

## Long-Term Care Background Checks Frequently Asked Questions

### General Information

#### When does the new fingerprint legislation go into effect?

The legislation will have two (2) phases. **Phase I** will go into effect on **October 1, 2019**, and only **new** owners, job applicants and volunteers who have direct access to residents or patients will be required to be fingerprinted. **Phase II** requires that **current** owners, employees and volunteers who have direct access to residents or patients be fingerprinted no later than **March 31, 2022**.

#### What is a fingerprint records check?

A fingerprint records check is conducted using the fingerprints of the individual by the Georgia Bureau of Investigation (GBI) and the Federal Bureau of Investigation (FBI) in response to a request by the Georgia Department of Community Health (DCH).

#### Who must be fingerprinted?

Owners, administrators, directors, managers, direct access employees and volunteers of adult day centers, assisted living communities, home health agencies, hospice, intermediate care facilities, nursing homes, personal care homes and private home care.

#### What does direct access mean?

Direct access means having, or expecting to have, duties that involve **routine personal contact** with a patient, resident, or client. This includes face-to-face contact, hands-on physical assistance, verbal cuing, reminding, standing by or monitoring 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** (e.g., patient's, resident's, or client's checkbook, debit and credit cards, resident trust funds, banking records, stock accounts, or brokerage accounts). This term does include administrators, onsite managers and directors.

#### Who is considered an owner?

For nursing homes or intermediate care homes, an owner means a person or entity that performs, has the duty to perform, or controls the performance of any of the following functions:

- (A) Providing management, operation, or administrative services for such home;
- (B) Hiring or firing of the administrator, director of nursing, or other staff working at such home;

- (C) Setting or controlling the budget of such home;
- (D) Staffing or determining the level of staff at such home;
- (E) Providing direct care, treatment, or services to the residents of such home;
- (F) Making decisions regarding the care, treatment, or services provided to residents at such home;
- (G) Adopting, implementing, or enforcing the policies and procedures for such home.

For all other facilities, an owner 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;
- (G) Enters into a contract to acquire ownership of a facility.

### **Who is considered an employee?**

Any individual who has direct access and who is hired by the facility **through employment, or through a contract** with such facility, including, but not limited to, housekeepers, meal delivery staff, maintenance personnel, and dietitians. 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 health care 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.\*

*\*In order for the professional licensing exemption to apply, the facility must verify that the individual's Georgia license is in good standing. If the license has expired or has been revoked, a fingerprint background check is required.*

### **Is there a list of health care professional job titles that are exempt from the background check requirements?**

Yes. Click on the following link [Professional Exemptions.pdf](#) to view those direct access employees who are licensed health care professionals. These individuals are exempt from the background check process; however, the facility must verify that their license is

in good standing otherwise they would be required to undergo the fingerprint background screening. There may be other types of licensed health care providers that qualify for this exemption.

The list also includes those direct access employees that are subject to the fingerprint background check requirements. These include barbers, cosmetologists, nursing home administrators, and certified nurse assistants.

### **Is there a grace period while my background check is pending?**

Yes. While a criminal background check is pending, the facility may permit an individual to have direct access to residents for a period not to exceed 30 days, provided that the individual is under the direct supervision of a staff member who has a satisfactory determination. At the end of 30 days, if no background check determination has been issued by the department and the individual is working at the facility, the facility shall ensure that the individual does not have direct access to residents.

There are two exceptions to the grace period:

- I. Administrators, directors and onsite managers **cannot** work while their background check is pending.
- II. Federal regulations allow employees of nursing homes and intermediate care homes to work directly with residents while the background check is being performed. In order for facilities to utilize the 30-day grace period, the facility first must obtain a Georgia-only criminal background check to verify that the individual has not been found guilty of abuse, neglect, exploitation, misappropriation of property, or mistreatment by a court of law. This background check can be performed by your local police department or sheriff's office.

### **I work at a long-term care facility's corporate office and I have access to resident's financial information. Am I required to have a background check?**

Yes. Direct access means having access to a patient, resident, or client's **financial information** such as their checkbook, debit and credit cards, resident trust funds, banking records, stock accounts, or brokerage accounts.

### **If a nurse is exempt from a background check, can a facility still require them to undergo a separate fingerprint background check under the new legislation?**

No. Senate Bill 406 is very clear that nurses are exempt from having a background check. The FBI only allows DCH to conduct fingerprint-based background checks on individuals specifically included in the legislation.

## **Who is considered a volunteer?**

An individual who has duties that are equivalent to the duties of an employee providing such services.

## **Are volunteers that come to the facility to participate in group setting activities subject to a background check?**

No. "Direct access" requires routine personal contact. In most instances, this will involve a private setting that is one-on-one with no supervision. For example, if a nursing home hires a magician to do a performance in a common area for a special event that would not meet the definition. If the magician comes every other Tuesday and always walks around the facility afterwards to meet with residents in their rooms, then the magician will need a fingerprint background check.

## **Who is responsible for classifying employees as "direct access"?**

The facility must make that determination, and Healthcare Facility Regulation (HFR) will accept the classification unless there is strong evidence to suggest that the facility has done so improperly.

## **How long is a satisfactory criminal records determination good for?**

A satisfactory criminal records check is good for 12 months or the period of employment if the employee continues working at the same facility. Individuals that remain employed at the facility do not require any subsequent fingerprint background checks as long as they remain employed at the same facility. Individuals that leave a facility and seek employment at a different facility are required to have a background check determination that was issued within the past 12 months unless the fingerprints have been retained under Rap Back. If the fingerprints are retained under Rap Back, then there is no need to obtain an additional fingerprint check regardless of a change in employment.

**Important Notice to Employers:** While employees that obtain a fingerprint check are not required to have a re-check in 12 months as long as they remain employed by the same facility, the facility should be aware that those employees fingerprinted prior to the implementation of Rap Back will not remain in the system and the employer will not receive any notice if the individual subsequently obtains a criminal record. Thus, employers may wish to require a re-check once Rap Back is in place even though it is not mandatory to do so.

**Important Note to Employees:** If your retained fingerprints are removed from the GBI and FBI's Rap Back systems, then you would be required to undergo another fingerprint background check in order to work at a facility.

## **I was convicted of a disqualifying crime many years ago. Is this going to prevent me from being hired?**

It depends on the disposition of the case. SB 406 granted an exemption for what is considered a criminal record. The term "criminal record" shall not include an owner,

applicant, or employee for which at least 10 years have elapsed from the date of his or her criminal background check since the completion of all the terms of his or her sentence; provided, however, that such 10-year period or exemption shall never apply to any crime identified below:

- (1) A felony violation of trafficking of persons for labor or sexual servitude as prohibited by Code Section 16-5-46;
- (2) A violation of neglecting disabled adults, elder persons, or residents as prohibited by Code Section 16-5-101; and,
- (3) A violation of exploitation and intimidation of disabled adults, elder persons, and residents as prohibited by Code Section 16-5-102.

## GCHEXS/Fingerprints

### **How do I use the Georgia Criminal History Check System (GCHEXS) to conduct background checks?**

On October 1, 2019, GCHEXS will send an email to the facility administrator and provide them a username and temporary password. In most cases, a facility will have an individual(s) who is responsible for completing the GCHEXS application for new hires and current employees. For new facilities and new facility administrators, the administrator must first get a username and password from DCH. Individuals must complete a **Request for GCHEXS Username and Password** which can be found by clicking here [here](#). Once completed and submitted electronically, the department will send the requestor an email (within 24-48 hours) which contains their username and password. Users may access GCHEXS by clicking here <https://www.dch.gchexs.ga.gov/>.

**NOTE:** Assisted Living Communities, Personal Care Homes and Private Home Care who currently use GCHEXS will not be sent a username and password on October 1, 2019. Should the user need to have their password reset, they can click on the forget password link on the GCHEXS login screen or by sending an email to [gchexs.user@dch.ga.gov](mailto:gchexs.user@dch.ga.gov).

### **Why do I need to have my job applicant or employee prepare the Acknowledgement of Applicant's Non-Criminal Justice Privacy Rights and Georgia Caregiver Portal Consent form?**

The Georgia Bureau of Investigations and the Federal Bureau of Investigations require that everyone who is fingerprinted receive the Privacy Rights form. Historically, facility staff prepare the GCHEXS application which includes the Georgia Applicant Processing

Service (GAPS) fingerprint registration; whereby, the applicant or employee does not personally acknowledge receiving the Privacy Rights. The Acknowledgement of Applicant's Non-Criminal Justice Privacy Rights and Caregiver Portal Consent form

must be completed by the owner, applicant or employee prior to logging into GCHEXS. You can download the form by clicking [Privacy Rights and Consent.pdf](#). DCH recommends that the form be part of the facility's hiring packet because it includes the Privacy Act.

On October 1, 2019, DCH will implement the Georgia Caregiver Portal. The Portal is to be used by family employers to check the eligibility of applicants and employees who received a determination from DCH as part of the background check process for facilities. The Portal contains **no** criminal history information. If the applicant or employee has already had a successful background check then they would not need to undergo a separate background check. The family employer may hire the individual to provide health care services to their immediate, elderly family member and the services must be performed in a location not licensed by DCH. The applicant can request that their determination not be placed in the Portal.

### **How do I access GCHEXS?**

Once an individual has a username and password, they can access GCHEXS by clicking here <https://www.dch.gchexs.ga.gov/>. There are five (5) tutorials as well as written instructions on navigating through GCHEXS which can be found at <https://dch.georgia.gov/georgia-criminal-background-check-system-gchexs>. You may download the individual tutorials by right-clicking each link.

**NOTE:** GCHEXS will support only the most up-to-date version of the following internet browsers: Mozilla, Firefox, Internet Explorer, Google Chrome, and Safari.

Using an older or unsupported internet browser may lead to web pages within the GCHEXS system to not function as intended. Please ensure you are using the most up-to-date version of your internet browser.

### **Are there instructions on how to navigate through GCHEXS?**

Yes. Once you have logged into GCHEXS click on the "Help" icon in the upper right hand corner of the screen. It contains very useful information on how to navigate through the system.

### **Who can I contact should I have questions regarding GCHEXS?**

Users should send an email to [gchexs.user@dch.ga.gov](mailto:gchexs.user@dch.ga.gov). You may also contact the Background Investigations Unit at (833) 463-0020.

### **How do I submit fingerprints?**

All individuals subject to mandatory fingerprinting must first log in to GCHEXS and complete an application. Once the GCHEXS application is complete, you will be re-directed to the GAPS to complete the fingerprinting registration process. The GCHEXS and GAPS systems are very easy to navigate and should take no more 20 minutes per application.

## **What is the cost of fingerprinting and who is responsible for paying?**

The cost is \$51.50. The facility shall make the determination as to whether they will pay the fingerprinting fee or have the applicant pay. DCH is not responsible for paying any costs associated with fingerprinting, including refunds.

## **How long does it take to get State and Federal results back?**

On an average, it takes 24-48 hours to receive a response from the GBI and FBI. Once the results are received at DCH, there is an additional review and eligibility determination process.

## **I live out-of-state. How do I get fingerprinted?**

You can always travel to Georgia and be fingerprinted at one of the locations here. If that is not feasible, you can submit fingerprint cards directly to the fingerprint vendor, Gemalto-Cogent. You must still complete the GCHEXS application process; however, the GAPS fingerprint registration page has instructions on how to submit paper fingerprint cards.

## **Can facilities use third party vendors to obtain a criminal background check?**

This would be at the discretion of the facility. DCH will not provide a username and password to a third party vendor; however, if the facility contracts with a third party vendor to conduct their background checks then they (facility) would provide GCHEXS access to the vendor. DCH will only provide information regarding the applicant being fingerprinted to the facility representative.

## **As an owner coming from another facility or opening a second location, do I have to do my fingerprints over?**

If your fingerprint results are less than 12 months old then you would not be required to submit to another background check. If it has been more than a year since you received a satisfactory fingerprint check determination, you would need to be re-fingerprinted.

## **Disqualifying Crimes**

### **What are the crimes that would prevent an owner from obtaining a license, a job applicant from being hired, or a current employee from being terminated?**

You may view the disqualifying crimes by clicking [Disqualifying Crimes.pdf](#).

### **If I get an unsatisfactory determination, what do I do?**

If an individual receives an unsatisfactory determination, they will receive a letter from DCH, Office of Inspector General (OIG) which lists the disqualifying crime(s) that caused the unsatisfactory criminal records check. If you receive an unsatisfactory determination you may appeal the finding. **Effective October 1, 2019**, OIG will be conducting the appeals process. The appeals process can be viewed by clicking [Appeals Process.pdf](#)

If you believe the information contained in the GBI and/or FBI record is inaccurate, you may request a copy of the record. If the individual believes the state and/or federal criminal history information is inaccurate, they should contact the GBI or FBI directly and request a review of their record depending on whether it is a state or federal issue. Do not contact DCH, as the department is not involved in this review process.

For Georgia criminal history information, visit the GBI website at <https://georgia.gov/popular-topic/criminal-history-records>.

To request a copy of your national criminal history record, you'll need to contact the Federal Bureau of Investigations at <https://www.fbi.gov/services/cjis/identity-history-summary-checks>.

**I am an owner of a facility and wish to appeal the unsatisfactory determination, can I continue to operate while waiting for the hearing?**

No. DCH has no authority under the law to allow you to continue to operate while you are waiting for your hearing.

**How long does it take to get a hearing and a decision? Is there any way to speed the process up?**

The time varies considerably. You can speed up the process by getting certified copies of the court records on the crimes you were charged with that are the subject of the hearing. If you get these certified copies yourself and submit them to DCH, we can make the request to get the hearing scheduled sooner. If DCH requests the certified court records in writing, it may take a longer time to get the court records. DCH will not process your request for a hearing until the certified court records are received. You will be notified in writing by the OIG when your hearing request has been sent to the Office of State Administrative Hearings (OSAH).

**Who schedules the hearing and how do I know when it has been scheduled?**

The hearing will be scheduled by OSAH once they receive all the required records from the OIG. After you receive a copy of the letter from the OIG indicating that hearing request has been processed, OSAH will schedule the hearing and send you notice of the hearing date in writing. Questions concerning the scheduling of the hearing may be directed to OSAH at 404-657-2800.