



GEORGIA DEPARTMENT  
OF COMMUNITY HEALTH

# Criminal Background Checks



Georgia Health Care Association  
2019 Summer Convention



## **Mission:**

The mission of the Department of Community Health is to provide access to affordable, quality health care to Georgians through effective planning, purchasing, and oversight.



## Implementation of the Georgia Long-term Care Background Check Program

O.C.G.A. § 31-7-350 et seq.



WHO:  
WHAT:  
WHERE:  
WHEN:  
HOW:  
MUCH

# Criminal Background Checks: WHAT

The Georgia Long-term Care Background Check Program requires fingerprint criminal background checks of owners, applicants for employment and direct access employees at the following long term care facilities:

*Adult Day Centers*

*Intermediate Care Facilities*

*Assisted Living Communities*

*Nursing Homes*

*Home Health Agencies*

*Personal Care Homes*

*Hospices*

*Private Home Care Providers*



# Criminal Background Checks: WHO

- Owners

**Owner, for nursing homes or intermediate care homes**, means an individual who is not an “excluded party” as such term is defined in O.C.G.A. § 31-7-3.3.

**Owner, for all other facilities\***, means 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.

\*Adult day centers, assisted living communities, home health agencies, hospices, personal care homes and private home care providers.



# Criminal Background Checks: WHO

- Administrators, Onsite Managers and Directors
- Direct Access Employees

**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.

**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 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. If the facility wants to require a fingerprint background check for licensed professionals, it can do so as a matter of policy.*



# Examples of “Direct Access”

- **Are volunteers that come to the facility to participate in group setting activities subject to a fingerprint criminal records check?** *The definition of “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 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 records check.*
- **What about lawn service personnel or contracted pest control?** *In most circumstances, these individuals should not require a check. If they are routinely working in the residents’ rooms with no supervision, they may meet the definition and require a fingerprint records check.*
- **Who is responsible for classifying employees as “direct access”?** *The facility must make that determination and HFRD will accept the classification unless there is strong evidence to suggest that the facility has done so improperly.*
- **What about youth volunteers?** *A criminal background check is not required for anyone under the age of 17.*



# Grace Period

## **30-Day Grace Period while check is pending**

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 or otherwise meets the requirements of these rules. 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.

### Exceptions

- 1) Administrators, Directors and Onsite Managers (cannot resume duties while check is pending)
- 2) Employees of nursing homes (see note below)

Note: In order for facilities subject to federal regulations that require background screening before employment to utilize the 30-day grace period, the facility first must obtain a GCIC state criminal history record check comparison of data with information other than fingerprints in order to verify that the individual has not been found guilty of abuse, neglect, exploitation, misappropriation of property, or mistreatment by a court of law.





# Criminal Background Checks: HOW

## Georgia Criminal History Check System (GCHEXS)



GCHEXS enables users to:

- Easily check various registries, including the Certified Nurse Aide, Sex Offender and federal OIG Exclusions List;
- Determine the status of an applicant's background check; and
- Print the criminal background check fitness determination letter directly from the GCHEXS system.

All new users of GCHEXS must first get a username and password from DCH/OIG to access the system.

***Please Note: GCHEXS will not be activated until October 1, 2019 for new participants.***

<https://www.dch.gchexs.ga.gov>



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# Criminal Background Checks: WHERE

## The GBI fingerprint vendor is Gemalto.

Electronic submission of fingerprint images will involve the use of a Gemalto GAPS live scan machine. The live scan captures fingerprint images and demographic data and submits this information to the Georgia Crime Information Center (GCIC) and FBI for processing. Notifications of the search results are then forwarded from the GCIC/FBI to Gemalto Cogent. Gemalto Cogent electronically sends the search results to the DCH Office of the Inspector General (OIG) for review and issuance of a satisfactory or an unsatisfactory determination.

### To access the Gemalto locations go to:

1. Go to the Gemalto website at <https://www.aps.gemalto.com/ga/index.htm>
2. To the Left of the screen, select “Helpful Links”
3. The first selection on the screen is “FIND A LOCATION”



# Criminal Background Checks: WHEN

## PHASE 1

- **Effective October 1, 2019, NEW** owners, directors, onsite managers, administrators and direct access employees must submit a records check application.



## PHASE 2

- **EXISTING** owners, directors, onsite managers, administrators and direct access employees must submit a records check application on or before **January 1, 2021**.

## RAP BACK

- **HB 91** which allows the Georgia Bureau of Investigation to retain fingerprints for purposes of the Georgia Long-term Care Background Check Program, is anticipated to take effect on **January 1, 2020**.



# Criminal Background Checks: WHY

The purpose of the new requirement is to exclude individuals with a criminal record from working with vulnerable older or disabled adults.

The look back period is 10 years. Disqualifying crimes are as follows:

<b>Chapter 4 of Title 16, Attempt</b>	<ul style="list-style-type: none"> <li>• Felony attempted murder, 16-4-1</li> </ul>
<b>Chapter 5 of Title 16 Murder and other crimes against the person</b>	<ul style="list-style-type: none"> <li>• All felony violations of any offense in Chapter 5 of Title 16</li> <li>• Misdemeanor violations of cruelty to children, 16-5-70</li> <li>• Misdemeanor violations of neglect to a disabled adult, elder person or resident, 16-5-101</li> <li>• Misdemeanor violations of exploitation and intimidation of a disabled adult, elder person or resident, 16-5-102</li> </ul>
<b>Chapter 6 of Title 16 Sexual Offenses</b>	<ul style="list-style-type: none"> <li>• All felony violations of any offense in Chapter 6 of Title 16</li> <li>• Misdemeanor violations of child molestation, 16-6-4</li> <li>• Misdemeanor violations of enticing a child, 16-6-5</li> <li>• Misdemeanor violations of supervisory sexual assault, 16-6-5.1</li> </ul>
<b>Chapter 7 of Title 16, Damage to Property</b>	<ul style="list-style-type: none"> <li>• Felony violations of smash and grab burglary, 16-7-2</li> </ul>
<b>Chapter 8 of Title 16, Theft and related crimes</b>	<ul style="list-style-type: none"> <li>• All felony violations of any offense in Chapter 8 of Title 16</li> </ul>
<b>Chapter 9 of Title 16, Forgery and related crimes</b>	<ul style="list-style-type: none"> <li>• All felony violations of any offense in Chapter 9 of Title 16</li> </ul>
<b>Chapter 13 of Title 16, Controlled substances</b>	<ul style="list-style-type: none"> <li>• All felony violations of any offense in Chapter 13 of Title 16</li> </ul>
<b>Chapter 5 of Title 30, Failure to report abuse</b>	<ul style="list-style-type: none"> <li>• Misdemeanor and felony violations of 30-5-8</li> </ul>
<b>Chapter 7 of Title 31, Unlicensed personal care home</b>	<ul style="list-style-type: none"> <li>• Felony violations of 31-7-12.1</li> </ul>
<b>Miscellaneous</b>	<ul style="list-style-type: none"> <li>• Equivalent offenses from other states</li> </ul>



# Enforcement Penalties

## Civil Money Penalties for violations:

- \$500 for each day of noncompliance

*Calculated from the time the facility knew or should have known that it employed an individual with a criminal record until the date such individual's employment is terminated.*

- Maximum of \$10,000



# Upcoming Dates for Adoption of New Criminal Background Check Rules

## **Thursday, June 13, 2019**

Rules presented to the Board of Community Health for initial adoption

## **Tuesday, July 9, 2019**

Public Comment Hearing, 10:00 am, 5<sup>th</sup> Floor Board Room

## **Friday, July 12, 2019**

Deadline to submit written comments. Please submit comments to Valerie Harrell at [vharrell@dch.ga.gov](mailto:vharrell@dch.ga.gov)

## **Thursday, August 8, 2019**

Rules presented to the Board of Community Health for final adoption



# For more information . . .

Check our website for implementation updates:

<https://dch.georgia.gov/>

Please reach out to us with any questions or concerns.

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We are dedicated to ***A Healthy Georgia.***

