
A BILL FOR AN ACT

RELATING TO BACKGROUND CHECKS.

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

1 SECTION 1. The purpose of this Act is to clarify and
2 streamline the background check requirements for applicants,
3 operators, employees, and volunteers at health care facilities.

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

6 "**§321-15.2 Background checks.** (a) For the purposes of
7 this section:

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

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



1 ~~["Background check" means a review of records stored in~~
2 ~~state or national record repositories for history of abuse,~~
3 ~~neglect, threatened harm, or other maltreatment against children~~
4 ~~or adults, and for any criminal history, including:~~

5 ~~(1) Adult abuse perpetrator records by means of a search~~
6 ~~of the individual's name and birth date in the state~~
7 ~~adult protective services central registry of reported~~
8 ~~cases established in section 346-224;~~

9 ~~(2) Child abuse and neglect records by means of:~~

10 ~~(A) An initial name inquiry in the state child~~
11 ~~welfare record files;~~

12 ~~(B) A subsequent child abuse confirmation history~~
13 ~~check for new hires and rehires; and~~

14 ~~(C) An annual name inquiry into state child welfare~~
15 ~~record files;~~

16 ~~(3) Criminal history records in accordance with section~~
17 ~~846-2.7;~~

18 ~~(4) Sex offender registry records;~~

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



1 ~~(6) Adult abuse perpetrator records, child abuse and~~
2 ~~neglect records, criminal history records, sex~~
3 ~~offender registry records, and certified nurse aide~~
4 ~~registry records of another state where a prospective~~
5 ~~employee or adult volunteer previously resided.]~~

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

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

12 "Department" means the department of health.

13 "Direct patient access employee" means any individual,
14 including a volunteer, who has access to a patient or resident
15 of a healthcare facility, or any provider through employment or
16 through an agreement or contract with such a facility or
17 provider. ~~[Such individuals include but are not limited to:]~~

18 "Direct patient access employee" includes but is not limited to
19 physicians, nurses, nursing assistants, home health aides,
20 therapists, activities personnel, and support staff (i.e.,
21 housekeeping, dietary, etc.), as well as volunteers, who have



1 direct access to patients or patient belongings. "Direct
2 patient access employee" does not include individuals whose
3 duties do not involve the provision of health care services or
4 direct physical contact with patients and whose access to
5 patients or patient belongings is incidental, limited, or
6 supervised.

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

9 "Fingerprint-based background check" means a fingerprint-
10 based inquiry search of Hawaii state criminal history records
11 and the Federal Bureau of Investigation national criminal
12 history records database, the results of which are accessible
13 only to the department or its designee.

14 "Healthcare facility" means a facility, setting, or agency
15 licensed or certified by the department of health that provides
16 mental health or health care services or living accommodations
17 to individuals, such as a skilled nursing facility, intermediate
18 care facility, adult residential care home, expanded adult
19 residential care home, assisted living facility, home health
20 agency, home care agency, hospice, adult day health center,
21 special treatment facility, therapeutic living program,



1 intermediate care facility for individuals with intellectual
2 disabilities, hospital, [~~rural health center,~~] community care
3 foster family home, home and community-based case management
4 agency, adult day care center, developmental disabilities
5 domiciliary home, adult foster home for individuals with
6 developmental disabilities, community mental health center, and
7 rehabilitation agency.

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

11 "Name-based background check" means a search conducted by
12 using the name and other identifying information of the
13 individual of records stored in state or national record
14 repositories for history of abuse, neglect, threatened harm, or
15 other maltreatment against children or adults, and for any
16 criminal history, including the:

17 (1) Hawaii adult protective services central registry of
18 reported cases established in section 346-224;

19 (2) Hawaii child abuse and neglect central registry
20 established in section 350-2.5;

21 (3) Criminal history records;



- 1 (4) Hawaii sex offender registry;
- 2 (5) Hawaii certified nurse aide registry for information
- 3 or findings pursuant to section 457A-3; and
- 4 (6) Adult abuse perpetrator records, child abuse and
- 5 neglect records, criminal history records, sex
- 6 offender registry records, and certified nurse aide
- 7 registry records of another state where the individual
- 8 previously resided.

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

13 "Relevant crime" means:

- 14 (1) Any offense described in title 42 United States Code
- 15 [~~§1320a-7~~] section 1320a-7 (section 1128(a) of the
- 16 Social Security Act); or
- 17 (2) A crime of such a serious nature or circumstance that
- 18 the department finds its perpetrator to pose a risk to
- 19 the health, safety, or well-being of a patient or
- 20 resident. This includes but is not limited to murder,
- 21 manslaughter, assault, sex offenses, domestic



1 violence, theft or forgery, arson, kidnapping, or
2 possession, use, sale, manufacture, or distribution of
3 dangerous drugs or controlled substances.

4 (b) The department shall adopt rules pursuant to chapter
5 91 to ensure the reputable and responsible character of all
6 prospective applicants, operators, and direct patient access
7 employees [~~, and adult volunteers~~] of a healthcare facility, and,
8 in the case of any healthcare facility operated in a private
9 residence, all adults living in the home other than the
10 clients [~~. These rules, among other things, shall specify how the~~
11 ~~department or its designee may conduct background checks~~], in
12 accordance with this section.

13 (c) All prospective applicants [~~and prospective~~],
14 operators, and direct patient access employees of any healthcare
15 facility, and, in the case of any healthcare facility operated
16 in a private residence, all adults living in the home other than
17 the clients shall [~~+~~] provide consent to the department or its
18 designee to conduct and be subject to the following background
19 checks conducted by the department or its designee:

20 (1) [~~Be subject to background checks;~~] A one-time
21 fingerprint-based background check; and



1 (2) ~~[Provide consent to the department or its designee to~~
2 ~~conduct background checks.]~~ An initial name-based
3 background check;
4 provided that a fingerprint-based background check shall not be
5 required for individuals, including students, who will be
6 working or volunteering at a hospital licensed under section
7 321-14.5 and individuals who have submitted fingerprints as a
8 condition of their licensure.

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

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

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

17 ~~(e) The department or its designee shall obtain background~~
18 ~~check information in accordance with this section from an~~
19 ~~applicant or operator, on the applicant or operator, and on any~~
20 ~~prospective employees of the applicant or operator including any~~
21 ~~new employee retained after the applicant is issued a license or~~



1 ~~certificate under this part, which shall include an annual name~~
2 ~~inquiry into state criminal history record files.]~~

3 (d) All operators and direct patient access employees of a
4 healthcare facility, and, in the case of any healthcare facility
5 operated in a private residence, all adults living in the home
6 other than the clients shall provide consent to the department
7 or its designee to conduct and shall undergo a name-based
8 background check biennially.

9 (e) The department or its designee shall obtain all
10 fingerprint-based background check and named-based background
11 check information required under this section; provided that,
12 notwithstanding this subsection, or any law to the contrary,
13 hospitals licensed under section 321-14.5 may conduct the name-
14 based background checks required under this section in lieu of
15 the department or its designee; provided further that hospitals
16 licensed under section 321-14.5 that conduct required name-based
17 background checks shall possess documentation of compliance and
18 shall provide access to the documentation upon request by the
19 department.



1 (f) No applicant or operator shall employ, contract with,
2 or permit any prospective direct patient access employee to work
3 at a healthcare facility unless:

4 (1) The individual has completed the one-time fingerprint-
5 based background check and the initial name-based
6 background check required by this section; and

7 (2) No disqualifying information is found, or any
8 disqualifying information found is determined not to
9 be disqualifying following an appeal process.

10 [~~f~~] (g) The department may revoke or suspend a current
11 license or certificate, impose penalties or fines, or deny an
12 application for a license or certificate under rules adopted
13 pursuant to chapter 91 if the applicant, operator, [~~employee, or~~
14 adult volunteer] or direct patient access employee at the
15 healthcare facility or, in the case of any healthcare facility
16 operated in a private residence, any adult living in the home
17 other than the client:

18 (1) ~~Refuses to authorize [the department or its designee~~
19 ~~to conduct a background check, refuses to authorize~~
20 ~~the department or its designee to obtain background~~
21 ~~check record information for verification, or refuses~~



1 ~~consent to be fingerprinted~~], provide information
2 required to perform, or undergo a fingerprint-based
3 background check or name-based background check
4 required pursuant to this section;

5 [~~2~~] ~~Refuses or fails to submit to the department or its~~
6 ~~designee information required to perform a background~~
7 ~~check~~;

8 [~~3~~] (2) Has any disqualifying information; or

9 [~~4~~] (3) Has any fingerprint-based background check or
10 name-based background check information that the
11 department finds may pose a risk to the health,
12 safety, or welfare of the patients or residents [~~or~~
13 ~~patients~~] of the healthcare facility.

14 [~~g~~] (h) The fee charged [~~by the Federal Bureau of~~
15 ~~Investigation and the Hawaii criminal justice data center to~~
16 ~~perform criminal history record checks~~] to perform the required
17 fingerprint-based background check and name-based background
18 check may be passed on to all applicants, operators, and direct
19 patient access employees [~~, and adult volunteers~~] at the
20 healthcare facility and, in the case of a facility operated in a



1 private residence, all adults living in the home other than the
2 clients.

3 ~~[(h)]~~ (i) The department or its designee, in obtaining and
4 relying upon the fingerprint-based background check or name-
5 based background check information, is presumed to be acting in
6 good faith and shall be immune from civil liability for taking
7 or recommending action based upon the fingerprint-based
8 background check or name-based background check information.

9 The presumption of good faith may be rebutted upon a showing of
10 proof by a preponderance of the evidence that the department or
11 its designee relied upon information or opinion that it knew was
12 false or misleading or that such reliance was not reasonable.

13 ~~[(i)]~~ (j) Any applicant or operator who receives
14 information from the department or its designee relating to a
15 fingerprint-based background check or name-based background
16 check of a direct patient access employee [~~or adult volunteer~~]
17 or, in the case of a healthcare facility operated in a private
18 residence, an adult living in the home other than the clients,
19 is presumed to be acting in good faith and shall be immune from
20 civil liability for reasonably taking or recommending action
21 based upon the department's recommendation or direction.



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

4 ~~[Background]~~ Fingerprint-based background check or name-
5 based background check record information pursuant to this
6 section shall be used exclusively ~~[by the department or its~~
7 ~~designee]~~ for the sole purpose of determining whether an
8 applicant, operator, or direct patient access employee~~[, or~~
9 ~~adult volunteer]~~ at a healthcare facility, or, in the case of a
10 facility operated in a private residence, any adult living in
11 the home other than the clients is suitable for working or
12 living in close proximity to patients or residents of a
13 healthcare facility such that the health, safety, and welfare of
14 the patients or residents would not be at risk."

15 SECTION 3. Section 321-171.5, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

17 "(a) The department of health shall develop procedures for
18 obtaining verifiable background check information regarding
19 persons who are seeking employment, or seeking to serve as
20 providers or subcontractors, in positions that place them in
21 direct contact with adult, child, or youth clients when



1 providing non-witnessed direct mental health or health care
2 services. These procedures shall include but not be limited to
3 background checks as [~~defined~~] described in section 321-15.2."

4 SECTION 4. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 5. This Act shall take effect on January 1, 2050.



Report Title:

DOH; Healthcare Facilities; Background Checks; Applicants;
Operators

Description:

Clarifies and streamlines background check requirements for
healthcare facility applicants, operators, and direct patient
access employees. Effective 1/1/2050. (SD1)

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not legislation or evidence of legislative intent.*

