A BILL FOR AN ACT

RELATING TO BACKGROUND CHECKS.

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

PART I

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

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

"Adults" means individuals aged eighteen years or older.

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

"Background check" means a review of records stored in state or national record repositories for history of abuse, neglect, threatened harm, or other maltreatment against children or adults, and for any criminal history, including:
(1) Adult abuse perpetrator records by means of a search of the individual's name and birth date in the state adult protective services central registry of reported cases established in section 346-224;

(2) Child abuse and neglect records by means of:
   (A) An initial name inquiry in the state child welfare record files;
   (B) A subsequent child abuse confirmation history check for new hires and rehires; and
   (C) An annual name inquiry into state child welfare record files;

(3) Criminal history records in accordance with section 846-2.7;

(4) Sex offender registry records;

(5) Certified nurse aide registry for information or findings pursuant to section 457A-3; and

(6) Adult abuse perpetrator records, child abuse and neglect records, criminal history records, sex offender registry records, and certified nurse aide registry records of another state where a prospective employee or adult volunteer previously resided.
"Conviction for a relevant crime" means any federal or state conviction for any relevant crime as defined in this section.

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

"Department" means the department of health.

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

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

"Healthcare facility" means a facility [or setting [where a frail, elderly, or disabled adult receives care], or agency licensed or certified by the department of health that provides
mental health or health care services or [is provided] living accommodations to individuals, such as a skilled nursing facility, intermediate care facility, adult residential care home, expanded adult residential care home, assisted living facility, home health agency, home care agency, hospice, adult day health center, special treatment facility, therapeutic living program, intermediate care facility for individuals with intellectual disabilities, hospital, rural health center, community care foster family home, home and community-based case management agency, adult day care center, developmental disabilities domiciliary home, adult foster home for individuals with developmental disabilities, community mental health center, and rehabilitation agency.

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

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

"Relevant crime" means:
(1) Any offense described in 42 United States Code §1320a-7 (section 1128(a) of the Social Security Act); or

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

(b) The department shall adopt rules pursuant to chapter 91 to ensure the reputable and responsible character of all prospective applicants, operators, direct patient access employees, and adult volunteers of a healthcare facility, and, in the case of any healthcare facility operated in a private residence, all adults living in the home other than the clients. These rules, among other things, shall specify how the department or its designee may conduct criminal history record checks in accordance with section 846-2.7. background checks in accordance with this section.
(c) All applicants and prospective operators shall:

(1) Be subject to [criminal history record checks in accordance with section 846-27;]

(2) Authorize the disclosure to the department or the department's designee of criminal history record information;

(3) Sign a waiver form stating that the department or the department's designee shall not be liable to the applicant or prospective operator; and

(4) Consent to be fingerprinted for the purpose of requesting criminal history record information from the Federal Bureau of Investigation and the Hawaii criminal justice data center.] background checks; and

(2) Provide consent to the department or its designee to conduct background checks.

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

(1) Consent to be fingerprinted.
(2) Provide all necessary information for the purpose of enabling the department or the department's designee to conduct the criminal history record checks; and

(3) Sign a waiver form stating that the department or the department's designee shall not be liable to the employee or volunteer.

(1) Be subject to background checks in accordance with this section; and

(2) Provide consent to the department or its designee to conduct background checks.

(e) The department or the department's designee may request criminal history record information which includes Federal Bureau of Investigation data through the Hawaii criminal justice data center on all prospective applicants, operators, direct patient access employees, and adult volunteers of healthcare facilities. In addition, in the case of any healthcare facility to be operated in a private residence, the department of health or the department's designee may request criminal history record information which includes Federal Bureau of Investigation data through the Hawaii criminal justice data center for all adults residing in the home who are not
The department or its designee shall obtain background check information in accordance with this section from an applicant or operator, on the applicant or operator, and on any prospective employees of the applicant or operator including any new employee retained after the applicant is issued a license or certificate under this part, which shall include an annual name inquiry into state criminal history record files.

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

(g) [The department may revoke or suspend a current license or certificate, impose penalties or fines, or deny an application for a license or certificate under rules adopted pursuant to chapter 91 if the applicant, operator, employee, or adult volunteer at the healthcare facility or, in the case of any healthcare facility operated in a private residence, any]
adult living in the home other than the client refuses to authorize the department or the department's designee to conduct a criminal history record check, obtain criminal history record information for verification, or consent to be fingerprinted. In addition, the department may revoke or suspend a current license, impose penalties or fines, or deny an application for a license if the applicant, operator, direct patient access employee, or adult volunteer at the healthcare facility, or, in the case of a healthcare facility operated in a private residence, any adult living in the home other than the client, has any disqualifying information. The department may also revoke or suspend a current license, impose penalties or fines, or deny an application for a license if the department determines, based upon consideration of the criminal history information, that the applicant, operator, direct patient access employee, or adult volunteer at the healthcare facility, or, in the case of a healthcare facility operated in a private residence, any adult living in the home other than the client, is unsuitable to work or live in close proximity to the residents of the healthcare facility such that the health,
safety, and welfare of the residents of the healthcare facility could be at risk.]:

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

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

(3) Has any disqualifying information; or

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

[(h) Notwithstanding any other law to the contrary, for purposes of this section, the department shall be exempt from section 831.3.1 and need not conduct investigations, notifications, or hearings under this section in accordance with chapter 91.]
The fee charged by the Federal Bureau of Investigation and the Hawaii criminal justice data center to perform criminal history record checks may be passed on to all applicants, operators, direct patient access employees, and adult volunteers at the healthcare facility and, in the case of a facility operated in a private residence, all adults living in the home other than the clients.

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

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

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

[Background check record information
shall be used exclusively by the department or its
designee for the sole purpose of determining
whether an applicant, operator, direct patient access employee,
or adult volunteer at a healthcare facility, or, in the case of
a facility operated in a private residence, any adult living in
the home other than the clients is suitable for working or
living in close proximity to residents of a healthcare facility
such that the health, safety, and welfare of the residents would
not be at risk."

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

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

(b) Except as otherwise specified, any person who seeks
employment with the department of health, or who is employed or
seeks employment with a provider or subcontractor in a position
that necessitates non-witnessed direct contact with clients when providing non-witnessed direct mental health or health care services, shall:

1. Be subject to background checks in accordance with section 321-15.2;
2. Authorize the disclosure to the department or its designee of background check information; and
3. Provide to the department or its designee written consent for the department or its designee to obtain background check information for verification.

Information obtained pursuant to subsection (a) and this subsection shall be used exclusively by the department of health for purposes of determining whether a person is suitable for working in a position that necessitates non-witnessed direct contact with clients when providing non-witnessed direct mental health or health care services. All such decisions shall be subject to federal laws and regulations currently or hereafter in effect.
(c) The department of health may refuse to employ or may terminate the employment of any employee or applicant for employment if [the person]:

1. The person refuses to authorize the department or its designee to conduct a background check;
2. The person refuses or fails to submit to the department or its designee information required to conduct a background check;
3. The person has been convicted of an offense for which incarceration is a sentencing option; or
4. The department of health finds by reason of the nature and circumstances of the background check information that the person poses a risk to the health, safety, or well-being of clients receiving non-witnessed direct mental health or health care services. Such refusal or termination may occur only after appropriate investigation, notification of results and planned action, and opportunity to meet and rebut the finding, all of which need not be conducted in accordance with chapter 91. Nothing in
this subsection shall abrogate any applicable appeal
rights under chapter 76 or 89.

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

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

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

[{f}] (g) For purposes of this section:
"Provider" means any organization or individual that intends to enter into a contract with or is currently contracted by the department of health to provide direct mental health or health care services to the department's eligible clients.

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

Notwithstanding any other law to the contrary, the department of health shall be exempt from section 831-3.1 for purposes of this section and need not conduct investigations, notifications, or hearings under this section in accordance with chapter 91."

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

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

(1) The department of health or its designee on operators of adult foster homes for individuals with developmental disabilities or developmental disabilities domiciliary homes and their employees, as provided by section [332P-22+] 321-15.2;
(2) The department of health or [the department's] its
designee on prospective employees, persons seeking to
serve as providers, or subcontractors in positions
that place them in direct contact with clients when
providing non-witnessed direct mental health or health
care services as provided by section 321-171.5;

(3) The department of health or [the department's] its
designee on all applicants for licensure or
certification for, operators for, prospective
employees, [and] adult volunteers, and all adults,
except adults in care, at [one or more of the
following: skilled nursing facility, intermediate
care facility, adult residential care home, expanded
adult residential care home, assisted living facility,
home health agency, hospice, adult day health center,
special treatment facility, therapeutic living
program, intermediate care facility for individuals
with intellectual disabilities, hospital, rural health
center and rehabilitation agency, and, in the case of
any of the above facilities operating in a private
residence, on any adult living in the facility other
than the client as provided by section 321-15.2;)

health care facilities as defined in section 321-15.2;

(4) The department of education on employees, prospective
employees, and teacher trainees in any public school
in positions that necessitate close proximity to
children as provided by section 302A-601.5;

(5) The counties on employees and prospective employees
who may be in positions that place them in close
proximity to children in recreation or child care
programs and services;

(6) The county liquor commissions on applicants for liquor
licenses as provided by section 281-53.5;

(7) The county liquor commissions on employees and
prospective employees involved in liquor
administration, law enforcement, and liquor control
investigations;

(8) The department of human services on operators and
employees of child caring institutions, child placing
organizations, and foster boarding homes as provided
by section 346-17;
(9) The department of human services on prospective adoptive parents as established under section 346-19.7;

(10) The department of human services on applicants to operate child care facilities, prospective employees of the applicant, and new employees of the provider after registration or licensure as provided by section 346-154;

(11) The department of human services on persons exempt pursuant to section 346-152 to be eligible to provide child care and receive child care subsidies as provided by section 346-152.5;

(12) The department of health on operators and employees of home and community-based case management agencies and operators and other adults, except for adults in care, residing in community care foster family homes as provided by section [321-484r] 321-15.2;

(13) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;
(14) The department of human services on employees, prospective employees, and volunteers of contracted providers and subcontractors in positions that place them in close proximity to youth when providing services on behalf of the office or the Hawaii youth correctional facility as provided by section 352D-4.3;

(15) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;

(16) The department of public safety on employees and prospective employees who are directly involved with the treatment and care of persons committed to a correctional facility or who possess police powers including the power of arrest as provided by section 353C-5;

(17) The board of private detectives and guards on applicants for private detective or private guard licensure as provided by section 463-9;

(18) Private schools and designated organizations on employees and prospective employees who may be in positions that necessitate close proximity to children; provided that private schools and designated
organizations receive only indications of the states
from which the national criminal history record
information was provided pursuant to section 302C-1;
(19) The public library system on employees and prospective
employees whose positions place them in close
proximity to children as provided by section
302A-601.5;
(20) The State or any of its branches, political
subdivisions, or agencies on applicants and employees
holding a position that has the same type of contact
with children, vulnerable adults, or persons committed
to a correctional facility as other public employees
who hold positions that are authorized by law to
require criminal history record checks as a condition
of employment as provided by section 78-2.7;
(21) The department of health on licensed adult day care
center operators, employees, new employees,
subcontracted service providers and their employees,
and adult volunteers as provided by section 321-15.2;
(22) The department of human services on purchase of
service contracted and subcontracted service providers
and their employees serving clients of the adult
protective and community services branch, as
provided by section 346-97;

(23) The department of human services on foster grandparent
program, senior companion program, and respite
companion program participants as provided by section
346-97;

(24) The department of human services on contracted and
subcontracted service providers and their current and
prospective employees that provide home and community-
based services under section 1915(c) of the Social
Security Act, title 42 United States Code section
1396n(c), or under any other applicable section or
sections of the Social Security Act for the purposes
of providing home and community-based services, as
provided by section 346-97;

(25) The department of commerce and consumer affairs on
proposed directors and executive officers of a bank,
savings bank, savings and loan association, trust
company, and depository financial services loan company as provided by section 412:3-201;

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

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

(28) The department of commerce and consumer affairs on:

(A) Each principal of every non-corporate applicant for a money transmitter license; and

(B) The executive officers, key shareholders, and managers in charge of a money transmitter's activities of every corporate applicant for a money transmitter license,

as provided by sections 489D-9 and 489D-15;

(29) The department of commerce and consumer affairs on applicants for licensure and persons licensed under title 24;
(30) The Hawaii health systems corporation on:
   (A) Employees;
   (B) Applicants seeking employment;
   (C) Current or prospective members of the corporation's board or regional system board; or
   (D) Current or prospective volunteers, providers, or contractors,
in any of the corporation's health facilities as provided by section 323F-5.5;

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

(32) The state public charter school commission or public charter schools on employees, teacher trainees,
prospective employees, and prospective teacher trainees in any public charter school for any position
that places them in close proximity to children, as provided in section 302D-33;

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

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

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

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

(37) The State and counties on employees, prospective employees, volunteers, and contractors whose position responsibilities require unescorted access to secured
areas and equipment related to a traffic management center;

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

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

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

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

PART II

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

"(c) As a condition for obtaining a license, a person, agency, or organization shall comply with rules adopted under
subsection (b)(1), (2), and (3), and satisfy the background check requirements under section 321-484. The department may deny a license if:

(1) An operator, employee, or new employee of the home and community-based case management agency has been convicted of a crime other than a minor traffic violation involving a fine of $50 or less;

(2) The department finds that the criminal history background check record of an operator, employee, or new employee poses a risk to the health, safety, or well-being of adults receiving care in community care foster family homes, expanded adult residential care homes, or assisted living facilities;

(3) An operator, employee, or new employee of the home and community-based case management agency is a perpetrator of abuse as defined in section 346-222; or

(4) The holder of or an applicant for a home and community-based case management agency license, or one of its employees, has a certificate of approval to operate a community care foster family home, or a license from the department to operate an adult
residential care home, expanded adult residential care
home, or assisted living facility."

SECTION 5. Section 321-483, Hawaii Revised Statutes, is
amended by amending subsection (c) to read as follows:
"(c) As a condition for obtaining a certificate of
approval, community care foster family homes shall comply with
rules adopted under subsection (b) and satisfy the background
check requirements under section [321-484.] 321-15.2. The
department or its designee may deny a certificate of approval
if:
(1) An operator or other adult residing in the community
care foster family home, except for adults receiving
care, has been convicted of a crime other than a minor
traffic violation involving a fine of $50 or less;
(2) The department or its designee finds that the
[criminal history] background check record of an
operator or other adult residing in the home, except
for adults receiving care, poses a risk to the health,
safety, or well-being of adults in care; or
(3) An operator or other adult residing in the community
care foster family home, except for adults receiving
care, is a perpetrator of abuse as defined in section 346-222."

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

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

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

"(d) Notwithstanding subsections (b) and (c), the requirement that inquiry into and consideration of a prospective employee's conviction record may take place only after the individual has received a conditional job offer, and the limitation to the most recent ten-year period, excluding the period of incarceration, shall not apply to employers who are expressly permitted to inquire into an individual's criminal history for employment purposes pursuant to any federal or state law other than subsection (a), including:
(1) The State or any of its branches, political subdivisions, or agencies pursuant to sections 78-2.7 and 831-3.1;

(2) The department of education pursuant to section 302A-601.5;

(3) The department of health with respect to employees, providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services pursuant to section 321-171.5;

(4) The judiciary pursuant to section 571-34;

(5) The counties pursuant to section 846-2.7(b)(5), (33), (34), (35), (36), and (38);

(6) Armed security services pursuant to section 261-17(b);

(7) Providers of a developmental disabilities domiciliary home pursuant to section [333F–22+] 321-15.2;

(8) Private schools pursuant to sections 302C-1 and 378-3(8);

(9) Financial institutions in which deposits are insured by a federal agency having jurisdiction over the financial institution pursuant to section 378-3(9);
(10) Detective agencies and security guard agencies pursuant to sections 463-6(b) and 463-8(b);

(11) Employers in the business of insurance pursuant to section 431:2-201.3;

(12) Employers of individuals or supervisors of individuals responsible for screening passengers or property under title 49 United States Code section 44901 or individuals with unescorted access to an aircraft of an air carrier or foreign carrier or in a secured area of an airport in the United States pursuant to title 49 United States Code section 44936(a);

(13) The department of human services pursuant to sections 346-97 and 352-5.5;

(14) The public library system pursuant to section 302A-601.5;

(15) The department of public safety pursuant to section 353C-5;

(16) The board of directors of a cooperative housing corporation or the manager of a cooperative housing project pursuant to section 421I-12;
(17) The board of directors of an association of owners under chapter 514A or 514B, or the manager of a condominium project pursuant to section 514A-82.1 or 514B-133; and

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

PART III

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

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

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

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

(2) Be subject to adult abuse perpetrator checks, if the individual has direct contact with a client. For the purposes of this section, "adult abuse perpetrator
check
means a search to determine whether an
individual is known to the department of human
services as a perpetrator of abuse as defined in
section 346-222, by means of a search of the
individual's name and birth date in the department of
human services' adult protective service file; and

(3) Provide consent to the department or its designee to
conduct an adult abuse perpetrator check and to obtain
other criminal history record information for
verification.

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

(d) The department or its designee shall obtain criminal
history record information through the Hawaii criminal justice
data center in accordance with section 846-2.7 on applicants for
programs identified in this part. The Hawaii criminal justice
data center may assess the applicants and operators, employees,
and new employees a reasonable fee for each criminal history
record check conducted. The information obtained shall be used
exclusively for the stated purposes for which it was obtained and shall be subject to federal laws and regulations as may be now or hereafter adopted.

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

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

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

(2) Be subject to adult abuse perpetrator checks, if the individual has direct contact with a client. For the purposes of this section, "adult abuse perpetrator check" means a search to determine whether an individual is known to the department of human services as a perpetrator of abuse as defined in section 346-222, by means of a search of the
individual's name and birth date in the department of
human services' adult protective service file; and

(3) Provide consent to the department to conduct an adult
abuse perpetrator check and to obtain other criminal
history record information for verification.

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

(h) The department or its designee shall make a name
inquiry into the criminal history records and the adult
protective service file for the first two years a community care
foster family home is certified and annually or biennially
thereafter depending on the certification status of the
community care foster family home."

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

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

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

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

"Department" means the department of health.

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

"Relevant crime" means:

(1) Any offense described in title 42 United States Code
section 1320a-7 (section 1128(a) of the Social
Security Act); or
(2) A crime of such a serious nature or circumstance that the department finds its perpetrator to pose a risk to the health, safety, or well-being of a patient or resident. This shall include but not be limited to murder, manslaughter, assault, sex offenses, domestic violence, and the use, sale, manufacture, or distribution of dangerous drugs or controlled substances.

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

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

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

(2) Be subject to criminal history record checks in accordance with section 846-2.7.
(3) Sign a waiver stating that the department shall not be
liable to the individual; and

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

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

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

(e) The department may take appropriate action if it finds
that the criminal history of the individual identified under
subsection (b) may pose a risk to the health, welfare, and
safety of service recipients. Such action may include denying a
certificate of approval to operate an adult day care center.

(f) Notwithstanding any other law to the contrary, for
purposes of this section, the department shall be exempt from
section 831.3.1 and shall not be required to conduct
investigations, notifications, or hearings under this section in
accordance with chapter 91.

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

(h) The department, in obtaining and relying upon the
results of the state criminal history record check, shall be
presumed to be acting in good faith and shall be immune from
civil liability for taking or recommending action based upon the
criminal history record information. The presumption of good
faith may be rebutted upon a showing by the person or entity
acknowledging a lack of good faith by a preponderance of the
evidence that the department relied upon information or opinion
that it knew was false or misleading.
(i) Nothing in this section shall affect the rights, obligations, remedies, liabilities, or standards of proof under chapters 368 and 378.

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

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

"§333F-22—Criminal history record checks. (a) The department shall adopt rules pursuant to chapter 91 to ensure the reputable and responsible character of an applicant to operate an adult foster home or developmental disabilities domiciliary home, of existing providers and their employees, of current and prospective employees of the applicant, and of new employees of the provider after certification or licensure, which shall provide for, but not be limited to, criminal history record checks in accordance with section 846-2.7.
(b) For the purposes of this section, "developmental disabilities domiciliary homes" means any facility licensed under section 321.15.9 that provides twenty-four-hour supervision or care, excluding licensed nursing care, for a fee, to not more than five adults with intellectual disabilities or developmental disabilities as defined in this chapter; and "adult foster homes" shall be as defined under section 321.11.2.

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

(d) Each existing provider or provider and all employees hired after the initial licensure or certification of the existing provider or provider shall be subject to criminal history record checks in accordance with section 846-2.7, and shall provide consent to the department or the department's designee to obtain criminal history record information for verification.
(e) The department or the department’s designee is authorized to obtain criminal history record information through the Hawaii criminal justice data center on existing providers and their employees upon their next licensure or certification renewal date, and on any applicant and all current and prospective employees of the applicant, including all new employees after the applicant is issued a certification or license under this chapter.

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

(g) The department may revoke a current license or certification or deny an application for a license or certification to operate an adult foster home or developmental disabilities domiciliary home under rules adopted pursuant to chapter 91 if the existing provider or employee of an existing provider, applicant, current or prospective employee of the applicant, provider, or new employee of the provider refuses to submit to the department or the department’s designee statements indicating criminal convictions, refuses to provide consent to
the department or the department's designee to conduct a
criminal history record check or obtain other criminal history
record information for verification, refuses to be
fingerprinted, has been convicted of a crime other than a minor
traffic violation involving a fine of $50 or less; or if the
department or the department's designee finds that the criminal
history record of the existing provider or employee of an
existing provider, applicant, current or prospective employee of
the applicant, provider, or new employee of the provider
indicates that the individual may pose a risk to the health,
safety, or well-being of persons with developmental or
intellectual disabilities living in the home.

PART IV

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

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