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| The 2018 Florida Statutes |
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| **408.809 Background screening; prohibited offenses.**—  (1) Level 2 background screening pursuant to chapter 435 must be conducted through the agency on each of the following persons, who are considered employees for the purposes of conducting screening under chapter 435:  (a) The licensee, if an individual.  (b) The administrator or a similarly titled person who is responsible for the day-to-day operation of the provider.  (c) The financial officer or similarly titled individual who is responsible for the financial operation of the licensee or provider.  (d) Any person who is a controlling interest.  (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, or contracting with a licensee or provider to work 20 hours a week or more who will have access to client funds, personal property, or living areas. Evidence of contractor screening may be retained by the contractor’s employer or the licensee.  (2) Every 5 years following his or her licensure, employment, or entry into a contract in a capacity that under subsection (1) would require level 2 background screening under chapter 435, each such person must submit to level 2 background rescreening as a condition of retaining such license or continuing in such employment or contractual status. For any such rescreening, the agency shall request the Department of Law Enforcement to forward the person’s fingerprints to the Federal Bureau of Investigation for a national criminal history record check unless the person’s fingerprints are enrolled in the Federal Bureau of Investigation’s national retained print arrest notification program. If the fingerprints of such a person are not retained by the Department of Law Enforcement under s. [943.05](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=408.809&URL=0900-0999/0943/Sections/0943.05.html)(2)(g) and (h), the person must submit fingerprints electronically to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The fingerprints shall be retained by the Department of Law Enforcement under s. [943.05](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=408.809&URL=0900-0999/0943/Sections/0943.05.html)(2)(g) and (h) and enrolled in the national retained print arrest notification program when the Department of Law Enforcement begins participation in the program. The cost of the state and national criminal history records checks required by level 2 screening may be borne by the licensee or the person fingerprinted. Until a specified agency is fully implemented in the clearinghouse created under s. [435.12](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=408.809&URL=0400-0499/0435/Sections/0435.12.html), the agency may accept as satisfying the requirements of this section proof of compliance with level 2 screening standards submitted within the previous 5 years to meet any provider or professional licensure requirements of the agency, the Department of Health, the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Children and Families, or the Department of Financial Services for an applicant for a certificate of authority or provisional certificate of authority to operate a continuing care retirement community under chapter 651, provided that:  (a) The screening standards and disqualifying offenses for the prior screening are equivalent to those specified in s. [435.04](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=408.809&URL=0400-0499/0435/Sections/0435.04.html) and this section;  (b) The person subject to screening has not had a break in service from a position that requires level 2 screening for more than 90 days; and  (c) Such proof is accompanied, under penalty of perjury, by an attestation of compliance with chapter 435 and this section using forms provided by the agency.  (3) All fingerprints must be provided in electronic format. Screening results shall be reviewed by the agency with respect to the offenses specified in s. [435.04](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=408.809&URL=0400-0499/0435/Sections/0435.04.html) and this section, and the qualifying or disqualifying status of the person named in the request shall be maintained in a database. The qualifying or disqualifying status of the person named in the request shall be posted on a secure website for retrieval by the licensee or designated agent on the licensee’s behalf.  (4) In addition to the offenses listed in s. [435.04](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=408.809&URL=0400-0499/0435/Sections/0435.04.html), all persons required to undergo background screening pursuant to this part or authorizing statutes must not have an arrest awaiting final disposition for, must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, and must not have been adjudicated delinquent and the record not have been sealed or expunged for any of the following offenses or any similar offense of another jurisdiction:  (a) Any authorizing statutes, if the offense was a felony.  (b) This chapter, if the offense was a felony.  (c) Section [409.920](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=408.809&URL=0400-0499/0409/Sections/0409.920.html), relating to Medicaid provider fraud.  (d) Section [409.9201](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=408.809&URL=0400-0499/0409/Sections/0409.9201.html), relating to Medicaid fraud.  (e) Section [741.28](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=408.809&URL=0700-0799/0741/Sections/0741.28.html), relating to domestic violence.  (f) Section [777.04](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=408.809&URL=0700-0799/0777/Sections/0777.04.html), relating to attempts, solicitation, and conspiracy to commit an offense listed in this subsection.  (g) Section [817.034](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=408.809&URL=0800-0899/0817/Sections/0817.034.html), relating to fraudulent acts through mail, wire, radio, electromagnetic, photoelectronic, or photooptical systems.  (h) Section [817.234](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=408.809&URL=0800-0899/0817/Sections/0817.234.html), relating to false and fraudulent insurance claims.  (i) Section [817.481](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=408.809&URL=0800-0899/0817/Sections/0817.481.html), relating to obtaining goods by using a false or expired credit card or other credit device, if the offense was a felony.  (j) Section [817.50](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=408.809&URL=0800-0899/0817/Sections/0817.50.html), relating to fraudulently obtaining goods or services from a health care provider.  (k) Section [817.505](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=408.809&URL=0800-0899/0817/Sections/0817.505.html), relating to patient brokering.  (l) Section [817.568](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=408.809&URL=0800-0899/0817/Sections/0817.568.html), relating to criminal use of personal identification information.  (m) Section [817.60](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=408.809&URL=0800-0899/0817/Sections/0817.60.html), relating to obtaining a credit card through fraudulent means.  (n) Section [817.61](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=408.809&URL=0800-0899/0817/Sections/0817.61.html), relating to fraudulent use of credit cards, if the offense was a felony.  (o) Section [831.01](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=408.809&URL=0800-0899/0831/Sections/0831.01.html), relating to forgery.  (p) Section [831.02](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=408.809&URL=0800-0899/0831/Sections/0831.02.html), relating to uttering forged instruments.  (q) Section [831.07](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=408.809&URL=0800-0899/0831/Sections/0831.07.html), relating to forging bank bills, checks, drafts, or promissory notes.  (r) Section [831.09](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=408.809&URL=0800-0899/0831/Sections/0831.09.html), relating to uttering forged bank bills, checks, drafts, or promissory notes.  (s) Section [831.30](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=408.809&URL=0800-0899/0831/Sections/0831.30.html), relating to fraud in obtaining medicinal drugs.  (t) Section [831.31](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=408.809&URL=0800-0899/0831/Sections/0831.31.html), relating to the sale, manufacture, delivery, or possession with the intent to sell, manufacture, or deliver any counterfeit controlled substance, if the offense was a felony.  (u) Section [895.03](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=408.809&URL=0800-0899/0895/Sections/0895.03.html), relating to racketeering and collection of unlawful debts.  (v) Section [896.101](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=408.809&URL=0800-0899/0896/Sections/0896.101.html), relating to the Florida Money Laundering Act.  If, upon rescreening, a person who is currently employed or contracted with a licensee as of June 30, 2014, and was screened and qualified under ss. [435.03](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=408.809&URL=0400-0499/0435/Sections/0435.03.html) and [435.04](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=408.809&URL=0400-0499/0435/Sections/0435.04.html), has a disqualifying offense that was not a disqualifying offense at the time of the last screening, but is a current disqualifying offense and was committed before the last screening, he or she may apply for an exemption from the appropriate licensing agency and, if agreed to by the employer, may continue to perform his or her duties until the licensing agency renders a decision on the application for exemption if the person is eligible to apply for an exemption and the exemption request is received by the agency no later than 30 days after receipt of the rescreening results by the person.  (5) A person who serves as a controlling interest of, is employed by, or contracts with a licensee on July 31, 2010, who has been screened and qualified according to standards specified in s. [435.03](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=408.809&URL=0400-0499/0435/Sections/0435.03.html) or s. [435.04](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=408.809&URL=0400-0499/0435/Sections/0435.04.html) must be rescreened by July 31, 2015, in compliance with the following schedule. If, upon rescreening, such person has a disqualifying offense that was not a disqualifying offense at the time of the last screening, but is a current disqualifying offense and was committed before the last screening, he or she may apply for an exemption from the appropriate licensing agency and, if agreed to by the employer, may continue to perform his or her duties until the licensing agency renders a decision on the application for exemption if the person is eligible to apply for an exemption and the exemption request is received by the agency within 30 days after receipt of the rescreening results by the person. The rescreening schedule shall be:  (a) Individuals for whom the last screening was conducted on or before December 31, 2004, must be rescreened by July 31, 2013.  (b) Individuals for whom the last screening conducted was between January 1, 2005, and December 31, 2008, must be rescreened by July 31, 2014.  (c) Individuals for whom the last screening conducted was between January 1, 2009, through July 31, 2011, must be rescreened by July 31, 2015.  (6) The costs associated with obtaining the required screening must be borne by the licensee or the person subject to screening. Licensees may reimburse persons for these costs. The Department of Law Enforcement shall charge the agency for screening pursuant to s. [943.053](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=408.809&URL=0900-0999/0943/Sections/0943.053.html)(3). The agency shall establish a schedule of fees to cover the costs of screening.  (7)(a) As provided in chapter 435, the agency may grant an exemption from disqualification to a person who is subject to this section and who:  1. Does not have an active professional license or certification from the Department of Health; or  2. Has an active professional license or certification from the Department of Health but is not providing a service within the scope of that license or certification.  (b) As provided in chapter 435, the appropriate regulatory board within the Department of Health, or the department itself if there is no board, may grant an exemption from disqualification to a person who is subject to this section and who has received a professional license or certification from the Department of Health or a regulatory board within that department and that person is providing a service within the scope of his or her licensed or certified practice.  (8) The agency and the Department of Health may adopt rules pursuant to ss. [120.536](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=408.809&URL=0100-0199/0120/Sections/0120.536.html)(1) and [120.54](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=408.809&URL=0100-0199/0120/Sections/0120.54.html) to implement this section, chapter 435, and authorizing statutes requiring background screening and to implement and adopt criteria relating to retaining fingerprints pursuant to s. [943.05](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=408.809&URL=0900-0999/0943/Sections/0943.05.html)(2).  (9) There is no reemployment assistance or other monetary liability on the part of, and no cause of action for damages arising against, an employer that, upon notice of a disqualifying offense listed under chapter 435 or this section, terminates the person against whom the report was issued, whether or not that person has filed for an exemption with the Department of Health or the agency.  **History.**—s. 5, ch. 2006-192; s. 50, ch. 2009-223; s. 21, ch. 2010-114; s. 61, ch. 2012-30; s. 2, ch. 2012-73; s. 166, ch. 2014-19; s. 3, ch. 2014-84; s. 7, ch. 2016-78; s. 71, ch. 2018-24. |