
A BILL FOR AN ACT

RELATING TO HAWAII HEALTH SYSTEMS CORPORATION BACKGROUND CHECKS.

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

1 SECTION 1. SECTION 1. Chapter 323F, Hawaii Revised
2 Statutes, is amended by adding a new section to be appropriately
3 designated and to read as follows:

4 "~~§323F-~~ Criminal history record checks. (a) The Hawaii
5 health systems corporation shall develop procedures for
6 obtaining verifiable information regarding the criminal history
7 of persons who are employed or seeking employment, or are
8 current or prospective contractors, providers or volunteers in
9 any of the corporation's health facilities. The procedures shall
10 include but not be limited to criminal history record checks in
11 accordance with section 846-2.7.

12 The Hawaii criminal justice data center may assess
13 providers and contractors a reasonable fee for criminal history
14 record checks performed. Providers and contractors shall be
15 responsible for payment to the Hawaii criminal justice data
16 center of the fee for the criminal history records checks.

1 (b) Except as otherwise specified, any person who is
2 employed or who seeks employment with Hawaii health systems
3 corporation, or is a current or prospective contractor,
4 provider, or volunteer in any of the corporation's health
5 facilities may be required to provide to the corporation:

6 (1) A sworn statement indicating whether or not the
7 person has ever been convicted of an offense for
8 which incarceration was a sentencing option, and
9 the details thereof;

10 (2) Written consent for the corporation to obtain criminal
11 history record check information for verification; and

12 (3) Written consent to be fingerprinted for the purpose
13 of a criminal history record check.

14 Information obtained pursuant to subsection (a) and this
15 subsection shall be used exclusively by the Hawaii health
16 systems corporation for the purposes of determining whether a
17 person is suitable for working or providing services in any of
18 the corporation's health facilities. All such decisions shall be
19 subject to federal laws and regulations currently or hereafter
20 in effect.

21 (c) Any Hawaii health systems corporation employee,
22 applicant for employment, or current or prospective contractor,

1 provider, or volunteer, who has been convicted of a criminal
2 offense for which incarceration is a sentencing option, may be
3 terminated, not hired, released, or not be utilized. This
4 action will be based on the corporation's analysis of whether
5 the nature and circumstances of the crime may pose a risk to the
6 health, safety, or well-being of patients and residents in its
7 health facilities.

8 (d) For the purposes of this section:

9 "Contractor" means any organization or individual that
10 enters into a contract or agreement to provide services to the
11 patients or residents in any of the Hawaii health systems
12 corporation's health facilities.

13 "Criminal history record check" means an examination of an
14 individual's criminal history records by means including, but
15 not limited to, fingerprint analysis and name inquiry into state
16 and national criminal history record files.

17 "Provider" means any organization or individual that
18 currently provides or intends to enter into a contract or
19 agreement to provide services to the patients or residents in
20 any of the Hawaii health systems corporation's health facilities,

1 or is a student in any program at any of Hawaii health systems
2 corporation's health facilities.

3 (e) Notwithstanding any other law to the contrary, for
4 purposes of this section, the Hawaii health systems corporation
5 shall be exempt from section 831-3.1 and need not conduct
6 investigations, notifications, or hearing under this section in
7 accordance with chapter 91."

8 SECTION 2. Section 378-2.5, Hawaii Revised Statutes, is
9 amended by amending subsection (d) to read as follows:

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

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

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- 1 (2) The department of education pursuant to section
2 302A-601.5;
- 3 (3) The department of health with respect to employees,
4 providers, or subcontractors in positions that place
5 them in direct contact with clients when providing non-
6 witnessed direct mental health services pursuant to
7 section 321-171.5;
- 8 (4) The judiciary pursuant to section 571-34;
- 9 (5) The counties pursuant to section 846-2.7;
- 10 (6) Armed security services pursuant to section 261-17(b);
- 11 (7) Providers of a developmental disabilities domiciliary
12 home pursuant to section 333F-22;
- 13 (8) Private schools pursuant to section 378-3(8) and
14 section 302C-1;
- 15 (9) Financial institutions in which deposits are insured by
16 a federal agency having jurisdiction over the financial
17 institution pursuant to section 378-3(9);
- 18 (10) Detective agencies and security guard agencies pursuant
19 to sections 463-6(b) and 463-8(b);
- 20 (11) Employers in the business of insurance pursuant to
21 section 431:2-201.3;

- 1 (12) Employers of individuals or supervisors of individuals
2 responsible for screening passengers or property under
3 49 U.S.C. §44901 or individuals with unescorted access
4 to an aircraft of an air carrier or foreign carrier or
5 in a secured area of an airport in the United States
6 pursuant to 49 U.S.C. §44936(a);
- 7 (13) The department of human services pursuant to sections
8 346-97 and 352-5.5;
- 9 (14) The public library system pursuant to section
10 302A-601.5;
- 11 (15) The department of public safety pursuant to section
12 353C-5;
- 13 (16) The board of directors of a cooperative housing
14 corporation or the manager of a cooperative housing
15 project pursuant to section 421I-12;
- 16 (17) The board of directors of an association of apartment
17 owners, or the manager of a condominium project
18 pursuant to section 514B-133; ~~and~~
- 19 (18) The department of health pursuant to section 321-
20 15.2[-]; and
- 21 (19) The Hawaii health systems corporation with respect to
22 employees, applicants, and current or prospective

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1 contractors, providers, or volunteers, pursuant to
2 section 323F."

3 SECTION 3. Section 846-2.7, Hawaii Revised Statutes, is
4 amended by amending subsection (b) to read as follows:

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

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

9 (2) The department of health on prospective employees,
10 persons seeking to serve as providers, or
11 subcontractors in positions that place them in direct
12 contact with clients when providing non-witnessed
13 direct mental health services as provided by section
14 321-171.5;

15 (3) The department of health on all applicants for
16 licensure for, operators for, and prospective
17 employees, and volunteers at one or more of the
18 following: skilled nursing facility, intermediate care
19 facility, adult residential care home, expanded adult
20 residential care homes, assisted living facility, home
21 health agency, hospice, adult day health center,
22 special treatment facility, therapeutic living program,

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1 intermediate care facility for the mentally retarded,
2 hospital, rural health center and rehabilitation
3 agency, and, in the case of any of the above-related
4 facilities operating in a private residence, on any
5 adult living in the facility other than the client as
6 provided by section 321-15.2;

7 (4) The department of education on employees, prospective
8 employees, and teacher trainees in any public school in
9 positions that necessitate close proximity to children
10 as provided by section 302A-601.5;

11 (5) The counties on employees and prospective employees who
12 may be in positions that place them in close proximity
13 to children in recreation or child care programs and
14 services;

15 (6) The county liquor commissions on applicants for liquor
16 licenses as provided by section 281-53.5;

17 (7) The department of human services on operators and
18 employees of child caring institutions, child placing
19 organizations, and foster boarding homes as provided by
20 section 346-17;

21 (8) The department of human services on prospective
22 adoptive parents as established under section 346-19.7;

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- 1 (9) The department of human services on applicants to
2 operate child care facilities, prospective employees of
3 the applicant, and new employees of the provider after
4 registration or licensure as provided by section 346-
5 154;
- 6 (10) The department of human services on persons exempt
7 pursuant to section 346-152 to be eligible to provide
8 child care and receive child care subsidies as provided
9 by section 346-152.5;
- 10 (11) The department of human services on operators and
11 employees of home and community-based case management
12 agencies and operators and other adults, except for
13 adults in care, residing in foster family homes as
14 provided by section 346-335;
- 15 (12) The department of human services on staff members of
16 the Hawaii youth correctional facility as provided by
17 section 352-5.5;
- 18 (13) The department of human services on employees,
19 prospective employees, and volunteers of contracted
20 providers and subcontractors in positions that place
21 them in close proximity to youth when providing

- 1 services on behalf of the office or the Hawaii youth
2 correctional facility as provided by section 352D-4.3;
- 3 (14) The judiciary on employees and applicants at detention
4 and shelter facilities as provided by section 571-34;
- 5 (15) The department of public safety on employees and
6 prospective employees who are directly involved with
7 the treatment and care of persons committed to a
8 correctional facility or who possess police powers
9 including the power of arrest as provided by section
10 353C-5;
- 11 (16) The department of commerce and consumer affairs on
12 applicants for private detective or private guard
13 licensure as provided by section 463-9;
- 14 (17) Private schools and designated organizations on
15 employees and prospective employees who may be in
16 positions that necessitate close proximity to children;
17 provided that private schools and designated
18 organizations receive only indications of the states
19 from which the national criminal history record
20 information was provided as provided by section 302C-1;

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1 (18) The public library system on employees and prospective
2 employees whose positions place them in close proximity
3 to children as provided by section 302A-601.5;

4 (19) The State or any of its branches, political
5 subdivisions, or agencies on applicants and employees
6 holding a position that has the same type of contact
7 with children, dependent adults, or persons committed
8 to a correctional facility as other public employees
9 who hold positions that are authorized by law to
10 require criminal history record checks as a condition
11 of employment as provided by section 78-2.7;

12 (20) The department of human services on licensed adult day
13 care center operators, employees, new employees,
14 subcontracted service providers and their employees,
15 and adult volunteers as provided by section 346-97;

16 (21) The department of human services on purchase of service
17 contracted and subcontracted service providers and
18 their employees serving clients of the adult and
19 community care services branch, as provided by section
20 346-97;

21 (22) The department of human services on foster grandparent
22 program, senior companion program, and respite

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1 companion program participants as provided by section
2 346-97;

3 (23) The department of human services on contracted and
4 subcontracted service providers and their current and
5 prospective employees that provide home and community-
6 based services under Section 1915(c) of the Social
7 Security Act (42 U.S.C. §1396n(c)), as provided by
8 section 346-97; [~~and~~]

9 (24) The Hawaii health systems corporation on employees,
10 applicants seeking employment, or current and
11 prospective volunteers, providers, or contractors in
12 any of the corporation's health facilities as provided
13 by section 323F; and

14 [~~24~~] (25) Any other organization, entity, or the State, its
15 branches, political subdivisions, or agencies as may be
16 authorized by state law."

17 SECTION 4. There is appropriated out of the state criminal
18 history record improvement revolving fund the sum of \$20,000, or
19 so much thereof as may be necessary for fiscal year 2008-2009,
20 for purposes of this Act. The sum appropriated shall be
21 expended by the department of the attorney general.

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

3 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY: Calvin K. Day

BY REQUEST

JAN 22 2008

Report Title:

Hawaii Health Systems Corporation Background Checks

Description:

Authorize the Hawaii Health Systems Corporation to conduct FBI criminal history record checks through the Hawaii Criminal Justice Data Center on employees, applicants, current or prospective contractors, providers, or volunteers.

JUSTIFICATION SHEET

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO HAWAII HEALTH SYSTEMS CORPORATION BACKGROUND CHECKS.

PURPOSE: Authorize the Hawaii health systems corporation (HHSC) to request criminal history checks through the Federal Bureau of Investigation and through the Hawaii Criminal Justice Data Center, on employees or applicants, as well as current or prospective contractors, providers, or volunteers, in order to comply with federal law and to ensure the safety of its patients.

MEANS: Add a new section to chapter 323F and amend sections 378-2.5(d) and 846-2.7(b), Hawaii Revised Statutes.

JUSTIFICATION: Currently, HHSC is authorized by 42 U.S.C. section 5119 et seq. to conduct FBI criminal history background checks on employees and applicants who will have direct contact with children, the elderly and disabled patients. HHSC is seeking to expand its authority to conduct background checks through the Federal Bureau of Investigation and through the Hawaii Criminal Justice Data Center, on all employees and applicants, including current and potential contractors, providers and volunteers who provide services to HHSC, regardless of whether they will be having direct contact with protected categories of patients. All patients should be afforded this protection.

Impact on the public: Conducting criminal background checks on HHSC employees and applicants will promote the safety of its patients and employees.

Impact on the department and other agencies:
Same as above.

GENERAL FUND: None.

OTHER FUNDS: Special Fund: state criminal history record improvement revolving fund.

PPBS PROGRAM: ATG-231.
DESIGNATION:

OTHER AFFECTED AGENCIES: Hawaii Criminal Justice Data Center.

EFFECTIVE DATE: Upon approval.