

**RULES OF
GEORGIA DEPARTMENT OF COMMUNITY HEALTH**

**CHAPTER 111-8
HEALTHCARE FACILITY REGULATION**

**SUBJECT 111-8-12
RULES AND REGULATIONS FOR CRIMINAL BACKGROUND
CHECKS**

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Rule 111-8-12-.03 Definitions

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In these rules, unless the context otherwise requires, the terms set forth herein shall mean the following:

(1) "Abuse" means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish. Such term includes the deprivation by an individual of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being. Such term includes verbal abuse, sexual abuse, physical abuse, and mental abuse, including abuse facilitated or enabled through the use of technology.

(2) "Conviction" means a finding or verdict of guilty or a plea of guilty regardless of whether an appeal of the conviction has been sought.

(3) "Crime" means commission of:

(a) Any of the following offenses:

1. A violation of O.C.G.A. § 16-5-70;
2. A violation of O.C.G.A. § 16-5-101;
3. A violation of O.C.G.A. § 16-5-102;
4. A violation of O.C.G.A. § 16-6-4;
5. A violation of O.C.G.A. § 16-6-5;
6. A violation of O.C.G.A. § 16-6-5.1; or
7. A violation of O.C.G.A. § 30-5-8;

(b) A felony violation of:

1. Chapter 5, 6, 8, 9, or 13 of O.C.G.A. Title 16;
2. O.C.G.A. § 16-4-1;
3. O.C.G.A. § 16-7-2; or
4. O.C.G.A. § 31-7-12.1; or

(c) Any other offense committed in another jurisdiction which, if committed in this state, would be deemed to constitute an offense identified in this paragraph without regard to its designation elsewhere.

(4) "Criminal background check" means a search of the criminal records maintained by the Georgia Crime Information Center and the Federal Bureau of Investigation to determine whether an owner, applicant for employment, or employee has a criminal record.

(5) "Criminal record" means any of the following:

- (a) Conviction of a crime;
- (b) Arrest, charge, and sentencing for a crime when:

1. A plea of nolo contendere was entered to the crime;
2. First offender treatment without adjudication of guilt was granted to the crime; or
3. Arrested and charged for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to Chapter 3 of Title 17;

(c) Such term shall not include an owner, applicant for employment, or employee for which at least ten years have elapsed from the date of his or her criminal background check since the completion of all of the terms of his or her sentence; provided, however, that such ten-year period or exemption shall never apply to any crime identified in subsection 0) of O.C.G.A. § 42-8-60.

(6) "Department" means the Department of Community Health of the State of Georgia, its agents and employees.

(7) "Direct access" means having, or expecting to have, duties that involve routine personal contact with a patient, resident, or client, including face-to-face contact, hands-on physical assistance, verbal cuing, reminding, standing by or monitoring or activities that require the person to be routinely alone with the patient's, resident's, or client's property or access to such property or financial information such as the patient's, resident's, or client's checkbook, debit and credit cards, resident trust funds, banking records, stock accounts, or brokerage accounts.

(8) "Employee" means any individual who has direct access and who is hired by a facility through employment, or through a contract with such facility, including, but not limited to, housekeepers, maintenance personnel, dieticians, and any volunteer who has duties that are equivalent to the duties of an employee providing such services. Such term shall not include an individual who contracts with the facility, whether personally or through a company, to provide utility, construction,

communications, accounting, quality assurance, human resource management, information technology, legal, or other services if the contracted services are not directly related to providing services to a patient, resident, or client of the facility. Such term shall not include any licensed healthcare provider, including, but not limited to physicians, dentists, nurses, and pharmacists who are licensed by the Georgia Composite Medical Board, the Georgia Board of Dentistry, the Georgia Board of Nursing, or the State Board of Pharmacy.

(9) "Facility" means:

(a) A personal care home required to be licensed pursuant to O.C.G.A. § 31-7-12;

(b) An assisted living community required to be licensed pursuant to O.C.G.A. § 31-7-12.2;

(c) A private home care provider required to be licensed pursuant to O.C.G.A. § 31-7-301;

(d) A home health agency required to be licensed pursuant to O.C.G.A. § 31-7-151;

(e) A hospice required to be licensed pursuant to O.C.G.A. § 31-7-173;

(f) A nursing home, skilled nursing facility, or intermediate care home required to be licensed pursuant to O.C.G.A. § 31-7-1 et seq.;

(g) An adult day center required to be licensed pursuant to O.C.G.A. § 49-6-83; or

(h) An adult residential mental health program required to be licensed pursuant to O.C.G.A. § 37-3-206.

(10) "Fingerprint records check determination" means a satisfactory or unsatisfactory determination by the department based upon fingerprint based national criminal history information.

(11) "GCIC" means the Georgia Crime Information Center established under Article 2 of Chapter 3 of Title 35.

(12) "License" or "Permit" means the document issued by the department to authorize a facility to operate.

(13) "Owner" in the context of a nursing home or intermediate care home means an individual who is not an "excluded party" as such term is defined in O.C.G.A. § 31-7-3.3, otherwise such term means an individual or any person affiliated with a corporation, partnership, or association, who has 10 percent or greater ownership interest in a facility and who performs one or more of the following:

(a) Purports to or exercises authority of a facility;

(b) Applies to operate or operates a facility;

(c) Maintains an office on the premises of a facility;

(d) Resides at a facility;

(e) Has direct access at a facility;

(f) Provides direct personal supervision of facility personnel by being immediately available to provide assistance and direction when such facility services are being provided; or

(g) Enters into a contract to acquire ownership of a facility.

(14) "Records check application" means fingerprints in such form and of such quality as prescribed by GCIC under standards adopted by the Federal Bureau of Investigation and a records search fee to be established by the department by rule and regulation, payable in such form as the department may direct to cover the cost of obtaining a criminal background check.

(15) "Registry check" means a review of the nurse aide registry provided for in O.C.G.A. § 31-2-14, the state sexual offender registry, and the List of Excluded Individuals and Entities as authorized in Sections 1128 and 1156 of the federal Social

Security Act, as it existed on February 1, 2018, or any other registry useful for the administration of, or mandated under, these rules.

(16) "Satisfactory determination" means a written determination that an individual for whom a criminal background check was performed was found to have no criminal record.

(17) "Unsatisfactory determination" means a written determination that an individual for whom a criminal background check was performed was found to have a criminal record.

(18) "Willful" means acting deliberately, not that there is an intention to inflict injury or harm.

Authority: O.C.G.A. §§ 31-7-351, 31-7-355.