
A BILL FOR AN ACT

RELATING TO HEALTH.

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

1 PART I

2 SECTION 1. The legislature finds that West Maui has a de
3 facto population of fifty thousand, and its resident population
4 is projected to double within ten years. The area lacks twenty-
5 four hour, seven days a week, urgent and extended medical care.
6 Urgent care is required for any episode of illness or injury
7 that is not immediately life-threatening and not elective but is
8 brought on unexpectedly. Extended care services refer to the
9 provision of appropriate medical care after normal physician
10 work hours, or after 8:00 p.m. on weekdays and whole or partial
11 days on the weekends and on holidays.

12 The legislature finds that West Maui patients who need
13 urgent care after hours must drive over twenty-five miles one
14 way to central Maui for care. Providing outpatient, urgent, and
15 extended medical care in West Maui could reduce the costs of
16 health care and provide needed medical services to residents of
17 the area.



1 The purpose of this Act is to appropriate funds to provide
2 outpatient, urgent, and extended medical care in West Maui.

3 SECTION 2. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$, or so
5 much thereof as may be necessary for fiscal year 2006-2007, for
6 the Hawaii health systems corporation to contract with a private
7 health care provider or a nonprofit health care provider
8 pursuant to chapter 103F, Hawaii Revised Statutes, to:

9 (1) Provide outpatient, urgent, and extended medical care
10 services after 8:00 p.m. in West Maui. Proposals
11 shall demonstrate long-term sustainability or a means
12 to reduce emergency dispatch calls to Maui memorial
13 medical center that are not truly emergencies and a
14 commitment to accept all patients; and

15 (2) Fund expenses related to the delivery of direct
16 services, including staff salaries for medical and
17 administrative personnel, and operating expenses;
18 provided that funds shall not be used for equipment.

19 The sum appropriated shall be expended by the department of
20 health for the purposes of this part.



PART II

1
2 SECTION 3. To protect the health and safety of the elderly
3 and disabled, the legislature recognizes the need to generate
4 timely and accurate background checks in the form of positive
5 fingerprint identification for persons providing care or having
6 access to residents of skilled nursing facilities, intermediate
7 care facilities, adult residential care homes, expanded adult
8 residential care homes, assisted living facilities, home health
9 agencies, hospices, adult day health centers, special treatment
10 facilities, therapeutic living programs, intermediate care
11 facilities for the mentally retarded, hospitals, rural health
12 centers, and rehabilitation agencies, including applicants for
13 licensure to any of these facilities, facility operators,
14 prospective facility employees and facility adult volunteers,
15 and, in the case of any facility operated in a private
16 residence, all adults living in the home other than the clients,
17 and service providers who have direct contact with individuals
18 receiving services who may be frail, elderly, or disabled.

19 SECTION 4. Chapter 321, Hawaii Revised Statutes, is
20 amended by adding a new section to be appropriately designated
21 and to read as follows:



1 "§321- Criminal history record checks. (a) For the
2 purposes of this section:

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

4 "Applicant" means a person or entity seeking licensure to
5 operate a healthcare facility. If the applicant is an entity,
6 the term "applicant" shall also include its principals,
7 directors, partners, managers, agents, and representatives to
8 the extent that any of these individuals will have access to or
9 contact with clients, their finances, assets, personal property,
10 medical records, or individually identifiable information.

11 "Conviction for a relevant crime" means any federal or
12 state conviction for any relevant crime as defined in this
13 section.

14 "Criminal conviction record name inquiry" means a record
15 check by name for any federal or state conviction for any
16 relevant crime as defined in this section.

17 "Department" means the department of health.

18 "Direct patient access employee" means any individual,
19 including a volunteer, who has access to a patient or resident
20 of a healthcare facility, or any provider through employment or
21 through an agreement or contract with such a facility or
22 provider. These individuals include, but are not limited to:



1 physicians, nurses, nursing assistants, home health aides,
2 therapists, activities personnel, and support staff (i.e.
3 housekeeping, dietary, etc.) who have direct access to patients
4 or patient belongings.

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

7 "Finding of patient or resident abuse" means a
8 substantiated finding by a state agency under section
9 1819(g) (1) (C) or 1919(g) (1) (C) of the Social Security Act (42
10 U.S.C. §§1395i-3(g) (1) (C) and 1396r(g) (1) (C)) or a federal
11 agency that a direct patient access employee has committed an
12 act of patient or resident abuse or neglect or has
13 misappropriated patient or resident property.

14 "Healthcare facility" means a facility or setting licensed
15 by the department where a frail, elderly, or disabled adult
16 receives care or is provided living accommodations such as a
17 skilled nursing facility, intermediate care facility, adult
18 residential care home, expanded adult residential care home,
19 assisted living facility, home health agency, hospice, adult day
20 health center, special treatment facility, therapeutic living
21 program, intermediate care facility for the mentally retarded,
22 hospital, rural health center, and rehabilitation agency.



1 "Name inquiry" means a criminal history record check
2 conducted in accordance with section 846-2.7 by utilizing the
3 name and other identifying information of the individual, in
4 lieu of a fingerprint check.

5 "Operator" means an individual or entity that is licensed
6 by the department or is seeking licensure from the department to
7 operate a healthcare facility and, therefore, is responsible for
8 the management and overall operations of that healthcare
9 facility.

10 "Relevant crime" means:

11 (1) Any offense described in 42 U.S.C. §1320a-7 (section
12 1128(a) of the Social Security Act); or

13 (2) A crime of such a serious nature or circumstance that
14 the department finds its perpetrator to pose a risk to
15 the health, safety, or well-being of a patient or
16 resident. This includes, but is not limited to,
17 murder, manslaughter, assault, sex offenses, domestic
18 violence, theft or forgery, arson, kidnapping, or
19 possession, use, sale, manufacture, or distribution of
20 dangerous drugs or controlled substances.

21 (b) The department shall adopt rules pursuant to chapter
22 91 establishing procedures to ensure standards regarding the



1 reputable and responsible character of all prospective
2 applicants, operators, direct patient access employees, and
3 adult volunteers of a healthcare facility, and, in the case of
4 any healthcare facility operated in a private residence, all
5 adults living in the home other than the clients. The
6 procedures shall include criminal history record checks in
7 accordance with section 846-2.7.

8 (c) All applicants and prospective operators shall:
9 (1) Be subject to criminal history record checks in
10 accordance with section 846-2.7; and
11 (2) Sign a waiver form stating that the department shall
12 not be liable to the applicant or prospective
13 operator.

14 (d) All prospective direct patient access employees and
15 adult volunteers of healthcare facilities and, in the case of
16 any healthcare facility operated in a private residence, all
17 adults living in the home other than the clients shall consent
18 to be fingerprinted, shall be subject to a criminal history
19 record check conducted in accordance with section 846-2.7 and
20 shall sign a waiver form stating that the department shall not
21 be liable to the employee or volunteer.



1 (e) The department shall make a name inquiry into the
2 criminal history records or conduct criminal history record
3 checks of all prospective applicants, operators, direct patient
4 access employees, and adult volunteers at the healthcare
5 facility, and, in the case of any healthcare facility operated
6 in a private residence, all adults living in the home other than
7 the clients.

8 (f) The department may revoke or suspend a current
9 license, impose penalties or fines, or deny an application for a
10 license under rules adopted pursuant to chapter 91 if the
11 applicant, operator, employee, or adult volunteer at the
12 healthcare facility or, in the case of any healthcare facility
13 operated in a private residence, any adult living in the home
14 other than the client, refuses to authorize the department to
15 conduct a criminal history record check, obtain criminal history
16 record information for verification, or consent to be
17 fingerprinted. In addition, the department may revoke or
18 suspend a current license, impose penalties or fines, or deny an
19 application for a license if the applicant, operator, direct
20 patient access employee or adult volunteer at the healthcare
21 facility, or, in the case of a healthcare facility operated in a
22 private residence, any adult living in the home other than the



1 client, has any disqualifying information. The department may
2 also revoke or suspend a current license, impose penalties or
3 finances, or deny an application for a license if the department
4 determines, based upon consideration of the criminal history
5 record information, that the applicant, operator, direct patient
6 access employee, or adult volunteer at the healthcare facility,
7 or, in the case of a healthcare facility operated in a private
8 residence, any adult living in the home other than the client,
9 is unsuitable to work or live in close proximity to the
10 residents of the healthcare facility such that the health,
11 safety, or welfare of the residents of the healthcare facility
12 could be at risk.

13 (g) Notwithstanding any other law to the contrary, for
14 purposes of this section, the department shall be exempt from
15 section 831-3.1 and need not conduct investigations,
16 notifications, or hearings under this section in accordance with
17 chapter 91.

18 (h) Subject to section 846-10.5, the fee charged by the
19 Federal Bureau of Investigation and the Hawaii criminal justice
20 data center to perform criminal history record checks may be
21 passed on to all applicants, operators, direct patient access
22 employees, and adult volunteers of a healthcare facility and, in



1 the case of a facility operated in a private residence, all
2 adults living in the home other than the clients who are subject
3 to criminal history record checks in accordance with section
4 846-2.7.

5 (i) The department, in obtaining and relying upon the
6 criminal history record checks, is presumed to be acting in good
7 faith and shall be immune from civil liability for taking or
8 recommending action based upon the criminal history record
9 information. The good faith presumption may be rebutted upon a
10 showing by the person or entity of a lack of good faith, and
11 proof by a preponderance of the evidence, that the department
12 relied upon information or opinion that it knew was false or
13 misleading.

14 (j) Any applicant or operator who receives information
15 from the department relating to a criminal history record check
16 of a direct patient access employee or adult volunteer or, in
17 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 taking or recommending action based upon the
21 department's recommendation or direction. Nothing in this



1 section shall affect rights, obligations, remedies, liabilities,
2 or standards of proof under chapters 368 and 378."

3 SECTION 5. Chapter 346, Hawaii Revised Statutes, is
4 amended by adding to part IV a new section to be appropriately
5 designated and to read as follows:

6 "§346- Criminal history record checks. (a) For the
7 purposes of this section:

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

11 "Criminal history record name inquiry" means a search by
12 name, and other identifying information, using the state
13 computerized criminal history record information system.

14 "Department" means the department of human services.

15 "Name inquiry" means a criminal history record check
16 conducted by utilizing the name and other identifying
17 information of the individual, in lieu of a fingerprint check.

18 "Relevant crime" means:

19 (1) Any offense described in 42 U.S.C. §1320a-7 (section
20 1128(a) of the Social Security Act); or

21 (2) A crime of such a serious nature or circumstance that
22 the department finds its perpetrator to pose a risk to



1 the health, safety, or well-being of a patient or
 2 resident. This includes, but is not limited to,
 3 murder, manslaughter, assault, sex offenses, domestic
 4 violence, theft or forgery, arson, kidnapping, or
 5 possession, use, sale, manufacture, or distribution of
 6 dangerous drugs or controlled substances.

7 (b) The department shall adopt rules pursuant to chapter
 8 91 establishing procedures to ensure standards regarding the
 9 reputable and responsible character of service providers who
 10 have direct contact with individuals providing services under
 11 this part. These procedures shall include criminal history
 12 record checks conducted in accordance with section 846-2.7 on
 13 individuals including:

14 (1) Licensed adult day care center operators, employees,
 15 new employees, subcontracted service providers and
 16 their employees, and adult volunteers;

17 (2) Purchase of service contracted and subcontracted
 18 service providers and their employees serving clients
 19 of the adult and community care services branch;

20 (3) Foster grandparent program, senior companion program,
 21 and respite companion program participants; and



1 (4) Contracted and subcontracted service providers and
2 their employees and new employees who provide home and
3 community-based services under section 1915(c) of the
4 Social Security Act (42 U.S.C. §1396n(d)).

5 (c) Individuals identified in subsection (b) shall:

6 (1) Meet the standards regarding the reputable and
7 responsible character of service providers;

8 (2) Be subject to criminal history record checks in
9 accordance with section 846-2.7; and

10 (3) Sign a waiver stating that the department shall not be
11 liable to the individual.

12 (d) The department shall conduct criminal history record
13 checks in accordance with section 846-2.7 on individuals
14 identified in subsection (b) for the first two years that an
15 individual identified in subsection (b) is required to have
16 those checks, and shall conduct a criminal history record name
17 inquiry into the state criminal history records annually or
18 biennially thereafter.

19 (e) The department may take appropriate action if it finds
20 that the criminal history of the individual identified under
21 subsection (a) may pose a risk to the health, welfare, and
22 safety of service recipients. Appropriate action may include:



1 (1) Denying a certificate of approval to operate an adult
2 day care center; or

3 (2) Refusing to use an individual as a service provider.

4 (f) Notwithstanding any other law to the contrary, for
5 purposes of this section, the department shall be exempt from
6 section 831-3.1 and need not conduct investigations,
7 notifications, or hearings under this section in accordance with
8 chapter 91.

9 (g) Subject to section 846-10.5, the costs of criminal
10 history record checks or criminal history record name inquires
11 may be passed on to the individual who is subject to a criminal
12 history record check conducted in accordance with section
13 846-2.7.

14 (h) The department, in obtaining and relying upon the
15 results of the state criminal history record checks, or criminal
16 history record name inquires is presumed to be acting in good
17 faith and shall be immune from civil liability for taking or
18 recommending action based upon the criminal history record
19 information. The good faith presumption may be rebutted upon a
20 showing by the person or entity alleging a lack of good faith,
21 and by a preponderance of the evidence, that the department



1 relied upon information or opinion that it knew was false or
2 misleading.

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

6 SECTION 6. Section 378-2.5, Hawaii Revised Statutes, is
7 amended by amending subsection (d) to read as follows:

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

17 (1) The State or any of its branches, political
18 subdivisions, or agencies pursuant to section 831-3.1
19 and section 78-2.7;

20 (2) The department of education pursuant to section
21 302A-601.5;



- 1 (3) The department of health with respect to employees,
2 providers, or subcontractors in positions that place
3 them in direct contact with clients when providing
4 non-witnessed direct mental health services pursuant
5 to section 321-171.5;
- 6 (4) The judiciary pursuant to section 571-34;
- 7 (5) The counties pursuant to section 846-2.7;
- 8 (6) Armed security services pursuant to section 261-17(b);
- 9 (7) Providers of a developmental disabilities domiciliary
10 home pursuant to section 333F-22;
- 11 (8) Private schools pursuant to section 378-3(8) and
12 section 302C-1;
- 13 (9) Financial institutions in which deposits are insured
14 by a federal agency having jurisdiction over the
15 financial institution pursuant to section 378-3(9);
- 16 (10) Detective agencies and security guard agencies
17 pursuant to sections 463-6(b) and 463-8(b);
- 18 (11) Employers in the business of insurance pursuant to
19 section 431:2-201.3;
- 20 (12) Employers of individuals or supervisors of individuals
21 responsible for screening passengers or property under
22 49 U.S.C. §44901 or individuals with unescorted access



1 to an aircraft of an air carrier or foreign carrier or
2 in a secured area of an airport in the United States
3 pursuant to 49 U.S.C. §44936(a);

4 (13) The department of human services pursuant to [~~section~~]
5 sections 346- and 352-5.5;

6 (14) The public library system pursuant to section
7 302A-601.5;

8 (15) The department of public safety pursuant to section
9 353C-5;

10 (16) The board of directors of a cooperative housing
11 corporation or the manager of a cooperative housing
12 project pursuant to section 421I-12; [~~and~~]

13 (17) The board of directors of an association of apartment
14 owners, or the manager of a condominium project
15 pursuant to section 514A-82.1[~~-~~]; and

16 (18) The department of health pursuant to section
17 321- ."

18 SECTION 7. Section 846-2.7, Hawaii Revised Statutes, is
19 amended by amending subsection (b) to read as follows:

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



1 (1) The department of health on operators of adult foster
2 homes or developmental disabilities domiciliary homes
3 and their employees, as provided by section 333F-22;

4 (2) The department of health on prospective employees,
5 persons seeking to serve as providers, or
6 subcontractors in positions that place them in direct
7 contact with clients when providing non-witnessed
8 direct mental health services as provided by section
9 321-171.5;

10 (3) The department of health on all applicants for
11 licensure for, operators for, and prospective
12 employees, and volunteers at one or more of the
13 following: skilled nursing facility, intermediate
14 care facility, adult residential care home, expanded
15 adult residential care homes, assisted living
16 facility, home health agency, hospice, adult day
17 health center, special treatment facility, therapeutic
18 living program, intermediate care facility for the
19 mentally retarded, hospital, rural health center and
20 rehabilitation agency, and, in the case of any of the
21 above-related facilities operating in a private



1 residence, on any adult living in the facility other
2 than the client as provided by section 321- ;

3 ~~[(3)]~~ (4) The department of education on employees,
4 prospective employees, and teacher trainees in any
5 public school in positions that necessitate close
6 proximity to children as provided by section
7 302A-601.5;

8 ~~[(4)]~~ (5) The counties on employees and prospective
9 employees who may be in positions that place them in
10 close proximity to children in recreation or child
11 care programs and services;

12 ~~[(5)]~~ (6) The county liquor commissions on applicants for
13 liquor licenses as provided by section 281-53.5;

14 ~~[(6)]~~ (7) The department of human services on operators and
15 employees of child caring institutions, child placing
16 organizations, and foster boarding homes as provided
17 by section 346-17;

18 ~~[(7)]~~ (8) The department of human services on prospective
19 adoptive parents as established under section
20 346-19.7;

21 ~~[(8)]~~ (9) The department of human services on applicants to
22 operate child care facilities, prospective employees



1 of the applicant, and new employees of the provider
2 after registration or licensure as provided by section
3 346-154;

4 [~~+9~~] (10) The department of human services on persons
5 exempt pursuant to section 346-152 to be eligible to
6 provide child care and receive child care subsidies as
7 provided by section 346-152.5;

8 [~~+10~~] (11) The department of human services on operators
9 and employees of home and community-based case
10 management agencies and operators and other adults,
11 except for adults in care, residing in foster family
12 homes as provided by section 346-335;

13 [~~+11~~] (12) The department of human services on staff
14 members of the Hawaii youth correctional facility as
15 provided by section 352-5.5;

16 [~~+12~~] (13) The judiciary on employees and applicants at
17 detention and shelter facilities as provided by
18 section 571-34;

19 [~~+13~~] (14) The department of public safety on employees and
20 prospective employees who are directly involved with
21 the treatment and care of persons committed to a
22 correctional facility or who possess police powers



1 including the power of arrest as provided by section
2 353C-5;

3 [~~(14)~~] (15) The department of commerce and consumer affairs
4 on applicants for private detective or private guard
5 licensure as provided by section 463-9;

6 [~~(15)~~] (16) Private schools and designated organizations on
7 employees and prospective employees who may be in
8 positions that necessitate close proximity to
9 children; provided that private schools and designated
10 organizations receive only indications of the states
11 from which the national criminal history record
12 information was provided as provided by section
13 302C-1;

14 [~~(16)~~] (17) The public library system on employees and
15 prospective employees whose positions place them in
16 close proximity to children as provided by section
17 302A-601.5;

18 [~~(17)~~] (18) The State or any of its branches, political
19 subdivisions, or agencies on applicants and employees
20 holding a position that has the same type of contact
21 with children, dependent adults, or persons committed
22 to a correctional facility as other public employees



1 who hold positions that are authorized by law to
2 require criminal history record checks as a condition
3 of employment as provided by section 78-2.7; [~~and~~]
4 (19) The department of human services on licensed adult day
5 care center operators, employees, new employees,
6 subcontracted service providers and their employees,
7 and adult volunteers as provided by section 346- ;
8 (20) The department of human services on purchase of
9 service contracted and subcontracted service providers
10 and their employees serving clients of the adult and
11 community care services branch, as provided by section
12 346- ;
13 (21) The department of human services on foster grandparent
14 program, senior companion program, and respite
15 companion program participants as provided by section
16 346- ;
17 (22) The department of human services on contracted and
18 subcontracted service providers and their current and
19 prospective employees that provide home and community-
20 based services under section 1915(c) of the Social
21 Security Act (42 U.S.C. §1396n(c)), as provided by
22 section 346- ; and



1 [~~18~~] (23) Any other organization, entity, or the State,
2 its branches, political subdivisions, or agencies as
3 may be authorized by state law."

4 SECTION 8. There shall be established a working committee
5 of five members with representatives from the department of
6 health, department of human services, provider organizations and
7 community, as appointed by the directors of health and human
8 services to meet minimally on a quarterly basis to review and
9 evaluate the process undertaken by the departments in effecting
10 criminal history record checks and provide recommendations to
11 the directors of the departments as relevant. Members shall
12 serve a term of two years which may be extended at the
13 discretion of the directors of the departments and shall report
14 to departmental administrators as designated by the directors.

15 SECTION 9. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 10. This Act shall take effect on July 1, 2050.



Report Title:

West Maui; Outpatient Urgent & Extended Medical Care; Background Checks

Description:

Appropriates funds to DOH to provide outpatient urgent and extended medical care after normal physician hours in West Maui. Requires criminal history checks on persons providing care or having access to residents of healthcare facilities. (SD2)

