



CHARLIE CRIST
GOVERNOR

Better Health Care for all Floridians

THOMAS W. ARNOLD
SECRETARY

July 14, 2010

All Licensed or Registered Providers

**Re: New Background Screening Requirements Effective August 1, 2010
New Administrative Rule, 59A-35, Effective July 14, 2010**

Dear Administrator/Operator:

Changes in law passed during the 2010 legislative session significantly modifies the background screening and hiring process for many service providers regulated by a variety of state agencies including health care providers licensed by the Agency for Health Care Administration (Agency) under Chapter 408, Part II, Florida Statutes (F.S.).

The following is a summary of changes to section 408.809 and Chapter 435, F.S. that apply to employees and contractors of health care providers licensed through the Agency for Health Care Administration. These changes **take effect August 1, 2010**.

SCREENING

➤ **Replaces all Level 1 background screening with Level 2 screenings**

Persons seeking employment with a health care provider for a position previously required by law to undergo Level 1 background screening will now be required to have a **Level 2 screening**. See **Attachment 1** for a chart indicating the provider type and the positions that require screening.

The law expands the criteria for screening requirements to include administrators, chief financial officers and all employees that are expected to provide direct care or services or have access to client property, funds or living areas; and all contractors must have a Level 2 screening if they are expected to provide personal care or personal services directly to clients.

Requires Level 2 rescreening every 5 years. Health care providers have until **July 31, 2015** to conduct Level 2 rescreening on current employees hired prior to August 1, 2010.

- ❖ Employees and contractors screened, qualified and hired before August 1, 2010, that have a disqualifying offense revealed during a rescreening that was not disqualifying at the time of the prior screening, may continue to work, if the employer agrees, while applying for an exemption from disqualification as long as the employee is eligible to apply for an exemption and the application is received by the appropriate agency within 30 days after receipt of the rescreening results. This provision does not apply to staff hired before August 1, 2010 who have never been screened.
- ❖ Persons seeking employment after August 1, 2010 must have a Level 2 screening unless they were screened and qualified by a Level 2 screening in the previous 5 years and have not been unemployed for more than 90 days. The employee must complete and sign an Affidavit of Compliance with Background Screening Requirements, AHCA Form 3100-0008, August 2010. A copy of this form is enclosed. This form is also available on the Agency's website at:



http://ahca.myflorida.com/MCHQ/Long_Term_Care/Background_Screening/index.shtml. **This form must be kept in the employee's personnel file.**

➤ **All Level 2 screening requests must be submitted electronically.** *This means:*

- ❖ The Agency will no longer process Level 1 or Level 2 screening requests or fees after July 31, 2010.

NOTE: Any Level 1 or Level 2 screening request and fees submitted to the Agency's Background Screening Section after July 31, 2010 will be returned to the sender unprocessed.

- ❖ All Level 2 screening requests must be submitted through a **LiveScan vendor** approved to submit fingerprint requests through the Florida Department of Law Enforcement (FDLE). For more information regarding LiveScan vendors please see **Attachment 2**.
- ❖ All screening results must be sent to the **Agency for Health Care Administration** (Agency) for review and employment determinations (see Attachment 2 for further details).

NOTE: The following provider types may submit screening requests for review by the Agency **OR** the Department of Children and Families; different fees may apply:

- Crisis Stabilization Units
- Intermediate Care Facilities for the Developmentally Disabled
- Residential Treatment Facilities for Adolescents and Children
- Residential Treatment Facilities
- Short Term Residential Programs

Persons disqualified from employment due to their background screening that are seeking an Exemption from Disqualification must submit the appropriate application to the agency that reviewed the screening results.

ELIGIBILITY DETERMINATIONS

The Agency will review all screening results and a determination of "**Eligible**" or "**Not Eligible**" will be posted on our secure website. **Notifications by mail will no longer be available.** The website will also indicate if the individual has applied for or has a decision for an Exemption from Disqualification. Providers may access the screening results through the Agency's secure website at: http://ahca.myflorida.com/MCHQ/Long_Term_Care/Background_Screening/logon.shtml.

NOTE: Screening results processed through the Agency that are **more than 5 years old and all Level 1 results that are "Eligible" will no longer be available on the website.** Please be sure that you have copies of your employee screening results and print out any missing screening results **before July 31, 2010.**

- **Adds additional disqualifying criminal offenses** (includes luring and enticing a child; voyeurism, video voyeurism; and unlawful sexual activity with certain minors)
- A health care provider **may not hire a new employee** until a final screening **determination of "Eligible"** has been made or the individual is "Not Eligible" but has been granted an **Exemption from Disqualification** from the Agency or the Department of Health (if seeking employment in a position that requires professional licensure or certification through the Department).
- Requires individuals **to attest upon hiring** that they meet the requirements for employment and **agree to inform the employer immediately if arrested for any disqualifying offense.** AHCA Form 3100-0008, August 2010, [Affidavit of Compliance with Background Screening Requirements](#) will be available for use on the Agency's website: http://ahca.myflorida.com/MCHQ/Corebill/Files/Affidavit_Compliance_with_BGS.pdf.
- If an employee has an **arrest for a disqualifying offense** and is awaiting sentencing he/she is **Not Eligible** to work until there is a final court disposition and the individual is determined by the Agency to be eligible.

EXEMPTIONS

- An **Application for Exemption from Disqualification** AHCA Form 3110-0019, October 2009, and instructions may be downloaded from the Agency's website at:
http://ahca.myflorida.com/MCHQ/Long_Term_Care/Background_Screening/exemption.shtml.
- A person is ***not eligible*** to apply for an Exemption from Disqualification until:
 - He/she has been lawfully released from confinement, probation or other sanction for a disqualifying misdemeanor criminal offense;
 - At least **3 years after** he/she has been lawfully released from confinement, probation or other sanction for a disqualifying felony criminal offense.
- **Persons designated as sexual predators, sexual offenders or career offenders** *are not eligible* for an Exemption from Disqualification.
- The Agency will review applications and make decisions for Exemptions for unlicensed personnel working for a health care provider and the Department of Health will review applications and make decisions for licensed and certified personnel as long as that person is working in the scope of his or her license or certification.

Employees of the following provider types must submit the appropriate application for exemption to the agency that reviewed the Level 2 screening results (Agency for Health Care Administration OR Department of Children and Families).

- Crisis Stabilization Units
- Intermediate Care Facilities for the Developmentally Disabled
- Residential Treatment Facilities for Adolescents and Children
- Residential Treatment Facilities
- Short Term Residential Programs

If you have any questions please contact the Background Screening section at 850-412-4503 or email bgscreen@ahca.myflorida.com.

New Administrative Rule 59A-35 Effective July 14, 2010

In addition to the background screening changes, please note that there are new administrative rules for all licensed providers, including new licensing application forms. Chapter 59A-35, Florida Administrative Code is effective as of July 14, 2010. For more information you may download a copy of the administrative rules at: <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=59A-35>.

Sincerely,

Elizabeth Dudek, Deputy Secretary
Health Quality Assurance