The Florida Health Care Association is a federation of facilities representing long term care providers who believe that the individuals served are entitled to a supportive environment in which professional and compassionate care is delivered.

Created in 1956, FHCA works to educate society and government to invest in the well-being of elderly and disabled individuals and to assure access to long term care. FHCA is committed to developing necessary and reasonable public policies which balance economic and regulatory principles to support quality care and quality of life.

FHCA is dedicated to professionalism and ethical behavior among all who provide long term care.

*The Background Screening Guide for Nursing Homes and Assisted Living Facilities* was written and compiled by Lee Ann Griffin, FHCA Director of Quality and Regulatory Services. Contact Lee Ann at the FHCA Headquarters in Tallahassee for any questions about this guide.

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Permission is given to duplicate by FHCA member nursing homes and ALFs for internal training of employees.
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Criminal History Screenings are not new for Florida’s nursing homes and assisted living facilities. Since 1995, long term care facilities providing care and services to the state’s most vulnerable citizens have been required to conduct employee criminal history screenings. Florida’s 2009, 2010, and 2012 Legislature adopted additional disqualifying criminal offenses and stricter screening requirements affecting both employers and persons seeking employment in nursing homes and assisted living facilities.

With House Bill 7069 Florida’s 2010 Legislature required that all persons seeking certain positions of employment or contracting to provide certain work with a nursing home or an ALF must have evidence of a national fingerprint screening that is no more than 5 years old. The applicant’s fingerprints will be scanned, digitally captured, and transmitted to the Federal Bureau of Investigation and the Florida Department of Law Enforcement. Screening results are then sent to Florida’s Agency for Health Care Administration where employment eligibility will be determined.

Existing employees are also affected by the 2010 legislation and must sign new affidavits, make disclosure agreements, and submit to national fingerprint screenings according to a schedule based on their hire date.

With House Bill 943, the 2012 Legislature established the Agency for Health Care Administration’s Care Provider Background Screening Clearinghouse, required photographs be taken at the time of screening, and instituted a retention process.

Between these Legislative initiatives, the technology they employ, and the cost of their implementation, Florida’s criminal history screening requirements for employment and licensure moves to the regulatory forefront of the nation’s efforts to protect children, the elderly, and disabled by controlling their caregiver exposure to persons with certain criminal histories.
GUIDE PURPOSE

The intent of this guide is to consolidate the criminal history screening requirements for Florida’s nursing homes and assisted living facilities and to guide users to specific content areas as questions arise.

GENERAL PROVISIONS

As of August 1, 2010, persons employed by a nursing home or assisted living facility in certain positions must submit to a Level 2 background screening conducted through the agency (s.408.809(1), F.S.):

1. The licensee, if an individual.
2. The administrator or a similarly titled person who is responsible for the day-to-day operation of the provider.
3. The financial officer or similarly titled individual who is responsible for the financial operation of the licensee or provider.
4. 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.
5. Any person seeking employment with a licensee or provider who is expected to, or whose responsibilities may require him or her to:
   a. provide personal care or services directly to clients or
   b. have access to client funds, personal property, or living areas
6. Any person contracting with a licensee or provider whose responsibilities require him or her to provide personal care or personal services directly to clients
   a. Evidence of contractor screening may be retained by the contractor’s employer or the licensee

A Level 2 criminal history screening is a fingerprint check of state and federal criminal history information conducted through the Florida Department of law Enforcement (FDLE) and Federal Bureau of Investigation (FBI).

No person subject to the screening requirements may begin working in the capacity that requires screening prior to completing the screening process and being found eligible to work (see side bar for orientation).

In addition, as of August 1, 2010, such persons must attest, under penalty of perjury, that they have met the criminal history screening requirements of s. 435, F.S. and agree to tell their employer if they are arrested for a disqualifying offense. (s.435.05(2), F.S.) (See Attestations).
CURRENT EMPLOYEES

HB 7069 notes that “[t]he 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.”

Persons employed by a nursing home or assisted living facility before or on July 31, 2010, who already met the screening requirements that were in effect at the time of their screening do not have to be rescreened until the date indicated in the schedule below. This applies as long as the person is employed with the same organization, but if they change jobs, the new employer should verify a Level 2 screening is in place, or initiate one.

RESCREENING SCHEDULE

The rescreening schedule for current employees (HB 943) is:

<table>
<thead>
<tr>
<th>Persons screened:</th>
<th>Must be rescreened by:</th>
</tr>
</thead>
<tbody>
<tr>
<td>on or before 12/31/2004</td>
<td>7/31/2013</td>
</tr>
<tr>
<td>between 1/1/2005 - 12/31/2008</td>
<td>7/31/2014</td>
</tr>
<tr>
<td>between 1/1/2009 - 7/31/2011</td>
<td>7/31/2015</td>
</tr>
</tbody>
</table>

If a Level 2 screen conducted after August 1, 2010, reveals that a person employed on or before July 31, 2010, does have a disqualifying offense that was not a disqualifying offense at the time of their last screening, he/she may apply for an exemption and continue to work until the licensing agency makes a decision regarding their exemption, if the person is otherwise 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 being screened (see Exemptions).

CONTRACTED WORKERS

Beginning August 1, 2010, persons contracting with a licensee or provider whose responsibilities require him or her to provide personal care or personal services directly to clients are subject to the same screenings as employees (s.408.809(1)(e) F.S.). Evidence of contractor screening may be retained by the contractor’s employer or the licensee.

Persons working as contracted workers are covered by the same rescreening provisions as employees (see Avoiding Duplicative Screenings).
AVOIDING DUPLICATIVE SCREENINGS

If a person has already submitted to a level 2 screening within the previous 5 years through the Agency for Health Care Administration, the Department of Health (for nurses and CNAs), the Department of Children & Families, the Department of Financial Services, or the Agency for Persons with Disabilities, he/she does not have to be screened again, if:

1. The person has proof they’ve not been unemployed for more than 90 days from a position that required Level 2 screening, and
2. They sign an affidavit of compliance, under penalty of perjury, attesting they have met the criminal history screening requirements of s. 435, F.S. and s. 408.809, F.S. (see Affidavits and Attestations).

Employees or contract workers hired or engaged on or after August 1, 2010, who are subject to the screening requirement must have evidence of successful completion of a Level 2 background screening that is no older than 5 years. Repetitive screening of the same individual within a 5 year time frame is not required.

DISQUALIFYING OFFENSES

Criminal offenses that disqualify a person from being employed by a nursing home or assisted living facility are located in three Florida Statutes (See Regulatory Authority):

1. s. 408.809(4)
2. s. 435.04
3. s. 435.07(4)

When an employer becomes aware of an arrest for one of the disqualifying offenses, Florida law requires the employer to remove the employee from contact with any vulnerable person (s.435.06, F.S.). The employer must terminate the employment of any employee or place the employee in a position that does not require background screening if the employee is found to be in noncompliance with the screening standards unless the employee is granted an exemption.

The employee dismissed due to a disqualifying offense is not entitled to unemployment compensation or other monetary liability. There is no cause of action for damages arising against an employer that terminates an employee due to a disqualifying offense (s.408.809(8), F.S.)
EXEMPTIONS

Florida’s law includes a provision for exemptions that permit persons who have committed a disqualifying offense to work in a nursing home or assisted living facility providing personal care or services directly to clients with access to client funds, personal property, or living areas. Exemptions are not new and have been in place since 1995 though they, too, were modified by HB7069 in 2010. See Current Employees for alternatives for persons employed before 8/1/2010 who trigger an ineligible status when rescreened.

The process for applying for an exemption for an individual is:

1. The Agency’s Care Provider Background Screening Clearinghouse lists a person’s status as ineligible for employment
2. The Agency notifies the person who has been screened of their ineligible status via a mailed letter which includes information on:
   a. The disqualifying offense(s)
   b. Exemption eligibility and process
      i. If an individual is an employer, owner, Administrator, or non-certified, or non-licensed worker, they will be directed to submit an exemption request to the Agency for Health Care Administration.
      ii. If an individual is a CNA or a Nurse, they will be directed to the Department of Health's Board of Nursing for an exemption request.

An Application for Exemption from Disqualification AHCA Form 3110-0019 and instructions may be downloaded from the Agency’s Background Screening website. There is no charge for applying for an exemption with the Agency.

To request an exemption from the Department of Health’s Board of Nursing, download the application from the Board’s website or call 850/245-4125 (CNA Ext. 3633; RN/PN Ext. 3613). There is no charge for applying for an exemption with the Board of Nursing.

See Resources for links to the exemption application forms.
A person is not eligible to apply for an Exemption from Disqualification until:

1. He/she has been lawfully released from confinement, probation or other sanction for a disqualifying misdemeanor criminal offense;
2. At least 3 years after he/she has been lawfully released from confinement, probation or other sanction for a disqualifying felony criminal offense.
3. Persons designated as sexual predators, sexual offenders or career offenders are not eligible for an Exemption from Disqualification.

According to the Agency, applicants should allow 30 days for a decision from the date a complete exemption application is submitted.

Employers do not have access to information about the exemption status for an applicant. The Agency for Health Care Administration will not disclose specific applicant information to the employer.

Once granted, the exemption decision will be posted on the Agency’s Care Provider Background Screening Clearinghouse.

ATTESTATIONS

HB7069 introduced new documentation requirements for agreements and attestations that employers have to make sure are in place (s. 435.05(2), F.S.).

Effective August 1, 2010, applicants for hire or existing employees that are subject to criminal history screening must:

1. Attest, subject to penalty of perjury, that they meet the requirements for employment (meaning, they don’t have any of the disqualifying offenses in their background or, if they do, that they have an exemption), and
2. Agree to inform the employer immediately if they are arrested for a disqualifying offense (See Disqualifying Offenses related to employer obligation to remove such employees).

Nursing home and assisted living facility employers must:

1. Attest, under penalty of perjury, to the Agency whenever they renew their license that they are conducting criminal history screenings in accordance with state law.
The Agency for Health Care Administration has developed one form to capture these attestations and agreements: An Affidavit of Compliance with Background Screening Requirements, AHCA Form #3100-0008, August, 2010.

There are different circumstances for when the attestation and agreement are required:

- For those employees or contract workers who were employed on or before July 31, 2010, who do not have to be rescreened until their rescreen date as given in statute
- For new hires that have had a Level 2 screening within the past 5 years and who haven’t been unemployed for more than 90 days from a position that required Level 2 screening and the new employer does not want to initiate a duplicative screening
- For new hires submitting to the Level 2 screening requirements

Once signed by an employee, the Affidavit of Compliance with Background Screening Requirements, AHCA Form #3100-0008 does not have to be signed again.

However, the Affidavit of Compliance is required to be signed again by the Administrator as part of the facility’s relicensure process.

**LEVEL 2 CRIMINAL HISTORY SCREENING - CURRENT COST**

Two Florida state agencies and one federal agency charge $64.50 for a Level 2 LiveScan background screening. The additional cost of screening varies based on the LiveScan vendor’s pricing rates. See the Agency’s Vendor List within the Clearinghouse for some published fees. The fees in the Vendor List include the cost of the screening plus the vendor's charge.

<table>
<thead>
<tr>
<th>Initial Screening Fees</th>
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<td>National Print Screen (recipient: FBI)</td>
<td>$16.50</td>
</tr>
<tr>
<td>State Print Screen (recipient: AHCA)</td>
<td>$24.00</td>
</tr>
<tr>
<td>Retention Fee (recipient: FDLE)</td>
<td>$24.00</td>
</tr>
<tr>
<td>Vendor Fee (average fee, inc. photograph estimate)</td>
<td>$20.00</td>
</tr>
<tr>
<td>Criminal History Screening Fee (average)</td>
<td>$84.50</td>
</tr>
</tbody>
</table>
Because fingerprints are retained in the Florida Department of Law Enforcement database and are automatically compared with new Florida arrests that occur, rescreening does not require a new fingerprint scan or resubmitting the print to the Agency for Health Care Administration. Photographs do not have to be retaken upon rescreening.

<table>
<thead>
<tr>
<th>Rescreen Fees</th>
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</tr>
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<tbody>
<tr>
<td>National Print Screen (recipient: FBI)</td>
<td>$16.50</td>
</tr>
<tr>
<td>Criminal History Rescreening Fee</td>
<td>$16.50</td>
</tr>
</tbody>
</table>

LIVESCAN FINGERPRINT CAPTURE

All Level 2 screening requests must be submitted electronically to the Agency for Health Care Administration.

LiveScan is a term used to describe the scanners that digitally capture fingerprints through a scanning function. Person being screened place their hands directly on the scanner for reading. Fingerprint scanning using a LiveScan device provides faster results and generally costs the state less money than hard card scanning as there is less handling involved. LiveScan capture also produces a better quality print, so has a lower rejection rate of illegible prints.

There are a few options for LiveScan fingerprint capture:

1. New hires and employees will go to a qualified electronic fingerprint service provider approved to submit fingerprint requests. See the Agency for Health Care Administration’s Care Provider Background Screening Clearinghouse for a list of photo-enabled LiveScan vendors in your area.

   If there are no photo-enabled LiveScan vendors in your area, new hires and employees may be screened by a non photo-enabled LiveScan vendor; their screening results will be available electronically through the Agency’s portal, but not retained within the Clearinghouse.
2. LiveScan devices may be purchased/leased by providers who wish to conduct their own fingerprint and photo capture. Several business offer machines (sale or lease); however, it is important to assure that any selection is approved for submission through FDLE and all requirements of fingerprint submission are met. For more information visit FDLE LiveScan or the AHCA Cogent contract (See LiveScan Service Providers, Option 1 or Option 2).

3. In some cases, non-digital fingerprint cards will still be used:

- Out-of-state applicants
- Others who do not have access to a Florida LiveScan vendor
- Persons whose fingerprints cannot be detected digitally

These persons are required to submit a fingerprint card to Cogent Systems along with a fee of $80.25 ($64.50 for the screening + $15.75 processing fee). Fingerprint cards must be obtained from the Agency. To request a fingerprint card please contact the Agency’s Background Screening Section at (850)412-4503 or email bgscreen@ahca.myflorida.com.

The physical fingerprint card must be filled out completely and the fingerprints taken by law enforcement personnel or individual trained in processing fingerprints. Please visit Cogent to register and pay for the screening. Return the completed card to:

Cogent Systems
Attn: Fingerprint Card Scan Florida
5025 Bradenton Ave Suite A
Dublin, OH 43017

LIVESCAN VENDORS

The Agency maintains a list of photo-enabled LiveScan vendors through the Care Provider Background Screening Clearinghouse.

The Florida Department of Law Enforcement also maintains a list of vendors providing LiveScan services (see Resources); however, these may not be photo-enabled.
PHOTOGRAPHS

Beginning January 1, 2013, persons having their prints scanned for employment screening will also have their photograph taken by the LiveScan vendor for inclusion in the Clearinghouse (HB 943). Photographs are only taken one time and are retained within the Clearinghouse so that they do not have to be taken again upon rescreening.

Persons may still be screened using a LiveScan provider who is not photo-enabled, but their screening will not appear in the Clearinghouse, nor will their print be retained. Their work eligibility based on the results of their screening will be available through the Agency’s Background Screening Results database (pre-Clearinghouse database).

LIVESCAN REQUEST FORM

Some LiveScan vendors are set up for processing appointments directly through the Clearinghouse portal. Otherwise, employers will print a LiveScan Request Form (formerly known as the Validation for LiveScan Service Providers) for the employee or new hire to take with them to the LiveScan vendor. The LiveScan Request Form, generated through the Clearinghouse, contains critical preprinted data necessary for print transmission. Elements of information include (1) employee name, (2) employer name, (3) Employer AHCA Number (assigned through licensure process) and a (4) screening request I.D. number.

RAP BACK AND RETENTION OF PRINTS

HB 7069 (2010) and HB 943 (2012) established a series of new screening requirements for health care employers. Many of these new requirements have additional associated fees and require new staff resources for compliance. The purpose of the new screening requirements is to create a system in which all retained fingerprints will be continually scanned against all arrests in Florida (and, eventually, the nation) allowing for employer notification if an employee is arrested for a disqualifying offense.

Another long-term goal of print retention is to allow eligible state government entities to share access to digitally captured fingerprints and screening results.

See Disqualifying Offenses for termination or reassignment requirements.
CARE PROVIDER BACKGROUND SCREENING CLEARINGHOUSE

The Agency for Health Care Administration is charged with maintaining the results of criminal history screenings and for housing the eligibility determinations for applicants and employees, whether eligibility is determined by the Agency or by the Florida Department of Health.

The Agency’s Care Provider Background Screening Clearinghouse (HB 7069; HB 943) expanded on the preceding Background Screening Results Database. The Clearinghouse introduced:

1. National, digital fingerprint scans
2. Additional disqualifying offenses
3. Additional caregiver categories to be screened for employment
4. Requirement that employers enter start and end dates for all hirings and separations within 10 days
5. Retention of all digital prints within the Clearinghouse
6. Employment dependent upon new hires agreeing to FBI/FDLE Policies for exchanging fingerprint information among agencies
7. Automatic comparison of all arrests to retained digital prints within the Clearinghouse
8. Notification of current employers for persons arrested (“rap back”)

The Clearinghouse allows the results of criminal history checks to be shared among specified agencies when a person has applied to volunteer, be employed, be licensed, or enter into a contract that requires a state and national fingerprint-based criminal history check.

The Agency developed a web portal to allow authorized users access to multiple external systems maintained by the Agency for the purpose of viewing and maintaining information. The Clearinghouse is the first external Agency system to be available on the Portal. The former Background Screening Results database is part of the portal as well. Users will need to create a Portal account, request Background Screening access and submit a User Agreement. The User Agreement for new accounts must be received and approved by Agency staff before accessing the site.

The Agency for Health Care Administration has published comprehensive guides to assist users:

Clearinghouse User Registration Guide
Clearinghouse Results Website – Instruction Guide
RESOURCES

Agency for Health Care Administration
Central Systems Management
Background Screening Section
2727 Mahan Drive, Mail Stop #40
Tallahassee, FL 32308
(850) 412-4503
(850) 487-0470 Fax
Email: bg screen@ahca.myflorida.com

Background Screening:
http://ahca.myflorida.com/MCHQ/Central_Services/Background_Screening/index.shtml

Care Provider Background Screening Clearinghouse: Available from the Agency's Background Screening website. Look for Logon link.

Department of Health Board of Nursing: Exemption Information and Form http://www.doh.state.fl.us/mqa/CBSEI.html

Florida Health Care Association: www.fhca.org
For Background Screening Resources, select Facility Operations; Regulatory; then, Background Screenings.

Statutes and Regulations
The latest statutes and regulations may be found online at these government sites:

Florida Statutes: http://www.flsenate.gov; select Laws, then Statutes

Florida Administrative Code: https://www.flrules.org; enter “59A-35” in the Search by Chapter Number field to explore regulations related to criminal history screening.

AHCA Wayfinding Tip:
At this site address http://ahca.myflorida.com, enter "background screening" in the site's search field to bring up the background screening site page.
REGULATORY AUTHORITY

The following statutes and administrative rules address criminal history screening requirements in Florida's nursing homes and assisted living facilities:

Title XXXI Chapter 435 Employment Screening
Title XXIX Chapter 408.809 Background Screening; prohibited offenses
Chapter 59A-35.090 F.A.C. Background Screening
Title XXXII Chapter 456.0635 Health Professions and Occupations

Disqualifying Offenses

Criminal offenses that disqualify a person subject to screening from being employed by a nursing home or assisted living facility are located in three statutes:

1. s. 408.809(4)
2. s. 435.04
3. s. 435.07(4)
4. s. 456.0635(2) – applies to individual licensure (Medicaid Fraud)
TITLE XXXI
LABOR
CHAPTER 435
EMPLOYMENT SCREENING
435.01 Applicability of this chapter; statutory references; rulemaking.
435.02 Definitions.
435.03 Level 1 screening standards.
435.04 Level 2 screening standards.
435.05 Requirements for covered employees and employers.
435.06 Exclusion from employment.
435.07 Exemptions from disqualification.
435.08 Payment for processing of fingerprints and state criminal records checks.
435.09 Confidentiality of personnel background check information.
435.10 Sharing of personnel information among employers.
435.11 Penalties.
435.12 Care Provider Background Screening Clearinghouse.

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, the provisions of this chapter 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.
History.—s. 47, ch. 95-228; s. 35, ch. 2010-114.

435.02 Definitions.—For the purposes of this chapter, the term:
(1) “Agency” means any state, county, or municipal agency that grants licenses or registration permitting the operation of an employer or is itself an employer or that otherwise facilitates the screening of employees pursuant to this chapter. If there is no state agency or the municipal or county agency chooses not to conduct employment screening, “agency” means the Department of Children and Family Services.
(2) “Employee” means any person required by law to be screened pursuant to this chapter, including, but not limited to, persons who are contractors, licensees, or volunteers.
(3) “Employer” means any person or entity required by law to conduct screening of employees pursuant to this chapter.
(4) “Employment” means any activity or service sought to be performed by an employee which requires the employee to be screened pursuant to this chapter.

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

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

435.03 Level 1 screening standards.—(1) All employees required by law to be screened pursuant to this section must undergo background screening as a condition of employment and continued employment which includes, but need not be limited to, employment history checks and statewide criminal correspondence checks through the Department of Law Enforcement, and 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, 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) or similar law of another jurisdiction.

(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.

History.—s. 47, ch. 95-228; s. 15, ch. 96-268; s. 21, ch. 96-322; s. 3, ch. 98-417; s. 87, ch. 2000-153; s. 45, ch. 2000-349; s. 62, ch. 2001-62; s. 50, ch. 2003-1; s. 4, ch. 2004-267; s. 3, ch. 2005-119; s. 89, ch. 2006-197; s. 61, ch. 2006-227; s. 109, ch. 2007-5; s. 16, ch. 2008-244; s. 37, ch. 2010-114; s. 34, ch. 2011-4.

435.04 Level 2 screening standards.—(1)(a) All employees required by law to be screened pursuant to this section must undergo security background investigations as a condition of employment and continued employment which includes, but need not be limited to, fingerprinting for statewide criminal history records checks through the Department of Law Enforcement, and national 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 informa-
(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.

(e) Vendors who submit fingerprints on behalf of employers must:
1. Meet the requirements of s. 943.053; and
2. Have the ability to communicate electronically with the state agency accepting screening results from the Department of Law Enforcement and provide a photograph of the applicant taken at the time the fingerprints are submitted.

(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 or similar law 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) Section 784.011, relating to assault, if the victim of the offense was a minor.
(j) Section 784.03, relating to battery, if the victim of the offense was a minor.
(k) Section 787.01, relating to kidnapping.
(l) Section 787.02, relating to false imprisonment.
(m) Section 787.025, relating to luring or enticing a child.
(n) Section 787.04(2), relating to taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings.
(o) Section 787.04(3), relating to carrying a child beyond the state lines with criminal intent to avoid producing a child at a custody hearing or delivering the child to the designated person.
(p) Section 790.115(1), relating to exhibiting firearms or weapons within 1,000 feet of a school.
(q) Section 790.115(2)(b), relating to possessing an electric weapon or device, destructive device, or other weapon on school property.
(r) Section 794.011, relating to sexual battery.
(s) Former s. 794.041, relating to prohibited acts of persons in familial or custodial authority.
(t) Section 794.05, relating to unlawful sexual activity with certain minors.
(u) Chapter 796, relating to prostitution.
(v) Former s. 794.041, relating to prohibited acts of persons in familial or custodial authority.
(w) Chapter 800, relating to lewdness and indecent exposure.
(x) Section 806.01, relating to arson.
(y) Section 810.02, relating to burglary.
(z) Section 810.14, relating to voyeurism, if the offense is a felony.
(aa) Section 810.145, relating to video voyeurism, if the offense is a felony.
(bb) Chapter 812, relating to theft, robbery, and related crimes, if the offense is a felony.
(cc) Section 817.563, relating to fraudulent sale of controlled substances, only if the offense was a felony.
(dd) Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
(ee) Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.
(ff) Section 825.103, relating to exploitation of an elderly person or disabled adult, if the offense was a felony.
(gg) Section 826.04, relating to incest.
(hh) Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.
(ii) Section 827.04, relating to contributing to the delinquency or dependency of a child.
(jj) Former s. 827.05, relating to negligent treatment of children.
(kk) Section 827.071, relating to sexual performance by a child.
(ll) Section 843.01, relating to resisting arrest with violence.
(mm) Section 843.025, relating to depriving a law enforcement, correctional, or correctional probation officer means of protection or communication.
(nn) Section 843.12, relating to aiding in an escape.
(o0) Section 843.13, relating to aiding in the escape of juvenile inmates in correctional institutions.
(pp) Chapter 847, relating to obscene literature.
(qq) Section 874.05(1), relating to encouraging or recruiting another to join a criminal gang.
(rr) Chapter 893, relating to drug abuse prevention and control, only if the offense was a felony or if any other person involved in the offense was a minor.
(ss) Section 916.1075, relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.
(tt) Section 944.35(3), relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.
(uu) Section 944.40, relating to escape.
(vv) Section 944.46, relating to harboring, concealing, or aiding an escaped prisoner.
(ww) Section 944.47, relating to introduction of contraband into a correctional facility.
(xx) Section 985.701, relating to sexual misconduct in juvenile justice programs.
(yy) Section 985.711, relating to contraband introduced into detention facilities.

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.

History.—s. 47, ch. 95-228; s. 16, ch. 96-268; s. 22, ch. 96-322; s. 4, ch. 98-417; s. 5, ch. 99-284; s. 88, ch. 2000-153; s. 7, ch. 2001-125; s. 5, ch. 2004-267; s. 4, ch. 2005-119; s. 111, ch. 2006-120; s. 90, ch. 2006-197; s. 110, ch. 2007-5; s. 3, ch. 2007-112; s. 66, ch. 2009-223; s. 6, ch. 2010-31; s. 38, ch. 2010-114; s. 10, ch. 2012-73.

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

(1) (a) Every person required by law to be screened pursuant to this chapter must submit a complete set of information necessary to conduct a screening under this chapter.
(b) For level 1 screening, the employer must submit the information necessary for screening to the Department of Law Enforcement within 5 working days after receiving it. The Department of Law Enforcement shall conduct a search of its records and respond to the employer or agency. The employer must inform the employee whether screening has revealed any disqualifying information.
(c) For level 2 screening, the employer or agency must submit the information necessary for screening to the Department of Law Enforcement within 5 working days after receiving it. The Department of Law Enforcement shall perform a criminal history record check of its records and request that the Federal Bureau of Investigation perform a national criminal history record check of its records for each employee for whom the request is made. The Department of Law Enforcement shall respond to the employer or agency, and the employer or agency must 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 request for the information.

(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.

(3) Each employer licensed or registered with an agency must conduct level 2 background screening and must submit to the agency annually or at the time of license renewal, under penalty of perjury, a signed affidavit attesting to compliance with the provisions of this chapter.

History.—s. 47, ch. 95-228; s. 208, ch. 99-8; s. 46, ch. 2000-349; s. 63, ch. 2001-62; s. 21, ch. 2004-267; s. 67, ch. 2009-223; s. 39, ch. 2010-114.
435.06 Exclusion from employment.—(1) If an employer or 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 indicates noncompliance with the standards in this chapter. It is 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 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 terminate the employment of any of its personnel found to be in noncompliance with the minimum standards of this chapter 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.

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

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

(4) There is no reemployment assistance 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.

History.—s. 47, ch. 95-228; s. 40, ch. 2010-114; s. 65, ch. 2012-30; s. 11, ch. 2012-73.
435.07  **Exemptions from disqualification.**—Unless otherwise provided by law, the provisions of this section 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 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;
   (b) Misdemeanors prohibited under any of the 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 purposes of this subsection, the term “felonies” means both felonies prohibited under any of the 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 without application of the waiting period in paragraph (1)(a).

3. (a) In order for the head of an agency 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 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 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 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 agency shall be considered by subsequent agencies, but are not binding on the subsequent agency.

History.—s. 47, ch. 95-228; s. 47, ch. 2000-349; s. 64, ch. 2001-62; s. 9, ch. 2005-128; s. 41, ch. 2010-114.

435.08 Payment for processing of fingerprints and state criminal records checks.—The employer or the employee is responsible for paying the costs of screening. Payment shall be submitted to the 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.

History.—s. 47, ch. 95-228; s. 209, ch. 99-8; s. 48, ch. 2000-349; s. 42, ch. 2010-114.

435.09 Confidentiality of personnel background check information.—No criminal or juvenile information obtained under this section may be used for any purpose other than determining whether persons meet the minimum standards for employment or for an owner or director of a covered service provider. The criminal records and juvenile records obtained by the department or by an employer are exempt from s. 119.07(1).

History.—s. 47, ch. 95-228; s. 282, ch. 96-406; s. 49, ch. 2000-349.

435.10 Sharing of personnel information among employers.—Every employer of employees covered by this chapter shall furnish copies of personnel records for employees or former employees to any other employer requesting this information pursuant to this section. Information contained in the records may include, but is not limited to, disciplinary matters and any reason for termination. Any employer releasing such records pursuant to this chapter shall be considered to be acting in good faith and may not be held liable for information contained in such records, absent a showing that the employer maliciously falsified such records.

History.—s. 47, ch. 95-228.
435.11 Penalties.—(1) 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:
(a) Fail, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose in any application for voluntary or paid employment a material fact used in making a determination as to such person’s qualifications for a position of special trust.
(b) Use records information for purposes other than screening for employment or release records information to other persons for purposes other than screening for employment.
(2) 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 juvenile records information for any purposes other than specified in this section or to release such information to other persons for purposes other than specified in this section.
History.—s. 47, ch. 95-228; s. 283, ch. 96-406.

435.12 Care Provider Background Screening Clearinghouse.—(1) The Agency for Health Care Administration in consultation with the Department of Law Enforcement shall create a secure web-based system, which shall be known as the “Care Provider Background Screening Clearinghouse” or “clearinghouse,” and which shall be implemented to the full extent practicable no later than September 30, 2013, subject to the specified agencies being funded and equipped to participate in such program. The clearinghouse shall allow the results of criminal history checks provided to the specified agencies for screening of persons qualified as care providers under s. 943.0542 to be shared among the specified agencies when a person has applied to volunteer, be employed, be licensed, or enter into a contract that requires a state and national fingerprint-based criminal history check. The Agency for Health Care Administration and the Department of Law Enforcement may adopt rules to create forms or implement procedures needed to carry out this section.
(2)(a) To ensure that the information in the clearinghouse is current, the fingerprints of an employee required to be screened by a specified agency and included in the clearinghouse must be:
1. Retained by the Department of Law Enforcement pursuant to s. 943.05(2)(g) and (h) and (3), and the Department of Law Enforcement must report the results of searching those fingerprints against state incoming arrest fingerprint submissions to the Agency for Health Care Administration for inclusion in the clearinghouse.
2. Resubmitted for a Federal Bureau of Investigation national criminal history check every 5 years until such time as the fingerprints are retained by the Federal Bureau of Investigation.
3. Subject to retention on a 5-year renewal basis with fees collected at the time of initial submission or resubmission of fingerprints.
(b) Until such time as the fingerprints are retained at the Federal Bureau of Investigation, an employee with a break in service of more than 90 days from a position that requires screening by a specified agency must submit to a national screening if the person returns to a position that requires screening by a specified agency.
(c) An employer of persons subject to screening by a specified agency must register with the clearinghouse.
and maintain the employment status of all employees within the clearinghouse. Initial employment status
and any changes in status must be reported within 10 business days.

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

History.—s. 12, ch. 2012-73.
408.809 Background screening; prohibited offenses.—(1) Level 2 background screening pursuant to chapter 435 must be conducted through the agency on each of the following persons, who are considered employees for the purposes of conducting screening under chapter 435:

(a) The licensee, if an individual.

(b) The administrator or a similarly titled person who is responsible for the day-to-day operation of the provider.

(c) The financial officer or similarly titled individual who is responsible for the financial operation of the licensee or provider.

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

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

(2) Every 5 years following his or her licensure, employment, or entry into a contract in a capacity that under subsection (1) would require level 2 background screening under chapter 435, each such person must submit to level 2 background rescreening as a condition of retaining such license or continuing in such employment or contractual status. For any such rescreening, the agency shall request the Department of Law Enforcement to forward the person’s fingerprints to the Federal Bureau of Investigation for a national criminal history record check. If the fingerprints of such a person are not retained by the Department of Law Enforcement under s. 943.05(2)(g), the person must file a complete set of fingerprints with the agency and the agency shall forward the fingerprints to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The fingerprints may be retained by the Department of Law Enforcement under s. 943.05(2)(g). The cost of the state and national criminal history records checks required by level 2 screening may be borne by the licensee or the person fingerprinted. Until the person’s background screening results are retained in the clearinghouse created under s. 435.12, the agency may accept as satisfying the requirements of this section proof of compliance with level 2 screening standards submitted within the previous 5 years to meet any provider or professional licensure requirements of the agency, the Department of Health, the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Children and Family Services, or the Department of Financial Services for an applicant for a certificate of authority or provisional certificate of authority to operate a continuing care retirement community under
chapter 651, provided that:
(a) The screening standards and disqualifying offenses for the prior screening are equivalent to those specified in s. 435.04 and this section;
(b) The person subject to screening has not had a break in service from a position that requires level 2 screening for more than 90 days; and
(c) Such proof is accompanied, under penalty of perjury, by an affidavit of compliance with the provisions of chapter 435 and this section using forms provided by the agency.

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

(4) In addition to the offenses listed in s. 435.04, all persons required to undergo background screening pursuant to this part or authorizing statutes must not have an arrest awaiting final disposition for, must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, and must not have been adjudicated delinquent and the record not have been sealed or expunged for any of the following offenses or any similar offense of another jurisdiction:
(a) Any authorizing statutes, if the offense was a felony.
(b) This chapter, if the offense was a felony.
(c) Section 409.920, relating to Medicaid provider fraud.
(d) Section 409.9201, relating to Medicaid fraud.
(e) Section 741.28, relating to domestic violence.
(f) Section 817.034, relating to fraudulent acts through mail, wire, radio, electromagnetic, photoelectronic, or photooptical systems.
(g) Section 817.234, relating to false and fraudulent insurance claims.
(h) Section 817.505, relating to patient brokering.
(i) Section 817.568, relating to criminal use of personal identification information.
(j) Section 817.60, relating to obtaining a credit card through fraudulent means.
(k) Section 817.61, relating to fraudulent use of credit cards, if the offense was a felony.
(l) Section 831.01, relating to forgery.
(m) Section 831.02, relating to uttering forged instruments.
(n) Section 831.07, relating to forging bank bills, checks, drafts, or promissory notes.
(o) Section 831.09, relating to uttering forged bank bills, checks, drafts, or promissory notes.
(p) Section 831.30, relating to fraud in obtaining medicinal drugs.
(q) Section 831.31, relating to the sale, manufacture, delivery, or possession with the intent to sell, manufacture, or deliver any counterfeit controlled substance, if the offense was a felony.
(5) A person who serves as a controlling interest of, is employed by, or contracts with a licensee on July 31, 2010, who has been screened and qualified according to standards specified in s. 435.03 or s. 435.04 must be rescreened by July 31, 2015, in compliance with the following schedule. If, upon rescreening, such person has a disqualifying offense that was not a disqualifying offense at the time of the last screening, but is a current disqualifying offense and was committed before the last screening, he or she may apply for an exemption from the appropriate licensing agency and, if agreed to by the employer, may continue to perform his or her duties until the licensing agency renders a decision on the application for exemption if the person is eligible to apply for an exemption and the exemption request is received by the agency within 30 days after receipt of the rescreening results by the person. The rescreening schedule shall be:

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

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

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

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

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

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

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

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

(9) There is no reemployment assistance 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.

History.—s. 5, ch. 2006-192; s. 50, ch. 2009-223; s. 21, ch. 2010-114; s. 61, ch. 2012-30; s. 2, ch. 2012-73.
59A-35.090 Background Screening.

(1) Definitions:
(a) “Arrest Report” means the detailed narrative written by the arresting law enforcement officer explaining the circumstances of the arrest.
(b) “Disposition” means the sentencing or other final settlement of a criminal case which shall include, regardless of adjudication, a plea of nolo contendere or guilty, or a conviction by a judge or jury.
(c) “Disqualifying Offense” means any criminal offense prohibited in Section 435.03, 435.04 or 408.809(5), F.S.
(d) “Exemption from Disqualification” means an exemption granted by the Agency following a review of the Application for Exemption, AHCA Form 3010-0019, October 2009, hereby incorporated by reference, and an informal hearing, if appropriate, during which the individual must present clear and convincing evidence to support a reasonable belief that he or she has been rehabilitated and does not present a danger to the health, safety, and welfare of the patient or individual as described in Section 435.07, F.S.
(e) “FBI” means the Federal Bureau of Investigation.
(f) “FDLE” means the Florida Department of Law Enforcement.
(g) “Level 1 Screening” means an assessment of the criminal history record obtained from the FDLE to determine whether screened individuals have any disqualifying offenses pursuant to Section 435.03 or 408.809(5), F.S. An analysis and review of court dispositions and arrest reports may be required to make a final determination.
(h) “Level 2 Screening” means an assessment of the criminal history record obtained through a fingerprint search through the FDLE and FBI to determine whether screened individuals have any disqualifying offenses pursuant to Section 435.04 or 408.809(5), F.S. An analysis and review of court dispositions and arrest reports may be required to make a final determination.

(2) Processing Screening Requests, Required Documents and Fees.
(a) A provider may conduct Level 1 background screening for employees either directly through the FDLE or through the Agency. Requests through the Agency must be submitted using the Agency’s background screening website at: http://www.ahca.myflorida.com/MCHQ/Long_Term_Care/Background_Screening/logon.shtml. A user code and password is required for use of this site. A request for a Level 1 screening through the Agency must be accompanied by the cost required by the FDLE to pay for the cost of processing the request.
(b) Persons required to undergo Level 2 background screening must submit an Applicant Fingerprint Card, incorporated herein by reference, and available from the appropriate Agency licensure unit or by submitting a request to: bgscreen@ahca.myflorida.com. A health care provider licensed pursuant to this chapter may submit a Level 2 request and make payment electronically or by mail. A request for a Level 2 screening through the Agency must be accompanied by the cost required by the FDLE and the FBI to pay for the cost of processing the request.
1. Electronic submissions must be made through the Agency’s background screening web site. The completed fingerprint card must be mailed to the Background Screening Unit at 2727 Mahan Drive, MS #40, Tallahassee, Florida 32308.
2. Mailed requests must be submitted to the Background Screening Unit at 2727 Mahan Drive, MS #40, Tallahassee, Florida 32308.
3. If a fingerprint card is rejected by the FBI due to illegible prints, the individual must submit a second fingerprint card in accordance with the guidelines established by the FBI. The second card must be submitted to the Agency within 21 days of the Agency’s request or the screening request will be considered withdrawn. If withdrawn, the individual must submit a new fingerprint card accompanied by the required fee.
(3) Screening of Administrators, Owners, Chief Financial Officers and Controlling Interests.
(a) Persons required to undergo Level 2 background screening in accordance with a licensure application, must submit the completed and signed fingerprint card and screening fee with an application for licensure to the appropriate Agency licensing unit.
(b) As an alternative to a new background screen, persons required to undergo Level 2 background screening in accordance with Section 408.809, F.S., that have been screened within the previous 5 years by the Agency, Department of Health, Department of Children and Family Services, Agency for Persons with Disabilities or Department of Financial Services, or if the applicant has a certificate of authority to operate a continuing care retirement community, may submit to the appropriate Agency licensing unit:
1. A copy of the background screening result, and

(4) Results of Screening and Notification.
(a) Final results of background screening requests will be provided to the requesting provider through the Agency’s secure web site.
(b) When the dispositional information of a potentially disqualifying offense is unclear or not present in a criminal history from a Level I request, a notice will be sent to the requesting licensee or entity to obtain the arrest report and dispositional information from the individual being screened. The information must then be forwarded to the Agency for a final determination or show such information cannot be obtained. If a Level 2 criminal history is incomplete, a certified letter will be sent to the individual being screened requesting the arrest report and dispositional information. If the letter is returned unclaimed, a copy of the letter will be sent by regular mail. For Level 1 and Level 2, the missing information must be filed with the Agency within 30 days of the Agency’s request, or the individual is subject to automatic disqualification in accordance with Section 435.05(1)(d), F.S.
(c) When the Agency or the provider obtains information indicating an individual has a disqualifying offense pursuant to Chapter 435, F.S., the individual is prohibited from working in a position that requires background screening until such time as the individual has applied for and been determined to be exempt from such disqualification.
(d) An alleged offense is not disqualifying until such time as there has been a disposition.

(5) Exemption from Disqualification.
(a) Requests for an exemption from disqualification shall be submitted in writing to the Agency using the “Application for Exemption from Disqualification” AHCA Form 3010-0019, October 2009. This form may be obtained from the Agency for Health Care Administration, Background Screening Unit, 2727 Mahan Drive, MS #40, Tallahassee, Florida 32308 or through the Agency’s website at: http://www.ahca.myflorida.com/MCHQ/Long_Term_Care/Background_Screening/exemption.shtml.
(b) Individuals that are licensed or certified in a profession under the jurisdiction of the Department of Health must apply for an exemption to the appropriate licensing or certifying board at the Department of Health unless the individual will be working in a position other than for which they are licensed or certified.
(c) The individual shall bear the burden of setting forth clear and convincing evidence of rehabilitation which includes any information indicating the individual presents no danger to the safety or well being of others. The individual must present such evidence as arrest reports, court dispositions, parole/probation information, letters from employers, and personal references. Other documents that may be included are records of successful participation in a rehabilitation program, further education or training, community or church involvement, special awards or recognition or testimony by self or others.
(d) An “Application for Exemption” will not be reviewed until all required documents are obtained. If the application is deemed incomplete after 30 days of receipt by the Agency, the application will be withdrawn.
(e) In deciding whether to grant or deny an exemption request, the Agency shall consider factors such as the facts and circumstances surrounding the disqualifying offense(s), the nature of the harm to the victim, whether the individual is on probation or parole, whether restitution has been made, the length of time since the last offense, the history of the person since the disqualifying offense(s), work experience, personal references, performance evaluations, probation or parole violations, education, other evidence of rehabilitation, and the honesty and candor of the disqualified individual.
(f) Any exemption granted by the Agency is limited to the disqualifying offense or offenses committed prior to the date of the request for exemption.
(g) The Agency shall void any exemption granted to an individual when there is evidence that information which would adversely affect the decision was not made available at the time of the determination or there is a disposition of a new disqualifying offense since the date the exemption was granted.

(6) Unless otherwise specified, information requested pursuant to this section must be filed with the Agency within 21 days of the Agency’s request.

Rulemaking Authority 408.819 FS. Law Implemented 408.809, 408.810 FS. History–New 7-14-10.
456.0635 Health care fraud; disqualification for license, certificate, or registration.—

(1) Health care fraud in the practice of a health care profession is prohibited.

(2) Each board within the jurisdiction of the department, or the department if there is no board, shall refuse to admit a candidate to any examination and refuse to issue a license, certificate, or registration to any applicant if the candidate or applicant or any principal, officer, agent, managing employee, or affiliated person of the applicant:

(a) Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under chapter 409, chapter 817, or chapter 893, or a similar felony offense committed in another state or jurisdiction, unless the candidate or applicant has successfully completed a drug court program for that felony and provides proof that the plea has been withdrawn or the charges have been dismissed. Any such conviction or plea shall exclude the applicant or candidate from licensure, examination, certification, or registration unless the sentence and any subsequent period of probation for such conviction or plea ended:
   1. For felonies of the first or second degree, more than 15 years before the date of application.
   2. For felonies of the third degree, more than 10 years before the date of application, except for felonies of the third degree under s. 893.13(6)(a).
   3. For felonies of the third degree under s. 893.13(6)(a), more than 5 years before the date of application;

(b) Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396, unless the sentence and any subsequent period of probation for such conviction or plea ended more than 15 years before the date of the application;

(c) Has been terminated for cause from the Florida Medicaid program pursuant to s. 409.913, unless the candidate or applicant has been in good standing with the Florida Medicaid program for the most recent 5 years;

(d) Has been terminated for cause, pursuant to the appeals procedures established by the state, from any other state Medicaid program, unless the candidate or applicant has been in good standing with a state Medicaid program for the most recent 5 years and the termination occurred at least 20 years before the date of the application; or

(e) Is currently listed on the United States Department of Health and Human Services Office of Inspector General’s List of Excluded Individuals and Entities.

This subsection does not apply to candidates or applicants for initial licensure or certification who were enrolled in an educational or training program on or before July 1, 2009, which was recognized by a board or, if there is no board, recognized by the department, and who applied for licensure after July 1, 2012.

(3) The department shall refuse to renew a license, certificate, or registration of any applicant if the applicant or any principal, officer, agent, managing employee, or affiliated person of the applicant:

(a) Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under chapter 409, chapter 817, or chapter 893, or a similar felony offense committed in another state or jurisdiction, unless the applicant is currently enrolled in a drug court program that allows the withdrawal of the plea for that felony upon successful completion
of that program. Any such conviction or plea excludes the applicant from licensure renewal unless the sentence and any subsequent period of probation for such conviction or plea ended:
1. For felonies of the first or second degree, more than 15 years before the date of application.
2. For felonies of the third degree, more than 10 years before the date of application, except for felonies of the third degree under s. 893.13(6)(a).
3. For felonies of the third degree under s. 893.13(6)(a), more than 5 years before the date of application.

(b) Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396 since July 1, 2009, unless the sentence and any subsequent period of probation for such conviction or plea ended more than 15 years before the date of the application.

(c) Has been terminated for cause from the Florida Medicaid program pursuant to s. 409.913, unless the applicant has been in good standing with the Florida Medicaid program for the most recent 5 years.

(d) Has been terminated for cause, pursuant to the appeals procedures established by the state, from any other state Medicaid program, unless the applicant has been in good standing with a state Medicaid program for the most recent 5 years and the termination occurred at least 20 years before the date of the application.

(e) Is currently listed on the United States Department of Health and Human Services Office of Inspector General’s List of Excluded Individuals and Entities.

(4) Licensed health care practitioners shall report allegations of health care fraud to the department, regardless of the practice setting in which the alleged health care fraud occurred.

(5) The acceptance by a licensing authority of a licensee’s relinquishment of a license which is offered in response to or anticipation of the filing of administrative charges alleging health care fraud or similar charges constitutes the permanent revocation of the license.

History.—s. 24, ch. 2009-223; s. 1, ch. 2012-64.
## Disqualifying Offenses Added 2009/2010

<table>
<thead>
<tr>
<th>Crimes Modified/Added in 2009</th>
<th>Crimes Modified/Added in 2010</th>
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<tbody>
<tr>
<td><strong>408.809(5)</strong></td>
<td><strong>408.809(4)</strong></td>
</tr>
<tr>
<td>(a) A violation of any authorizing statutes, if the offense was a felony.</td>
<td>(c) Section 409.920, relating to Medicaid provider fraud, if the offense was a felony.</td>
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<tr>
<td>(b) A violation of this chapter, if the offense was a felony.</td>
<td>(d) Section 409.9201, relating to Medicaid fraud, if the offense was a felony.</td>
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<tr>
<td>(c) A violation of s. 409.920, relating to Medicaid provider fraud, if the offense was a felony.</td>
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<tr>
<td>(d) A violation of s. 409.9201, relating to Medicaid fraud, if the offense was a felony.</td>
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<tr>
<td>(e) A violation of s. 741.28, relating to domestic violence.</td>
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<tr>
<td>(f) A violation of chapter 784, relating to assault, battery, and culpable negligence, if the offense was a felony.</td>
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<tr>
<td>(g) A violation of s. 810.02, relating to burglary.</td>
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<tr>
<td>(h) A violation of s. 817.034, relating to fraudulent acts through mail, wire, radio, electromagnetic, photoelectronic, or photooptical systems.</td>
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<tr>
<td>(i) A violation of s. 817.234, relating to false and fraudulent insurance claims.</td>
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<tr>
<td>(j) A violation of s. 817.505, relating to patient brokering.</td>
<td></td>
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<tr>
<td>(k) A violation of s. 817.568, relating to criminal use of personal identification information.</td>
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<tr>
<td>(l) A violation of s. 817.60, relating to obtaining a credit card through fraudulent means.</td>
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<tr>
<td>(m) A violation of s. 817.61, relating to fraudulent use of credit cards, if the offense was a felony.</td>
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<tr>
<td>(n) A violation of s. 831.01, relating to forgery.</td>
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<tr>
<td>(o) A violation of s. 831.02, relating to uttering forged 1301 instruments.</td>
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<tr>
<td>(p) A violation of s. 831.07, relating to forging bank bills, checks, drafts, or promissory notes.</td>
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<tr>
<td>(q) A violation of s. 831.09, relating to uttering forged bank bills, checks, drafts, or promissory notes.</td>
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<tr>
<td>(r) A violation of s. 831.30, relating to fraud in obtaining medicinal drugs.</td>
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<tr>
<td>(s) A violation of s. 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.</td>
<td></td>
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</tbody>
</table>

Provided by the Florida Agency for Health Care Administration, 9/2011
July 14, 2010

All Licensed or Registered Providers

Re:  New Background Screening Requirements Effective August 1, 2010

Dear Administrator/Operator:

Changes in law passed during the 2010 legislative session significantly modifies the background screening and hiring process for many service providers regulated by a variety of state agencies including health care providers licensed by the Agency for Health Care Administration (Agency) under Chapter 408, Part II, Florida Statutes (F.S.).

The following is a summary of changes to section 408.809 and Chapter 435, F.S. that apply to employees and contractors of health care providers licensed through the Agency for Health Care Administration. These changes take effect August 1, 2010.

SCREENING

- Replaces all Level 1 background screening with Level 2 screenings

Persons seeking employment with a health care provider for a position previously required by law to undergo Level 1 background screening will now be required to have a Level 2 screening. See Attachment 1 for a chart indicating the provider type and the positions that require screening.

The law expands the criteria for screening requirements to include administrators, chief financial officers and all employees that are expected to provide direct care or services or have access to client property, funds or living areas; and all contractors must have a Level 2 screening if they are expected to provide personal care or personal services directly to clients.

Requires Level 2 rescreening every 5 years. Health care providers have until July 31, 2015 to conduct Level 2 rescreening on current employees hired prior to August 1, 2010.

- Employees and contractors screened, qualified and hired before August 1, 2010, that have a disqualifying offense revealed during a rescreening that was not disqualifying at the time of the prior screening, may continue to work, if the employer agrees, while applying for an exemption from disqualification as long as the employee is eligible to apply for an exemption and the application is received by the appropriate agency within 30 days after receipt of the rescreening results. This provision does not apply to staff hired before August 1, 2010 who have never been screened.

- Persons seeking employment after August 1, 2010 must have a Level 2 screening unless they were screened and qualified by a Level 2 screening in the previous 5 years and have not been unemployed for more than 90 days. The employee must complete and sign an Affidavit of Compliance with Background Screening Requirements, AHCA Form 3100-0008, August 2010. A copy of this form is enclosed. This form is also available on the Agency’s website at:
This form must be kept in the employee’s personnel file.

- All Level 2 screening requests must be submitted electronically. This means:
  - The Agency will no longer process Level 1 or Level 2 screening requests or fees after July 31, 2010.

**NOTE:** Any Level 1 or Level 2 screening request and fees submitted to the Agency’s Background Screening Section after July 31, 2010 will be returned to the sender unprocessed.

- All Level 2 screening requests must be submitted through a LiveScan vendor approved to submit fingerprint requests through the Florida Department of Law Enforcement (FDLE). For more information regarding LiveScan vendors please see Attachment 2.

- All screening results must be sent to the Agency for Health Care Administration (Agency) for review and employment determinations (see Attachment 2 for further details).

**NOTE:** The following provider types may submit screening requests for review by the Agency OR the Department of Children and Families; different fees may apply:

- Crisis Stabilization Units
- Intermediate Care Facilities for the Developmentally Disabled
- Residential Treatment Facilities for Adolescents and Children
- Residential Treatment Facilities
- Short Term Residential Programs

Persons disqualified from employment due to their background screening that are seeking an Exemption from Disqualification must submit the appropriate application to the agency that reviewed the screening results.

**ELIGIBILITY DETERMINATIONS**

The Agency will review all screening results and a determination of “Eligible” or “Not Eligible” will be posted on our secure website. **Notifications by mail will no longer be available.** The website will also indicate if the individual has applied for or has a decision for an Exemption from Disqualification. Providers may access the screening results through the Agency's secure website at: [http://ahca.myflorida.com/MCHQ/Long_Term_Care/Background_Screening/logon.shtml](http://ahca.myflorida.com/MCHQ/Long_Term_Care/Background_Screening/logon.shtml).

**NOTE:** Screening results processed through the Agency that are more than 5 years old and all Level 1 results that are “Eligible” will no longer be available on the website. Please be sure that you have copies of your employee screening results and print out any missing screening results before July 31, 2010.

- Adds additional disqualifying criminal offenses (includes luring and enticing a child; voyeurism, video voyeurism; and unlawful sexual activity with certain minors)

- A health care provider may not hire a new employee until a final screening determination of “Eligible” has been made or the individual is “Not Eligible” but has been granted an Exemption from Disqualification from the Agency or the Department of Health (if seeking employment in a position that requires professional licensure or certification through the Department).

- Requires individuals to attest upon hiring that they meet the requirements for employment and agree to inform the employer immediately if arrested for any disqualifying offense. AHCA Form 3100-0008, August 2010, Affidavit of Compliance with Background Screening Requirements will be available for use on the Agency’s website: [http://ahca.myflorida.com/MCHQ/Corebill/Files/Affidavit_Compliance_with_BGS.pdf](http://ahca.myflorida.com/MCHQ/Corebill/Files/Affidavit_Compliance_with_BGS.pdf).

- If an employee has an arrest for a disqualifying offense and is awaiting sentencing he/she is Not Eligible to work until there is a final court disposition and the individual is determined by the Agency to be eligible.
EXEMPTIONS

- An Application for Exemption from Disqualification AHCA Form 3110-0019, October 2009, and instructions may be downloaded from the Agency’s website at: http://ahca.myflorida.com/MCHQ/Long_Term_Care/Background_Screening/exemption.shtml.

- A person is not eligible to apply for an Exemption from Disqualification until:
  - He/she has been lawfully released from confinement, probation or other sanction for a disqualifying misdemeanor criminal offense;
  - At least 3 years after he/she has been lawfully released from confinement, probation or other sanction for a disqualifying felony criminal offense.

- Persons designated as sexual predators, sexual offenders or career offenders are not eligible for an Exemption from Disqualification.

- The Agency will review applications and make decisions for Exemptions for unlicensed personnel working for a health care provider and the Department of Health will review applications and make decisions for licensed and certified personnel as long as that person is working in the scope of his or her license or certification.

Employees of the following provider types must submit the appropriate application for exemption to the agency that reviewed the Level 2 screening results (Agency for Health Care Administration OR Department of Children and Families):

- Crisis Stabilization Units
- Intermediate Care Facilities for the Developmentally Disabled
- Residential Treatment Facilities for Adolescents and Children
- Residential Treatment Facilities
- Short Term Residential Programs

If you have any questions please contact the Background Screening section at 850-412-4503 or email bgscreen@ahca.myflorida.com.

New Administrative Rule 59A-35 Effective July 14, 2010

In addition to the background screening changes, please note that there are new administrative rules for all licensed providers, including new licensing application forms. Chapter 59A-35, Florida Administrative Code is effective as of July 14, 2010. For more information you may download a copy of the administrative rules at: https://www.flrules.org/gateway/ChapterHome.asp?Chapter=59A-35.

Sincerely,

Elizabeth Dudek, Deputy Secretary
Health Quality Assurance
### Who is Required to be Screened

<table>
<thead>
<tr>
<th>Facility/Service Type</th>
<th>Owner / Administrator</th>
<th>Financial Officer</th>
<th>Employees and Contractors Providing Personal Care / Services</th>
<th>Employees that have access to client property, funds or living areas</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abortion Clinics</td>
<td>Level 2</td>
<td>Level 2</td>
<td>n/a</td>
<td>n/a</td>
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<tr>
<td>Ambulatory Surgery Centers</td>
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<td>Birth Centers</td>
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<tr>
<td>Clinical Laboratories Performing Non-waived Testing (including physician performed microscopic tests)</td>
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<td>Drug Free Workplace</td>
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<tr>
<td>Multiphasic Health Testing Centers</td>
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<tr>
<td>Organ Procurement Organizations, Tissue Banks, Eye Banks</td>
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<tr>
<td>Adult Day Care Centers</td>
<td>Level 2</td>
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<tr>
<td>Adult Family Care Homes</td>
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<td>Assisted Living Facilities</td>
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<td>Health Care Service Pools</td>
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<td>Home Health Agencies</td>
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<td>Homemaker/Sitter/Companion</td>
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<td>Home Medical Equipment Providers</td>
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<td>Homes for Special Services</td>
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<tr>
<td>Hospice</td>
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<td>Intermediate Care Facilities for the Developmentally Disabled **</td>
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<tr>
<td>Medicaid Contracted Facilities</td>
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<tr>
<td>Nurse Registries</td>
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<td>Nursing Homes</td>
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<tr>
<td>Prescribed Pediatric Extended Care</td>
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<td>Transitional Living Facilities</td>
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<tr>
<td>Community Mental Health</td>
<td>Level 2</td>
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<td>Level 2</td>
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<tr>
<td>Crisis Stabilization Units **</td>
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<tr>
<td>Residential Treatment Centers for Children and Adolescents **</td>
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<tr>
<td>Residential Treatment Facilities **</td>
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<tr>
<td>Short Term Residential Treatment Facilities **</td>
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<tr>
<td>Health Care Clinics</td>
<td>Level 2</td>
<td>Level 2</td>
<td>Level 2</td>
<td>Level 2</td>
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<tr>
<td>(includes owners with 10% or more interest in the clinic)</td>
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<tr>
<td>Hospitals</td>
<td>Level 2</td>
<td>Level 2</td>
<td>Level 2 (only applies to staff working within mental health or psychiatric centers)</td>
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<tr>
<td>Risk Managers</td>
<td>Level 2</td>
<td>**</td>
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</tbody>
</table>
** These providers may request screenings to be reviewed through the Agency for Health Care Administration OR the Department of Children and Families
As of August 1, 2010, all Level 2 screening requests for health care providers licensed according to Chapter 408, Part II, Florida Statutes, must be submitted electronically through a LiveScan Vendor approved through the Florida Department of Law Enforcement to provide such services.

Providers may choose to purchase their own equipment (as long as it is in accordance with FDLE standards) or select a LiveScan vendor listed on the FDLE website: [http://www.fdle.state.fl.us/Content/getdoc/04833e12-3fc6-4c03-9993-379244e0da50/livescan.aspx](http://www.fdle.state.fl.us/Content/getdoc/04833e12-3fc6-4c03-9993-379244e0da50/livescan.aspx).

The Agency for Health Care Administration has contracted with Cogent Systems to provide electronic fingerprint services for health care providers licensed through the Agency. Cogent Systems has statewide locations and will expand additional sites by August 1 - see Attachment 3. Cogent will provide LiveScan services for a screening fee of $43.25 plus a processing fee of $11.00 per transaction for a total screening fee of $54.25 per individual. The fee is due at the time of screening unless other payment arrangements have been made with Cogent.

On or before August 1, Cogent Systems will provide an AHCA link on their website that will allow providers to register individuals for screening appointments, find LiveScan locations, operating hours and other information and instructions. The link will be located at: [http://www.cogentid.com/fl/index.htm](http://www.cogentid.com/fl/index.htm).

Cogent Systems is also offering to provide LiveScan equipment to health care providers based on the expected volume of transactions. The following options will be offered by the vendor:

**Option One:**

Health care providers licensed by the Agency with a minimum monthly volume of 30 or more transactions may request a LiveScan system for a one-time cost of $1,000.00 and receive a refund of $2.00 per transaction at the end of each full 12 months of service. This will result in a per transaction fee of $9.00, provided the user achieves the minimum volume. The Vendor will provide the necessary online training, annual system maintenance and remote system configuration and installation of the system at no cost to the health care provider. Should the user fail to meet the minimum volume of 360 yearly total transactions (12 months x 30 transactions), the $2.00 refund will not be applied. If the yearly volume is less than 180 transactions, the health care provider will pay the Vendor the discounted purchase amount outlined in Option 2 (less the $1,000.00 previously paid) plus the $500.00 annual maintenance fee.

**Option Two:**

Health care providers that anticipate a volume of less than 30 transactions a month but more than 15 transactions per month will be allowed to purchase a LiveScan capturing system at a discounted rate of $4,000 and an annual maintenance fee of $500.00. The Vendor will provide online training, remote system configuration and installation and a one-year full warranty. The per transaction fee for volume less than 30 transactions per month will be $11.00.

Agencies and/or facilities that participate in either Option One or Option Two above have the option of paying for their transactions utilizing credit cards/debit cards or money orders. Alternatively, an account may be established with the Vendor to allow either pre-pay through an escrow account or the option of being invoiced at the end of each month.
NOTE: If you choose to use a LiveScan source other than the Agency’s contracted vendor you must provide the following ORI FL922020Z and identify the Agency for Health Care Administration as the recipient of the screening results to ensure the results are reviewed by the Agency. A form for individual’s to submit to a LiveScan vendor is attached for your use. You may also access this form on the Agency’s website at: http://ahca.myflorida.com/MCHQ/Long_Term_Care/Background_Screening/index.shtml

Out of State Applicants for Licensure or Employment:

Out of state applicants that do not have access to a Florida LiveScan vendor will be required to submit a fingerprint card to Cogent Systems along with a fee of $58.25 ($43.25 for the screening + $15.00 processing fee). You must obtain a fingerprint card from the Agency. To request a fingerprint card please contact the Agency’s Background Screening Section at (850)412-4503 or email bgscreen@ahca.myflorida.com.

The fingerprint card must be filled out completely and the fingerprints taken by law enforcement personnel or individual trained in processing fingerprints. Return the completed card to:

Cogent Systems
5450 Frantz Rd.
Dublin, OH 43016

The fingerprint card may also be sent to other LiveScan vendors authorized to provide services in Florida as long as they are equipped to transmit the images of the fingerprints from the fingerprint card electronically. This requires special equipment and not all LiveScan vendors have this ability. For more information you may find LiveScan vendor contact information on the FDLE website: http://www.fdle.state.fl.us/Content/getdoc/04833e12-3fc6-4c03-9993-379244e0da50/livescan.aspx.
May 2, 2012

All Licensed or Registered Providers and Health Care Contractors

Re: New Background Screening Requirements
Passing of HB943 (Chapter 2012-73, Laws of Florida)

Dear Administrator/Operator:

Changes in law passed during the 2012 legislative session significantly modifies background screening for many service providers regulated by a variety of state agencies including health care providers licensed by the Agency for Health Care Administration (Agency) under Chapter 408, Part II, Florida Statutes (F.S.).

The following is a summary of changes to section 408.809 and Chapter 435, F.S. that apply to employees and contractors of health care providers licensed through the Agency for Health Care Administration. House Bill 943 went into effect upon becoming law, however several of the requirements have specific implementation dates as indicated in the summary.

EFFECTIVE IMMEDIATELY:

- An employer may hire a person prior to completion of a screening for training and orientation purposes. The individual may not have direct contact with any client/resident until successful completion of a screening. (Section 435.06(2)(d), Florida Statutes).

  **Explanation:** Previously, the law prohibited an employer from hiring an individual until the screening process was complete and the person was deemed “Eligible”. The passing of HB943 allows the employer to hire an individual and place them in a training or orientation program while the screening process is underway. The individual is not to have any direct contact with a client or resident. If the final screening determination is deemed “Not Eligible”, the employer must terminate the employee or place them in a position that is not required to undergo screening. If the final screening determination is “Eligible”, the individual may continue as an employee.

- The Agency may accept proof of Level 2 screening conducted within the previous 5 years from the Department of Elder Affairs. Proof of screening received from other specified state agencies must use the equivalent screening standards as the Agency. In addition, the individual must not have had a break in service from a position that requires screening for more than 90 days. (Section 408.809(2), Florida Statutes).

  **Explanation:** The Agency may accept proof of Level 2 from the Department of Children and Families, the Department of Health, the Agency for Persons with Disabilities and now includes the Department of Elder Affairs. Prior laws did not differentiate in the screening standards. The new law now requires the screening standards to be the same as the Agency. At this time, the
screening conducted for certification as a Certified Nursing Assistant through the Department of Health is the only screening at DOH that is the same as the Agency’s. Screening conducted for day care, foster care and adoption through the Department of Children and Families does not use the same criteria and therefore is not an acceptable screening.

In addition to the same screening standards, the subject of the screening must not have been unemployed for more than 90 days from a position that required Level 2 screening (Example: An individual that worked as a CNA at a nursing home leaves the position and works in a physician’s office (background screening not required). She successfully completed a Level 2 screening before she left employment at the nursing home. Eight months later she decides to return to work as a CNA at the nursing home. The employer must conduct a new screening.

• Under section 464.203(1), F.S., language was added that allows the Board of Nursing/CNA Council to accept a screening result from the Agency if the screening was conducted within 90 days before the individual applies for a license to practice. For more information regarding this language please contact the Board of Nursing/CNA Council through the DOH Call Center at (850)488-0595.

FUTURE IMPLEMENTATION:

• Provides a staggered rescreening schedule for AHCA regulated providers over a 3-year period (2013-2015) (Section 408.809(5), Florida Statutes).

The schedule is as follows:

- Individuals for whom the last screening was conducted on or before December 31, 2004, must be rescreened by July 31, 2013.
- Individuals for whom the last screening conducted was between January 1, 2005, and December 31, 2008, must be rescreened by July 31, 2014.
- Individuals for whom the last screening conducted was between January 1, 2009, through July 31, 2011, must be rescreened by July 31, 2015.

Explanation: Changes in 2010 required all employees to be screened every 5 years beginning August 1, 2010. Many of the employees working at the time of the law change had been previously screened and qualified and would be subject to the 5 year rescreening on July 31, 2015. The change in law now allows rescreening over a 3-year period to spread the cost and workload of screening.

• Creates a “Care Provider Background Screening Clearinghouse”. The purpose of the Clearinghouse is to provide a single data source for background screening results of persons required to be screened by law for employment in a position that provides services to children, the elderly and disabled individuals. (Section 435.12, Florida Statutes).

To be entered into the Clearinghouse, the person screened must:
- Undergo Level 2 screening and have fingerprints retained by the FDLE
- Have a photograph taken at time of fingerprinting

The fee for retaining fingerprints is $24.00 for 5 years. This fee is in addition to the screening fee and the LiveScan Service Provider processing fee and is required at the
time of screening. **However, the retention of fingerprints eliminates the need for subsequent fingerprinting and state rescreening, providing future cost savings.**

Specific state agencies that may participate in the Clearinghouse

- Department of Children and Families
- Department of Health
- Agency for Health Care Administration
- Department of Elder Affairs
- Department of Juvenile Justice
- Agency for Persons with Disabilities
- Vocational Rehabilitation

The Agency will be responsible for maintaining the Clearinghouse and will be working with the other agencies to become part of the Clearinghouse over time. The law specifies that the Clearinghouse must be implemented to the full extent practicable no later than September 30, 2013, subject to each agencies funding and ability to participate.

If you have any questions please contact the Background Screening section at 850-412-4503 or email bgscreen@ahca.myflorida.com.

Sincerely,

Molly McKinstry, Deputy Secretary
Division of Health Quality Assurance
April 30, 2013

All Licensed or Registered Providers, Health Care Contractors, and Background Screening Users

Re: New BGS Clearinghouse Enhancements

Dear Administrator/Operator:

House Bill 943 created a “Care Provider Background Screening Clearinghouse” or “Clearinghouse.” The Clearinghouse shall allow the results of criminal history checks to be shared among specified agencies when a person has applied to volunteer, be employed, be licensed, or enter into a contract that requires a state and national fingerprint-based criminal history check. (Section 435.12, Florida Statutes).

To implement the Clearinghouse, the Agency for Health Care Administration (AHCA) has begun rolling out enhancements to the Clearinghouse results website in a multi-phase project. The following is a summary of enhancements now available on the website and important information about the Clearinghouse to help guide you through the current system and mandatory requirements. Additionally, an external instruction guide is attached to assist you when navigating the Clearinghouse website.

ENHANCEMENTS EFFECTIVE IMMEDIATELY:

1. Initiating an Agency Review: If an individual has been screened by another specified agency (i.e. DOH) and entered into the Clearinghouse, an AHCA provider must request an agency review on the Clearinghouse website. This will allow AHCA to make an eligibility determination for employment purposes without the provider having to pay for a completely new screening.

2. Initiating a Resubmission: The retention of fingerprints (effective for screenings on or after January 1, 2013) provides a cost savings for applicants that are in the Clearinghouse but have had a lapse in employment greater than 90 days. If there has been a 90 day lapse in employment, these applicants would only require a new national criminal history check – a resubmission of the retained fingerprints. A new state criminal history search will also be conducted, at no additional charge. A resubmission can be requested and paid for directly through the Clearinghouse website.

3. Employee Roster: According to section 435.12(2)(c), F.S., an employer of persons subject to screening by a specified agency must register with the Clearinghouse and maintain the employment status of all employees within the Clearinghouse. Initial employment status and any changes in status must be reported within 10 business days. Current employees screened since January 1, 2013, who have a photo, retained prints, and a signed privacy policy must be added to the employee roster immediately or their status will change to “Resubmission Required-90-day lapse in employment” and payment will be required for a resubmission.

   Additionally, you must add an employee to your employee roster to receive arrest and criminal registration notifications. Please remember, per section 435.06(2)(b), F.S., 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.

*We are aware and currently working on the glitch in the system that won’t allow for licensed employees to be added to the employee roster. Please add them as an “Employee/Staff Person” until this situation is resolved.

• **Initiating a Clearinghouse Screening:**
  It is very important for all screenings to be initiated through the Clearinghouse website prior to sending an applicant for fingerprinting. Initiating the original screening online will provide the privacy policy required for the employee to be included in the Clearinghouse and will also supply a view of the Florida Public Rap Sheet. Also, initiating the screening allows the ability to track a screening through the process and email updates when an employee’s status has been changed or updated. To register and begin initiating screenings please visit our website at [https://apps.ahca.myflorida.com/SingleSignOnPortal](https://apps.ahca.myflorida.com/SingleSignOnPortal).

• **Bulletin Messages:**
  Important updates will be displayed on the Home Page of the Clearinghouse results website. Providers should regularly check the home page for notifications regarding system outages, new regulations, etc.

• **Privacy Policy:**
  Applicants must sign a privacy policy in order for their screening to be entered into the Clearinghouse. The privacy policy is available during the ‘Initiate New Screening’ process on the website. Employers must retain a copy of the privacy policy in the employee’s personnel file.

• **Arrest and Criminal Registration Notifications:**
  The retention of fingerprints will allow the Florida Department of Law Enforcement (FDLE) to report any new arrest/registration information to the specified state agencies. At this time the Agency is receiving arrest/registration notifications from FDLE and manually updating the employee’s eligibility as necessary.

**FUTURE ENHANCEMENTS:**

• **Arrest and Criminal Registration Notifications:**
  Providers that have initiated a screening for an applicant, or added an applicant to their employee roster will receive an email notification that there is a new arrest/registration notification AND a copy of the arrest/registration information will be available on the Clearinghouse website for the employer to review.

• **Enhanced tracking of fingerprints from Livescan provider to screening completion:**
  Additional statuses will be available to track screenings from the time they are initiated on the Clearinghouse website to the time a final eligibility determination is made. For example, screenings that are initiated on the Clearinghouse website and use a Livescan provider from our photo-enabled list will be able to see the status ‘Fingerprints Sent to FDLE’ – indicating the Livescan vendor has successfully submitted the applicants fingerprints for processing.

For more information concerning background screening please visit our website at [http://ahca.myflorida.com/backgroundscreening](http://ahca.myflorida.com/backgroundscreening). If you have any questions please contact the Background Screening Unit at 850-412-4503 or email bgscreen@ahca.myflorida.com.

Sincerely,

Molly McKinstry, Deputy Secretary
Division of Health Quality Assurance
AFFIDAVIT OF COMPLIANCE WITH Background Screening Requirements

Authority: This form may be used by all employees to comply with:

- the attestation requirements of section 435.05(2), Florida Statutes, which state that every employee required to undergo Level 2 background screening 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; AND

- the proof of screening within the previous 5 years in section 408.809(2), Florida Statutes which requires 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, 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 if the person has not been unemployed for more than 90 days.

This form must be maintained in the employee’s personnel file. If this form is used as proof of screening for an administrator or chief financial officer to satisfy the requirements of an application for a health care provider license, please attach a copy of the screening results and submit with the licensure application.

Employee/Contractor Name:

Health Care Provider/ Employer Name:

Address of Health Care Provider:

I hereby attest to meeting the requirements for employment and that I have not been arrested for or been found guilty of, regardless of adjudication, or entered a plea of nolo contendere, or guilty to any offense, or have an arrest awaiting a final disposition prohibited under any of the following provisions of the Florida Statutes or under any similar statute of another jurisdiction:

- (f) Section 782.071, relating to vehicular homicide.
- (g) Section 782.09, relating to killing of an unborn quick child by injury to the mother.
- (h) Chapter 784, relating to assault, battery, and culpable negligence, if the offense was a felony.
- (i) Section 784.011, relating to assault, if the victim of the offense was a minor.
- (j) Section 784.03, relating to battery, if the victim of the offense was a minor.
- (k) Section 787.01, relating to kidnapping.
- (l) Section 787.02, relating to false imprisonment.
- (m) Section 787.025, relating to luring or enticing a child.

Criminal offenses found in section 435.04, F.S

a) Section 393.135, relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.

(b) Section 394.583, 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.
(n) Section 787.04(2), relating to taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings.

(o) Section 787.04(3), relating to carrying a child beyond the state lines with criminal intent to avoid producing a child at a custody hearing or delivering the child to the designated person.

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

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

(r) Section 794.011, relating to sexual battery.

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

(t) Section 794.05, relating to unlawful sexual activity with certain minors.

(u) Chapter 796, relating to prostitution.

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

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

(x) Section 806.01, relating to arson.

(y) Section 810.02, relating to burglary.

(z) Section 810.14, relating to voyeurism, if the offense is a felony.

(aa) Section 810.145, relating to video voyeurism, if the offense is a felony.

(bb) Chapter 812, relating to theft, robbery, and related crimes, if the offense is a felony.

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

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

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

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

(gg) Section 826.04, relating to incest.

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

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

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

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

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

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

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

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

(pp) Chapter 847, relating to obscene literature.

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

(rr) Chapter 893, relating to drug abuse prevention and control, only if the offense was a felony or if any other person involved in the offense was a minor.

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

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

(uu) Section 944.40, relating to escape.

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

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

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

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

(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.

Criminal offenses found in section 408.809(4), F.S

(a) Any authorizing statutes, if the offense was a felony.
(b) This chapter, if the offense was a felony.

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

(d) Section 409.9201, relating to Medicaid fraud.

(e) Section 741.28, relating to domestic violence.

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

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

(h) Section 817.505, relating to patient brokering.

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

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

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

(l) Section 831.01, relating to forgery.

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

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

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

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

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

If you are also using this form to provide evidence of prior Level 2 screening (fingerprinting) in the last 5 years and have not been unemployed for more than 90 days, please provide the following information. A copy of the prior screening results must be attached.

Purpose of Prior Screening: __________________________________________________________

Screened conducted by: ___________________________ Date of Prior Screening: ________

☐ Agency for Health Care Administration
☐ Department of Health
☐ Agency for Persons with Disabilities
☐ Department of Children and Family Services
☐ Department of Financial Services

Affidavit

Under penalty of perjury, I, ___________________________, hereby swear or affirm that I meet the requirements for qualifying for employment in regards to the background screening standards set forth in Chapter 435 and section 408.809, F.S. In addition, I agree to immediately inform my employer if arrested or convicted of any of the disqualifying offenses while employed by any health care provider licensed pursuant to Chapter 408, Part II F.S.

Employee/Contractor Signature ___________________________ Title ___________ Date ________