



<b>Policy Title:</b>	<b>Voluntary Background Check Program</b>	<b>Division:</b>	Office of Inspector General
<b>Version:</b>	2015	<b>Effective Date:</b>	03/01/2015

**I. Purpose**

The purpose of this policy is to establish the process and minimum standards governing a Facility's participation in the Voluntary Background Check Program ("Program"). By electing to participate in this Program, the Facility is accepting the terms of this policy including the standards and disqualifying events outlined herein as the basis for hiring decisions.

The Facility may elect to discontinue participation at any time in accordance with this policy. By participating in the Program, the Facility is electing to conduct Criminal Background Checks for its Employees at facilities licensed by the Georgia Department of Community Health ("Department" or "DCH"), Healthcare Facility Regulation Division.

Facilities who participate in the Program shall ensure that an Employee undergoes the Registry Check and Criminal Background Check prior to employment. Facilities must also ensure that all current Employees undergo a Registry Check and Criminal Background Check within one (1) year of the Facility participating in the Program. By having Employees undergo Registry Checks and Criminal Background Checks, the Facility is able to conduct pre- and post-screening of Employees' actions that may not have been self-disclosed, and the Facility may appear more attractive to potential customers due to the enhanced employee background screenings.

**II. Scope**

Participation in this Program is limited to Employees of the following Facilities:

- Private Home Care Providers
- Hospice Providers
- Home Health Agencies
- Long Term Acute Care Hospitals
- Nursing Homes\*

\*required to undergo state background checks as described in O.C.G.A. § 31-7-350

### **III. Policy**

#### **A. Request for Criminal History Records Check**

Pursuant to Title VI, Subtitle B, Part III, Subtitle C, Section 6201, of the Affordable Care Act of 2010, Public Law 111-148, the Department shall request a fingerprint-based criminal history records check (ie, Criminal Background Check) from the Georgia Crime Information Center ("GCIC") and the Federal Bureau of Investigation ("FBI") for purposes of determining suitability of an Employee for employment. Fingerprints shall be in such form and of such quality as prescribed by the GCIC and under standards adopted by the FBI. The cost of the Criminal Background Check shall be borne by the Employee or Facility requesting the Criminal Background Check. No charge for a Criminal Background Check should be assessed against the Employee or charged by the Facility that exceeds the actual cost thereof.

#### **B. Office of Inspector General (OIG) Records Check Determination**

After reviewing the results of the Criminal Background Check, the OIG shall issue a Fingerprint Records Check Determination that excludes the results generated by the GCIC or FBI. At no time will OIG release actual results of the Criminal Background Check from GCIC or the FBI to the Facility.

#### **C. Liability In Connection With Dissemination Of Information Or Determination Based Thereon**

All information received from the GCIC and the FBI shall be used exclusively for employment purposes and shall not be released or otherwise disclosed to any other person or agency. All such information collected by the Department shall be maintained by the Department pursuant to laws regarding and the rules or regulations of the GCIC and the FBI, as is applicable.

Penalties for the unauthorized release or disclosure of any such information shall be as prescribed pursuant to laws regarding and rules or regulations of the GCIC and the FBI, as is applicable.

The Department shall not be responsible for the accuracy of information nor has any liability for defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of information or determination based thereon.

#### **D. Nursing Home Employees; Criminal Background Checks and Registry Checks**

Nursing homes, including skilled nursing facilities, licensed by the Department may participate in the Program as described in this policy. For purposes of this section, the term "crime" means

those disqualifying offenses as described in O.C.G.A. § 31-7-350 concerning Nursing Homes and Skilled Nursing facilities. This policy shall not waive or limit the responsibility of nursing homes to have their Employees undergo a criminal record check from GCIC pursuant to O.C.G.A. § 31-7-351.

#### **E. Participation in the Program**

The Department, at its discretion, may limit the number of Facilities that may participate in the Program. Facilities requesting permission to participate in the Program must complete and submit a Participation Agreement for the Department's review and approval (attachment A).

The Department may cancel this program at any time. If at any time a Facility would like to opt out of participating in this Program, written notice from the President, Vice-President, Chief Executive Officer, or other individual authorized by the Facility to act on its behalf shall be emailed to [voluntarybackgroundcheck@dch.ga.gov](mailto:voluntarybackgroundcheck@dch.ga.gov) at least 30 calendar days in advance of discontinuing participation.

Facilities who are required either by Georgia Code or by the Department to undergo state background checks, such as nursing home Employees, will satisfy that requirement through participation in this Program.

If an Employee is required to undergo a background check by a state agency other than the Department of Community Health, there is no guarantee that participation in this Program will satisfy that requirement. Facilities that opt to participate in this Program will ensure all Direct Access Employees in its organization undergo a Criminal Background Check, Registry Check, and receive a Fingerprint Records Check Determination in accordance with this policy.

The Department may cancel a Facility's Participation Agreement if a Facility violates the terms of this policy by not performing Criminal Background Checks and/or Registry Checks or hiring or not terminating individuals who are issued an Unsatisfactory Criminal Background Check Determination.

### **IV. Procedures**

#### **A. Requesting Participation in Program**

Facilities requesting permission to participate in the Program must complete and submit a Participation Agreement for the Department's review and approval. The Participation Agreement can be found at <https://dch.georgia.gov/voluntary-background-check-program-0>. The Participation Agreement must be signed by the President, Vice President, CEO or other Officer authorized to execute on behalf of and bind the entity to a contract.

The signed and executed Participation Agreement can be emailed to [voluntarybackgroundcheck@dch.ga.gov](mailto:voluntarybackgroundcheck@dch.ga.gov). The agreement may also be mailed or faxed to:

Denise Matthews, Director  
Background Investigations Unit, OIG  
2 Peachtree Street NW, 5<sup>th</sup> Floor  
Atlanta, GA 30303  
Fax: 678-717-6769

A Facility must have an ORI or Georgia OAC number issued by the Georgia Crime Information Center, and be enrolled with Cogent-GAPS to participate in the Program. Cogent enrollment information is available at [www.ga.cogentid.com](http://www.ga.cogentid.com) under the Agency Use tab.

## **B. Registry Checks**

The Facility will conduct Registry Checks of Employees. The Registry Checks must be conducted by the Facility prior to requesting a Criminal Background Check of the Employee. The Facility must conduct checks of the following registries, at minimum, for all Employees, including those with Direct Access, and must be completed prior to the Employee being fingerprinted:

1. Georgia Sex Offender Registry: ([http://state.sor.gbi.ga.gov/Sort\\_Public/](http://state.sor.gbi.ga.gov/Sort_Public/))
2. Georgia Nurse Aide Registry:  
(<https://www.mmis.georgia.gov/portal/PubAccess.Nurse%20Aide/tabId/73/Default.aspx>)
3. Georgia Certified Medication Aide Registry (Click on Certified Medication Aide)  
(<https://www.mmis.georgia.gov/portal/PubAccess.Nurse%20Aide/tabId/73/Default.aspx>)
4. List of Excluded Individual & Entities (<http://exclusions.oig.hhs.gov/>)

The Facility shall conduct the four Registry Checks identified above and print out the results of each check and place the results in the Employee's personnel file. The Facility shall not hire an Employee who has been identified as being on any of the registries.

The Facility should consider conducting the Registry Checks prior to the Criminal Background Checks. If the Employee is found to be on any of the registries, and is not eligible for employment, said employee shall be notified and it would not be necessary for the Employee or Facility to pay the expense of conducting a Criminal Background Check.

### **C. Criminal Background Checks**

Following the Facility's Registry Check of the Employee, the Facility should proceed to request a Criminal Background Check of the Employee if the Registry Check is clear. As mentioned previously, a Facility must have an ORI or Georgia OAC number issued by the GCIC, and be enrolled with Cogent-GAPS to participate in the Program. Cogent enrollment information is available at [www.ga.cogentid.com](http://www.ga.cogentid.com) under the Agency Use tab. A fingerprint instructional guide can be found at <https://dch.georgia.gov/voluntary-background-check-program-0>. The Facility is required to register their Employees for fingerprinting using Cogent-GAPS.

Once the Facility has obtained their OAC number and enrolled with Cogent, the Facility will then register the Employee(s) for fingerprinting at [www.ga.cogentid.com](http://www.ga.cogentid.com). Click on the Single Application Registrations (or Multiple if more than one Employee). Please ensure the following actions are taken:

1. All fields highlighted in yellow must be completed;
2. Select "DCH – Affordable Care Act" as the "Reason" for fingerprinting;
3. Check the box asking, "Does another agency make the fitness determination?" From the drop down box, the Facility must choose "DCH – Affordable Care Act."

Failure to choose the correct Reason and/or agency to conduct the fitness determination may result in the fingerprint request being rejected.

Criminal Background Check results are returned directly to DCH via a secure web server, usually within 24-48 hours for DCH staff to review.

### **D. Determination process**

Employees will be evaluated according to the Crimes described in Section V.3 of this policy. An Employee is issued a Satisfactory Criminal Background Check Determination if it is determined that the results reveal no Criminal Record. The OIG will issue Satisfactory Criminal Background Check Determination letters within 5 business days based only on the results of the Criminal Background Check. The letter will be mailed or emailed to the Facility addressed to the individual designated by the Facility who has the authority to act on behalf of the Facility.

The OIG will issue an Unsatisfactory Criminal Background Check Determination based on the following and subject to the provisions in Section IV, F of this Policy:

1. The Employee has been found to have Criminal Record as defined in Section V.3 of this policy; or
2. The Employee has a missing criminal history disposition, or does not provide court documents to the OIG within 15 business days of notification.

#### **E. Fingerprint Rejections**

Fingerprint images captured on a Live Scan device may be rejected by the FBI or GCIC for a variety of reasons. Rejections due to low or poor quality of the fingerprints requires the Employee to be fingerprinted a second time at no cost to the agency, Facility or Employee. Pursuant to Cogent's requirements, the Employee must return within 90 calendar days of the first rejection to a GAPS print location to be fingerprinted again. If the Employee does not return within 90 calendar days he/she will have to pay to be fingerprinted again.

Prior to submitting the Participation Agreement form or conducting a search online, please read the Voluntary Background Check FAQs at <https://dch.georgia.gov/voluntary-background-check-program-0> in addition to reading this policy. The FAQs section provides additional information regarding the process, the search mechanism, how names are submitted, and other factors which we hope brings a better understanding of how this search process works.

#### **F. Process to Challenge, Correct, or Update Criminal History**

If charges are found or further information is needed to complete the background investigation, OIG will send a request to the Employee's most recently provided home address for additional information for the disposition for each charge. The Employee has 15 business days from the date of OIG's request to submit the requested information to:

DCH, OIG, Background Investigations Unit  
2 Peachtree Street NW, 5<sup>th</sup> Floor  
Atlanta, GA 30303

DCH will issue an Unsatisfactory Criminal Background Check Determination to the Facility if the information is not received within 15 business days.

In situations where an Employee has been fingerprinted and the criminal history has no accompanying disposition, the OIG will issue notification to the Employee describing the circumstances of the offense(s) and request that he/she provide court documents to the OIG

within 15 business days.

It shall be the responsibility of the Employee to provide the pertinent court records to the OIG within 15 business days to assist in making a final determination. DCH will issue an Unsatisfactory Criminal Background Check Determination to the Facility if the information is not received within 15 business days.

Communications to the Facility from DCH will be addressed to the individual designated by the Facility who has the authority to act on behalf of the Facility.

An Employee may obtain information concerning the accuracy of his or her Criminal Record and the OIG shall refer the individual to the appropriate local, state or federal law enforcement agency that was involved in the arrest. To challenge, correct or update their criminal history, the Employee must either:

1. Challenge the accuracy or completeness of an entry on the GEORGIA record to the Georgia Crime Information Center (GCIC) at the address and/or phone number below:

Georgia Crime Information Center  
CCH/Identification Services  
P.O. Box 370808  
Decatur, Georgia 30037-0808  
404-244-2639, option 1

2. Submit a record challenge to the FBI's CJIS Division by writing to the following address:

FBI CJIS Division  
Attention: Correspondence Group  
1000 Custer Hollow Road  
Clarksburg, WV 26306.

For Registry Check challenges, an Employee may challenge the finding that he or she is the subject of the results from a Registry Check by contacting the agency responsible for maintaining the registry.

## V. Definitions

1. **“Code”** or “O.C.G.A” means the Official Code of Georgia.
  
2. **“Conviction”** means a finding or verdict of guilty or a plea of guilty to a crime regardless of whether an appeal of the conviction has been sought.
  
3. **“Crime”** means the commission of a prohibited crime which includes the following offenses:
  - a. A violation of Code Section 16-5-1, relating to murder and felony murder;
  - b. A violation of Code Section 16-5-21, relating to aggravated assault;
  - c. A violation of Code Section 16-5-24, relating to aggravated battery;
  - d. A violation of Code Section 16-5-70, relating to cruelty to children;
  - e. A violation of Code Section 16-5-100 et seq., including the following offenses against a disabled adult, elder person, or resident of a long term care facility: neglect; knowingly and willfully exploiting; willfully inflicting physical pain, physical injury, sexual abuse, mental anguish or unreasonable confinement; willfully deprivation of essential services; threatening, intimidating or attempting to intimidate; or willfully and knowingly obstructing or impeding an investigation conducted pursuant to Code Section 16-5-100 et seq.;
  - f. A violation of Code Section 16-6-1, relating to rape;
  - g. A violation of Code Section 16-8-41, relating to armed robbery;
  - h. A felony violation of Title 16, Chapter 16-9, relating to forgery and fraudulent practices;
  - i. A felony violation of Chapter 13 of Title 16, relating to controlled substances;
  - j. A violation of Code Section 16-4-1, relating to criminal attempt as it concerns attempted murder;
  - k. A violation of Code Section 16-5-23.1, relating to battery;
  - l. A felony violation of Title 16, Chapter 8, relating to theft;
  - m. Any other offense committed in another jurisdiction that, if committed in the State of Georgia, would be deemed to be a crime listed in this paragraph without regard to its designation elsewhere;
  - n. Any other criminal offense as determined by the Department that would indicate the unfitness of an individual to provide care to or be in contact with persons residing in a facility as promulgated by rule adopted pursuant to Chapter 13 of Title 50, the Georgia Administrative Procedure Act.
  
4. **“Criminal Background Check”** means a fingerprint search of the criminal records maintained by the GCIC and the FBI to determine whether the Employee has a Disqualifying Offense.

5. **"Criminal Record"** means any of the following:

a. Conviction of a Crime;

b. Arrest, charge, and sentencing for a Crime where:

i. A plea of nolo contendere was entered to the charge;

ii. First offender treatment without adjudication of guilt pursuant to the charge was granted; or

iii. Adjudication or sentence was otherwise withheld or not entered on the charge; or

c. Arrest and being 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, or record has been restricted for employment or licensing purposes.

6. **"Department"** means the Georgia Department of Community Health.

7. **"Direct Access"** means having, or expecting to have, duties that involve personal contact with a patient, resident or client, or access to the patient, resident or client's property, personal identifying information, or financial information.

8. **"Employee"** means any individual who is an applicant for employment or is currently employed by the Facility and will have or has Direct Access to patients, residents, or clients who is hired by a Facility through employment, or through a contract with such Facility, including but not limited to, certified nurse aides, housekeepers, maintenance personnel, administrative staff, and any volunteer who has duties that are equivalent to the duties of an employee providing services. Employee does not include an individual who independently contracts with the Facility to provide utility, construction, communications, or other services if the contracted services are not directly related to the provision of services to a resident, patient, or client of the Facility.

9. **"Facility"** means:

a. A private home care provider (PHCP) required to be licensed under O.C.G.A. §31-7-2 et seq.;

b. A home health agency (HHA) as licensed pursuant to O.C.G.A. §31-7-150;

c. A provider of hospice care (HSPC) agency as licensed pursuant to O.C.G.A. §31-7-170;

d. A long-term-acute care (LTAC) hospital licensed pursuant to rules of the Department;

e. A nursing home licensed pursuant to O.C.G.A. §31-7-1;

f. Any other Facility or provider as specified by the Department.

10. **"Fingerprint Records Check Determination"** means a satisfactory or unsatisfactory determination by the department based upon a fingerprint records check of the GCIC and the FBI Criminal History Database.

11. **"GCIC"** means the Georgia Crime Information Center.

12. **"License" or "Permit"** means the document issued by the Department to authorize a Facility, as defined in paragraph (10) of this policy, to operate in the specified category(ies).

13. **"Office of the Inspector General" or "OIG"** means the Department of Community Health, Office of Inspector General.

14. **"Registry Check"** means conducting a search of each of the following registries: the State of Georgia Nurse Aide Abuse Registry, Georgia Certified Medication Aide Registry, Georgia Sex Offender Registry, List of Excluded Individuals and Entities as authorized in sections 1128 and 1156 of the Social Security Act, and other states' registries if the Direct Access Employee has worked outside of the State of Georgia.

15. **"Satisfactory Criminal Background Check Determination"** means a written determination that a person for whom a criminal background check was performed was not found to have a Criminal Record. For nursing home Employees, it means a written determination that was not found to have a Criminal Record within the past 10 (ten) years.

16. **"Unsatisfactory Criminal Background Check Determination"** means a written determination that a person for whom a criminal background check was performed has a Criminal Record.

## **VI. References**

Voluntary Background Check Program for Health Care Facilities or Providers – Participation Agreement; The Patient Protection and Affordable Care Act, Pub. L. 11-148, § 6201, 124 Stat. 119, 722 (2010); O.C.G.A. §§ 31-7-150, 31-7-170, 31-7-173, 31-7-301, 31-7-350 through 351, 35-3-3; 28 CFR 16.34; 3M Cogent Privacy Policy [http://www.ga.cogentid.com/GA\\_PDF/3MPrivacy.pdf](http://www.ga.cogentid.com/GA_PDF/3MPrivacy.pdf); Georgia Crime Information Center, <https://gbi.georgia.gov/georgia-crime-information-center>; Federal Bureau of Investigations, <http://www.fbi.gov/about-us/cjis>; Georgia Applicant Processing Services, [www.ga.cogentid.com](http://www.ga.cogentid.com).

**Signature** Clyde L. Reese, III  
w/p MAH **Date** MARCH 4, 2015