

**ACT 79**

S.B. NO. 1362

A Bill for an Act Relating to Mental Health.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 321-171.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a), (b), and (c) to read:

“(a) The department of health shall develop procedures for obtaining verifiable information regarding the criminal history of persons who are seeking employment, or seeking to serve as providers or subcontractors, in positions that place them in direct contact with clients when providing non-witnessed direct mental health

services [~~on behalf of the child and adolescent mental health division of the department of health~~]. These procedures shall include but not be limited to criminal history record checks in accordance with section 846-2.7.

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

- (1) Be subject to criminal history record checks in accordance with section 846-2.7; and
- (2) Provide to the department of health written consent for the department to obtain criminal history record information for verification.

Information obtained pursuant to subsection (a) and this subsection shall be used exclusively by the department of health for purposes of determining whether a person is suitable for working in a position that necessitates non-witnessed direct contact with clients when providing non-witnessed direct mental health services [~~on behalf of the child and adolescent mental health division~~]. All such decisions shall be subject to federal laws and regulations currently or hereafter in effect.

(c) The department of health may refuse to employ or may terminate the employment of any employee or applicant for employment if the person has been convicted of an offense for which incarceration is a sentencing option, and if the department of health finds by reason of the nature and circumstances of the crime that the person poses a risk to the health, safety, or well-being of clients receiving non-witnessed direct mental health services. Such refusal or termination may occur only after appropriate investigation, notification of results and planned action, and opportunity to meet and rebut the finding, all of which need not be conducted in accordance with chapter 91. Nothing in this subsection shall abrogate any applicable appeal rights under [~~chapters~~] chapter 76 or 89."

2. By amending the definition of "provider" in subsection (f) to read:  
 "“Provider” means any organization or individual that intends to enter into a contract with or is currently contracted by the [~~child and adolescent mental health division of the~~] department of health to provide direct mental health services to the department’s eligible clients.”

SECTION 2. Section 334-3, Hawaii Revised Statutes, is amended to read as follows:

**“§334-3 Functions of department in mental health.** (a) The department of health within the limits of available funds within the designated programs, shall promote and provide for the establishment and operation of a community-based mental health system responsive to the needs of persons of all ages, ethnic groups, and geographical areas of the State, reflective of an appropriate distribution of resources and services, and monitored and evaluated in terms of standards, goal attainment, and outcomes. The elements of the system shall be defined by departmental rules recognizing the need for at least the following services:

- (1) Informational and educational services to the general public and to lay and professional groups;
- (2) Collaborative and cooperative services with public and private agencies and groups for the prevention and treatment of mental or emotional disorders and substance abuse and rehabilitation of patients;
- (3) Consultation services to the judiciary, to educational institutions, and to health and welfare agencies;
- (4) Case management, outreach, and follow-up services;

- (5) Emergency crisis and noncrisis intervention services accessible to all residents [~~of all service areas~~];
- (6) Community-based, relevant, and responsive outpatient services;
- (7) Community residential care comprising a comprehensive range of small, homelike, and appropriately staffed treatment and rehabilitation facilities;
- (8) Short-term psychiatric treatment, preferably in facilities where access to other health and medical services are readily available;
- (9) Intensive psychiatric treatment for patients in need of long-term, highly structured, or highly specialized care and treatment under section 334-2.5, and provision of appropriate community resources;
- (10) Training programs, activities, and staffing standards for the major mental health disciplines and ancillary services; and
- (11) Rehabilitative services for hospital and community-based individuals who have experienced short- or long-term mental or emotional disorders and substance abuse.

(b) The department shall revise, refine, and develop the system to ensure optimal responsiveness to the many and varied needs of the people of the State. The development of the system shall be based on [a] an annual statewide [four-year plan which is developed in response to statewide assessments of need, evaluations of services, programs, and facilities, and community expressions of needed services and programs.] comprehensive integrated service plan that is the cumulative result of comprehensive integrated service area planning within each county. The statewide plan shall determine the specific content of the department of health budget for the mental health system. [~~The plan shall be annually monitored and updated.~~]

(c) The department shall specifically:

- (1) Perform statewide assessments of the need for prevention, treatment, and rehabilitation services in the areas of mental or emotional disorders and substance abuse;
- (2) Adopt rules pursuant to chapter 91 for establishing the number and boundaries of the geographical service areas for the delivery of services in the areas of mental or emotional disorders and substance abuse. [~~Each statewide four-year plan shall include a] The department shall periodically review [of] the effectiveness of the geographical service areas in promoting accessibility and continuity of appropriate care to all residents of that geographical area;~~
- (3) [~~Establish] Appoint a service area [eenter] administrator in each [geographical service area that] county who shall be [the focal point] responsible for the development, delivery, and coordination of services in that area;~~
- (4) Ensure statewide and community-based planning for the ongoing development and coordination of the service delivery system as guided by needs assessment data and performance related information;
- (5) Establish standards and rules for psychiatric facilities and their licensing, where applicable;
- (6) Establish standards and rules for services in the areas of mental health and substance abuse treatment, including assurances of the provision of minimum levels of accessible service to persons of all ages, ethnic groups, and geographical areas in the State;
- (7) Ensure community involvement in determining the service delivery arrangements appropriate to each community of the State;
- (8) Cooperate with public and private health, education, and human service groups, agencies, and institutions in establishing a coordinated system

- to meet the needs of persons with mental or emotional disorders and substance abuse difficulties;
- (9) Evaluate and monitor all services in the fields of mental health and substance abuse where such services are supported fully or in part by state resources;
  - (10) Promote and conduct research, demonstration projects, and studies concerned with the nature, prevention, intervention, and consequences of mental or emotional disorders and substance abuse;
  - (11) Keep records, statistical data, and other information as may be necessary in carrying out the functions of the mental health system and this chapter;
  - (12) Advocate patients' rights in all psychiatric facilities in the State and investigate any grievances submitted to the department by any patient in a psychiatric facility, except as provided in section 334E-2(d). The department shall establish rules and procedures for the purpose of this paragraph within one year after January 1, 1985, and post the rules in a conspicuous manner and accessible place;
  - (13) Promote and conduct a systematic program of accountability for all services provided, funds expended, and activities carried out under its direction or support in accordance with sound business, management, and scientific principles;
  - (14) Coordinate mental health resources in each [service area] county of the State by the development and presentation of [a mental health systems service plan incorporating the planning of each service area.] a comprehensive integrated service area plan developed by the service area administrator in conjunction with the service area board. The service area ~~[center]~~ administrator and the service area board, in collaboration with private and public agencies serving their population, shall submit recommendations for the statewide ~~[four-year plan,]~~ comprehensive integrated service plan, including needs assessment, program planning, resource development, priorities for funding, monitoring, and accountability activities;
  - (15) Oversee and coordinate service area programs and provide necessary administrative and technical assistance to assist service area programs in meeting their program objectives; and
  - (16) Provide staffing to the state council and service area boards to assist in the performance of their functions."

SECTION 3. Section 334-10, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (c) to read:

"(c) The council shall advise the department on allocation of resources, statewide needs, and programs affecting two or more service areas. The council shall review and comment on the [state] statewide comprehensive integrated service plan and shall serve as an advocate for adults with serious mental illness, children with serious emotional disturbances, other individuals with mental illnesses or emotional problems, and individuals with combined mental illness substance abuse disorders."

2. By amending subsection (e) to read:

"(e) The council shall prepare and submit an annual report to the governor and the legislature on implementation of the [state] statewide comprehensive integrated service plan. The report presented to the legislature shall be submitted at least ~~[ten]~~ twenty days prior to the convening of each regular session."

SECTION 4. Section 334-11, Hawaii Revised Statutes, is amended to read as follows:

“**§334-11 Service area boards.** (a) A service area board shall be established to advise each service area ~~[center.]~~ administrator. Each board shall consist of nine members appointed by the governor, who shall serve for terms to be determined by the governor. After the initial appointees, the governor shall fill each vacancy on a board by appointing a member from a list of four persons submitted by that board, except that, if the board is unable to achieve a quorum at two consecutive meetings called for the purpose of making such a list, the list may be provided by a group of at least seven service area consumers and nonproviders of mental health services. This group shall consist of all board members willing to participate in making the list and other area consumers and nonproviders of mental health services to be selected by the service area board chairperson and service area ~~[center-chief.]~~ administrator. Any meeting called for the purpose of making the list shall be subject to part I of chapter 92. The members of the board shall be service area residents, who are consumers or nonproviders of mental health services and service area providers with a majority being non-state employees and nonproviders of mental health or other health services.

Each board shall elect a chairperson from among its members. All members shall serve without compensation but shall be paid their necessary expenses in attending meetings of the board.

(b) Each service area ~~[center]~~ administrator and board, in consultation with public and private providers, shall participate in the development of comprehensive integrated service area plans and budgets. Each board shall advise ~~[its-center]~~ the service area administrator about service area needs to prevent and treat mental or emotional disorders, combined mental illness substance abuse disorders, and persons afflicted by these disorders, and provide advice, guidance, and recommendations to both the advisory commission on drug abuse and controlled substances, section 329-2, and the state council on mental health, section 334-10, as they deem appropriate.

(c) If a ~~[center-chief's]~~ service area administrator's actions are not in conformance with the board's planning decisions, the ~~[center-chief]~~ service area administrator shall provide a written explanation to the board.”

SECTION 5. Section 378-2.5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

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

- (1) The State or any of its branches, political subdivisions, or agencies pursuant to section 831-3.1 and section 78-2.7;
- (2) The department of education pursuant to section 302A-601.5;
- (3) The department of health with respect to employees, providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services ~~[on-behalf of the child and adolescent mental health division]~~ pursuant to section 321-171.5;
- (4) The judiciary pursuant to section 571-34;
- (5) The counties pursuant to section 846-2.7;

- (6) Armed security services pursuant to section 261-17(b);
- (7) Providers of a developmental disabilities domiciliary home pursuant to section 333F-22;
- (8) Private schools pursuant to section 378-3(8) and section 302C-1;
- (9) Financial institutions in which deposits are insured by a federal agency having jurisdiction over the financial institution pursuant to section 378-3(9);
- (10) Detective agencies and security guard agencies pursuant to sections 463-6(b) and 463-8(b);
- (11) Employers in the business of insurance pursuant to section 431:2-201.3;
- (12) Employers of individuals or supervisors of individuals responsible for screening passengers or property under 49 U.S.C. §44901 or individuals with unescorted access to an aircraft of an air carrier or foreign carrier or in a secured area of an airport in the United States pursuant to 49 U.S.C. §44936(a);
- (13) The department of human services pursuant to section 352-5.5;
- (14) The public library system pursuant to section 302A-601.5;
- (15) The department of public safety pursuant to section 353C-5;
- (16) The board of directors of a cooperative housing corporation or the manager of a cooperative housing project pursuant to section 421I-12; and
- (17) The board of directors of an association of apartment owners, or the manager of a condominium project pursuant to section 514A-82.1.’’

SECTION 6. Section 846-2.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- “(b) Criminal history record checks may be conducted by:
- (1) The department of health on operators of adult foster homes or developmental disabilities domiciliary homes and their employees, as provided by section 333F-22;
  - (2) The department of health on prospective employees, persons seeking to serve as providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services [~~on behalf of the child and adolescent mental health division~~], as provided by section 321-171.5;
  - (3) The department of education on employees, prospective employees, and teacher trainees in any public school in positions that necessitate close proximity to children as provided by [{}section{}] 302A-601.5;
  - (4) The counties on employees and prospective employees who may be in positions that place them in close proximity to children in recreation or child care programs and services;
  - (5) The county liquor commissions on applicants for liquor licenses as provided by section 281-53.5;
  - (6) The department of human services on operators and employees of child caring institutions, child placing organizations, and foster boarding homes as provided by section 346-17;
  - (7) The department of human services on prospective adoptive parents as established under [{}section] 346-19.7[{}];
  - (8) The department of human services on applicants to operate child care facilities, prospective employees of the applicant, and new employees of the provider after registration or licensure as provided by section [{}346-154[{}];

- (9) The department of human services on persons exempt pursuant to section 346-152 to be eligible to provide child care and receive child care subsidies as provided by section ~~[[346-152.5]]~~;
- (10) The department of human services on operators and employees of home and community-based case management agencies and operators and other adults, except for adults in care, residing in foster family homes as provided by section 346-E;
- (11) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;
- (12) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;
- (13) The department of public safety on employees and prospective employees who are directly involved with the treatment and care of persons committed to a correctional facility or who possess police powers including the power of arrest as provided by section 353C-5;
- (14) The department of commerce and consumer affairs on applicants for private detective or private guard licensure as provided by section 463-9;
- (15) Private schools and designated organizations on employees and prospective employees who may be in positions that necessitate close proximity to children; provided that private schools and designated organizations receive only indications of the states from which the national criminal history record information was provided as provided by section 302C-1;
- (16) The public library system on employees and prospective employees whose positions place them in close proximity to children as provided by section 302A-601.5;
- (17) The State or any of its branches, political subdivisions, or agencies on applicants and employees holding a position that has the same type of contact with children, dependent adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require criminal history record checks as a condition of employment as provided by section 78-2.7; and
- (18) Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law.”

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved May 18, 2004.)