct and constant supervision of child care personnel.~~

Section 23. Paragraphs (i) and (k) of subsection (2) of section 409.175, Florida Statutes, are amended, present paragraphs (b) and (c) of subsection (5) of that section are redesignated as paragraphs (c) and (d), respectively, and a new paragraph (b) is added to that section to read:

409.175 Licensure of family foster homes, residential child-caring agencies, and child-placing agencies; public records exemption.—

(2) As used in this section, the term:

(i) "Personnel" means all owners, operators, employees, and volunteers working in a child-placing agency, family foster home, or residential child-caring agency who may be employed by or do volunteer work for a person, corporation, or agency that which holds a license as a child-placing agency or a residential child-caring agency, but the term does not include those who do not work on the premises where child care is furnished and either have no direct contact with a child or have no contact with a child outside of the presence of the child's parent or guardian. For purposes of screening, the term includes ~~shall include~~ any member, over the age of 12 years, of the

family of the owner or operator or any person other than a client, over the age of 12 years, residing with the owner or operator if the agency or family foster home is located in or adjacent to the home of the owner or operator or if the family member of, or person residing with, the owner or operator has any direct contact with the children. Members of the family of the owner or operator, or persons residing with the owner or operator, who are between the ages of 12 years and 18 years are shall not be required to be fingerprinted, but must shall be screened for delinquency records. For purposes of screening, the term “~~personnel~~” shall also includes include owners, operators, employees, and volunteers working in summer day camps, or summer 24-hour camps providing care for children. A volunteer who assists on an intermittent basis for less than 10 40 hours per month shall not be included in the term “personnel” for the purposes of screening if a person who meets the screening requirement of this section is always present and has the volunteer in his or her line of sight, provided that the volunteer is under direct and constant supervision by persons who meet the personnel requirements of this section.

(k) “Screening” means the act of assessing the background of personnel and includes, but is not limited to, employment history checks as provided in chapter 435, using the level 2 standards for screening set forth in that chapter. ~~Screening for employees and volunteers in summer day camps and summer 24-hour camps and screening for all volunteers included under the definition of “personnel” shall be conducted as provided in chapter 435, using the level 1 standards set forth in that chapter.~~

(5)

(b) The department shall randomly drug test a licensed foster parent if there is a reasonable suspicion that he or she is using illegal drugs. The cost of testing shall be paid by the foster parent but shall be reimbursed by the department if the test is negative. The department may adopt rules necessary to administer this paragraph.

Section 24. 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 shall comply with the requirements of s. 435.05. Persons shall be excluded from employment pursuant to s. 435.06.

~~1. Persons excluded from employment may request an exemption from disqualification, as provided in s. 435.07. Persons not subject to certification or professional licensure may request an exemption from the agency. In~~

~~considering a request for an exemption, the agency shall comply with the provisions of s. 435.07.~~

2. 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~~ 180 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 25. Subsection (8) of section 409.907, Florida Statutes, is amended to read:

409.907 Medicaid provider agreements.—The agency may make payments for medical assistance and related services rendered to Medicaid recipients only to an individual or entity who has a provider agreement in effect with the agency, who is performing services or supplying goods in accordance with federal, state, and local law, and who agrees that no person shall, on the grounds of handicap, race, color, or national origin, or for any other reason, be subjected to discrimination under any program or activity for which the provider receives payment from the agency.

(8)(a) Each provider, or each principal of the provider if the provider is a corporation, partnership, association, or other entity, seeking to participate in the Medicaid program must submit a complete set of his or her fingerprints to the agency for the purpose of conducting a criminal history record check. Principals of the provider include any officer, director, billing agent, managing employee, or affiliated person, or any partner or shareholder who has an ownership interest equal to 5 percent or more in the provider. However, a director of a not-for-profit corporation or organization is not a principal for purposes of a background investigation as required by this section if the director: serves solely in a voluntary capacity for the corporation or organization, does not regularly take part in the day-to-day operational decisions of the corporation or organization, receives no remuneration from the not-for-profit corporation or organization for his or her service on the board of directors, has no financial interest in the not-for-profit corporation or organization, and has no family members with a financial interest in the not-for-profit corporation or organization; and if the director submits an affidavit, under penalty of perjury, to this effect to the agency and the not-for-profit corporation or organization submits an affidavit, under penalty of perjury, to this effect to the agency as part of the corporation's or organization's Medicaid provider agreement application. Notwithstanding the above, the agency may require a background check for any person reasonably suspected by the agency to have been convicted of a crime. This subsection does ~~shall~~ not apply to:

1. A hospital licensed under chapter 395;
2. A nursing home licensed under chapter 400;
3. A hospice licensed under chapter 400;
4. An assisted living facility licensed under chapter 429;
5. A unit of local government, except that requirements of this subsection apply to nongovernmental providers and entities when contracting with the local government to provide Medicaid services. The actual cost of the state and national criminal history record checks must be borne by the non-governmental provider or entity; or
6. Any business that derives more than 50 percent of its revenue from the sale of goods to the final consumer, and the business or its controlling parent either is required to file a form 10-K or other similar statement with the Securities and Exchange Commission or has a net worth of \$50 million or more.

~~(b) Background screening shall be conducted in accordance with chapter 435 and s. 408.809. The agency shall submit the fingerprints to the Department of Law Enforcement. The department shall conduct a state criminal background investigation and forward the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The cost of the state and national criminal record check shall be borne by the provider.~~

~~(c) The agency may permit a provider to participate in the Medicaid program pending the results of the criminal record check. However, such permission is fully revocable if the record check reveals any crime-related history as provided in subsection (10).~~

~~(c)(d) Proof of compliance with the requirements of level 2 screening under chapter 435 s. 435.04 conducted within 12 months before prior to the date that the Medicaid provider application is submitted to the agency fulfills shall fulfill the requirements of this subsection. Proof of compliance with the requirements of level 1 screening under s. 435.03 conducted within 12 months prior to the date that the Medicaid provider application is submitted to the agency shall meet the requirement that the Department of Law Enforcement conduct a state criminal history record check.~~

Section 26. Paragraph (b) of subsection (48) of section 409.912, Florida Statutes, is amended to read:

409.912 Cost-effective purchasing of health care.—The agency shall purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the delivery of quality medical care. To ensure that medical services are effectively utilized, the agency may, in any case, require a confirmation or second physician's opinion of the correct diagnosis for purposes of authorizing future services under the Medicaid program. This

section does not restrict access to emergency services or poststabilization care services as defined in 42 C.F.R. part 438.114. Such confirmation or second opinion shall be rendered in a manner approved by the agency. The agency shall maximize the use of prepaid per capita and prepaid aggregate fixed-sum basis services when appropriate and other alternative service delivery and reimbursement methodologies, including competitive bidding pursuant to s. 287.057, designed to facilitate the cost-effective purchase of a case-managed continuum of care. The agency shall also require providers to minimize the exposure of recipients to the need for acute inpatient, custodial, and other institutional care and the inappropriate or unnecessary use of high-cost services. The agency shall contract with a vendor to monitor and evaluate the clinical practice patterns of providers in order to identify trends that are outside the normal practice patterns of a provider's professional peers or the national guidelines of a provider's professional association. The vendor must be able to provide information and counseling to a provider whose practice patterns are outside the norms, in consultation with the agency, to improve patient care and reduce inappropriate utilization. The agency may mandate prior authorization, drug therapy management, or disease management participation for certain populations of Medicaid beneficiaries, certain drug classes, or particular drugs to prevent fraud, abuse, overuse, and possible dangerous drug interactions. The Pharmaceutical and Therapeutics Committee shall make recommendations to the agency on drugs for which prior authorization is required. The agency shall inform the Pharmaceutical and Therapeutics Committee of its decisions regarding drugs subject to prior authorization. The agency is authorized to limit the entities it contracts with or enrolls as Medicaid providers by developing a provider network through provider credentialing. The agency may competitively bid single-source-provider contracts if procurement of goods or services results in demonstrated cost savings to the state without limiting access to care. The agency may limit its network based on the assessment of beneficiary access to care, provider availability, provider quality standards, time and distance standards for access to care, the cultural competence of the provider network, demographic characteristics of Medicaid beneficiaries, practice and provider-to-beneficiary standards, appointment wait times, beneficiary use of services, provider turnover, provider profiling, provider licensure history, previous program integrity investigations and findings, peer review, provider Medicaid policy and billing compliance records, clinical and medical record audits, and other factors. Providers shall not be entitled to enrollment in the Medicaid provider network. The agency shall determine instances in which allowing Medicaid beneficiaries to purchase durable medical equipment and other goods is less expensive to the Medicaid program than long-term rental of the equipment or goods. The agency may establish rules to facilitate purchases in lieu of long-term rentals in order to protect against fraud and abuse in the Medicaid program as defined in s. 409.913. The agency may seek federal waivers necessary to administer these policies.

(48)

(b) The agency shall limit its network of durable medical equipment and medical supply providers. For dates of service after January 1, 2009, the agency shall limit payment for durable medical equipment and supplies to providers that meet all the requirements of this paragraph.

1. Providers must be accredited by a Centers for Medicare and Medicaid Services deemed accreditation organization for suppliers of durable medical equipment, prosthetics, orthotics, and supplies. The provider must maintain accreditation and is subject to unannounced reviews by the accrediting organization.

2. Providers must provide the services or supplies directly to the Medicaid recipient or caregiver at the provider location or recipient's residence or send the supplies directly to the recipient's residence with receipt of mailed delivery. Subcontracting or consignment of the service or supply to a third party is prohibited.

3. Notwithstanding subparagraph 2., a durable medical equipment provider may store nebulizers at a physician's office for the purpose of having the physician's staff issue the equipment if it meets all of the following conditions:

a. The physician must document the medical necessity and need to prevent further deterioration of the patient's respiratory status by the timely delivery of the nebulizer in the physician's office.

b. The durable medical equipment provider must have written documentation of the competency and training by a Florida-licensed registered respiratory therapist of any durable medical equipment staff who participate in the training of physician office staff for the use of nebulizers, including cleaning, warranty, and special needs of patients.

c. The physician's office must have documented the training and competency of any staff member who initiates the delivery of nebulizers to patients. The durable medical equipment provider must maintain copies of all physician office training.

d. The physician's office must maintain inventory records of stored nebulizers, including documentation of the durable medical equipment provider source.

e. A physician contracted with a Medicaid durable medical equipment provider may not have a financial relationship with that provider or receive any financial gain from the delivery of nebulizers to patients.

4. Providers must have a physical business location and a functional landline business phone. The location must be within the state or not more than 50 miles from the Florida state line. The agency may make exceptions for providers of durable medical equipment or supplies not otherwise available from other enrolled providers located within the state.

5. Physical business locations must be clearly identified as a business that furnishes durable medical equipment or medical supplies by signage that can be read from 20 feet away. The location must be readily accessible to the public during normal, posted business hours and must operate at least ~~no less than~~ 5 hours per day and at least ~~no less than~~ 5 days per week, with the exception of scheduled and posted holidays. The location may not be located within or at the same numbered street address as another enrolled Medicaid durable medical equipment or medical supply provider or as an enrolled Medicaid pharmacy that is also enrolled as a durable medical equipment provider. A licensed orthotist or prosthetist that provides only orthotic or prosthetic devices as a Medicaid durable medical equipment provider is exempt from ~~the provisions in~~ this paragraph.

6. Providers must maintain a stock of durable medical equipment and medical supplies on site that is readily available to meet the needs of the durable medical equipment business location's customers.

7. Providers must provide a surety bond of \$50,000 for each provider location, up to a maximum of 5 bonds statewide or an aggregate bond of \$250,000 statewide, as identified by Federal Employer Identification Number. Providers who post a statewide or an aggregate bond must identify all of their locations in any Medicaid durable medical equipment and medical supply provider enrollment application or bond renewal. Each provider location's surety bond must be renewed annually and the provider must submit proof of renewal even if the original bond is a continuous bond. A licensed orthotist or prosthetist that provides only orthotic or prosthetic devices as a Medicaid durable medical equipment provider is exempt from the provisions in this paragraph.

8. Providers must obtain a level 2 background screening, in accordance with chapter 435 and s. 408.809 ~~as provided under s. 435.04~~, for each provider employee in direct contact with or providing direct services to recipients of durable medical equipment and medical supplies in their homes. This requirement includes, but is not limited to, repair and service technicians, fitters, and delivery staff. The provider shall pay for the cost of the background screening.

9. The following providers are exempt from ~~the requirements of~~ subparagraphs 1. and 7.:

a. Durable medical equipment providers owned and operated by a government entity.

b. Durable medical equipment providers that are operating within a pharmacy that is currently enrolled as a Medicaid pharmacy provider.

c. Active, Medicaid-enrolled orthopedic physician groups, primarily owned by physicians, which provide only orthotic and prosthetic devices.

Section 27. Subsection (12) is added to section 411.01, Florida Statutes, to read:

411.01 School readiness programs; early learning coalitions.—

(12) SUBSTITUTE INSTRUCTORS.—Each school district shall make a list of all individuals currently eligible to act as a substitute teacher within the county pursuant to the rules adopted by the school district pursuant to s. 1012.35 available to an early learning coalition serving students within the school district. Child care facilities, as defined by s. 402.302, may employ individuals listed as substitute instructors for the purpose of offering the school readiness program, the Voluntary Prekindergarten Education Program, and all other legally operating child care programs.

Section 28. Subsection (1) of section 429.14, Florida Statutes, is amended to read:

429.14 Administrative penalties.—

(1) In addition to the requirements of part II of chapter 408, the agency may deny, revoke, and suspend any license issued under this part and impose an administrative fine in the manner provided in chapter 120 against a licensee of an assisted living facility for a violation of any provision of this part, part II of chapter 408, or applicable rules, or for any of the following actions by a licensee of an assisted living facility, for the actions of any person subject to level 2 background screening under s. 408.809, or for the actions of any facility employee:

(a) An intentional or negligent act seriously affecting the health, safety, or welfare of a resident of the facility.

(b) The determination by the agency that the owner lacks the financial ability to provide continuing adequate care to residents.

(c) Misappropriation or conversion of the property of a resident of the facility.

(d) Failure to follow the criteria and procedures provided under part I of chapter 394 relating to the transportation, voluntary admission, and involuntary examination of a facility resident.

(e) A citation of any of the following deficiencies as specified in s. 429.19:

1. One or more cited class I deficiencies.
2. Three or more cited class II deficiencies.
3. Five or more cited class III deficiencies that have been cited on a single survey and have not been corrected within the times specified.

(f) ~~Failure to comply with the A-determination that a person subject to level 2 background screening under s. 408.809 does not meet the screening~~

standards of ~~this part, s. 408.809(1), or chapter 435 s. 435.04~~ or that the facility is retaining an employee subject to level 1 background screening standards under s. 429.174 who does not meet the screening standards of s. 435.03 and for whom exemptions from disqualification have not been provided by the agency.

~~(g) A determination that an employee, volunteer, administrator, or owner, or person who otherwise has access to the residents of a facility does not meet the criteria specified in s. 435.03(2), and the owner or administrator has not taken action to remove the person. Exemptions from disqualification may be granted as set forth in s. 435.07. No administrative action may be taken against the facility if the person is granted an exemption.~~

~~(g)(h)~~ Violation of a moratorium.

~~(h)(i)~~ Failure of the license applicant, the licensee during relicensure, or a licensee that holds a provisional license to meet the minimum license requirements of this part, or related rules, at the time of license application or renewal.

~~(i)(j)~~ An intentional or negligent life-threatening act in violation of the uniform firesafety standards for assisted living facilities or other firesafety standards that threatens the health, safety, or welfare of a resident of a facility, as communicated to the agency by the local authority having jurisdiction or the State Fire Marshal.

~~(j)(k)~~ Knowingly operating any unlicensed facility or providing without a license any service that must be licensed under this chapter or chapter 400.

~~(k)(l)~~ Any act constituting a ground upon which application for a license may be denied.

Section 29. Section 429.174, Florida Statutes, is amended to read:

~~429.174 Background screening; exemptions.—The agency shall require level 2 background screening for personnel as required in s. 408.809(1)(e) pursuant to chapter 435 and s. 408.809. The owner or administrator of an assisted living facility must conduct level 1 background screening, as set forth in chapter 435, on all employees hired on or after October 1, 1998, who perform personal services as defined in s. 429.02(16). The agency may exempt an individual from employment disqualification as set forth in chapter 435. Such persons shall be considered as having met this requirement if:~~

~~(1) Proof of compliance with level 1 screening requirements obtained to meet any professional license requirements in this state is provided and accompanied, under penalty of perjury, by a copy of the person's current professional license and an affidavit of current compliance with the background screening requirements.~~

~~(2) The person required to be screened has been continuously employed in the same type of occupation for which the person is seeking employment without a breach in service which exceeds 180 days, and proof of compliance with the level 1 screening requirement which is no more than 2 years old is provided. Proof of compliance shall be provided directly from one employer or contractor to another, and not from the person screened. Upon request, a copy of screening results shall be provided by the employer retaining documentation of the screening to the person screened.~~

~~(3) The person required to be screened is employed by a corporation or business entity or related corporation or business entity that owns, operates, or manages more than one facility or agency licensed under this chapter, and for whom a level 1 screening was conducted by the corporation or business entity as a condition of initial or continued employment.~~

Section 30. Subsection (4) of section 429.67, Florida Statutes, is amended to read:

429.67 Licensure.—

~~(4) Upon receipt of a completed license application or license renewal, and the fee, The agency shall require level 2 initiate a level 1 background screening for personnel as required in s. 408.809(1)(e), including as provided under chapter 435 on the adult family-care home provider, the designated relief person, and all adult household members, pursuant to chapter 435 and s. 408.809, and all staff members.~~

~~(a) Proof of compliance with level 1 screening standards which has been submitted within the previous 5 years to meet any facility or professional licensure requirements of the agency or the Department of Health satisfies the requirements of this subsection. Such proof must be accompanied, under penalty of perjury, by a copy of the person's current professional license and an affidavit of current compliance with the background screening requirements.~~

~~(b) The person required to be screened must have been continuously employed in the same type of occupation for which the person is seeking employment without a breach in service that exceeds 180 days, and proof of compliance with the level 1 screening requirement which is no more than 2 years old must be provided. Proof of compliance shall be provided directly from one employer or contractor to another, and not from the person screened. Upon request, a copy of screening results shall be provided to the person screened by the employer retaining documentation of the screening.~~

Section 31. Section 429.69, Florida Statutes, is amended to read:

429.69 Denial, revocation, and suspension of a license.—In addition to the requirements of part II of chapter 408, the agency may deny, suspend, and revoke a license for any of the following reasons:

(1) ~~Failure to comply with the of any of the persons required to undergo background screening standards of this part, s. 408.809(1), or chapter 435 under s. 429.67 to meet the level 1 screening standards of s. 435.03, unless an exemption from disqualification has been provided by the agency.~~

(2) Failure to correct cited fire code violations that threaten the health, safety, or welfare of residents.

Section 32. Paragraph (c) of subsection (2) of section 429.911, Florida Statutes, is amended to read:

429.911 Denial, suspension, revocation of license; emergency action; administrative fines; investigations and inspections.—

(2) Each of the following actions by the owner of an adult day care center or by its operator or employee is a ground for action by the agency against the owner of the center or its operator or employee:

(c) ~~A Failure to comply with the of persons subject to level 2 background screening standards of this part, s. 408.809(1), or chapter 435 under s. 408.809 to meet the screening standards of s. 435.04, or the retention by the center of an employee subject to level 1 background screening standards under s. 429.174 who does not meet the screening standards of s. 435.03 and for whom exemptions from disqualification have not been provided by the agency.~~

Section 33. Section 429.919, Florida Statutes, is amended to read:

429.919 Background screening.—~~The agency shall require level 2 background screening for personnel as required in s. 408.809(1)(e) pursuant to chapter 435 and s. 408.809. The owner or administrator of an adult day care center must conduct level 1 background screening as set forth in chapter 435 on all employees hired on or after October 1, 1998, who provide basic services or supportive and optional services to the participants. Such persons satisfy this requirement if:~~

(1) ~~Proof of compliance with level 1 screening requirements obtained to meet any professional license requirements in this state is provided and accompanied, under penalty of perjury, by a copy of the person's current professional license and an affidavit of current compliance with the background screening requirements.~~

(2) ~~The person required to be screened has been continuously employed, without a breach in service that exceeds 180 days, in the same type of occupation for which the person is seeking employment and provides proof of compliance with the level 1 screening requirement which is no more than 2 years old. Proof of compliance must be provided directly from one employer or contractor to another, and not from the person screened. Upon request, a copy of screening results shall be provided to the person screened by the employer retaining documentation of the screening.~~

~~(3) The person required to be screened is employed by a corporation or business entity or related corporation or business entity that owns, operates, or manages more than one facility or agency licensed under chapter 400 or this chapter, and for whom a level 1 screening was conducted by the corporation or business entity as a condition of initial or continued employment.~~

Section 34. Section 430.0402, Florida Statutes, is created to read:

430.0402 Screening of direct service providers.—

(1)(a) 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 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.

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

(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.

(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.

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

(c) Section 409.9201, relating to Medicaid fraud.

(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.

Section 35. Section 435.01, Florida Statutes, is amended to read:

435.01 Applicability of this chapter; statutory references; rulemaking.

(1)(a) Unless otherwise provided by law, whenever a background screening for employment or a background security check is required by law to be conducted pursuant to this chapter for employment, unless otherwise provided by law, the provisions of this chapter shall apply.

(b) Unless expressly provided otherwise, a reference in any section of the Florida Statutes to chapter 435 or to any section or sections or portion of a section of chapter 435 includes all subsequent amendments to chapter 435 or to the referenced section or sections or portions of a section. The purpose of this chapter is to facilitate uniform background screening and, to this end, a reference to this chapter, or to any section or subdivision within this chapter, constitutes a general reference under the doctrine of incorporation by reference.

(2) Agencies may adopt rules to administer this chapter.

Section 36. Section 435.02, Florida Statutes, is reordered and amended to read:

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

(2)(1) “Employee” means any person required by law to be screened pursuant to the provisions of this chapter.

~~(3)(2)~~ “Employer” means any person or entity required by law to conduct screening of employees pursuant to this chapter.

~~(1)(3)~~ “Licensing Agency” means any state, ~~or county, or municipal~~ agency ~~that~~ which 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~~ When there is no state licensing agency or the ~~municipal or county licensing~~ agency chooses not to conduct employment screening, “licensing agency” means the Department of Children and Family Services.

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

Section 37. Section 435.03, Florida Statutes, is amended to read:

435.03 Level 1 screening standards.—

(1) All employees required by law to be screened pursuant to this section ~~must shall be required to~~ undergo background screening as a condition of employment and continued employment ~~which includes.~~ ~~For the purposes of this subsection, level 1 screenings shall include,~~ but ~~need~~ not be limited to, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement, a check of the Dru Sjodin National Sex Offender Public Website, and may include local criminal records checks through local law enforcement agencies.

(2) Any person required by law to be screened pursuant to this section ~~must not have an arrest awaiting final disposition, for whom employment screening is required by statute~~ 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 sealed or expunged for, any offense prohibited under s. 435.04(2) ~~any of the following provisions of the Florida Statutes or under any similar law~~ statute of another jurisdiction.;

~~(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 abuse, neglect, or exploitation of a vulnerable adult.~~

~~(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) Section 784.011, relating to assault, if the victim of the offense was a minor.~~

~~(i) Section 784.021, relating to aggravated assault.~~

~~(j) Section 784.03, relating to battery, if the victim of the offense was a minor.~~

~~(k) Section 784.045, relating to aggravated battery.~~

~~(l) Section 787.01, relating to kidnapping.~~

~~(m) Section 787.02, relating to false imprisonment.~~

~~(n) Section 794.011, relating to sexual battery.~~

~~(o) Former s. 794.041, relating to prohibited acts of persons in familial or custodial authority.~~

~~(p) Chapter 796, relating to prostitution.~~

~~(q) Section 798.02, relating to lewd and lascivious behavior.~~

~~(r) Chapter 800, relating to lewdness and indecent exposure.~~

~~(s) Section 806.01, relating to arson.~~

~~(t) Chapter 812, relating to theft, robbery, and related crimes, if the offense was a felony.~~

~~(u) Section 817.563, relating to fraudulent sale of controlled substances, only if the offense was a felony.~~

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

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

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

~~(y) Section 826.04, relating to incest.~~

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

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

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

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

~~(dd) Chapter 847, relating to obscene literature.~~

~~(ee) Chapter 893, 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.~~

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

(3) The security background investigations under this section must ensure that no person subject to this section has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense that constitutes domestic violence as defined in s. 741.28, whether such act was committed in this state or in another jurisdiction. Standards must also ensure that the person:

~~(a) For employees and employers licensed or registered pursuant to chapter 400 or chapter 429, and for employees and employers of developmental disabilities centers as defined in s. 393.063, intermediate care facilities for the developmentally disabled as defined in s. 400.960, and mental health treatment facilities as defined in s. 394.455, meets the requirements of this chapter.~~

~~(b) Has not committed an act that constitutes domestic violence as defined in s. 741.28.~~

Section 38. Section 435.04, Florida Statutes, is amended to read:

435.04 Level 2 screening standards.—

(1)(a) All employees required by law to be screened pursuant to this section must in positions designated by law as positions of trust or responsibility shall be required to undergo security background investigations as a condition of employment and continued employment which includes. For the purposes of this subsection, security background investigations shall include, but need not be limited to, fingerprinting for statewide criminal history records all purposes and checks in this subsection, statewide criminal and juvenile records checks through the Florida Department of Law Enforcement, and national federal criminal history records checks through the Federal Bureau of Investigation, and may include local criminal records checks through local law enforcement agencies.

(b) Fingerprints submitted pursuant to this section on or after July 1, 2012, must be submitted electronically to the Department of Law Enforcement.

(c) An agency may contract with one or more vendors to perform all or part of the electronic fingerprinting pursuant to this section. Such contracts must ensure that the owners and personnel of the vendor performing the electronic fingerprinting are qualified and will ensure the integrity and security of all personal information.

(d) An agency may require by rule that fingerprints submitted pursuant to this section must be submitted electronically to the Department of Law Enforcement on a date earlier than July 1, 2012.

(2) The security background investigations under this section must ensure that no persons subject to the provisions of this section have been arrested for and are awaiting final disposition of, have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere 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 the Florida Statutes or under any similar law statute of another jurisdiction:

(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)(h) Section 784.011, relating to assault, if the victim of the offense was a minor.

(i) Section 784.021, relating to aggravated assault.

(j) Section 784.03, relating to battery, if the victim of the offense was a minor.

~~(k)~~ Section 784.045, relating to aggravated battery.

~~(l)~~ Section 784.075, relating to battery on a detention or commitment facility staff.

~~(k)(m)~~ Section 787.01, relating to kidnapping.

~~(l)(n)~~ Section 787.02, relating to false imprisonment.

(m) Section 787.025, relating to luring or enticing a child.

~~(n)(o)~~ Section 787.04(2), relating to taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings.

~~(o)(p)~~ 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)(q)~~ Section 790.115(1), relating to exhibiting firearms or weapons within 1,000 feet of a school.

~~(q)(r)~~ Section 790.115(2)(b), relating to possessing an electric weapon or device, destructive device, or other weapon on school property.

~~(r)(s)~~ Section 794.011, relating to sexual battery.

~~(s)(t)~~ 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)(y)~~ Chapter 812, relating to theft, robbery, and related crimes, if the offense is a felony.

~~(cc)(z)~~ Section 817.563, relating to fraudulent sale of controlled substances, only if the offense was a felony.

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

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

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

~~(gg)(dd)~~ Section 826.04, relating to incest.

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

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

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

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

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

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

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

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

~~(pp)(mm)~~ Chapter 847, relating to obscene literature.

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

~~(rr)(oo)~~ Chapter 893, 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.

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

~~(tt)(qq)~~ 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)(rr)~~ Section 944.46, relating to harboring, concealing, or aiding an escaped prisoner.

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

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

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

~~(3) The security background investigations under this section must ensure that no person subject to this section has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense that constitutes domestic violence as defined in s. 741.28, whether such act was committed in this state or in another jurisdiction. The security background investigations conducted under this section for employees of the Department of Juvenile Justice must ensure that no persons subject to the provisions of this section have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under any of the following provisions of the Florida Statutes or under any similar statute of another jurisdiction:~~

~~(a) Section 784.07, relating to assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers.~~

~~(b) Section 810.02, relating to burglary, if the offense is a felony.~~

~~(c) Section 944.40, relating to escape.~~

~~The Department of Juvenile Justice may not remove a disqualification from employment or grant an exemption to any person who is disqualified under this section for any offense disposed of during the most recent 7-year period.~~

~~(4) Standards must also ensure that the person:~~

~~(a) For employees or employers licensed or registered pursuant to chapter 400 or chapter 429, does not have a confirmed report of abuse, neglect, or exploitation as defined in s. 415.102(6), which has been uncontested or upheld under s. 415.103.~~

~~(b) Has not committed an act that constitutes domestic violence as defined in s. 741.30.~~

~~(5) Under penalty of perjury, all employees in such positions of trust or responsibility shall attest to meeting the requirements for qualifying for employment and agreeing to inform the employer immediately if convicted of any of the disqualifying offenses while employed by the employer. Each employer of employees in such positions of trust or responsibilities which is licensed or registered by a state agency shall submit to the licensing agency~~

~~annually or at the time of license renewal, under penalty of perjury, an affidavit of compliance with the provisions of this section.~~

Section 39. Section 435.05, Florida Statutes, is amended to read:

435.05 Requirements for covered employees and employers.—Except as otherwise provided by law, the following requirements ~~shall~~ apply to covered employees and employers:

(1)(a) Every person required by law to be screened pursuant to this chapter must employed in a position for which employment screening is required ~~must~~, within 5 working days after starting to work, submit to the employer a complete set of information necessary to conduct a screening under this chapter section.

(b) For level 1 screening, the employer must submit the information necessary for screening to the Florida Department of Law Enforcement within 5 working days after receiving it. The Florida Department of Law Enforcement ~~shall will~~ conduct a search of its records and ~~will~~ respond to the employer or agency. The employer ~~must will~~ inform the employee whether screening has revealed any disqualifying information.

(c) For level 2 screening, the employer or ~~licensing~~ agency must submit the information necessary for screening to the Florida Department of Law Enforcement within 5 working days after receiving it. The Florida Department of Law Enforcement ~~shall perform a criminal history record check of its will~~ conduct a search of its criminal and juvenile records and ~~will~~ request that the Federal Bureau of Investigation perform a national criminal history record check ~~conduct a search of its records for each employee for whom the request is made~~. The Florida Department of Law Enforcement ~~shall will~~ respond to the employer or ~~licensing~~ agency, and the employer or ~~licensing~~ agency ~~must will~~ inform the employee whether screening has revealed disqualifying information.

(d) The person whose background is being checked must supply any missing criminal or other necessary information upon request to the requesting employer or agency within 30 days after receiving the employer makes a request for the information ~~or be subject to automatic disqualification~~.

(2) ~~Every employee must attest, subject to penalty of perjury, to meeting the requirements for qualifying for employment pursuant to this chapter and agreeing to inform the employer immediately if arrested for any of the disqualifying offenses while employed by the employer. Unless otherwise prohibited by state or federal law, new employees may be placed on probationary status pending a determination of compliance with minimum standards set forth in this chapter.~~

(3) Each employer licensed or registered with an agency must required to conduct level 2 background screening and must submit to the agency sign an

~~affidavit annually or at the time of license renewal, under penalty of perjury, a signed affidavit attesting to compliance with the provisions of this chapter stating that all covered employees have been screened or are newly hired and are awaiting the results of the required screening checks.~~

Section 40. Section 435.06, Florida Statutes, is amended to read:

435.06 Exclusion from employment.—

(1) ~~If~~ ~~When~~ an employer or licensing agency has reasonable cause to believe that grounds exist for the denial or termination of employment of any employee as a result of background screening, it shall notify the employee in writing, stating the specific record ~~that~~ ~~which~~ indicates noncompliance with the standards in this ~~chapter~~ ~~section~~. It ~~is~~ ~~shall~~ be the responsibility of the affected employee to contest his or her disqualification or to request exemption from disqualification. The only basis for contesting the disqualification ~~is~~ ~~shall~~ be proof of mistaken identity.

(2)(a) An employer may not hire, select, or otherwise allow an employee to have contact with any vulnerable person that would place the employee in a role that requires background screening until the screening process is completed and demonstrates the absence of any grounds for the denial or termination of employment. If the screening process shows any grounds for the denial or termination of employment, the employer may not hire, select, or otherwise allow the employee to have contact with any vulnerable person that would place the employee in a role that requires background screening unless the employee is granted an exemption for the disqualification by the agency as provided under s. 435.07.

(b) If an employer becomes aware that an employee has been arrested for a disqualifying offense, the employer must remove the employee from contact with any vulnerable person that places the employee in a role that requires background screening until the arrest is resolved in a way that the employer determines that the employee is still eligible for employment under this chapter.

(c) The employer must either terminate the employment of any of its personnel found to be in noncompliance with the minimum standards of this chapter for good moral character contained in this section or place the employee in a position for which background screening is not required unless the employee is granted an exemption from disqualification pursuant to s. 435.07.

(3) Any ~~employee person who is required to undergo employment screening and who refuses to cooperate in such screening or refuses to~~ timely submit the information necessary to complete the screening, including fingerprints ~~if~~ ~~when~~ required, must ~~shall~~ be disqualified for employment in such position or, if employed, must ~~shall~~ be dismissed.

(4) There is no unemployment compensation or other monetary liability on the part of, and no cause of action for damages against, an employer that, upon notice of a conviction or arrest for a disqualifying offense listed under this chapter, terminates the person against whom the report was issued or who was arrested, regardless of whether or not that person has filed for an exemption pursuant to this chapter.

Section 41. Section 435.07, Florida Statutes, is amended to read:

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

(1) The head of the appropriate licensing agency may grant to any employee otherwise disqualified from employment an exemption from disqualification for:

(a) Felonies for which at least 3 years have elapsed since the applicant for the exemption has completed or been lawfully released from confinement, supervision, or sanction for the disqualifying felony committed more than 3 years prior to the date of disqualification;

(b) Misdemeanors prohibited under any of the Florida statutes cited in this chapter or under similar statutes of other jurisdictions for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or sanction;

(c) Offenses that were felonies when committed but that are now misdemeanors and for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or sanction; or

(d) Findings of delinquency. For offenses that would be felonies if committed by an adult and the record has not been sealed or expunged, the exemption may not be granted until at least 3 years have elapsed since the applicant for the exemption has completed or been lawfully released from confinement, supervision, or sanction for the disqualifying offense; or

~~(e) Commissions of acts of domestic violence as defined in s. 741.30.~~

For the purposes of this subsection, the term “felonies” means both felonies prohibited under any of the Florida statutes cited in this chapter or under similar statutes of other jurisdictions.

(2) Persons employed, or applicants for employment, by treatment providers who treat adolescents 13 years of age and older who are disqualified from employment solely because of crimes under s. 817.563, s. 893.13, or s. 893.147 may be exempted from disqualification from employment pursuant to this chapter section without application of the 3-year waiting period in paragraph (1)(a).

(3)(a) In order for the head of an agency a licensing department to grant an exemption to any employee, the employee must demonstrate by clear and convincing evidence that the employee should not be disqualified from employment. Employees seeking an exemption have the burden of setting forth clear and convincing sufficient evidence of rehabilitation, including, but not limited to, the circumstances surrounding the criminal incident for which an exemption is sought, the time period that has elapsed since the incident, the nature of the harm caused to the victim, and the history of the employee since the incident, or any other evidence or circumstances indicating that the employee will not present a danger if employment or continued employment is allowed.

(b) The agency may consider as part of its deliberations of the employee's rehabilitation the fact that the employee has, subsequent to the conviction for the disqualifying offense for which the exemption is being sought, been arrested for or convicted of another crime, even if that crime is not a disqualifying offense.

(c) The decision of the head of an agency licensing department regarding an exemption may be contested through the hearing procedures set forth in chapter 120. The standard of review by the administrative law judge is whether the agency's intended action is an abuse of discretion.

(4)(a) Disqualification from employment under this chapter subsection (1) may not be removed from, nor may an exemption be granted to, any personnel who is found guilty of, regardless of adjudication, or who has entered a plea of nolo contendere or guilty to, any felony covered by s. 435.03 or s. 435.04 solely by reason of any pardon, executive clemency, or restoration of civil rights.

(b) Disqualification from employment under this chapter may not be removed from, nor may an exemption be granted to, any person who is a:

1. Sexual predator as designated pursuant to s. 775.21;
2. Career offender pursuant to s. 775.261; or
3. Sexual offender pursuant to s. 943.0435, unless the requirement to register as a sexual offender has been removed pursuant to s. 943.04354.

(5) Exemptions granted by one licensing agency shall be considered by subsequent licensing agencies, but are not binding on the subsequent licensing agency.

Section 42. Section 435.08, Florida Statutes, is amended to read:

435.08 Payment for processing of fingerprints and state criminal records checks.—~~Either~~ The employer or the employee is responsible for paying the costs of screening. Payment shall be submitted to the Florida Department of Law Enforcement with the request for screening. The appropriate agency is responsible for collecting and paying any fee related to fingerprints retained

on its behalf to the Department of Law Enforcement for costs resulting from the fingerprint information retention services. The amount of the annual fee and procedures for the submission and retention of fingerprint information and for the dissemination of search results shall be established by rule of the Department of Law Enforcement.

Section 43. 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 Level I or Level II~~ screening pursuant to s. 400.215 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 under the Enterprise Florida Jobs and Education Partnership Grant 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 44. Subsection (9) of section 489.115, Florida Statutes, is amended to read:

489.115 Certification and registration; endorsement; reciprocity; renewals; continuing education.—

(9) An initial applicant shall submit, along with the application, a complete set of fingerprints ~~to in a form and manner required by the~~

department. The fingerprints shall be submitted to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward them to the Federal Bureau of Investigation for national processing for the purpose of determining if the applicant has a criminal history record ~~conducting a level 2 background check pursuant to s. 435.04.~~ The department shall and the board may review the background results to determine if an applicant meets licensure requirements. The cost for the fingerprint processing shall be borne by the person subject to the background screening. These fees are to be collected by the authorized agencies or vendors. The authorized agencies or vendors are responsible for paying the processing costs to the Department of Law Enforcement.

Section 45. Paragraphs (g) and (h) of subsection (2) of section 943.05, Florida Statutes, are amended, and subsection (4) is added to that section, to read:

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

(2) The program shall:

(g) Upon official written request, and subject to the department having sufficient funds and equipment to participate in such request, from the agency executive director or secretary, or designee, or from qualified entities participating in the volunteer and employee criminal history screening system under s. 943.0542, or as otherwise required ~~As authorized by law,~~ retain fingerprints submitted by criminal and noncriminal justice agencies to the department for a criminal history background screening ~~as in a manner~~ provided by rule and enter the fingerprints in the statewide automated fingerprint identification system authorized by paragraph (b). Such fingerprints shall thereafter be available for all purposes and uses authorized for arrest fingerprint submissions ~~cards~~ entered into the statewide automated fingerprint identification system pursuant to s. 943.051.

(h)1. For each agency or qualified entity that officially requests retention of fingerprints or for which retention is otherwise required ~~As authorized by law,~~ search all arrest fingerprint submissions ~~cards~~ 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 Agencies may participate in this search process, agencies or qualified entities must notify each person fingerprinted that his or her fingerprints will be retained, pay by payment of an annual fee to the department, and inform by informing the department of any change in the affiliation, employment, or contractual status or place of affiliation, employment, or contracting of each person ~~the persons 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. Fees may be waived or reduced by the executive director for good cause shown. Consistent with the recognition of criminal justice agencies expressed in s. 943.053(3), these services shall will be provided to criminal justice agencies for criminal justice purposes free of charge.

3. Agencies that participate in the fingerprint retention and search process may adopt rules 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.

(4) Upon notification that a federal fingerprint retention program is in effect, and subject to the department being funded and equipped to participate in such program, the department shall, if state and national criminal history records checks and retention of submitted prints are authorized or required by law, retain the fingerprints as provided in paragraphs (2)(g) and (h) and advise the Federal Bureau of Investigation to retain the fingerprints at the national level for searching against arrest fingerprint submissions received at the national level.

Section 46. Subsections (6) and (11) of section 943.053, Florida Statutes, are amended to read:

943.053 Dissemination of criminal justice information; fees.—

(6) Notwithstanding any other provision of law, the department shall provide to the Florida Department of Revenue Child Support Enforcement access to Florida criminal records that which are not exempt from disclosure under chapter 119, and to such information as may be lawfully available from other states via the National Law Enforcement Telecommunications System, for the purpose of locating subjects who owe or potentially owe support, as defined in s. 409.2554, or to whom such obligation is owed pursuant to Title IV-D of the Social Security Act. Such information may be provided to child support enforcement authorities in other states for these specific purposes.

(11) A criminal justice agency that is authorized under federal rules or law to conduct a criminal history background check on an agency employee who is not certified by the Criminal Justice Standards and Training

Commission under s. 943.12 may submit to the department the fingerprints of the noncertified employee to obtain state and national criminal history information. ~~Effective January 15, 2007,~~ The fingerprints submitted shall be retained and entered in the statewide automated fingerprint identification system authorized by s. 943.05 and shall be available for all purposes and uses authorized for arrest fingerprint submissions eards entered in the statewide automated fingerprint identification system pursuant to s. 943.051. The department shall search all arrest fingerprint submissions eards received pursuant to s. 943.051 against the fingerprints retained in the statewide automated fingerprint identification system pursuant to this section. In addition to all purposes and uses authorized for arrest fingerprint submissions eards for which submitted fingerprints may be used, any arrest record that is identified with the retained employee fingerprints must be reported to the submitting employing agency.

Section 47. Paragraph (a) of subsection (2) of section 984.01, Florida Statutes, is amended to read:

984.01 Purposes and intent; personnel standards and screening.—

(2) The Department of Juvenile Justice or the Department of Children and Family Services, as appropriate, may contract with the Federal Government, other state departments and agencies, county and municipal governments and agencies, public and private agencies, and private individuals and corporations in carrying out the purposes of, and the responsibilities established in, this chapter.

~~(a) If~~ When the department of Juvenile Justice or the Department of Children and Family Services contracts with a provider for any program for children, all personnel, including owners, operators, employees, and volunteers, in the facility must be of good moral character. Each contract entered into by either department for services delivered on an appointment or intermittent basis by a provider that does not have regular custodial responsibility for children and each contract with a school for before or aftercare services must ensure that the owners, operators, and all personnel who have direct contact with children are of good moral character. A volunteer who assists on an intermittent basis for less than 10 40 hours per month need not be screened if a person who meets the screening requirement of this section is always present and has the volunteer in his or her line of sight the volunteer is under direct and constant supervision by persons who ~~meet the screening requirements.~~

Section 48. Section 985.644, Florida Statutes, is amended to read:

985.644 Departmental contracting powers; personnel standards and screening.—

~~(1) The department of Juvenile Justice or the Department of Children and Family Services, as appropriate,~~ may contract with the Federal Government, other state departments and agencies, county and municipal

governments and agencies, public and private agencies, and private individuals and corporations in carrying out the purposes of, and the responsibilities established in, this chapter.

~~(a) When the Department of Juvenile Justice or the Department of Children and Family Services contracts with a provider for any program for children, all personnel, including owners, operators, employees, and volunteers, in the facility must be of good moral character. Each contract entered into by the either department for services delivered on an appointment or intermittent basis by a provider that does not have regular custodial responsibility for children and each contract with a school for before or aftercare services must ensure that all the owners, operators, and all personnel who have direct contact with children are subject to level 2 background screening pursuant to chapter 435 of good moral character.~~

~~(b) A volunteer who assists the department or any program for children on an intermittent basis for less than 10 40 hours per month need not be screened if a person who meets the screening requirement of this section is always present and has the volunteer in his or her line of sight the volunteer is under direct and constant supervision by persons who meet the screening requirements.~~

~~(b) The Department of Juvenile Justice and the Department of Children and Family Services shall require employment screening pursuant to chapter 435, using the level 2 standards set forth in that chapter for personnel in programs for children or youths.~~

~~(c) The Department of Juvenile Justice or the Department of Children and Family Services may grant exemptions from disqualification from working with children as provided in s. 435.07.~~

~~(2) The department may contract with the Federal Government, other state departments and agencies, county and municipal governments and agencies, public and private agencies, and private individuals and corporations in carrying out the purposes and the responsibilities of the delinquency services and programs of the department.~~

~~(2)(3) The department shall adopt a rule pursuant to chapter 120 establishing a procedure to provide notice of policy changes that affect contracted delinquency services and programs. A policy is defined as an operational requirement that applies to only the specified contracted delinquency service or program. The procedure must shall include:~~

- ~~(a) Public notice of policy development.~~
- ~~(b) Opportunity for public comment on the proposed policy.~~
- ~~(c) Assessment for fiscal impact upon the department and providers.~~
- ~~(d) The department's response to comments received.~~

~~(4) When the department contracts with a provider for any delinquency service or program, all personnel, including all owners, operators, employees, and volunteers in the facility or providing the service or program shall be of good moral character. A volunteer who assists on an intermittent basis for less than 40 hours per month is not required to be screened if the volunteer is under direct and constant supervision by persons who meet the screening requirements.~~

~~(3)(5)(a) All employees of the department and all personnel of contract providers for any program for children, including all owners, operators, employees, persons who have access to confidential juvenile records, and volunteers, must complete~~ For any person employed by the department, or by a provider under contract with the department, in delinquency facilities, services, or programs, the department shall require:

1. A level 2 employment screening pursuant to chapter 435 ~~before prior to~~ employment. The security background investigation conducted under this section must ensure that, in addition to the disqualifying offenses listed in s. 435.04, no person subject to the background screening provisions of this section has an arrest awaiting final disposition for, been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under the following provisions of state law or similar laws of another jurisdiction:

a. Section 784.07, relating to assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers.

b. Section 817.568, relating to criminal use of personal identification information.

2. A national ~~federal~~ criminal records check by the Federal Bureau of Investigation every 5 years following the date of the person's employment.

(b) Except for law enforcement, correctional, and correctional probation officers, to whom s. 943.13(5) applies, the department shall electronically submit to the Department of Law Enforcement:

1. Fingerprint information obtained during the employment screening required by subparagraph (a)1.

2. ~~Beginning on December 15, 2005,~~ Fingerprint information for all persons employed by the department, or by a provider under contract with the department, in delinquency facilities, services, or programs if such fingerprint information has not previously been electronically submitted to the Department of Law Enforcement under this paragraph.

(c) All fingerprint information electronically submitted to the Department of Law Enforcement under paragraph (b) shall be retained by the Department of Law Enforcement and entered into the statewide automated

fingerprint identification system authorized by s. 943.05(2)(b). Thereafter, such fingerprint information shall be available for all purposes and uses authorized for arrest fingerprint information entered into the statewide automated fingerprint identification system pursuant to s. 943.051 until the fingerprint information is removed pursuant to paragraph (e). The Department of Law Enforcement shall search all arrest fingerprint information received pursuant to s. 943.051 against the fingerprint information entered into the statewide automated fingerprint system pursuant to this subsection. Any arrest records identified as a result of the search shall be reported to the department in the manner and timeframe established by the Department of Law Enforcement by rule.

(d) The department shall pay an annual fee to the Department of Law Enforcement for its costs resulting from the fingerprint information retention services required by this subsection. The amount of the annual fee and procedures for the submission and retention of fingerprint information and for the dissemination of search results shall be established by the Department of Law Enforcement by a rule that is applicable to the department individually pursuant to this subsection or that is applicable to the department and other employing agencies pursuant to rulemaking authority otherwise provided by law.

(e) The department shall notify the Department of Law Enforcement when a person whose fingerprint information is retained by the Department of Law Enforcement under this subsection is no longer employed by the department, or by a provider under contract with the department, in a delinquency facility, service, or program. This notice shall be provided by the department to the Department of Law Enforcement within no later than 6 months after the date of the change in the person's employment status. Fingerprint information for persons identified by the department in the notice shall be removed from the statewide automated fingerprint system.

(6) The department may grant exemptions from disqualification from working with children as provided in s. 435.07.

(7) The department may adopt rules to describe the procedure and requirements necessary to administer the employment screening and fingerprint retention services for all employees of the department and all personnel of contract providers for any program for children, including all owners, operators, employees, and volunteers, including the collection of associated fees.

Section 49. Paragraph (a) of subsection (1) of section 381.60225, Florida Statutes, is amended to read:

381.60225 Background screening.—

(1) Each applicant for certification must comply with the following requirements:

(a) Upon receipt of a completed, signed, and dated application, the Agency for Health Care Administration shall require background screening, in accordance with the level 2 standards for screening set forth in chapter 435, of the managing employee, or other similarly titled individual responsible for the daily operation of the organization, agency, or entity, and financial officer, or other similarly titled individual who is responsible for the financial operation of the organization, agency, or entity, including billings for services. The applicant must comply with the procedures for level 2 background screening as set forth in chapter 435, as well as the requirements of s. 435.03(3).

Section 50. Subsection (32) of section 409.912, Florida Statutes, is amended to read:

409.912 Cost-effective purchasing of health care.—The agency shall purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the delivery of quality medical care. To ensure that medical services are effectively utilized, the agency may, in any case, require a confirmation or second physician's opinion of the correct diagnosis for purposes of authorizing future services under the Medicaid program. This section does not restrict access to emergency services or poststabilization care services as defined in 42 C.F.R. part 438.114. Such confirmation or second opinion shall be rendered in a manner approved by the agency. The agency shall maximize the use of prepaid per capita and prepaid aggregate fixed-sum basis services when appropriate and other alternative service delivery and reimbursement methodologies, including competitive bidding pursuant to s. 287.057, designed to facilitate the cost-effective purchase of a case-managed continuum of care. The agency shall also require providers to minimize the exposure of recipients to the need for acute inpatient, custodial, and other institutional care and the inappropriate or unnecessary use of high-cost services. The agency shall contract with a vendor to monitor and evaluate the clinical practice patterns of providers in order to identify trends that are outside the normal practice patterns of a provider's professional peers or the national guidelines of a provider's professional association. The vendor must be able to provide information and counseling to a provider whose practice patterns are outside the norms, in consultation with the agency, to improve patient care and reduce inappropriate utilization. The agency may mandate prior authorization, drug therapy management, or disease management participation for certain populations of Medicaid beneficiaries, certain drug classes, or particular drugs to prevent fraud, abuse, overuse, and possible dangerous drug interactions. The Pharmaceutical and Therapeutics Committee shall make recommendations to the agency on drugs for which prior authorization is required. The agency shall inform the Pharmaceutical and Therapeutics Committee of its decisions regarding drugs subject to prior authorization. The agency is authorized to limit the entities it contracts with or enrolls as Medicaid providers by developing a provider network through provider credentialing. The agency may competitively bid single-source-provider contracts if procurement of goods or services results in demonstrated cost savings to the state without

limiting access to care. The agency may limit its network based on the assessment of beneficiary access to care, provider availability, provider quality standards, time and distance standards for access to care, the cultural competence of the provider network, demographic characteristics of Medicaid beneficiaries, practice and provider-to-beneficiary standards, appointment wait times, beneficiary use of services, provider turnover, provider profiling, provider licensure history, previous program integrity investigations and findings, peer review, provider Medicaid policy and billing compliance records, clinical and medical record audits, and other factors. Providers shall not be entitled to enrollment in the Medicaid provider network. The agency shall determine instances in which allowing Medicaid beneficiaries to purchase durable medical equipment and other goods is less expensive to the Medicaid program than long-term rental of the equipment or goods. The agency may establish rules to facilitate purchases in lieu of long-term rentals in order to protect against fraud and abuse in the Medicaid program as defined in s. 409.913. The agency may seek federal waivers necessary to administer these policies.

(32) Each managed care plan that is under contract with the agency to provide health care services to Medicaid recipients shall annually conduct a background check with the Florida Department of Law Enforcement of all persons with ownership interest of 5 percent or more or executive management responsibility for the managed care plan and shall submit to the agency information concerning any such person who has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to, any of the offenses listed in s. ~~435.04~~ 435.03.

Section 51. Paragraph (e) of subsection (1) of section 464.018, Florida Statutes, is amended to read:

464.018 Disciplinary actions.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(e) Having been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under s. ~~435.04~~ 435.03 or under any similar statute of another jurisdiction; or having committed an act which constitutes domestic violence as defined in s. 741.28.

Section 52. Paragraph (m) of subsection (1) of section 468.3101, Florida Statutes, is amended to read:

468.3101 Disciplinary grounds and actions.—

(1) The department may make or require to be made any investigations, inspections, evaluations, and tests, and require the submission of any documents and statements, which it considers necessary to determine whether a violation of this part has occurred. The following acts shall be grounds for disciplinary action as set forth in this section:

(m) Having been found guilty of, regardless of adjudication, or pleading guilty or nolo contendere to, any offense prohibited under s. ~~435.04~~ 435.03 or under any similar statute of another jurisdiction.

Section 53. Subsection (3) of section 744.309, Florida Statutes, is amended to read:

744.309 Who may be appointed guardian of a resident ward.—

(3) DISQUALIFIED PERSONS.—No person who has been convicted of a felony or who, from any incapacity or illness, is incapable of discharging the duties of a guardian, or who is otherwise unsuitable to perform the duties of a guardian, shall be appointed to act as guardian. Further, no person who has been judicially determined to have committed abuse, abandonment, or neglect against a child as defined in s. 39.01 or s. 984.03(1), (2), and (37), or who has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under s. ~~435.04~~ 435.03 or under any similar statute of another jurisdiction, shall be appointed to act as a guardian. Except as provided in subsection (5) or subsection (6), a person who provides substantial services to the proposed ward in a professional or business capacity, or a creditor of the proposed ward, may not be appointed guardian and retain that previous professional or business relationship. A person may not be appointed a guardian if he or she is in the employ of any person, agency, government, or corporation that provides service to the proposed ward in a professional or business capacity, except that a person so employed may be appointed if he or she is the spouse, adult child, parent, or sibling of the proposed ward or the court determines that the potential conflict of interest is insubstantial and that the appointment would clearly be in the proposed ward’s best interest. The court may not appoint a guardian in any other circumstance in which a conflict of interest may occur.

Section 54. Subsection (12) of section 744.474, Florida Statutes, is amended to read:

744.474 Reasons for removal of guardian.—A guardian may be removed for any of the following reasons, and the removal shall be in addition to any other penalties prescribed by law:

(12) Having been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under s. ~~435.04~~ 435.03 or under any similar statute of another jurisdiction.

Section 55. Paragraph (a) of subsection (6) of section 985.04, Florida Statutes, is amended to read:

985.04 Oaths; records; confidential information.—

(6)(a) Records maintained by the department, including copies of records maintained by the court, which pertain to a child found to have committed a delinquent act which, if committed by an adult, would be a crime specified in ~~s. ss. 435.03 and~~ 435.04 may not be destroyed under this section for a period

of 25 years after the youth's final referral to the department, except in cases of the death of the child. Such records, however, shall be sealed by the court for use only in meeting the screening requirements for personnel in s. 402.3055 and the other sections cited above, or under departmental rule; however, current criminal history information must be obtained from the Department of Law Enforcement in accordance with s. 943.053. The information shall be released to those persons specified in the above cited sections for the purposes of complying with those sections. The court may punish by contempt any person who releases or uses the records for any unauthorized purpose.

Section 56. Section 409.1758, Florida Statutes, is repealed.

Section 57. Paragraph (d) of subsection (4) of section 456.039, Florida Statutes, is repealed.

Section 58. The changes made by this act are intended to be prospective in nature. It is not intended that persons who are employed or licensed on the effective date of this act be rescreened until such time as they are otherwise required to be rescreened pursuant to law, at which time they must meet the requirements for screening as set forth in this act.

Section 59. This act shall take effect August 1, 2010.

Approved by the Governor May 26, 2010.

Filed in Office Secretary of State May 26, 2010.