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GOVERNOR

MEMORANDUM

NOTICE #: 040414-1-T-LA

TO: Area Agency on Aging Executive Directors
FROM: Charles T. Corley, Secretary
DATE: April 3, 2014
SUBJECT: Notice of Transmittal: Background Screening Procedures

Chapter 435 and Section 430.0402, Florida Statutes, provide for the background screening of specified professionals, laypersons, and volunteers who serve vulnerable populations within the State of Florida.

This Notice provides an overview of the Department of Elder Affairs' ("Department") background screening process, which implements the background screening requirements contained in the aforementioned statutes.

Summary of Background Screening Process

I. **Authority**: The Department implements Section 430.0402 and Chapter 435, Florida Statutes, which require all Direct Service Providers to undergo Level 2 background screening.

II. **Persons Requiring Screening**: Initially, it must be determined whether an individual meets the definition of a Direct Service Provider. Next, if an individual is a Direct Service Provider, he or she may qualify for one of the exceptions to Level 2 screening contained in Section 430.0402, Florida Statutes. The definition and exceptions are listed 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."
Section 430.0402, Florida Statutes.

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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.”

Section 817.56(1)(f), Florida Statutes.

2. Exceptions to Level 2 Background Screening by the Department: In accordance with the exceptions listed in Sections 430.0402(2) and (3), Florida Statutes, the following Direct Service Providers are not required to undergo Level 2 background screening:

a. **Department of Health (“DOH”) Exception:** A licensed physician, nurse, or other professional licensed by DOH who has been fingerprinted and undergone background screening as part of their licensure, if they are providing a service that is within the scope of their licensed practice.

Section 430.0402(2)(a)1., Florida Statutes.

(Verification of licensure status is available on the DOH website, located at

<http://ww2.doh.state.fl.us/IRM00PRAES/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.

Section 430.0402(2)(a)2., Florida Statutes. (Determinations of good standing with the Florida Bar can be made by entering the attorney’s name in the “Find a Lawyer” tab on the Florida Bar’s website located at <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 being served.

Section 430.0402(2)(b), Florida Statutes.

d. **Volunteers:** Volunteers who assist on an intermittent basis for less than 20 hours per month and who are not listed on the Florida Department of Law Enforcement's ("FDLE") Career Offender Search database or the Dru Sjodin National Sex Offender Public Website.

Section 430.0402(2)(c), Florida Statutes.

- The provider that provides services to the elderly is responsible for verifying that the volunteer is not listed in either database.

Section 430.0402(2)(c)(1), Florida Statutes.

(The FDLE Career Offender Search Database is available at

<http://www.fdle.state.fl.us/coflyer/>. The Dru Sjodin National Sex Offender Public Website is available at <http://www.nsopr.gov/en.>)

- **If the individual's name appears in either database, the individual is not eligible for an exception to Level 2 background screening and must undergo Level 2 screening.**
- Once the Department is participating as a specified agency in AHCA's Care Provider Background Screening Clearinghouse ("AHCA Clearinghouse") created under Section 435.12, Florida Statutes, providers must forward a volunteer's information to the Department after determining that the volunteer is not listed in either of the above-referenced databases. The Department must then perform a check of the AHCA Clearinghouse. If a disqualification is identified in the AHCA Clearinghouse, the volunteer is not eligible for an exception from Level 2 background screening and must undergo Level 2 screening.

Section 430.0402(2)(c)2., Florida Statutes.

e. **Agency for Health Care Administration ("AHCA") Exception:** Until the Department begins participating as a specified agency in the AHCA Clearinghouse, an exception exists for individuals who have been qualified for licensure or employment by AHCA within the previous five years pursuant to AHCA's background screening standards, under Section 408.809, Florida Statutes, if the individual is providing a service within the scope of his or her licensure or employment.

Sections 430.0402(3) and 408.809(2), Florida Statutes.

(Verification of an individual's qualification for licensure or employment may be evidenced by a copy of either of the following:

- The individual's final exemption letter from AHCA; or
- A screen shot of the final determination of AHCA eligibility status, available at <https://apps.ahca.myflorida.com/SingleSignOnPortal/Login.>)

III. **Affidavit of Compliance:** Each individual determined to be a Direct Service Provider must complete and sign an Affidavit of Compliance – Employee Form, which the employer should keep in the individual's file.

(A copy of the Affidavit of Compliance - Employee Form may be found at:

http://elderaffairs.state.fl.us/doea/bs/DOEA_Form_236_Affidavit_of_Compliance_Employee.pdf.)

IV. **Rescreening:** An employee who previously qualified for employment or volunteer work under Level 1 screening standards or an individual who is required to be screened according to the Level 2 screening standards contained in Section 435.04, Florida Statutes, shall be rescreened **every 5 years** following the date of his or her last background screening or exemption.

Section 430.0402(6), Florida Statutes.

- This rule will apply until FDLE begins continuously retaining and monitoring individuals' fingerprints in the federal fingerprint retention program in accordance with Section 943.05, Florida Statutes.
Section 430.0402(6), Florida Statutes.
- The federal fingerprint retention program is not yet operational. Until it is operational, a Direct Service Provider must be rescreened every 5 years following the date of his or her last background screening or exemption, in accordance with Section 430.0402(6), Florida Statutes.

V. **Exclusion from Employment:**

- **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.** *Section 435.06(2)(a), Florida Statutes.*
 - For training and orientation purposes only, an employer may hire an employee to a position that requires background screening before the employee completes the screening process. **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.** *Section 435.06(2)(d), Florida Statutes.*
- Any employee who refuses to cooperate with the background screening process or refuses to timely submit the information necessary to complete the screening must be disqualified for employment for such position, or if employed, must be dismissed.
Section 435.06(3), Florida Statutes.
- **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 from disqualification by the Department, as provided under Section 435.07, Florida Statutes.** *Section 435.06(2)(a), Florida Statutes.*
 - It is the responsibility of the affected employee to contest his or her disqualification or to request an exemption from disqualification.
Section 435.06(1), Florida Statutes.
- 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 has been resolved in such a way that the employer determines the employee is still eligible for employment under Chapter 435, Florida Statutes.
Section 435.06(2)(b), Florida Statutes.

- The employer must terminate the employment of any of its personnel found to be in noncompliance with the minimum standards of Chapter 435, Florida Statutes, 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 *Section 435.07, Florida Statutes. Section 435.06(2)(c), Florida Statutes.*

VI. Failure to Comply: Refusal on the part of an employer to dismiss a manager, supervisor, or Direct Service Provider who fails to comply with the background screening requirements of Section 430.0402, Florida Statutes, shall result in the automatic denial, termination, or revocation of the employer's license or certification, rate agreement, purchase order, or contract, in addition to any other remedies authorized by law.

Section 430.0402(4), Florida Statutes.

An additional resource for Background Screening can be found on the Department's website at <http://elderaffairs.state.fl.us/doea/backgroundscreening.php>. As we proceed towards entering AHCA's Clearinghouse for the Aging Network Providers, further information will be transmitted.

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.

CTC/lmt