



RICK SCOTT
GOVERNOR

CHARLES T. CORLEY
SECRETARY

MEMORANDUM

TO: Area Agency on Aging Executive Directors **Notice #: 041812-1-I-LA**

FROM: Charles T. Corley, Secretary

DATE: April 16, 2012

SUBJECT: Notice of Instruction: New Background Screening Procedures
Implementing Chapter 2012-73, Laws of Florida

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

This Notice provides a brief overview of the pertinent changes contained in the law and a summary of the new requirements for the Department of Elder Affairs' ("Department") background screening process. This document contains the instructions and a copy of the forms that are required in the Department's screening process as of this date. As implementation of the legislation continues, you will be notified of updated procedures and forms as needed. The step-by-step instructions and forms are posted on our website located at this address:

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

I. OVERVIEW OF CHAPTER 2012-73:

- Section 8 amends s. 430.0402, F.S. in significant ways:
 - The definition of a "direct service provider" has been revised. Individuals currently must meet two criteria to be considered a direct service provider ("DSP"). To meet the new definition, an individual must: (1) have face-to-face contact with a client while providing services to the client; *and* (2) must have access to the client's living area, funds, personal property, or the client's personal identification information.

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- Additional exceptions from screening by the Department have been identified for DSPs who are:
 - Professionals licensed by the Department of Health who had fingerprinting and background screening as part of their licensure if they are providing a service within the scope of their license.
 - Attorneys in good standing with the Florida Bar if they are providing a service within the scope of their license.
 - Relatives of the client. *This does not include individuals who render care under the Consumer-Directed Care Program (see § 409.221(4)(i), Fla.Stat.).*
 - Volunteers who assist on an intermittent basis for less than 20 hours per month and who are not listed on the FDLE Career Offender Search database or the Dru Sjodin National Sex Offender Public Website.
- Enables the Department to forego additional level 2 screening if an individual is qualified for licensure or employment by AHCA pursuant to AHCA's level 2 background screening and if the individual is providing a service within the scope of his or her license or employment.
- Allows the Department to establish a staggered screening schedule for certain individuals not currently screened.
- Requires individuals screened by the Department to be rescreened every five years from initial screening or exemption until such time as the federal fingerprint retention program is operational.
- Section 9 amends s. 435.02, F.S. to add contractors, licensees, and volunteers specifically as persons required to be screened and defines "specified agency" by naming the state agencies participating in the Care Provider Background Screening Clearinghouse. The Department is included as a specified agency.
- Section 10 requires fingerprint vendors to supply a photograph of the applicant, which is taken at the time fingerprints are submitted.
- Section 11 amends s. 435.06, F.S. to allow an individual to be hired before the background screening process is completed for training and orientation purposes as long as the individual does not have direct contact with vulnerable persons.
- Section 12 creates the Care Provider Background Screening Clearinghouse, a secure web-based system, to be operational within AHCA by September 30, 2013. Once

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operational, specified agencies will share the results of criminal history checks for performing background screening.

- Section 17 amends s. 943.0585, F.S. stating that individuals who have an expunged criminal history record may not lawfully deny or fail to acknowledge to the Department the arrest covered by the expunged record.
- Section 18 amends s. 943.059, F.S. stating that individuals who have a sealed criminal history record may not lawfully deny or fail to acknowledge to the Department the arrest covered by the sealed record.

II. **SUMMARY OF BACKGROUND SCREENING PROCESS**

A. AUTHORITY. The Department implements section 430.0402 and Chapter 435, Florida Statutes, for level 2 background screening.

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

1. Direct Service Provider: means “a person 18 years of age or older who, pursuant to a program to provide services to the elderly, has direct, face-to-face contact with a client while providing services to the client and has access to the client’s living areas, funds, personal property, or personal identification information as defined in s. 817.568. The term includes coordinators, managers, and supervisors of residential facilities and volunteers.” § 430.0402(1)(b), Fla. Stat. (emphasis added).

Personal identification information means “any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any:

- a. Name, postal or electronic mail address, telephone number, social security number, date of birth, mother’s maiden name, official state-issued or United States-issued driver’s license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, or personal

identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card;

b. Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;

c. Unique electronic identification number, address, or routing code;

d. Medical records;

e. Telecommunication identifying information or access device; or

f. Other number or information that can be used to access a person's financial resources." § 817.56(1)(f), Fla. Stat.

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

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

a. DOH Exception: A physician, nurse, or other professional licensed by the Department of Health ("DOH") who has undergone level 2 background screening as part of their licensure, if they are providing a service within the scope of their licensed practice. § 430.0402(2)(a)1., Fla. Stat. Verification of licensure status from the DOH is available from its website located at this address:

<http://ww2.doh.state.fl.us/IRMOOPRAES/PRASLIST.ASP>

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

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

d. Volunteers: Volunteers who assist on an intermittent basis for less than 20 hours per month and who are not listed on the FDLE Career Offender Search database or the Dru Sjodin National Sex Offender Public

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Website. § 430.0402(2)(c), Fla. Stat. The Agency/Employer is responsible for verifying that the volunteer is not listed in either database. If the individual's name appears in either database, the individual is not eligible for an exception and must undergo level 2 screening by the Department. The FDLE Career Offender database is located here:

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

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

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

The individual must complete and sign an Affidavit of Compliance - Employee form which the Agency/Employer should keep in the individual's file. A copy of the new form is attached to this Notice and may also be found at this website address: <http://elderaffairs.state.fl.us/doea/backgroundscreening.php>. **The Affidavit of Compliance - Employee form replaces the Affidavit of Good Moral Character.**

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

Your assistance and cooperation in keeping the service provider network informed is very much appreciated. If you have any questions or concerns, please do not hesitate to contact your contract manager.