
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 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
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~~] worker" means any
14 individual, including a volunteer, who has access to a patient
15 or resident of a healthcare facility, or any provider through
16 employment or through an agreement or contract with such a
17 facility or provider. ~~[Such individuals include but are not~~
18 ~~limited to:]~~ "Direct patient access worker" includes but is not
19 limited to physicians, nurses, nursing assistants, home health
20 aides, therapists, activities personnel, and support staff
21 (i.e., housekeeping, dietary, etc.), as well as volunteers, who



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

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

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

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



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

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

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

- 16 (1) Hawaii adult protective services central registry of
17 reported cases established in section 346-224;
18 (2) Hawaii child abuse and neglect central registry;
19 (3) Criminal history records;
20 (4) Hawaii sex offender registry;



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

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

12 "Relevant crime" means:

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



1 possession, use, sale, manufacture, or distribution of
2 dangerous drugs or controlled substances.

3 "Third-party employer" means any person or entity other
4 than the applicant or operator that employs, contracts with,
5 provides through an educational affiliation agreement, or
6 otherwise retains an individual who provides services at a
7 healthcare facility pursuant to a contract, subcontract,
8 agreement, or other arrangement, including a staffing agency,
9 contractor, or subcontractor.

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

19 (c) All prospective applicants [~~and prospective~~],
20 operators, and direct patient access workers of any healthcare
21 facility, and, in the case of any healthcare facility operated



1 in a private residence, all adults living in the home other than
2 the clients shall[+] provide consent to the department or its
3 designee to conduct and be subject to the following background
4 checks conducted by the department or its designee:

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

7 (2) ~~[Provide consent to the department or its designee to~~
8 ~~conduct background checks.]~~ An initial name-based
9 background check;

10 provided that a fingerprint-based background check shall not be
11 required for individuals, including students, who will be
12 working or volunteering at a hospital licensed under section
13 321-14.5 and individuals who have submitted fingerprints as a
14 condition of their licensure.

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) ~~Be subject to background checks in accordance with~~
20 ~~this section; and~~



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

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

10 ~~(f)]~~ (d) All operators and direct patient access workers
11 of a healthcare facility, and, in the case of any healthcare
12 facility operated in a private residence, all adults living in
13 the home other than the clients shall provide consent to the
14 department or its designee to conduct and shall undergo a name-
15 based background check biennially.

16 (e) The department or its designee shall obtain all
17 fingerprint-based background check and named-based background
18 check information required under this section; provided that,
19 notwithstanding this subsection, or any law to the contrary,
20 hospitals licensed under section 321-14.5 may conduct the name-
21 based background checks required under this section in lieu of



1 the department or its designee; provided further that hospitals
2 licensed under section 321-14.5 that conduct required name-based
3 background checks shall possess documentation of compliance and
4 shall provide access to the documentation upon request by the
5 department.

6 (f) No applicant or operator shall employ, contract with,
7 or permit any prospective direct patient access worker to work
8 at a healthcare facility unless:

9 (1) The individual has completed the one-time fingerprint-
10 based background check and the initial name-based
11 background check required by this section; and

12 (2) No disqualifying information is found, or any
13 disqualifying information found is determined not to
14 be disqualifying following an appeal process.

15 (g) An applicant or operator may satisfy the requirements
16 of this section with respect to a prospective direct patient
17 access worker of a third-party employer by obtaining and
18 maintaining written certification from the third-party employer
19 that:



1 (1) The one-time fingerprint-based background check and
2 the initial name-based background check required by
3 this section has been completed; and

4 (2) No disqualifying information has been found, or any
5 disqualifying information found is determined not to
6 be disqualifying following an appeal process.

7 The applicant or operator shall provide this information to the
8 department upon request.

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

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



1 required to perform, or undergo a fingerprint-based
2 background check or name-based background check
3 required pursuant to this section;

4 ~~[-(2) Refuses or fails to submit to the department or its~~
5 ~~designee information required to perform a background~~
6 ~~check;~~

7 ~~[-(3)]~~ (2) Has any disqualifying information; or

8 ~~[-(4)]~~ (3) Has any fingerprint-based background check or
9 name-based background check information that the
10 department finds may pose a risk to the health,
11 safety, or welfare of the patients or residents [~~or~~
12 ~~patients~~] of the healthcare facility.

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



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

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

11 ~~[(i)]~~ (k) Any applicant or operator who receives
12 information from the department or its designee relating to a
13 fingerprint-based background check or name-based background
14 check of a direct patient access [~~employee or adult volunteer~~]
15 worker or, in the case of a healthcare facility operated in a
16 private residence, an adult living in the home other than the
17 clients, is presumed to be acting in good faith and shall be
18 immune from civil liability for reasonably taking or
19 recommending action based upon the department's recommendation
20 or direction. Nothing in this section shall affect rights,



1 obligations, remedies, liabilities, or standards of proof under
2 chapters 368 and 378.

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

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

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



1 services. These procedures shall include but not be limited to
2 background checks as [~~defined~~] described in section 321-15.2."

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

5 SECTION 5. This Act shall take effect on July 1, 3000.



Report Title:

DOH; Healthcare Facilities; Background Checks; Applicants;
Operators; Third-Party Employers

Description:

Clarifies and streamlines background check requirements for
healthcare facility applicants, operators, and direct patient
access workers. Effective 7/1/3000. (HD2)

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not legislation or evidence of legislative intent.*

