

Notice of Emergency Rule

DEPARTMENT OF ELDER AFFAIRS

Rule No.: Rule Title:

58ER10-1 Background Screening Requirements.

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: The Florida Legislature passed Chapter 2010-114, L.O.F., during the 2010 legislative session. This new law requires that effective August 1, 2010, all individuals seeking employment or volunteerism, which will require direct contact with individuals receiving services under the jurisdiction of the Department, must undergo a level 2 background screening prior to employment or volunteerism. For this reason, the Department is publishing this emergency rule to protect the health, safety and welfare of its recipients, thus eliminating the threat of immediate danger by reducing the potential for physical, mental or sexual abuse, or financial exploitation.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: This emergency rule establishes criteria for complying with level 2 background screening requirements pursuant to Chapter 2010-114, L.O.F., and more specifically, pursuant to Section 430.0402, F.S. Section 435.01(2), F.S., provides rulemaking authority to individual agencies affected by the new background screening requirements. In addition, Section 430.08, F.S., provides the Department with rulemaking authority to establish rules to implement the provisions of Chapter 430, F.S. Due to the August 1, 2010 effective date of this new requirement, it is not possible to adopt rules through the regular rulemaking process due to time constraints.

SUMMARY: This emergency rule establishes criteria and procedures for complying with the new requirement of a level 2 background screening for all potential employees, who will have direct contact with Department recipients, prior to employment or volunteerism.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Jim Crochet, Department of Elder Affairs, Office of the General Counsel, 4040 Esplanade Way, Suite 315, Tallahassee, FL 32399-7000; Telephone No.: 850-414-2113; Email address: crochethj@elderaffairs.org

THE FULL TEXT OF THE EMERGENCY RULE IS:

58ER10-1

(1) DEFINITIONS.

In addition to the term “direct service provider,” as defined in Section 430.0402(1)(b), F.S., the following definitions are included in this rule:

(a) “Agency” means the Agency for Health Care Administration.

(b) “Disqualifying Offense” means any criminal offense prohibited in Sections 430.0402 or 435.04, F.S.

(c) “DOEA” or “Department” means the Florida Department of Elder Affairs.

(d) “FBI” means the Federal Bureau of Investigation.

(e) “FDLE” means the Florida Department of Law Enforcement.

(f) “Level 1 Screening” means an assessment of employment history checks, statewide criminal correspondence checks, local criminal history checks and a check of the Dru Sjodin National Sex Offender Public Website coordinated through FDLE to determine whether screened individuals have any disqualifying offenses pursuant to Sections 430.0402 or 435.04, F.S.

(g) “Level 2 Screening” means an assessment of the criminal history record obtained through a fingerprint search coordinated through FDLE and the FBI to determine whether screened individuals have any disqualifying offenses pursuant to Sections 430.0402 or 435.04, F.S.

(2) BACKGROUND SCREENING REQUIRED.

Pursuant to Section 430.0402(1)(a), F.S., Level 2 background screening consistent with the requirements of Chapter 435, F.S., is required for all direct service providers.

(3) IMPLEMENTATION AND RETENTION.

Pursuant to Section 430.0402, F.S., beginning August 1, 2010:

(a) All newly-hired direct service providers shall be required to undergo Level 2 background screening pursuant to Chapter 435 as a condition of employment or volunteerism and continued employment or volunteerism. Such screening shall ensure that a direct service provider has not been arrested awaiting final disposition of, has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or has been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under Sections 430.0402 or 435.04, F.S., or a similar law of another jurisdiction.

(b) Employers of direct service providers who have not been previously screened according to the screening standards of Chapter 435, F.S., must ensure that at least twenty percent (20%) of the available population of such individuals are screened pursuant to the Level 2 screening standards of Chapter 435, F.S., must be screened within 120 calendar days of August 1, 2010, and an additional twenty percent (20%) every 90 calendar days thereafter, until all direct service providers have successfully satisfied the screening standards of Chapter 435, F.S., or have applied for and received an exemption pursuant to Section 435.07, F.S. Employers with fewer than 5 direct service providers must ensure that all such direct service providers are screened within the initial 120 calendar day window.

(c) Thereafter, employers of direct service providers are responsible for coordinating with the Department to ensure applicant fingerprint retention by FDLE in the Applicant Fingerprint Retention and Notification Program, whereby, in the event of a direct service provider's subsequent arrest, notification is automatically sent to the Department's Background Screening Coordinator, according to the procedures specified in Section 943.05, F.S.

(d) Employers of direct service providers previously qualified for employment or volunteer work under Level 1 screening standards and individuals required to be screened according to the Level 2 screening standards contained in Chapter 435, F.S., pursuant to Section 430.0402, F.S., shall be required to be rescreened every 5 years from the date of their last background screening or exemption, unless such individual's fingerprints are continuously retained and monitored by FDLE in the Applicant Fingerprint Retention and Notification Program, according to the procedures specified in Section 943.05, F.S.

(4) EXCEPTIONS.

The following are exceptions to the background screening requirements specified in this rule:

(a) Licensed physicians, nurses, or other professionals licensed by the Department of Health are not subject to the background screening requirements of Chapter 435, F.S, if they are providing a service that is within the scope of their licensed practice.

(b) Individuals qualified for employment by the Agency for Health Care Administration pursuant to the Agency's background screening standards for licensure or employment contained in Section 408.809, F.S., are not subject to subsequent or additional Level 2 background screening pursuant to Chapter 435, F.S., or the unique screening requirements of Section 430.0402, F.S., by virtue of their employment as a direct service provider, if they are providing a service that is within the scope of their licensed practice.

(5) ELECTRONIC SUBMISSION OF FINGERPRINTS.

Beginning August 1, 2010, fingerprints submitted pursuant to Chapter 435, F.S., must be submitted electronically to FDLE, pursuant to subsection (6) of this rule, unless there exists a hardship as acknowledged by the Department, which prevents an individual's fingerprints from being submitted electronically. In such instances, ink-based fingerprints are sufficient to satisfy the provisions of this rule, but only until July 1, 2012, when all must be submitted electronically pursuant to Section 435.04, F.S.

(6) SCREENERS.

Any screening company listed on the FDLE website as authorized to perform Level 2 LiveScan background screenings may be utilized to provide screening pursuant to this rule, so long as such screening company verifies in writing to the employer that all screeners have been subject to, and passed, a Level 1 background screening under the standards set forth in Chapter 435, F.S.

(7) SHARING OF SCREENING RESULTS.

The information that a particular direct service provider has successfully passed a Level 2 background screening may be shared among DOEA programs and providers. In addition, passage of a Level 2 background screening for one program or provider shall constitute passage for all programs and providers. However, the use of a Level 2 background screening by a subsequent program or provider shall not affect the applicable date for rescreening pursuant to subsection (3)(d) of this rule, if any. No information other than the fact that the applicant passed Level 2 screening may be shared.

Rulemaking Authority 430.08, 435.01(2) FS. Law Implemented 430.0402 F.S. History—New 8-2-10.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.