
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 clarify and streamline
2 the background check requirements for applicants, operators,
3 employees, and volunteers at healthcare 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 include
12 its principals, directors, partners, managers, agents, and
13 representatives to the extent that any of these individuals will
14 have access to or contact with clients, their finances, assets,
15 personal property, medical records, or individually identifiable
16 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 check
10 by name for any federal or state conviction for any relevant
11 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.,



1 housekeeping, dietary, etc.) who have direct access to patients
2 or patient belongings.

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

5 "Healthcare facility" means a facility, setting, or agency
6 licensed or certified by the department of health that provides
7 mental health or health care services or living accommodations
8 to individuals, such as a skilled nursing facility, intermediate
9 care facility, adult residential care home, expanded adult
10 residential care home, assisted living facility, home health
11 agency, home care agency, hospice, adult day health center,
12 special treatment facility, therapeutic living program,
13 intermediate care facility for individuals with intellectual
14 disabilities, hospital, rural health center, community care
15 foster family home, home and community-based case management
16 agency, adult day care center, developmental disabilities
17 domiciliary home, adult foster home for individuals with
18 developmental disabilities, community mental health center, and
19 rehabilitation agency.



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

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

8 "Relevant crime" means:

- 9 (1) Any offense described in title 42 United States Code
10 [~~§1320a-7~~] section 1320a-7 (section 1128(a) of the
11 Social Security Act); or
- 12 (2) A crime of such a serious nature or circumstance that
13 the department finds its perpetrator to pose a risk to
14 the health, safety, or well-being of a patient or
15 resident. This includes but is not limited to murder,
16 manslaughter, assault, sex offenses, domestic
17 violence, theft or forgery, arson, kidnapping, or
18 possession, use, sale, manufacture, or distribution of
19 dangerous drugs or controlled substances.

20 "Third-party employer" means any person or entity other
21 than the applicant or operator that employs, contracts with, or



1 otherwise retains an individual who provides services at a
2 healthcare facility pursuant to a contract, subcontract,
3 agreement, or other arrangement, including but not limited to a
4 staffing agency, contractor, or subcontractor.

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

15 (c) All applicants [~~and~~], prospective operators,
16 prospective direct patient access employees, prospective adult
17 volunteers, and, in the case of any healthcare facility operated
18 in a private residence, any adult living in the home other than
19 the client shall:

20 (1) Be subject to background checks; and



1 (2) Provide consent to the [~~department or its designee~~]
2 applicant, operator, or third-party employer to
3 conduct background checks.

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

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

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

12 ~~(e) The department or its designee shall obtain background~~
13 ~~check information in accordance with this section from an~~
14 ~~applicant or operator, on the applicant or operator, and on any~~
15 ~~prospective employees of the applicant or operator including any~~
16 ~~new employee retained after the applicant is issued a license or~~
17 ~~certificate under this part, which shall include an annual name~~
18 ~~inquiry into state criminal history record files.~~

19 ~~(f)]~~ (d) All applicants or operators shall obtain and
20 ensure completion of the background checks required by this
21 section, including background checks of any prospective direct



1 patient access employee or adult volunteer retained after the
2 applicant is issued a license or certification under this part;
3 provided that for purposes of any prospective direct patient
4 access employee of a third-party employer described under
5 subsection (f), the applicant or operator may satisfy the
6 requirements of this section by obtaining and maintaining the
7 written certification required by subsection (g); provided
8 further that the applicant or operator shall provide background
9 check information to the department upon request.

10 (e) No applicant or operator shall employ, contract with,
11 or permit any direct patient access employee to work at, or an
12 adult volunteer to serve at, a healthcare facility unless:

13 (1) The individual has completed the background check
14 required by this section; and

15 (2) No disqualifying information is found.

16 (f) A third-party employer shall be responsible for
17 obtaining and ensuring the completion of the background check
18 required by this section for any prospective direct patient
19 access employee who is employed, retained, or assigned by the
20 third-party employer prior to assigning the direct patient
21 access employee to work at a healthcare facility.



1 (g) An applicant or operator may satisfy the requirements
2 of this section with respect to a prospective direct patient
3 access employee of a third-party employer by obtaining and
4 maintaining written certification from the third-party employer
5 that:

6 (1) The background check required by this section has been
7 completed; and

8 (2) No disqualifying information has been found.

9 The applicant or operator shall submit this information to the
10 department upon request.

11 (h) Any use of background check information to make an
12 employment decision based on conviction record information shall
13 comply with the requirements of section 378-2.5(c), including
14 any applicable limitation on the consideration of conviction
15 record information.

16 (i) The department may revoke or suspend a current license
17 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



1 any healthcare facility operated in a private residence, any
2 adult living in the home other than the client:

3 (1) Refuses to [~~authorize the department or its designee~~
4 ~~to conduct a background check,~~] provide the results of
5 a background check to the department upon request,
6 refuses to authorize the department [~~or its designee~~]
7 to obtain background check record information for
8 verification, or refuses to consent to be
9 fingerprinted;

10 (2) Refuses or fails to submit [~~to the department or its~~
11 ~~designee~~] information required to perform a background
12 check;

13 (3) Has any disqualifying information; or

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

18 [~~(g)~~] (j) The fee charged [~~by the Federal Bureau of~~
19 ~~Investigation and the Hawaii criminal justice data center to~~
20 ~~perform criminal history record~~] for conducting background
21 checks may be passed on to all applicants, operators, direct



1 patient access employees, and adult volunteers at the healthcare
2 facility and, in the case of a facility operated in a private
3 residence, all adults living in the home other than the clients.

4 ~~[(h)]~~ (k) The department ~~[or its designee]~~, in obtaining
5 and relying upon the background check information, is presumed
6 to be acting in good faith and shall be immune from civil
7 liability for taking or recommending action based upon the
8 background check information. The presumption of good faith may
9 be rebutted upon a showing of proof by a preponderance of the
10 evidence that the department ~~[or its designee]~~ relied upon
11 information or opinion that it knew was false or misleading or
12 that such reliance was not reasonable.

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



1 accordance with this subsection or a written certification
2 received from a third-party employer pursuant to subsection (g).

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

6 (m) Background check record information obtained in
7 accordance with subsection (l) shall be used exclusively by the
8 department [~~or its designee~~], applicant, operator, or third-
9 party employer for the sole purpose of determining whether an
10 applicant, operator, direct patient access employee, or adult
11 volunteer at a healthcare facility, or, in the case of a
12 facility operated in a private residence, any adult living in
13 the home other than the clients is suitable for working or
14 living in close proximity to residents of a healthcare facility
15 such that the health, safety, and welfare of the residents would
16 not be at risk.

17 (n) An applicant, operator, or third-party employer may
18 apply to register as a qualified entity under section 846-2.7(c)
19 for the purposes of obtaining the background checks required by
20 this section."



1 SECTION 3. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 4. This Act shall take effect on July 1, 3000.



Report Title:

Healthcare Facilities; Background Checks; Applicants; Operators;
Third-Party Employers; Department of Health

Description:

Authorizes applicants, operators, and third-party employers,
rather than the Department of Health, to conduct background
checks of employees and adult volunteers at healthcare
facilities. Effective 7/1/3000. (HD1)

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