



- 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 §1320a-  
2 7 (section 1128(a) of the Social Security Act); or

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

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

21 (c) All applicants and prospective operators shall:



- 1 (1) Be subject to ~~[criminal history record checks in~~  
2 ~~accordance with section 846-2.7;~~
- 3 ~~(2) Authorize the disclosure to the department or the~~  
4 ~~department's designee of criminal history record~~  
5 ~~information;~~
- 6 ~~(3) Sign a waiver form stating that the department or the~~  
7 ~~department's designee shall not be liable to the~~  
8 ~~applicant or prospective operator; and~~
- 9 ~~(4) Consent to be fingerprinted for the purpose of~~  
10 ~~requesting criminal history record information from~~  
11 ~~the Federal Bureau of Investigation and the Hawaii~~  
12 ~~criminal justice data center.] background checks; and~~
- 13 (2) Provide consent to the department or its designee to  
14 conduct background checks.
- 15 (d) All prospective direct patient access employees and  
16 adult volunteers of healthcare facilities and, in the case of  
17 any healthcare facility operated in a private residence, all  
18 adults living in the home other than the clients shall:
- 19 ~~[-(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 [~~7, 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 of 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.

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

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



1 living in close proximity to residents of a healthcare facility  
2 such that the health, safety, and welfare of the residents would  
3 not be at risk."

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

6 "§321-171.5 Employees of the department of health, its  
7 providers and subcontractors; ~~[criminal history]~~ background  
8 checks. (a) The department of health shall develop procedures  
9 for obtaining verifiable background check information regarding  
10 ~~[the criminal history of]~~ persons who are seeking employment, or  
11 seeking to serve as providers or subcontractors, in positions  
12 that place them in direct contact with adult, child, or youth  
13 clients when providing non-witnessed direct mental health or  
14 health care services. These procedures shall include but not be  
15 limited to ~~[criminal history record checks in accordance with~~  
16 ~~section 846-2.7.]~~ background checks as defined in section 321-  
17 15.2.

18 (b) Except as otherwise specified, any person who seeks  
19 employment with the department of health, or who is employed or  
20 seeks employment with a provider or subcontractor in a position  
21 that necessitates non-witnessed direct contact with clients when



1 providing non-witnessed direct mental health or health care  
2 services, shall:

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

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

8 [~~2~~] (3) Provide to the department of health or [~~the~~  
9 ~~department's~~] its designee written consent for the  
10 department or [~~the department's~~] its designee to  
11 obtain [~~criminal history record~~] background check  
12 information for verification.

13 Information obtained pursuant to subsection (a) and this  
14 subsection shall be used exclusively by the department of health  
15 for purposes of determining whether a person is suitable for  
16 working in a position that necessitates non-witnessed direct  
17 contact with clients when providing non-witnessed direct mental  
18 health or health care services. All such decisions shall be  
19 subject to federal laws and regulations currently or hereafter  
20 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 of 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~~] since  
7 July 1, [~~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.

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

20           "Provider" means any organization or individual that  
21 intends to enter into a contract with or is currently contracted





1 by the department of health to provide direct mental health or  
2 health care services to the department's eligible clients.

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

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

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

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

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

20 (2) The department of health or [~~the department's~~] its  
21 designee on prospective employees, persons seeking to



1 serve as providers, or subcontractors in positions  
2 that place them in direct contact with clients when  
3 providing non-witnessed direct mental health or health  
4 care services as provided by section 321-171.5;

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



- 1           (4) The department of education on employees, prospective  
2           employees, and teacher trainees in any public school  
3           in positions that necessitate close proximity to  
4           children as provided by section 302A-601.5;
- 5           (5) The counties on employees and prospective employees  
6           who may be in positions that place them in close  
7           proximity to children in recreation or child care  
8           programs and services;
- 9           (6) The county liquor commissions on applicants for liquor  
10          licenses as provided by section 281-53.5;
- 11          (7) The county liquor commissions on employees and  
12          prospective employees involved in liquor  
13          administration, law enforcement, and liquor control  
14          investigations;
- 15          (8) The department of human services on operators and  
16          employees of child caring institutions, child placing  
17          organizations, and foster boarding homes as provided  
18          by section 346-17;
- 19          (9) The department of human services on prospective  
20          adoptive parents as established under section  
21          346-19.7;

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



- 1 services on behalf of the office or the Hawaii youth  
2 correctional facility as provided by section 352D-4.3;
- 3 (15) The judiciary on employees and applicants at detention  
4 and shelter facilities as provided by section 571-34;
- 5 (16) The department of public safety on employees and  
6 prospective employees who are directly involved with  
7 the treatment and care of persons committed to a  
8 correctional facility or who possess police powers  
9 including the power of arrest as provided by section  
10 353C-5;
- 11 (17) The board of private detectives and guards on  
12 applicants for private detective or private guard  
13 licensure as provided by section 463-9;
- 14 (18) Private schools and designated organizations on  
15 employees and prospective employees who may be in  
16 positions that necessitate close proximity to  
17 children; provided that private schools and designated  
18 organizations receive only indications of the states  
19 from which the national criminal history record  
20 information was provided pursuant to section 302C-1;



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



1 protective and community services branch[+], as  
2 provided by section 346-97;

3 (23) The department of human services on foster grandparent  
4 program, senior companion program, and respite  
5 companion program participants as provided by section  
6 346-97;

7 (24) The department of human services on contracted and  
8 subcontracted service providers and their current and  
9 prospective employees that provide home and community-  
10 based services under section 1915(c) of the Social  
11 Security Act, title 42 United States Code section  
12 1396n(c), or under any other applicable section or  
13 sections of the Social Security Act for the purposes  
14 of providing home and community-based services, as  
15 provided by section 346-97;

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



- 1       (26) The department of commerce and consumer affairs on
- 2             proposed directors and executive officers of a
- 3             nondepository financial services loan company as
- 4             provided by section 412:3-301;
- 5       (27) The department of commerce and consumer affairs on the
- 6             original chartering applicants and proposed executive
- 7             officers of a credit union as provided by section
- 8             412:10-103;
- 9       (28) The department of commerce and consumer affairs on:
- 10            (A) Each principal of every non-corporate applicant
- 11               for a money transmitter license; and
- 12            (B) The executive officers, key shareholders, and
- 13               managers in charge of a money transmitter's
- 14               activities of every corporate applicant for a
- 15               money transmitter license,
- 16            as provided by sections 489D-9 and 489D-15;
- 17       (29) The department of commerce and consumer affairs on
- 18             applicants for licensure and persons licensed under
- 19             title 24;
- 20       (30) The Hawaii health systems corporation on:
- 21            (A) Employees;





- 1 (B) Applicants seeking employment;
- 2 (C) Current or prospective members of the corporation
- 3 board or regional system board; or
- 4 (D) Current or prospective volunteers, providers, or
- 5 contractors,
- 6 in any of the corporation's health facilities as
- 7 provided by section 323F-5.5;
- 8 (31) The department of commerce and consumer affairs on:
- 9 (A) An applicant for a mortgage loan originator
- 10 license; and
- 11 (B) Each control person, executive officer, director,
- 12 general partner, and manager of an applicant for
- 13 a mortgage loan originator company license,
- 14 as provided by chapter 454F;
- 15 (32) The state public charter school commission or public
- 16 charter schools on employees, teacher trainees,
- 17 prospective employees, and prospective teacher
- 18 trainees in any public charter school for any position
- 19 that places them in close proximity to children, as
- 20 provided in section 302D-33;



- 1           (33) The counties on prospective employees who work with  
2           children, vulnerable adults, or senior citizens in  
3           community-based programs;
- 4           (34) The counties on prospective employees for fire  
5           department positions which involve contact with  
6           children or vulnerable adults;
- 7           (35) The counties on prospective employees for emergency  
8           medical services positions which involve contact with  
9           children or vulnerable adults;
- 10          (36) The counties on prospective employees for emergency  
11          management positions and community volunteers whose  
12          responsibilities involve planning and executing  
13          homeland security measures including viewing,  
14          handling, and engaging in law enforcement or  
15          classified meetings and assisting vulnerable citizens  
16          during emergencies or crises;
- 17          (37) The State and counties on employees, prospective  
18          employees, volunteers, and contractors whose position  
19          responsibilities require unescorted access to secured  
20          areas and equipment related to a traffic management  
21          center;



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

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

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

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

15 PART II

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

18 "(c) As a condition for obtaining a license, a person,  
19 agency, or organization shall comply with rules adopted under  
20 subsection (b)(1), (2), and (3), and satisfy the background



1 check requirements under section [~~321-484.~~] 321-15.2. The  
2 department may deny a license if:

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

17



**Report Title:**

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

**Description:**

Expand the authority of the department of health to conduct background checks to include criminal history record check, adult abuse perpetrator and child abuse record checks, and certified nurse aide registry record checks for persons seeking employment with the State or its contractors where the work involves direct client care and applicants and operators of healthcare facilities. (SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

