



CHARLIE CRIST
GOVERNOR

MEMORANDUM

TO: Area Agency on Aging Executive Directors
Notice #: 060910-1-I-SWCBS

FROM: E. Douglas Beach, Ph.D., Secretary

DATE: June 4, 2010

SUBJECT: Notice of Instruction: Background Screening

On May 26, 2010, Governor Charlie Crist signed into law House Bill (HB) 7069, creating Chapter Number 2010-114, Laws of Florida. This legislation amends various sections of Florida Statutes in regard to background screening. The purpose of this Notice of Instruction is to provide Area Agencies on Aging (AAAs) guidance for implementing the requirements of these changes. The bill increases Level 1 screening to Level 2 screening for persons working with vulnerable populations.

E. DOUGLAS BEACH, PH.D.
SECRETARY

Below is a summary of HB 7069:

- Employees of nursing homes, assisted living facilities, and adult family care homes are required to undergo a Level 2 background screening, pursuant to s. 408.809(1)(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.”
- No person required to be screened may begin work until the screening has been completed.
 - Section 39, amends s. 435.05, F.S. to delete existing authority that allows employees to work pending the outcome of their background screening.
- Section 40, amends s. 435.06, F.S. to provide that “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

4040 ESPLANADE WAY
TALLAHASSEE
FLORIDA, 32399-7000

phone 850.414.2000
fax 850.414.2004
TDD 850.414.2001

<http://elderaffairs.state.fl.us>

- An employer must remove an employee from contact with any vulnerable person if the employer becomes aware that the employee has been arrested for a disqualifying offense (section 39, s. 435.06, F.S.).
- All fingerprints must be submitted electronically by August 1, 2012, or sooner (s. 435.04, F.S.).
 - Agencies are authorized to contract with vendor(s) to perform the fingerprinting, but those contracts must ensure the owners and personnel of the vendor(s) are qualified and will ensure the integrity and security of all personal information.
- Additional disqualifying offenses added to statute (s. 435.04, F.S.):
 - Chapter 784, F.S., relating to assault, battery, and culpable negligence, if the offense was a felony (therefore, the bill strikes existing specific references to crimes in this chapter)
 - Section 787.025, F.S., relating to luring or enticing a child
 - Section 794.05, F.S., relating to unlawful sexual activity with certain minors
 - Section 810.02, F.S., relating to burglary (presently, felony burglary is a disqualifying offense for those being screening under DJJ)
 - Section 810.14, F.S., relating to voyeurism, if the offense is a felony
 - Section 810.145, F.S., relating to video voyeurism, if the offense is a felony
 - Section 944.40, F.S., relating to escape (presently, escape is a disqualifying offense for those being screening under DJJ)
 - Any crime that constitutes domestic violence
- An exemption from disqualification may not be granted for a disqualifying felony until at least three years **after the applicant has completed** or been lawfully released from confinement, supervision, or sanction for the disqualifying felony (s. 435.07, F.S.).
- Only the head of an agency may grant an exemption from disqualification (s. 435.07, F.S.).
- The agency may consider as part of its deliberations of the employee's rehabilitation subsequent arrests and convictions, even if that subsequent crime is not a disqualifying offense (s. 435.07, F.S.).

- The standard of review by the administrative law judge of the agency's decision as to rehabilitation is whether the agency's intended action is an abuse of discretion (s. 435.07, F.S.).
- An exemption may not be granted from disqualification from employment for any person who has been designated as a sexual predator pursuant to s. 775.21, F.S., is a career offender pursuant to s. 775.261, F.S., or is a sexual offender pursuant to s. 943.0435, F.S. However, an exemption may be granted to a sexual offender who has the requirement to register as a sexual offender removed pursuant to s. 943.04354, F.S. (s. 435.07, F.S.).
- Agencies are authorized to request the retention of fingerprints by FDLE (s. 943.05, F.S.) and to collect and pay any fee related to the retention of fingerprints (s. 935.08, F.S.).
- Chapter 430 is amended to require Level 2 background screening for direct service providers (s. 430.0402, F.S.).
 - Direct service providers are defined as “a person 18 years of age or older who, pursuant to a program to provide services to the elderly, has direct, face-to-face contact with a client while providing services to the client or has access to the client's living areas or to the client's funds or personal property. The term includes coordinators, managers, and supervisors of residential facilities and volunteers.”
- All changes to the law are meant to be prospective in nature. Persons are not required to be rescreened who are employed or licensed on the effective date of the bill until the time they are otherwise required to be rescreened pursuant to law.

Please consult your legal staff as it pertains to this bill, your staff, and current provider contracts. Since the bill is effective August 1, 2010, it is necessary for each AAA to ensure any necessary language is incorporated in all provider contracts beginning July 1, 2010. If you have questions, please contact your contract manager. Thank you for your cooperation.