
A BILL FOR AN ACT

RELATING TO BACKGROUND CHECKS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 **PART I**

2 SECTION 1. Section 321-15.2, Hawaii Revised Statutes, is
3 amended to read as follows:

4 **"§321-15.2 [~~Criminal history record checks.~~] Background**
5 **checks.** (a) For the purposes of this section:

6 "Adults" means individuals aged eighteen years or older.

7 "Applicant" means a person or entity seeking licensure or
8 certification to operate a healthcare facility. If the
9 applicant is an entity, the term "applicant" shall also include
10 its principals, directors, partners, managers, agents, and
11 representatives to the extent that any of these individuals will
12 have access to or contact with clients, their finances, assets,
13 personal property, medical records, or individually identifiable
14 information.

15 "Background check" means a review of records stored in
16 state or national record repositories for history of abuse,
17 neglect, threatened harm, or other maltreatment against children
18 or adults, and for any criminal history, including:



- 1 (1) Adult abuse perpetrator records by means of a search
2 of the individual's name and birth date in the state
3 adult protective services central registry of reported
4 cases established in section 346-224;
- 5 (2) Child abuse and neglect records by means of:
 - 6 (A) An initial name inquiry in the state child
7 welfare record files;
 - 8 (B) A subsequent child abuse confirmation history
9 check for new hires and rehires; and
 - 10 (C) An annual name inquiry into state child welfare
11 record files;
- 12 (3) Criminal history records in accordance with section
13 846-2.7;
- 14 (4) Sex offender registry records;
- 15 (5) Certified nurse aide registry for information or
16 findings pursuant to section 457A-3; and
- 17 (6) Adult abuse perpetrator records, child abuse and
18 neglect records, criminal history records, sex
19 offender registry records, and certified nurse aide
20 registry records of another state where a prospective
21 employee or adult volunteer previously resided.



1 "Conviction for a relevant crime" means any federal or
2 state conviction for any relevant crime as defined in this
3 section.

4 "Criminal history record name inquiry" means a record check
5 by name for any federal or state conviction for any relevant
6 crime as defined in this section.

7 "Department" means the department of health.

8 "Direct patient access employee" means any individual,
9 including a volunteer, who has access to a patient or resident
10 of a healthcare facility, or any provider through employment or
11 through an agreement or contract with such a facility or
12 provider. Such individuals include but are not limited to:
13 physicians, nurses, nursing assistants, home health aides,
14 therapists, activities personnel, and support staff (i.e.,
15 housekeeping, dietary, etc.) who have direct access to patients
16 or patient belongings.

17 "Disqualifying information" means a conviction for a
18 relevant crime or a finding of patient or resident abuse.

19 "Healthcare facility" means a facility [~~or~~], setting [where
20 a frail, elderly, or disabled adult receives care], or agency
21 licensed or certified by the department of health that provides



1 mental health or health care services or [~~is provided~~] living
2 accommodations to individuals, such as a skilled nursing
3 facility, intermediate care facility, adult residential care
4 home, expanded adult residential care home, assisted living
5 facility, home health agency, home care agency, hospice, adult
6 day health center, special treatment facility, therapeutic
7 living program, intermediate care facility for individuals with
8 intellectual disabilities, hospital, rural health center,
9 community care foster family home, home and community-based case
10 management agency, adult day care center, developmental
11 disabilities domiciliary home, adult foster home for individuals
12 with developmental disabilities, community mental health center,
13 and rehabilitation agency.

14 "Name inquiry" means a criminal history record check
15 conducted by using the name and other identifying information of
16 the individual, in lieu of a fingerprint check.

17 "Operator" means an individual or entity that is licensed
18 or is seeking licensure to operate a healthcare facility and is
19 responsible for the management and overall operations of that
20 healthcare facility.

21 "Relevant crime" means:



1 (1) Any offense described in 42 United States Code
2 §1320a-7 (section 1128(a) of the Social Security Act);
3 or

4 (2) A crime of such a serious nature or circumstance that
5 the department finds its perpetrator to pose a risk to
6 the health, safety, or well-being of a patient or
7 resident. This includes but is not limited to murder,
8 manslaughter, assault, sex offenses, domestic
9 violence, theft or forgery, arson, kidnapping, or
10 possession, use, sale, manufacture, or distribution of
11 dangerous drugs or controlled substances.

12 (b) The department shall adopt rules pursuant to chapter
13 91 to ensure the reputable and responsible character of all
14 prospective applicants, operators, direct patient access
15 employees, and adult volunteers of a healthcare facility, and,
16 in the case of any healthcare facility operated in a private
17 residence, all adults living in the home other than the clients.
18 These rules, among other things, shall specify how the
19 department or ~~[the department's]~~ its designee may conduct
20 ~~[criminal history record checks in accordance with section~~
21 ~~846-2.7.]~~ background checks in accordance with this section.



- 1 (c) All applicants and prospective operators shall:
- 2 (1) Be subject to ~~[eriminal history record checks in~~
3 ~~accordance with section 846-2.7;~~
- 4 ~~(2) Authorize the disclosure to the department or the~~
5 ~~department's designee of criminal history record~~
6 ~~information;~~
- 7 ~~(3) Sign a waiver form stating that the department or the~~
8 ~~department's designee shall not be liable to the~~
9 ~~applicant or prospective operator; and~~
- 10 ~~(4) Consent to be fingerprinted for the purpose of~~
11 ~~requesting criminal history record information from~~
12 ~~the Federal Bureau of Investigation and the Hawaii~~
13 ~~eriminal justice data center.] background checks; and~~
- 14 (2) Provide consent to the department or its designee to
15 conduct background checks.

16 (d) All prospective direct patient access employees and
17 adult volunteers of healthcare facilities and, in the case of
18 any healthcare facility operated in a private residence, all
19 adults living in the home other than the clients shall:

20 ~~[-(1) Consent to be fingerprinted;~~



- 1 ~~(2) Provide all necessary information for the purpose of~~
2 ~~enabling the department or the department's designee~~
3 ~~to conduct the criminal history record checks; and~~
- 4 ~~(3) Sign a waiver form stating that the department or the~~
5 ~~department's designee shall not be liable to the~~
6 ~~employee or volunteer.]~~
- 7 (1) Be subject to background checks in accordance with
8 this section; and
- 9 (2) Provide consent to the department or its designee to
10 conduct background checks.
- 11 (e) ~~[The department or the department's designee may~~
12 ~~request criminal history record information which includes~~
13 ~~Federal Bureau of Investigation data through the Hawaii criminal~~
14 ~~justice data center on all prospective applicants, operators,~~
15 ~~direct patient access employees, and adult volunteers of~~
16 ~~healthcare facilities. In addition, in the case of any~~
17 ~~healthcare facility to be operated in a private residence, the~~
18 ~~department of health or the department's designee may request~~
19 ~~criminal history record information which includes Federal~~
20 ~~Bureau of Investigation data through the Hawaii criminal justice~~
21 ~~data center for all adults residing in the home who are not~~



1 ~~clients.]~~ The department or its designee shall obtain
2 background check information in accordance with this section
3 from an applicant or operator, on the applicant or operator, and
4 on any prospective employees of the applicant or operator
5 including any new employee retained after the applicant is
6 issued a license or certificate under this part, which shall
7 include an annual name inquiry into state criminal history
8 record files.

9 (f) [~~The department or the department's designee shall~~
10 ~~make a name inquiry into the criminal history records or conduct~~
11 ~~criminal history record checks of all prospective applicants,~~
12 ~~operators, direct patient access employees, and adult volunteers~~
13 ~~at the healthcare facility, and, in the case of any healthcare~~
14 ~~facility operated in a private residence, all adults living in~~
15 ~~the home other than the clients.~~

16 (g)] The department may revoke or suspend a current
17 license~~[,]~~ or certificate, impose penalties or fines, or deny an
18 application for a license or certificate under rules adopted
19 pursuant to chapter 91 if the applicant, operator, employee, or
20 adult volunteer at the healthcare facility or, in the case of
21 any healthcare facility operated in a private residence, any



1 adult living in the home other than the client[, ~~refuses to~~
2 ~~authorize the department or the department's designee to conduct~~
3 ~~a criminal history record check, obtain criminal history record~~
4 ~~information for verification, or consent to be fingerprinted.~~
5 ~~In addition, the department may revoke or suspend a current~~
6 ~~license, impose penalties or fines, or deny an application for a~~
7 ~~license if the applicant, operator, direct patient access~~
8 ~~employee, or adult volunteer at the healthcare facility, or, in~~
9 ~~the case of a healthcare facility operated in a private~~
10 ~~residence, any adult living in the home other than the client,~~
11 ~~has any disqualifying information. The department may also~~
12 ~~revoke or suspend a current license, impose penalties or fines,~~
13 ~~or deny an application for a license if the department~~
14 ~~determines, based upon consideration of the criminal history~~
15 ~~information, that the applicant, operator, direct patient access~~
16 ~~employee, or adult volunteer at the healthcare facility, or, in~~
17 ~~the case of a healthcare facility operated in a private~~
18 ~~residence, any adult living in the home other than the client,~~
19 ~~is unsuitable to work or live in close proximity to the~~
20 ~~residents of the healthcare facility such that the health,~~



1 ~~safety, and welfare of the residents of the healthcare facility~~
2 ~~could be at risk.];~~

3 (1) Refuses to authorize the department or its designee to
4 conduct a background check, refuses to authorize the
5 department or its designee to obtain background check
6 record information for verification, or refuses
7 consent to be fingerprinted;

8 (2) Refuses or fails to submit to the department or its
9 designee information required to perform a background
10 check;

11 (3) Has any disqualifying information; or

12 (4) Has any background check information that the
13 department finds may pose a risk to the health,
14 safety, or welfare of the residents or patients of the
15 health care facility.

16 ~~[(h) Notwithstanding any other law to the contrary, for~~
17 ~~purposes of this section, the department shall be exempt from~~
18 ~~section 831 3.1 and need not conduct investigations,~~
19 ~~notifications, or hearings under this section in accordance with~~
20 ~~chapter 91.~~



1 ~~(i)]~~ (g) The fee charged by the Federal Bureau of
2 Investigation and the Hawaii criminal justice data center to
3 perform criminal history record checks may be passed on to all
4 applicants, operators, direct patient access employees, and
5 adult volunteers at the healthcare facility and, in the case of
6 a facility operated in a private residence, all adults living in
7 the home other than the clients.

8 ~~[(j) The department, or the department's designee, in
9 obtaining and relying upon the criminal history record checks,
10 is presumed to be acting in good faith and shall be immune from
11 civil liability for taking or recommending action based upon the
12 criminal history record information. The good faith presumption
13 may be rebutted upon a showing by the person or entity of a lack
14 of good faith, and proof by a preponderance of the evidence,
15 that the department relied upon information or opinion that it
16 knew was false or misleading.~~

17 ~~(k)]~~ (h) The department or its designee, in obtaining and
18 relying upon the background check information, is presumed to be
19 acting in good faith and shall be immune from civil liability
20 for taking or recommending action based upon the background
21 check information. The presumption of good faith may be



1 rebutted upon a showing of proof by a preponderance of the
2 evidence that the department or its designee relied upon
3 information or opinion that it knew was false or misleading or
4 that such reliance was not reasonable.

5 (i) Any applicant or operator who receives information
6 from the department or [~~the department's~~] its designee relating
7 to a [~~criminal history record~~] background check of a direct
8 patient access employee or adult volunteer or, in the case of a
9 healthcare facility operated in a private residence, an adult
10 living in the home other than the clients, is presumed to be
11 acting in good faith and shall be immune from civil liability
12 for reasonably taking or recommending action based upon the
13 department's recommendation or direction. Nothing in this
14 section shall affect rights, obligations, remedies, liabilities,
15 or standards of proof under chapters 368 and 378.

16 [~~Criminal history~~] Background check record information
17 shall be used exclusively by the department or [~~the~~
18 ~~department's~~] its designee for the sole purpose of determining
19 whether an applicant, operator, direct patient access employee,
20 or adult volunteer at a healthcare facility, or, in the case of
21 a facility operated in a private residence, any adult living in



1 the home other than the clients is suitable for working or
2 living in close proximity to residents of a healthcare facility
3 such that the health, safety, and welfare of the residents would
4 not be at risk."

5 SECTION 2. Section 321-171.5, Hawaii Revised Statutes, is
6 amended to read as follows:

7 **"§321-171.5 Employees of the department of health, its**
8 **providers and subcontractors; ~~[criminal history]~~ background**
9 **checks.** (a) The department of health shall develop procedures
10 for obtaining verifiable background check information regarding
11 ~~[the criminal history of]~~ persons who are seeking employment, or
12 seeking to serve as providers or subcontractors, in positions
13 that place them in direct contact with adult, child, or youth
14 clients when providing non-witnessed direct mental health or
15 health care services. These procedures shall include but not be
16 limited to ~~[criminal history record checks in accordance with~~
17 ~~section 846-2.7.] background checks as defined in section~~
18 321-15.2.

19 (b) Except as otherwise specified, any person who seeks
20 employment with the department of health, or who is employed or
21 seeks employment with a provider or subcontractor in a position



1 that necessitates non-witnessed direct contact with clients when
2 providing non-witnessed direct mental health or health care
3 services, shall:

4 (1) Be subject to [~~criminal history record~~] background
5 checks in accordance with section [~~846-2.7; and~~]
6 321-15.2;

7 (2) Authorize the disclosure to the department or its
8 designee of background check information; and

9 [~~+2~~] (3) Provide to the department of health or [the
10 department's] its designee written consent for the
11 department or [the department's] its designee to
12 obtain [~~criminal history record~~] background check
13 information for verification.

14 Information obtained pursuant to subsection (a) and this
15 subsection shall be used exclusively by the department of health
16 for purposes of determining whether a person is suitable for
17 working in a position that necessitates non-witnessed direct
18 contact with clients when providing non-witnessed direct mental
19 health or health care services. All such decisions shall be
20 subject to federal laws and regulations currently or hereafter
21 in effect.



1 (c) The department of health may refuse to employ or may
2 terminate the employment of any employee or applicant for
3 employment if [~~the person~~]:

4 (1) The person refuses to authorize the department or its
5 designee to conduct a background check;

6 (2) The person refuses or fails to submit to the
7 department or its designee information required to
8 conduct a background check;

9 (3) The person has been convicted of an offense for which
10 incarceration is a sentencing option[~~, and if the~~]; or

11 (4) The department of health finds by reason of the nature
12 and circumstances of the [~~crime~~] background check
13 information that the person poses a risk to the
14 health, safety, or well-being of clients receiving
15 non-witnessed direct mental health or health care
16 services. Such refusal or termination may occur only
17 after appropriate investigation, notification of
18 results and planned action, and opportunity to meet
19 and rebut the finding, all of which need not be
20 conducted in accordance with chapter 91. Nothing in



1 this subsection shall abrogate any applicable appeal
2 rights under chapter 76 or 89.

3 (d) This section shall not be used by the department of
4 health or [~~the department's~~] its designee to secure [~~criminal~~
5 ~~history record~~] background checks on persons who have been
6 employed continuously on a salaried basis prior to July 1,
7 [~~2000.~~] 2015.

8 (e) Nothing in this section shall prohibit [~~criminal~~
9 ~~history record~~] background checks on employees of all providers
10 and subcontractors.

11 (f) The department or its designee, in obtaining and
12 relying upon the background check information, shall be presumed
13 to be acting in good faith and shall be immune from civil
14 liability for taking or recommending action based upon the
15 background check information. The presumption of good faith may
16 be rebutted upon a showing of proof by a preponderance of the
17 evidence that the department or its designee relied upon
18 information or opinion that it knew was false or misleading or
19 that such reliance was not reasonable.

20 [~~(f)~~] (g) For purposes of this section:



1 "Provider" means any organization or individual that
2 intends to enter into a contract with or is currently contracted
3 by the department of health to provide direct mental health or
4 health care services to the department's eligible clients.

5 "Subcontractor" means any organization or individual that
6 enters into a contract or agreement with a provider to provide
7 direct mental health or health care services to the department's
8 eligible clients.

9 [~~g~~] (h) Notwithstanding any other law to the contrary,
10 the department of health shall be exempt from section 831-3.1
11 for purposes of this section and need not conduct
12 investigations, notifications, or hearings under this section in
13 accordance with chapter 91."

14 SECTION 3. Section 846-2.7, Hawaii Revised Statutes, is
15 amended by amending subsection (b) to read as follows:

16 "(b) Criminal history record checks may be conducted by:

17 (1) The department of health or [~~the department's~~] its
18 designee on operators of adult foster homes for
19 individuals with developmental disabilities or
20 developmental disabilities domiciliary homes and their
21 employees, as provided by section [~~333F-22+~~] 321-15.2;



- 1 (2) The department of health or [~~the department's~~] its
2 designee on prospective employees, persons seeking to
3 serve as providers, or subcontractors in positions
4 that place them in direct contact with clients when
5 providing non-witnessed direct mental health or health
6 care services as provided by section 321-171.5;
- 7 (3) The department of health or [~~the department's~~] its
8 designee on all applicants for licensure or
9 certification for, operators for, prospective
10 employees, [~~and~~] adult volunteers, and all adults,
11 except adults in care, at [~~one or more of the~~
12 ~~following: skilled nursing facility, intermediate~~
13 ~~care facility, adult residential care home, expanded~~
14 ~~adult residential care home, assisted living facility,~~
15 ~~home health agency, hospice, adult day health center,~~
16 ~~special treatment facility, therapeutic living~~
17 ~~program, intermediate care facility for individuals~~
18 ~~with intellectual disabilities, hospital, rural health~~
19 ~~center and rehabilitation agency, and, in the case of~~
20 ~~any of the above facilities operating in a private~~
21 ~~residence, on any adult living in the facility other~~



- 1 ~~than the client as provided by section 321-15.2;]~~
2 health care facilities as defined in section 321-15.2;
- 3 (4) The department of education on employees, prospective
4 employees, and teacher trainees in any public school
5 in positions that necessitate close proximity to
6 children as provided by section 302A-601.5;
- 7 (5) The counties on employees and prospective employees
8 who may be in positions that place them in close
9 proximity to children in recreation or child care
10 programs and services;
- 11 (6) The county liquor commissions on applicants for liquor
12 licenses as provided by section 281-53.5;
- 13 (7) The county liquor commissions on employees and
14 prospective employees involved in liquor
15 administration, law enforcement, and liquor control
16 investigations;
- 17 (8) The department of human services on operators and
18 employees of child caring institutions, child placing
19 organizations, and foster boarding homes as provided
20 by section 346-17;



- 1 (9) The department of human services on prospective
2 adoptive parents as established under section
3 346-19.7;
- 4 (10) The department of human services on applicants to
5 operate child care facilities, prospective employees
6 of the applicant, and new employees of the provider
7 after registration or licensure as provided by section
8 346-154;
- 9 (11) The department of human services on persons exempt
10 pursuant to section 346-152 to be eligible to provide
11 child care and receive child care subsidies as
12 provided by section 346-152.5;
- 13 (12) The department of health on operators and employees of
14 home and community-based case management agencies and
15 operators and other adults, except for adults in care,
16 residing in community care foster family homes as
17 provided by section [~~321-484,~~] 321-15.2;
- 18 (13) The department of human services on staff members of
19 the Hawaii youth correctional facility as provided by
20 section 352-5.5;



- 1 (14) The department of human services on employees,
2 prospective employees, and volunteers of contracted
3 providers and subcontractors in positions that place
4 them in close proximity to youth when providing
5 services on behalf of the office or the Hawaii youth
6 correctional facility as provided by section 352D-4.3;
- 7 (15) The judiciary on employees and applicants at detention
8 and shelter facilities as provided by section 571-34;
- 9 (16) The department of public safety on employees and
10 prospective employees who are directly involved with
11 the treatment and care of persons committed to a
12 correctional facility or who possess police powers
13 including the power of arrest as provided by section
14 353C-5;
- 15 (17) The board of private detectives and guards on
16 applicants for private detective or private guard
17 licensure as provided by section 463-9;
- 18 (18) Private schools and designated organizations on
19 employees and prospective employees who may be in
20 positions that necessitate close proximity to
21 children; provided that private schools and designated



1 organizations receive only indications of the states
2 from which the national criminal history record
3 information was provided pursuant to section 302C-1;
4 (19) The public library system on employees and prospective
5 employees whose positions place them in close
6 proximity to children as provided by section
7 302A-601.5;
8 (20) The State or any of its branches, political
9 subdivisions, or agencies on applicants and employees
10 holding a position that has the same type of contact
11 with children, vulnerable adults, or persons committed
12 to a correctional facility as other public employees
13 who hold positions that are authorized by law to
14 require criminal history record checks as a condition
15 of employment as provided by section 78-2.7;
16 (21) The department of health on licensed adult day care
17 center operators, employees, new employees,
18 subcontracted service providers and their employees,
19 and adult volunteers as provided by section [~~321-496~~]
20 321-15.2;



- 1 (22) The department of human services on purchase of
2 service contracted and subcontracted service providers
3 and their employees serving clients of the [†]adult
4 protective and community services branch[†], as
5 provided by section 346-97;
- 6 (23) The department of human services on foster grandparent
7 program, senior companion program, and respite
8 companion program participants as provided by section
9 346-97;
- 10 (24) The department of human services on contracted and
11 subcontracted service providers and their current and
12 prospective employees that provide home and community-
13 based services under section 1915(c) of the Social
14 Security Act, title 42 United States Code section
15 1396n(c), or under any other applicable section or
16 sections of the Social Security Act for the purposes
17 of providing home and community-based services, as
18 provided by section 346-97;
- 19 (25) The department of commerce and consumer affairs on
20 proposed directors and executive officers of a bank,
21 savings bank, savings and loan association, trust



1 company, and depository financial services loan
2 company as provided by section 412:3-201;

3 (26) The department of commerce and consumer affairs on
4 proposed directors and executive officers of a
5 nondepository financial services loan company as
6 provided by section 412:3-301;

7 (27) The department of commerce and consumer affairs on the
8 original chartering applicants and proposed executive
9 officers of a credit union as provided by section
10 412:10-103;

11 (28) The department of commerce and consumer affairs on:
12 (A) Each principal of every non-corporate applicant
13 for a money transmitter license; and
14 (B) The executive officers, key shareholders, and
15 managers in charge of a money transmitter's
16 activities of every corporate applicant for a
17 money transmitter license,
18 as provided by sections 489D-9 and 489D-15;

19 (29) The department of commerce and consumer affairs on
20 applicants for licensure and persons licensed under
21 title 24;



- 1 (30) The Hawaii health systems corporation on:
 - 2 (A) Employees;
 - 3 (B) Applicants seeking employment;
 - 4 (C) Current or prospective members of the corporation's
 - 5 board or regional system board; or
 - 6 (D) Current or prospective volunteers, providers, or
 - 7 contractors,
 - 8 in any of the corporation's health facilities as
 - 9 provided by section 323F-5.5;

- 10 (31) The department of commerce and consumer affairs on:
 - 11 (A) An applicant for a mortgage loan originator
 - 12 license; and
 - 13 (B) Each control person, executive officer, director,
 - 14 general partner, and manager of an applicant for
 - 15 a mortgage loan originator company license,
 - 16 as provided by chapter 454F;

- 17 (32) The state public charter school commission or public
- 18 charter schools on employees, teacher trainees,
- 19 prospective employees, and prospective teacher
- 20 trainees in any public charter school for any position



1 that places them in close proximity to children, as
2 provided in section 302D-33;

3 (33) The counties on prospective employees who work with
4 children, vulnerable adults, or senior citizens in
5 community-based programs;

6 (34) The counties on prospective employees for fire
7 department positions which involve contact with
8 children or vulnerable adults;

9 (35) The counties on prospective employees for emergency
10 medical services positions which involve contact with
11 children or vulnerable adults;

12 (36) The counties on prospective employees for emergency
13 management positions and community volunteers whose
14 responsibilities involve planning and executing
15 homeland security measures including viewing,
16 handling, and engaging in law enforcement or
17 classified meetings and assisting vulnerable citizens
18 during emergencies or crises;

19 (37) The State and counties on employees, prospective
20 employees, volunteers, and contractors whose position
21 responsibilities require unescorted access to secured



1 areas and equipment related to a traffic management
2 center;

3 (38) The State and counties on employees and prospective
4 employees whose positions involve the handling or use
5 of firearms for other than law enforcement purposes;

6 (39) The State and counties on current and prospective
7 systems analysts and others involved in an agency's
8 information technology operation whose position
9 responsibilities provide them with access to
10 proprietary, confidential, or sensitive information;

11 [+](40)[+] The department of commerce and consumer affairs on
12 applicants for real estate appraiser licensure or
13 certification as provided by chapter 466K; and

14 [+](41)[+] Any other organization, entity, or the State, its
15 branches, political subdivisions, or agencies as may
16 be authorized by state law."

17 **PART II**

18 SECTION 4. Section 321-482, Hawaii Revised Statutes, is
19 amended by amending subsection (c) to read as follows:

20 "(c) As a condition for obtaining a license, a person,
21 agency, or organization shall comply with rules adopted under



1 subsection (b)(1), (2), and (3), and satisfy the background
2 check requirements under section [~~321-484.~~] 321-15.2. The
3 department may deny a license if:

- 4 (1) An operator, employee, or new employee of the home and
5 community-based case management agency has been
6 convicted of a crime other than a minor traffic
7 violation involving a fine of \$50 or less;
- 8 (2) The department finds that the [~~criminal history~~]
9 background check record of an operator, employee, or
10 new employee poses a risk to the health, safety, or
11 well-being of adults receiving care in community care
12 foster family homes, expanded adult residential care
13 homes, or assisted living facilities;
- 14 (3) An operator, employee, or new employee of the home and
15 community-based case management agency is a
16 perpetrator of abuse as defined in section 346-222; or
- 17 (4) The holder of or an applicant for a home and
18 community-based case management agency license, or one
19 of its employees, has a certificate of approval to
20 operate a community care foster family home, or a
21 license from the department to operate an adult



1 residential care home, expanded adult residential care
2 home, or assisted living facility."

3 SECTION 5. Section 321-483, Hawaii Revised Statutes, is
4 amended by amending subsection (c) to read as follows:

5 "(c) As a condition for obtaining a certificate of
6 approval, community care foster family homes shall comply with
7 rules adopted under subsection (b) and satisfy the background
8 check requirements under section [~~321-484.~~] 321-15.2. The
9 department or its designee may deny a certificate of approval
10 if:

- 11 (1) An operator or other adult residing in the community
12 care foster family home, except for adults receiving
13 care, has been convicted of a crime other than a minor
14 traffic violation involving a fine of \$50 or less;
- 15 (2) The department or its designee finds that the
16 [~~criminal history~~] background check record of an
17 operator or other adult residing in the home, except
18 for adults receiving care, poses a risk to the health,
19 safety, or well-being of adults in care; or
- 20 (3) An operator or other adult residing in the community
21 care foster family home, except for adults receiving



1 care, is a perpetrator of abuse as defined in section
2 346-222."

3 SECTION 6. Section 333F-1, Hawaii Revised Statutes, is
4 amended by amending the definition of "existing provider" to
5 read as follows:

6 "Existing provider" means every person licensed or
7 certified as an adult foster or developmental disabilities
8 domiciliary home provider before the effective date [~~May 6,~~
9 ~~1994~~] of section [~~333F-22.~~] 321-15.2."

10 SECTION 7. Section 378-2.5, Hawaii Revised Statutes, is
11 amended by amending subsection (d) to read as follows:

12 "(d) Notwithstanding subsections (b) and (c), the
13 requirement that inquiry into and consideration of a prospective
14 employee's conviction record may take place only after the
15 individual has received a conditional job offer, and the
16 limitation to the most recent ten-year period, excluding the
17 period of incarceration, shall not apply to employers who are
18 expressly permitted to inquire into an individual's criminal
19 history for employment purposes pursuant to any federal or state
20 law other than subsection (a), including:



- 1 (1) The State or any of its branches, political
- 2 subdivisions, or agencies pursuant to sections 78-2.7
- 3 and 831-3.1;
- 4 (2) The department of education pursuant to section
- 5 302A-601.5;
- 6 (3) The department of health with respect to employees,
- 7 providers, or subcontractors in positions that place
- 8 them in direct contact with clients when providing
- 9 non-witnessed direct mental health services pursuant
- 10 to section 321-171.5;
- 11 (4) The judiciary pursuant to section 571-34;
- 12 (5) The counties pursuant to section 846-2.7(b)(5), (33),
- 13 (34), (35), (36), and (38);
- 14 (6) Armed security services pursuant to section 261-17(b);
- 15 (7) Providers of a developmental disabilities domiciliary
- 16 home pursuant to section [~~333F-22,~~] 321-15.2;
- 17 (8) Private schools pursuant to sections 302C-1 and
- 18 378-3(8);
- 19 (9) Financial institutions in which deposits are insured
- 20 by a federal agency having jurisdiction over the
- 21 financial institution pursuant to section 378-3(9);



- 1 (10) Detective agencies and security guard agencies
2 pursuant to sections 463-6(b) and 463-8(b);
- 3 (11) Employers in the business of insurance pursuant to
4 section 431:2-201.3;
- 5 (12) Employers of individuals or supervisors of individuals
6 responsible for screening passengers or property under
7 title 49 United States Code section 44901 or
8 individuals with unescorted access to an aircraft of
9 an air carrier or foreign carrier or in a secured area
10 of an airport in the United States pursuant to title
11 49 United States Code section 44936(a);
- 12 (13) The department of human services pursuant to sections
13 346-97 and 352-5.5;
- 14 (14) The public library system pursuant to section
15 302A-601.5;
- 16 (15) The department of public safety pursuant to section
17 353C-5;
- 18 (16) The board of directors of a cooperative housing
19 corporation or the manager of a cooperative housing
20 project pursuant to section 421I-12;



1 (17) The board of directors of an association of owners
2 under chapter 514A or 514B, or the manager of a
3 condominium project pursuant to section 514A-82.1 or
4 514B-133; and

5 (18) The department of health pursuant to section
6 321-15.2."

7 **PART III**

8 SECTION 8. Section 321-484, Hawaii Revised Statutes, is
9 repealed.

10 ~~["~~§321-484~~ Background checks. (a) The department shall~~
11 ~~develop standards to ensure the reputable and responsible~~
12 ~~character of operators, employees, volunteers, and other adults~~
13 ~~regularly present, except for adults in care, of the programs~~
14 ~~identified in this part.~~

15 ~~(b) An applicant for the programs identified in this part~~
16 ~~shall:~~

17 ~~(1) Be subject to criminal history record checks in~~
18 ~~accordance with section 846-2.7;~~

19 ~~(2) Be subject to adult abuse perpetrator checks, if the~~
20 ~~individual has direct contact with a client. For the~~
21 ~~purposes of this section, "adult abuse perpetrator~~



1 ~~check" means a search to determine whether an~~
2 ~~individual is known to the department of human~~
3 ~~services as a perpetrator of abuse as defined in~~
4 ~~section 346-222, by means of a search of the~~
5 ~~individual's name and birth date in the department of~~
6 ~~human services' adult protective service file; and~~
7 ~~(3) Provide consent to the department or its designee to~~
8 ~~conduct an adult abuse perpetrator check and to obtain~~
9 ~~other criminal history record information for~~
10 ~~verification.~~

11 ~~(c) New employees of the programs identified in this part~~
12 ~~shall be fingerprinted within five working days of employment~~
13 ~~for the purpose of complying with the criminal history record~~
14 ~~check requirement.~~

15 ~~(d) The department or its designee shall obtain criminal~~
16 ~~history record information through the Hawaii criminal justice~~
17 ~~data center in accordance with section 846-2.7 on applicants for~~
18 ~~programs identified in this part. The Hawaii criminal justice~~
19 ~~data center may assess the applicants and operators, employees,~~
20 ~~and new employees a reasonable fee for each criminal history~~
21 ~~record check conducted. The information obtained shall be used~~



1 ~~exclusively for the stated purposes for which it was obtained~~
2 ~~and shall be subject to federal laws and regulations as may be~~
3 ~~now or hereafter adopted.~~

4 ~~(e) The department or its designee shall make a name~~
5 ~~inquiry into the criminal history records and the adult~~
6 ~~protective service file for the first two years a home and~~
7 ~~community based case management agency is licensed and annually~~
8 ~~or biennially thereafter depending on the licensure status of~~
9 ~~the home and community based case management agency.~~

10 ~~(f) An applicant for a certificate of approval as a~~
11 ~~community care foster family home, operators, and other adults~~
12 ~~residing in a community care foster family home shall:~~

13 ~~(1) Be subject to criminal history record checks in~~
14 ~~accordance with section 846-2.7;~~

15 ~~(2) Be subject to adult abuse perpetrator checks, if the~~
16 ~~individual has direct contact with a client. For the~~
17 ~~purposes of this section, "adult abuse perpetrator~~
18 ~~check" means a search to determine whether an~~
19 ~~individual is known to the department of human~~
20 ~~services as a perpetrator of abuse as defined in~~
21 ~~section 346-222, by means of a search of the~~



1 ~~individual's name and birth date in the department of~~
2 ~~human services' adult protective service file; and~~
3 ~~(3) Provide consent to the department to conduct an adult~~
4 ~~abuse perpetrator check and to obtain other criminal~~
5 ~~history record information for verification.~~

6 ~~(g) The department or its designee shall obtain criminal~~
7 ~~history record information through the Hawaii criminal justice~~
8 ~~data center on applicants for certificates of approval as~~
9 ~~community care foster family homes and operators and other~~
10 ~~adults residing in community care foster family homes, except~~
11 ~~for adults receiving care. The Hawaii criminal justice data~~
12 ~~center may assess the applicants and operators and other adults~~
13 ~~a reasonable fee for each criminal history record check~~
14 ~~conducted. The information obtained shall be used exclusively~~
15 ~~for the stated purpose for which it was obtained and shall be~~
16 ~~subject to federal laws and regulations as may be now or~~
17 ~~hereafter adopted.~~

18 ~~(h) The department or its designee shall make a name~~
19 ~~inquiry into the criminal history records and the adult~~
20 ~~protective service file for the first two years a community care~~
21 ~~foster family home is certified and annually or biennially~~



1 ~~thereafter depending on the certification status of the~~
2 ~~community care foster family home."]~~

3 SECTION 9. Section 321-496, Hawaii Revised Statutes, is
4 repealed.

5 ~~["**§321-496** Criminal history record checks. (a) For the~~
6 ~~purposes of this section:~~

7 ~~"Conviction for a relevant crime" means any federal or~~
8 ~~state conviction for any relevant crime as defined in this~~
9 ~~section.~~

10 ~~"Criminal history record name inquiry" means a search by~~
11 ~~name and other identifying information using the state~~
12 ~~computerized criminal history record information system.~~

13 ~~"Department" means the department of health.~~

14 ~~"Name inquiry" means a criminal history record check~~
15 ~~conducted using the name and other identifying information of~~
16 ~~the individual in lieu of a fingerprint check.~~

17 ~~"Relevant crime" means:~~

18 ~~(1) Any offense described in title 42 United States Code~~
19 ~~section 1320a-7 (section 1128(a) of the Social~~
20 ~~Security Act); or~~



1 ~~(2) A crime of such a serious nature or circumstance that~~
2 ~~the department finds its perpetrator to pose a risk to~~
3 ~~the health, safety, or well being of a patient or~~
4 ~~resident. This shall include but not be limited to~~
5 ~~murder, manslaughter, assault, sex offenses, domestic~~
6 ~~violence, and the use, sale, manufacture, or~~
7 ~~distribution of dangerous drugs or controlled~~
8 ~~substances.~~

9 ~~(b) The department shall adopt rules pursuant to chapter~~
10 ~~91 to establish standards regarding the reputable and~~
11 ~~responsible character of service providers who have direct~~
12 ~~contact with individuals receiving services under this part,~~
13 ~~including licensed adult day care center operators, employees,~~
14 ~~subcontracted service providers and their employees, and adult~~
15 ~~volunteers.~~

16 ~~(c) Individuals identified under subsection (b) shall:~~

17 ~~(1) Meet the standards regarding the reputable and~~
18 ~~responsible character of service providers;~~

19 ~~(2) Be subject to criminal history record checks in~~
20 ~~accordance with section 846 2.7;~~



1 ~~(3) Sign a waiver stating that the department shall not be~~
2 ~~liable to the individual, and~~

3 ~~(4) Provide consent to the department or its designee to~~
4 ~~obtain criminal history record information for~~
5 ~~verification.~~

6 ~~New employees and adult volunteers shall consent to be~~
7 ~~fingerprinted, shall supply the necessary information to enable~~
8 ~~the criminal history record check prior to the start of~~
9 ~~employment or volunteering, and shall sign a waiver stating that~~
10 ~~the department shall not be liable to the employee or volunteer.~~

11 ~~(d) The department or its designee shall obtain criminal~~
12 ~~history record information through the Hawaii criminal justice~~
13 ~~data center on individuals identified in subsection (b) for the~~
14 ~~first two years that an individual identified in subsection (b)~~
15 ~~is required to have such checks, and shall conduct a criminal~~
16 ~~history record name inquiry into the state criminal history~~
17 ~~records annually or biennially thereafter.~~

18 ~~(e) The department may take appropriate action if it finds~~
19 ~~that the criminal history of the individual identified under~~
20 ~~subsection (b) may pose a risk to the health, welfare, and~~



1 ~~safety of service recipients. Such action may include denying a~~
2 ~~certificate of approval to operate an adult day care center.~~

3 ~~(f) Notwithstanding any other law to the contrary, for~~
4 ~~purposes of this section, the department shall be exempt from~~
5 ~~section 831 3.1 and shall not be required to conduct~~
6 ~~investigations, notifications, or hearings under this section in~~
7 ~~accordance with chapter 91.~~

8 ~~(g) The employer or the employee or the individual who is~~
9 ~~being screened may bear the costs of processing fingerprints and~~
10 ~~the state criminal history record check.~~

11 ~~(h) The department, in obtaining and relying upon the~~
12 ~~results of the state criminal history record check, shall be~~
13 ~~presumed to be acting in good faith and shall be immune from~~
14 ~~civil liability for taking or recommending action based upon the~~
15 ~~criminal history record information. The presumption of good~~
16 ~~faith may be rebutted upon a showing by the person or entity~~
17 ~~acknowledging a lack of good faith by a preponderance of the~~
18 ~~evidence that the department relied upon information or opinion~~
19 ~~that it knew was false or misleading.~~



1 ~~(i) Nothing in this section shall affect the rights,~~
2 ~~obligations, remedies, liabilities, or standards of proof under~~
3 ~~chapters 368 and 378.~~

4 ~~(j) The criminal history record information obtained under~~
5 ~~this section shall be used exclusively by the department for the~~
6 ~~purpose of establishing the reputable and responsible character~~
7 ~~of the individuals identified in subsection (b) to ensure that~~
8 ~~the health, welfare, and safety of service recipients will not~~
9 ~~be at risk."]~~

10 SECTION 10. Section 333F-22, Hawaii Revised Statutes, is
11 repealed.

12 ~~["§333F-22 Criminal history record checks. (a) The~~
13 ~~department shall adopt rules pursuant to chapter 91 to ensure~~
14 ~~the reputable and responsible character of an applicant to~~
15 ~~operate an adult foster home or developmental disabilities~~
16 ~~domiciliary home, of existing providers and their employees, of~~
17 ~~current and prospective employees of the applicant, and of new~~
18 ~~employees of the provider after certification or licensure,~~
19 ~~which shall provide for, but not be limited to, criminal history~~
20 ~~record checks in accordance with section 846 2.7.~~



1 ~~(b) For the purposes of this section, "developmental~~
2 ~~disabilities domiciliary homes" means any facility licensed~~
3 ~~under section 321 15.9 that provides twenty four hour~~
4 ~~supervision or care, excluding licensed nursing care, for a fee,~~
5 ~~to not more than five adults with intellectual disabilities or~~
6 ~~developmental disabilities as defined in this chapter; and~~
7 ~~"adult foster homes" shall be as defined under section 321 11.2.~~

8 ~~(c) An applicant to operate an adult foster home or~~
9 ~~developmental disabilities domiciliary home and all current and~~
10 ~~prospective employees of the applicant shall be subject to~~
11 ~~criminal history record checks in accordance with section 846-~~
12 ~~2.7, and shall provide consent to the department or the~~
13 ~~department's designee to obtain criminal history record~~
14 ~~information for verification.~~

15 ~~(d) Each existing provider or provider and all employees~~
16 ~~hired after the initial licensure or certification of the~~
17 ~~existing provider or provider shall be subject to criminal~~
18 ~~history record checks in accordance with section 846 2.7, and~~
19 ~~shall provide consent to the department or the department's~~
20 ~~designee to obtain criminal history record information for~~
21 ~~verification.~~



1 ~~(e) The department or the department's designee is~~
2 ~~authorized to obtain criminal history record information through~~
3 ~~the Hawaii criminal justice data center on existing providers~~
4 ~~and their employees upon their next licensure or certification~~
5 ~~renewal date, and on any applicant and all current and~~
6 ~~prospective employees of the applicant, including all new~~
7 ~~employees after the applicant is issued a certification or~~
8 ~~license under this chapter.~~

9 ~~(f) Once fingerprints are on file, yearly licensure or~~
10 ~~certification renewals for providers and employees will require~~
11 ~~only state criminal history record checks through the Hawaii~~
12 ~~criminal justice data center.~~

13 ~~(g) The department may revoke a current license or~~
14 ~~certification or deny an application for a license or~~
15 ~~certification to operate an adult foster home or developmental~~
16 ~~disabilities domiciliary home under rules adopted pursuant to~~
17 ~~chapter 91 if the existing provider or employee of an existing~~
18 ~~provider, applicant, current or prospective employee of the~~
19 ~~applicant, provider, or new employee of the provider refuses to~~
20 ~~submit to the department or the department's designee statements~~
21 ~~indicating criminal convictions, refuses to provide consent to~~



1 ~~the department or the department's designee to conduct a~~
2 ~~criminal history record check or obtain other criminal history~~
3 ~~record information for verification, refuses to be~~
4 ~~fingerprinted, has been convicted of a crime other than a minor~~
5 ~~traffic violation involving a fine of \$50 or less; or if the~~
6 ~~department or the department's designee finds that the criminal~~
7 ~~history record of the existing provider or employee of an~~
8 ~~existing provider, applicant, current or prospective employee of~~
9 ~~the applicant, provider, or new employee of the provider~~
10 ~~indicates that the individual may pose a risk to the health,~~
11 ~~safety, or well being of persons with developmental or~~
12 ~~intellectual disabilities living in the home."]~~

13 **PART IV**

14 SECTION 11. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 12. This Act shall take effect on July 1, 2015;
17 provided that the amendments made to the definition of
18 "healthcare facility" under section 321-15.2(a), Hawaii Revised
19 Statutes, by section 1 of this Act shall not be repealed when
20 that definition is reenacted on June 30, 2019, pursuant to



1 section 8 of Act 21, Special Session Laws of Hawaii 2009, as
2 amended by section 2 of Act 125, Session Laws of Hawaii 2014.
3



Report Title:

Background Checks; Employees, Prospective Employees, Applicants, or Operators of Healthcare Facilities and the State Department of Health

Description:

Expands the scope of background checks conducted by the Department of Health on operators, employees, applicants, and volunteers in health care facilities and other persons providing health care on behalf of the Department of Health to include criminal history record checks, sex offender registry record checks, adult abuse perpetrator and child abuse and neglect record checks, and certified nurse aide registry record checks.
(CD1)

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