

# The Florida Care Provider Background Screening Clearinghouse and the National Background Check Program (October 2016)

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## Introduction

Background screening requirements to obtain employment and professional/business licensing have grown significantly in the past few years, particularly among healthcare workers serving vulnerable populations such as children, the elderly, and the disabled. Florida, in response to growing concerns and legislative changes related to healthcare, passed legislation in 2010 that considerably increased the standards for applicants seeking employment in healthcare, principally long term care services.

Subsequent to the enactment of the new screening requirements, the Centers for Medicare & Medicaid Services (CMS) announced a grant opportunity as part of the Affordable Care Act (ACA) instituted in 2010. The purpose of the grant is “to establish a national program to identify efficient, effective and economical procedures for long term care (LTC) facilities and providers to conduct background checks on a statewide basis for all potential direct access employees.”<sup>1</sup> The National Background Check Program (NBCP) grant provides up to \$3 million in funds to States to implement a background screening program or enhance an existing program. The State of Florida took advantage of the opportunity, and was one of the first six States awarded the grant in October 2010. Florida’s primary goals for the grant were to streamline processes, reduce the number of duplicative screenings, collaborate with other State agencies with overlapping responsibilities, improve communication between data systems, and implement a State and national rap back program. Florida’s Agency for Health Care Administration (AHCA) began with expanding an external portal to their existing background screening database to allow health care providers to submit screening requests by entering applicant demographic information. Much of the development for this portal was accomplished through technical assistance provided through the NBCP grant. Grant funds were also provided to the Florida Department of Law Enforcement (FDLE) to advance their systems to better integrate with AHCA’s background screening system, creating an automated retrieval of State and national criminal history information.

In a progressive move to reduce duplicative screening, the Florida Care Provider Background Screening Clearinghouse (Clearinghouse) was established by law in 2012 to be a single data source for background screening results of persons required by law to undergo screening for employment in positions that provide services to vulnerable populations. The Clearinghouse allows the results of criminal history checks to be shared among seven specified agencies when a person has applied to volunteer, to be employed, be licensed, or enter into a contract that requires a State and national fingerprint-based criminal history check.<sup>2</sup>

In this case study, the decisions that led up to the establishment of the Clearinghouse are provided in detail. In addition, implementation of the Clearinghouse is described, alongside the NBCP grant, Clearinghouse features, the benefits associated with a centralized and shared

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<sup>1</sup> Subtitle C, Section 6201, Affordable Care Act (2010).

<sup>2</sup> State of Florida Statutes, Section 435.12, Care Provider Background Screening Clearinghouse.

resource, and finally any recommendations and lessons learned that can be used to enhance the Clearinghouse moving forward.

## Background

As a part of Florida's effort to ensure a safe living environment for the elderly and other vulnerable populations, the Florida legislature established mandatory background screening in 1998 for certain individuals applying to operate or be employed in a health care facility licensed by AHCA. This mandate included a sunset provision that would terminate the program effective June 30, 2001, unless reviewed and reenacted by the legislature. To prepare for the sunset review, AHCA was directed to conduct a study of the effectiveness of the background screening requirements in preventing persons with specified criminal histories from owning, operating, or working within health care facilities. To accomplish this study, AHCA assembled an interagency workgroup consisting of several other State agencies serving vulnerable populations and the State law enforcement agency, the FDLE. The workgroup also sought input from various healthcare organizations and advocacy groups regarding the effectiveness of background screening from the perspective of the providers they represent.

The workgroup published a report to the Governor summarizing the impact background screening had in preventing potentially harmful individuals from working in healthcare. The report also included three recommendations: centralize screening efforts to reduce duplication of screenings among agencies serving similar vulnerable populations; standardize screening requirements across professions and disciplines; and create an interagency workgroup to review and update the statutes pertaining to background screening to include the list of disqualifying offenses.

Over the next nine years, the Florida legislature progressively implemented many of the workgroup recommendations with the most comprehensive changes made in 2010 to include standardization of requirements across professions, State and national fingerprinting for all employees/contractors, and authority for participation in a State rap back program. With these changes came numerous efficiencies in the process but also created unintended consequences of an increase in duplicative fingerprinting. The legislature responded in 2011 by creating an interagency workgroup consisting of seven State agencies serving vulnerable populations and the FDLE to develop a strategy for the criminal background screening of the professionals, laypersons, and volunteers who serve vulnerable populations within the State and recommending potential legislative changes to implement this strategy.<sup>3</sup>

The workgroup held public meetings and heard testimony from many providers and other interested parties regarding occasions when a person who works or volunteers under the regulation of more than one agency dealing with vulnerable populations is screened multiple times at a cost to the applicant or provider. Therefore, one of the primary recommendations of the workgroup was to centralize screening efforts among the seven participating agencies. Historically, the portability of the criminal history record between agencies was not authorized by federal law. The FDLE petitioned the Federal Bureau of Investigation (FBI) with a possible solution consistent with federal guidelines that would allow agencies to share the criminal history information of persons working or volunteering with this specifically defined

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<sup>3</sup> Interview with Taylor Haddock, Unit Manager, Florida Agency for Health Care Administration, Background Screening Unit, September 29, 2016.

population.<sup>4</sup> Using the premise that each agency was conducting screening for the same purpose – vulnerable populations – the screenings could then be covered under the National Child Protection Act. The FBI approved the petition with the following conditions:

- Applicant fingerprints will be retained to ensure Florida criminal history information is kept current. Fingerprints will be forwarded to the FBI for enrollment in the federal Rap Back program once the program is operational.
- A photograph of the applicant will be taken at the time of fingerprinting to ensure that the criminal record information accessed by secondary agencies and providers belongs to the person seeking to be licensed, employed, or volunteering.
- A waiver or acknowledgement by the person being fingerprinted is required, indicating that his or her criminal history information may be shared with the defined State agencies.
- Each agency will receive the same results, for example, all must have authority to receive sealed and expunged information or none of the agencies will receive this data.
- Have mechanisms in place to provide security for shared criminal history information, ensure that each release is logged and that each interested agency is notified of new arrests on the applicant.

Upon the approval by the FBI and the passage of the Clearinghouse requirements in 2012, AHCA was charged with expanding their system and designing the operation of the Clearinghouse. The AHCA worked closely with the FDLE to ensure that all State and federal standards were met and with the other agencies to ensure that their needs were also incorporated.

The following State agencies are designated to participate in the Clearinghouse:

- Agency for Health Care Administration;
- Department of Children and Families;
- Department of Health;
- Department of Elder Affairs;
- Department of Juvenile Justice;
- Agency for Persons with Disabilities; and
- Vocational Rehabilitation.

## **Implementation of the Clearinghouse**

Implementation of the Clearinghouse was not as easy as envisioned and took more time than expected, as projects of this magnitude often do. AHCA had a system that was well advanced beyond any other State agency so it was determined that the Clearinghouse would be built off of that original system. Implementation of the other agencies was another complication.<sup>5</sup> It was determined that the DOH would be implemented first because it had the most crossover in screenings with AHCA of Certified Nurse Aides and other licensed health care professionals. After that, each agency was implemented on a time schedule determined by legislative need to be in the Clearinghouse or the availability of resources and funds to connect to the Clearinghouse.

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<sup>4</sup> Interview with Steve Anderson, Operations & Management Consultant Manager, Criminal History Services, Florida Department of Law Enforcement, September 29, 2016.

<sup>5</sup> Interview with Taylor Haddock, Unit Manager, Florida Agency for Health Care Administration, Background Screening Unit, September 29, 2016.

Funds from the NBCP grant were completely spent not long after DOH was implemented so the remaining agencies had to fund their own implementation.

## Features of the Clearinghouse Website

The enhanced Clearinghouse Website provides the following features<sup>6</sup> to its users:

- Shares results of criminal history checks among specified agencies;
- Collects subsequent arrest information for employees with retained fingerprints (Rap Back) that is only available to current employers of the individual;
- Tracks screenings from the time the screening request is initiated in the Clearinghouse until a determination is made;
- Provides email notification to the provider user regarding status updates to each request initiated;
- Allows provider to search for live scan Service Providers by entering certain criteria (county, name, etc.) and connects to the fingerprint service provider's website to make appointments;
- Provides access to the Public Record version of the State criminal history record (RAP sheet) for review by the provider initiating the original screening;
- Allows provider users to connect to a screening request in process for notification when results are available (reduces duplicative screening); and
- Maintains an employee roster by entering hire and separation dates for each employee. This facilitates a notification to the employer if the eligibility status of an employee changes.

## Benefits of the Clearinghouse

The Clearinghouse has proven to be a major cost-saving initiative for the State, while also providing safeguards to protect the health and welfare of vulnerable populations receiving health care services.

### Cost Savings

Since implementation began January 1, 2013, the Clearinghouse has processed over 1.5 million screenings and has collectively saved health care providers and licensees **over \$14.4 million** by sharing screenings through the Clearinghouse.

### Reduced Risks

By maintaining up-to-date and real-time notifications of information and employee arrests through Rap Back, the Clearinghouse has greatly reduced provider liability. Since implementing Rap Back in January 2014,<sup>7</sup> the AHCA received notification of nearly 45,000 individuals that were arrested **after** they were screened. Over 30% of those arrested went from Eligible to work with vulnerable individuals to Not Eligible. Many of these arrests were for serious offenses including:

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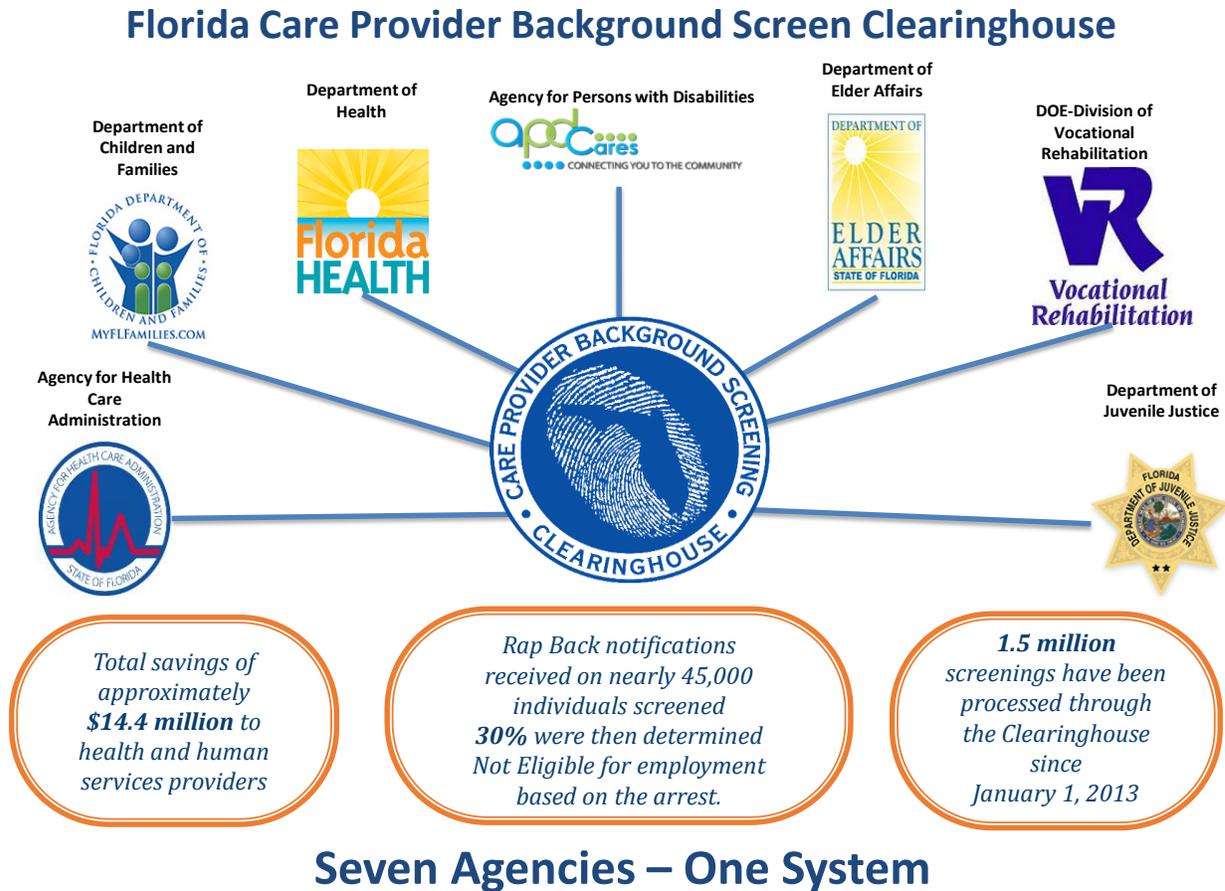
<sup>6</sup> "Care Provider Background Screening Clearinghouse, AHCA Clearinghouse Results Website Instructions Guide," Updated February 2015.

[http://ahca.myflorida.com/MCHQ/Central\\_Services/Background\\_Screening/docs/Clearinghouse\\_Results\\_InstructionsGuide\\_AHCA.pdf](http://ahca.myflorida.com/MCHQ/Central_Services/Background_Screening/docs/Clearinghouse_Results_InstructionsGuide_AHCA.pdf)

<sup>7</sup> Interview with Taylor Haddock, Unit Manager, Florida Agency for Health Care Administration, Background Screening Unit, September 29, 2016.

- Grand theft;
- Battery and assault;
- Sex offenses;
- Exploitation of the elderly; and
- Offenses against a child.

Figure 1 below illustrates the agencies currently utilizing the Clearinghouse and some highlights of the benefits achieved to date.



**Figure 1: Clearinghouse as a Shared Resource with Seven Agencies**

## Recommendations and Lessons Learned

Embarking on such a large program often leads to recommendations and certain lessons learned for improvement and efficiencies in the process.

**Recommendations:** According to AHCA, one of the most important recommendations is to ensure that the lead agency in charge of any endeavor such as a Clearinghouse has a good

working relationship with their State law enforcement agency. Within Florida, the Clearinghouse would not have been nearly as successful without FDLE's support and assistance.<sup>8</sup>

Furthermore, having good working relationships with the other agencies that will be using the system is also very important. The State agencies in Florida were very supportive of the project, but it did cause many of them to have to change their entire processes. As such, it is important to the overall process to have a core team that can become experts in the system so they can train the business users and be available once the agency is implemented.

FDLE recommends having an individual with a thorough understanding of the FBI's Criminal Justice Information Services (CJIS) security policy be a part of the development and deployment of any system such as the Clearinghouse. In addition, be prepared to make updates annually when the CJIS security policy is updated to ensure compliance.<sup>9</sup>

After further conversations with the FBI, FDLE also recommends the privacy policy be specifically acknowledged by applicant signature. Store the signed document within the system, instead of allowing the provider to attest that they provided the privacy policy to the applicant.

***Lessons Learned:*** Because AHCA is the lead agency for the Clearinghouse for all seven agencies that utilize the Clearinghouse, it has put a strain on AHCA resources and staff to maintain the system support. Establishing a long-term plan for how the system will be maintained and paid for and including that plan in the regulations may have alleviated some of the strain. Furthermore, when implementing a system with multiple State agencies, it should be noted that it may take at least six months and up to a year to implement one agency, particularly if the original processes vary from the intended Clearinghouse processes. This timeframe includes requirements gathering, development, and full regression testing.<sup>10</sup>

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<sup>8</sup> Interview with Taylor Haddock, Unit Manager (Florida Agency for Health Care Administration, Background Screening Unit), September 29, 2016.

<sup>9</sup> Interview with Steve Anderson, Operations & Management Consultant Manager, Criminal History Services, Florida Department of Law Enforcement, September 29, 2016.

<sup>10</sup> Interview with Taylor Haddock, Unit Manager (Florida Agency for Health Care Administration, Background Screening Unit), September 29, 2016.