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

4           "§323F-       Criminal history record checks. (a) The  
5 corporation shall develop procedures for obtaining verifiable  
6 information regarding the criminal history of persons who are  
7 employed or seeking employment, or are current or prospective  
8 contractors, providers, or volunteers in any of the  
9 corporation's health facilities. The procedures shall include  
10 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. The  
17 corporation shall be responsible for payment to the Hawaii

1 criminal justice data center of the fee for the criminal history  
2 record checks for employees and volunteers.

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

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

12 (2) Written consent for the corporation to obtain criminal  
13 history record check information for verification;  
14 and

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

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

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

10       (d) Notwithstanding any other law to the contrary, for  
11 purposes of this section, the corporation shall be exempt from  
12 section 831-3.1 and need not conduct investigations,  
13 notifications, or hearings under this section in accordance with  
14 chapter 91.

15       (e) For the purposes of this section:

16       "Contractor" means any organization or individual that  
17 enters into a contract or agreement to provide services to the  
18 patients or residents in any of the corporation's health  
19 facilities.

20       "Criminal history record check" means an examination of an  
21 individual's criminal history records by means including but not

1 limited to fingerprint analysis and name inquiry into state and  
2 national criminal history record files.

3 "Provider" means any organization or individual that  
4 currently provides or intends to enter into a contract or  
5 agreement to provide services to the patients or residents in  
6 any of the corporation's health facilities, or is a student in  
7 any program at any of the corporation's health facilities."

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 sections 78-2.7  
21 and 831-3.1;

- 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
- 6                   non-witnessed direct mental health services pursuant
- 7                   to 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 sections 302C-1 and 378-
- 14                   3(8);
- 15          (9) Financial institutions in which deposits are insured
- 16                   by a federal agency having jurisdiction over the
- 17                   financial institution pursuant to section 378-3(9);
- 18          (10) Detective agencies and security guard agencies
- 19                   pursuant 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 title 49 [U.S.C. ~~§44901~~] United States Code section  
4 44901 or individuals with unescorted access to an  
5 aircraft of an air carrier or foreign carrier or in a  
6 secured area of an airport in the United States  
7 pursuant to title 49 [U.S.C. ~~§44936(a)~~] United States  
8 Code section 44936(a);
- 9 (13) The department of human services pursuant to sections  
10 346-97 and 352-5.5;
- 11 (14) The public library system pursuant to section  
12 302A-601.5;
- 13 (15) The department of public safety pursuant to section  
14 353C-5;
- 15 (16) The board of directors of a cooperative housing  
16 corporation or the manager of a cooperative housing  
17 project pursuant to section 421I-12;
- 18 (17) The board of directors of an association of owners  
19 under chapter 514A or 514B, or the manager of a  
20 condominium project pursuant to section 514A-82.1 or  
21 514B-133; [and]

1 (18) The department of health pursuant to section 321-  
2 15.2[-]; and

3 (19) The Hawaii health systems corporation with respect  
4 to employees, applicants seeking employment, and  
5 current or prospective contractors, providers, or  
6 volunteers, pursuant to section 323F- ."

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

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

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

13 (2) The department of health on prospective employees,  
14 persons seeking to serve as providers, or  
15 subcontractors in positions that place them in direct  
16 contact with clients when providing non-witnessed  
17 direct mental health services as provided by section  
18 321-171.5;

19 (3) The department of health on all applicants for  
20 licensure for, operators for, and prospective  
21 employees, and volunteers at one or more of the  
22 following: skilled nursing facility, intermediate

1 care facility, adult residential care home, expanded  
2 adult residential care home, assisted living facility,  
3 home health agency, hospice, adult day health center,  
4 special treatment facility, therapeutic living  
5 program, intermediate care facility for the mentally  
6 retarded, hospital, rural health center and  
7 rehabilitation agency, and, in the case of any of the  
8 above-related facilities operating in a private  
9 residence, on any adult living in the facility other  
10 than the client as provided by section 321-15.2;

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

15 (5) The counties on employees and prospective employees  
16 who may be in positions that place them in close  
17 proximity to children in recreation or child care  
18 programs and services;

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

21 (7) The department of human services on operators and  
22 employees of child caring institutions, child placing



- 1 organizations, and foster boarding homes as provided  
2 by section 346-17;
- 3 (8) The department of human services on prospective  
4 adoptive parents as established under section  
5 346-19.7;
- 6 (9) The department of human services on applicants to  
7 operate child care facilities, prospective employees  
8 of the applicant, and new employees of the provider  
9 after registration or licensure as provided by section  
10 346-154;
- 11 (10) The department of human services on persons exempt  
12 pursuant to section 346-152 to be eligible to provide  
13 child care and receive child care subsidies as  
14 provided by section 346-152.5;
- 15 (11) The department of human services on operators and  
16 employees of home and community-based case management  
17 agencies and operators and other adults, except for  
18 adults in care, residing in foster family homes as  
19 provided by section 346-335;
- 20 (12) The department of human services on staff members of  
21 the Hawaii youth correctional facility as provided by  
22 section 352-5.5;

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

- 1 from which the national criminal history record  
2 information was provided as provided by section  
3 302C-1;
- 4 (18) The public library system on employees and prospective  
5 employees whose positions place them in close  
6 proximity to children as provided by section 302A-  
7 601.5;
- 8 (19) The State or any of its branches, political  
9 subdivisions, or agencies on applicants and employees  
10 holding a position that has the same type of contact  
11 with children, vulnerable adults, or persons committed  
12 to a correctional facility as other public employees  
13 who hold positions that are authorized by law to  
14 require criminal history record checks as a condition  
15 of employment as provided by section 78-2.7;
- 16 (20) The department of human services on licensed adult day  
17 care center operators, employees, new employees,  
18 subcontracted service providers and their employees,  
19 and adult volunteers as provided by section 346-97;
- 20 (21) The department of human services on purchase of  
21 service contracted and subcontracted service providers  
22 and their employees serving clients of the adult and

1 community care services branch, as provided by section  
2 346-97;

3 (22) The department of human services on foster grandparent  
4 program, retired and senior volunteer program, senior  
5 companion program, and respite companion program  
6 participants as provided by section 346-97;

7 (23) The department of human services on contracted and  
8 subcontracted service providers and their current and  
9 prospective employees that provide home and community-  
10 based services under Section 1915(c) of the Social  
11 Security Act (Title 42 United States Code Section  
12 1396n(c)), or under any other applicable section or  
13 sections of the Social Security Act for the purposes  
14 of providing home and community-based services, as  
15 provided by section 346-97;

16 (24) The department of commerce and consumer affairs on  
17 proposed directors and executive officers of a bank,  
18 savings bank, savings and loan association, trust  
19 company, and depository financial services loan  
20 company as provided by section 412:3-201;

21 (25) The department of commerce and consumer affairs on  
22 proposed directors and executive officers of a

1 nondepository financial services loan company as  
2 provided by section 412:3-301;

3 (26) The department of commerce and consumer affairs on the  
4 original chartering applicants and proposed executive  
5 officers of a credit union as provided by section  
6 412:10-103;

7 ~~[(27)]~~ The department of commerce and consumer affairs on:

8 (A) Each principal of every non-corporate applicant  
9 for a money transmitter license; and

10 (B) The executive officers, key shareholders, and  
11 managers in charge of a money transmitter's  
12 activities of every corporate applicant for a  
13 money transmitter license,

14 as provided by section 489D-9; ~~[and]~~

15 (28) The Hawaii health systems corporation on employees,  
16 applicants seeking employment, or current and  
17 prospective volunteers, providers, or contractors in  
18 any of the corporation's health facilities as provided  
19 by section 323F- ; and

20 ~~[(28)]~~ (29) Any other organization, entity, or the State, its  
21 branches, political subdivisions, or agencies as may  
22 be authorized by state law."

H.B. NO. 1123

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

3 SECTION 5. This Act shall take effect on July 1, 2009;  
4 provided that section 846-2.7(b), Hawaii Revised Statutes, as  
5 set forth in section 3 of this Act shall not be superseded by  
6 section 28 of Act 154, Session Laws of Hawaii 2008.

7  
8  
9

INTRODUCED BY: Calvin K. Jay

BY REQUEST

JAN 26 2009

**Report Title:**

Hawaii Health Systems Corporation; Background Checks

**Description:**

Authorizes 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 and applicants, as well as current and prospective contractors, providers, and 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: None.

PPBS PROGRAM  
DESIGNATION:

OTHER AFFECTED  
AGENCIES: Department of the Attorney General-Hawaii  
Criminal Justice Data Center.

EFFECTIVE DATE: July 1, 2009.