

PCB HHSC 11-08

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1 A bill to be entitled  
 2 An act relating to background screening; amending s.  
 3 430.0402, F.S.; including volunteers within the definition  
 4 of the term "direct service provider" for purposes of  
 5 required background screening; exempting a volunteer who  
 6 meets certain criteria and a client's relative or spouse  
 7 from the screening requirement; excepting certain licensed  
 8 professionals and persons screened as a licensure  
 9 requirement from further screening under certain  
 10 circumstances; requiring direct service providers working  
 11 as of a certain date to be screened within a specified  
 12 period; providing a phase-in for screening direct service  
 13 providers; providing rule-making authority to the  
 14 Department of Elderly Affairs to implement the phase-in;  
 15 requiring that employers of direct service providers and  
 16 certain other individuals be rescreened every 5 years  
 17 unless fingerprints are retained electronically by the  
 18 Department of Law Enforcement; removing an offense from  
 19 the list of disqualifying offenses for purposes of  
 20 background screening; providing an effective date.

21  
 22 Be It Enacted by the Legislature of the State of Florida:

23 Section 1. Section 430.0402, Florida Statutes, is amended  
 24 to read:

25 430.0402 Screening of direct service providers.—

26 (1) (a) Level 2 background screening pursuant to chapter  
 27 435 is required for direct service providers. Background  
 28 screening includes employment history checks as provided in s.

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29 435.03(1) and local criminal records checks through local law  
 30 enforcement agencies.

31 (b) For purposes of this section, the term "direct service  
 32 provider" means a person 18 years of age or older, including a  
 33 volunteer, who, pursuant to a program to provide services to the  
 34 elderly, has direct, face-to-face contact with a client while  
 35 providing services to the client and ~~or~~ has access to the  
 36 client's living areas or to the client's funds or personal  
 37 property. The term does not include ~~includes coordinators,~~  
 38 ~~managers, and supervisors of residential facilities and~~  
 39 volunteers who assist on an intermittent basis for less than 20  
 40 hours of direct, face-to-face contact with a client per month,  
 41 individuals who are related by blood to the client, or the  
 42 client's spouse.

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

47 (3) Individuals qualified for employment by the Agency for  
 48 Health Care Administration pursuant to the agency's background  
 49 screening standards for licensure or employment contained in s.  
 50 408.809 are not subject to subsequent or additional Level 2  
 51 screening pursuant to chapter 435, or to the unique screening  
 52 requirements of this section, by virtue of their employment as a  
 53 direct service provider if they are providing a service that is  
 54 within the scope of their licensed practice.

55 (4) ~~(3)~~ Refusal on the part of an employer to dismiss a  
 56 manager, supervisor, or direct service provider who has been

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57 found to be in noncompliance with standards of this section  
 58 shall result in the automatic denial, termination, or revocation  
 59 of the license or certification, rate agreement, purchase order,  
 60 or contract, in addition to any other remedies authorized by  
 61 law.

62 (5) Individuals serving as direct service providers on  
 63 July 31, 2010, must be screened by July 1, 2012. The department  
 64 may adopt rules to establish a schedule to stagger the  
 65 implementation of the required screening over a 1-year period,  
 66 beginning July 1, 2011, through July 1, 2012.

67 (6) An employer of a direct service provider who  
 68 previously qualified for employment or volunteer work under  
 69 Level 1 screening standards or an individual who is required to  
 70 be screened according to the Level 2 screening standards  
 71 contained in chapter 435, pursuant to this section, shall be  
 72 rescreened every 5 years following the date of his or her last  
 73 background screening or exemption, unless such individual's  
 74 fingerprints are continuously retained and monitored by the  
 75 Department of Law Enforcement in the federal fingerprint  
 76 retention program according to the procedures specified in s.  
 77 943.05.

78 (7)-(4) The background screening conducted pursuant to this  
 79 section must ensure that, in addition to the disqualifying  
 80 offenses listed in s. 435.04, no person subject to the  
 81 provisions of this section has an arrest awaiting final  
 82 disposition for, has been found guilty of, regardless of  
 83 adjudication, or entered a plea of nolo contendere or guilty to,  
 84 or has been adjudicated delinquent and the record has not been

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85 sealed or expunged for, any offense prohibited under any of the  
 86 following provisions of state law or similar law of another  
 87 jurisdiction:

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

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

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

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

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

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

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

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

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

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

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

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

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

111 Section 2. This act shall take effect July 1, 2011.

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