

ACT 53

H.B. NO. 1649

A Bill for an Act Relating to Services for Persons with Developmental Disabilities or Mental Retardation.

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

SECTION 1. Chapter 333F, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§333F- Criminal history record checks.** (a) The department shall adopt rules pursuant to chapter 91 to assure the reputable and responsible character of an applicant to operate an adult foster home or developmental disabilities domiciliary home, of existing providers and their employees, of current and prospective employees of the applicant, and of new employees of the provider after certification or licensure, which shall provide for, but not be limited to, criminal history record checks.

(b) For the purposes of this section, “developmental disabilities domiciliary homes” means any facility licensed under section 321-15.9 that provides twenty-four hour supervision or care, excluding licensed nursing care, for a fee, to not more than five adults with mental retardation or developmental disabilities as defined in this chapter; and “adult foster homes” shall be as defined under section 321-11.2.

(c) An applicant to operate an adult foster home or developmental disabilities domiciliary home shall submit to the department, with the applicant’s application for certification or licensure, statements signed under penalty of perjury by the applicant and all current and prospective employees of the applicant indicating whether the applicant or any of the current or prospective employees of the applicant have ever been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less and providing consent to the department to conduct a criminal history record check and to obtain other criminal history record information for verification. The applicant and current or prospective employees of the applicant shall also be fingerprinted for the purpose of a national criminal history record check.

(d) Each existing provider or provider shall submit to the department statements signed under penalty of perjury by all employees hired after the initial licensure or certification of the existing provider or provider indicating whether any of the employees has ever been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less and providing consent to the department to conduct a criminal history record check and obtain other criminal history

record information for verification. The employees shall also be fingerprinted for the purpose of the national criminal history record check.

(e) The department is authorized to obtain criminal history record information through the Hawaii criminal justice data center on existing providers and their employees upon their next licensure or certification renewal date, and on any applicant and all current and prospective employees of the applicant including all new employees after the applicant is issued a certification or license under this chapter. The Hawaii criminal justice data center may assess the existing providers and their employees, applicants, current or prospective employees, or new employees of the applicant a reasonable fee for each criminal history record check performed.

(f) Once fingerprints are on file, yearly licensure or certification renewals for providers and employees will require only state criminal history record checks through the Hawaii criminal justice data center.

(g) The department may revoke a current license or certification or deny an application for a license or certification to operate an adult foster home or developmental disabilities domiciliary home under rules adopted pursuant to chapter 91 if the existing provider or employee of an existing provider, applicant, current or prospective employee of the applicant, provider, or new employee of the provider refuses to submit to the department statements indicating criminal convictions, refuses to provide consent to the department to conduct a criminal history record check or obtain other criminal history record information for verification, refuses to be fingerprinted, has been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less; or if the department finds that the criminal history record of the existing provider or employee of an existing provider, applicant, current or prospective employee of the applicant, provider, or new employee of the provider may pose a risk to the health, safety, or well-being of persons with developmental disabilities or mental retardation living in the home."

SECTION 2. Section 333F-1, Hawaii Revised Statutes, is amended by adding seven new definitions to be appropriately inserted and to read as follows:

"Applicant" means every person applying for a license to become a provider of an adult foster home or developmental disabilities domiciliary home.

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

"Criminal history record information" means criminal history information received from state and national criminal history record checks.

"Current employee" means every person currently employed by an applicant, who will become an adult foster or developmental disabilities domiciliary home caregiver once the applicant is approved to be a provider by the department.

"Existing provider" means every person licensed or certified as an adult foster or developmental disabilities domiciliary home provider before the effective date of section 333F-\_\_\_\_\_.

"Prospective employee" means every person seeking employment as a caregiver for an applicant.

"Provider" means the person who is issued the license or certificate of registration, as the case may be, by the department to provide care in an adult foster or developmental disabilities domiciliary home."

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SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved May 6, 1994.)

### **Note**

1. Edited pursuant to HRS §23G-16.5.