

Long-Term Care Background Checks Frequently Asked Questions

General Information

When does the new fingerprint legislation go into effect?

The legislation will have three (3) 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, job applicants and volunteers who have direct access to residents or patients be fingerprinted no later than **January 1, 2021**. **Phase III** is the retention of fingerprints or Rap Back which has an implementation date of **October 1, 2019**.

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 dieticians. 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.*

NOTE: DCH's interpretation of a licensed health care provider includes physical therapists, speech therapists, and occupational therapists.

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 46 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 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. However, if your fingerprints are retained under Rap Back, then no additional background check is required. Also, 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.

I had my fingerprints taken on October 15, 2019, and my results were satisfactory. If my determination letter is only valid for 12 months, will I be required to have another background check before January 1, 2021?

Yes.

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 in subsection (j) of Code Section 42-8-60. These crimes are:

- (1) A serious violent felony as such term is defined in Code Section 17-10-6.1;
- (2) A sexual offense as such term is defined in Code Section 17-10-6.2;
- (3) Trafficking of persons for labor or sexual servitude as prohibited by Code Section 16-5-46;
- (4) Neglecting disabled adults, elder persons, or residents as prohibited by Code Section 16-5-101;
- (5) Exploitation and intimidation of disabled adults, elder persons, and residents

- as prohibited by Code Section 16-5-102;
- (6) Sexual exploitation of a minor as prohibited by Code Section 16-12-100;
 - (7) Electronically furnishing obscene material to a minor as prohibited by Code Section 16-12-100.1;
 - (8) Computer pornography and child exploitation as prohibited by Code Section 16-12-100.2;
 - (9) (A) Any of the following offenses when such offense is committed against a law enforcement officer while such officer is engaged in the performance of his or her official duties:
 - (i) Aggravated assault in violation of Code Section 16-5-21;
 - (ii) Aggravated battery in violation of Code Section 16-5-24; or
 - (iii) Obstruction of a law enforcement officer in violation of subsection (b) of Code Section 16-10-24, if such violation results in serious physical harm or injury to such officer.
 - (B) As used in this paragraph, the term "law enforcement officer" means:
 - (i) A peace officer as such term is defined in paragraph (8) of Code Section 35-8-2;
 - (ii) A law enforcement officer of the United States government;
 - (iii) An individual employed as a campus police officer or school security officer;
 - (iv) A conservation ranger; and
 - (v) A jail officer employed at a county or municipal jail; or
 - (10) Driving under the influence as prohibited by Code Section 40-6-391.

GCHEXS/Fingerprints

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

In most cases, a facility will have an individual(s) who is responsible for completing the GCHEXS application for new hires and current employees. To gain access to GCHEXS, the individual must first get a username and password from the department. Individuals must complete a **Request for GCHEXS Username and Password** which will be available on the HFR website **after September 1, 2019**. Once completed and submitted electronically, the department will send the requestor an email (within 24-48 hours) which contains their username and password.

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.

Who can I contact should I have questions regarding GCHEXS?

Users should send an email to gchexs.user@dch.ga.gov.

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 Georgia Applicant Processing System (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?

The cost is \$49.25. This includes the state and national check.

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.

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 Gemalto. 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 fingerprints have been retained, then you would not be required to submit to another background check. If your prints have not been retained, and 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?

A disqualifying crime is being arrested, charged or convicted of any of the following crimes:

- A violation of Code Section 16-5-70;
- A violation of Code Section 16-5-101
- A violation of Code Section 16-5-102
- A violation of Code Section 16-6-4;
- A violation of Code Section 16-6-5;

- A felony violation of:
 - Chapter 5, 6, 8, 9, or 13 of Title 16;
 - Code Section 16-4-1;
 - Code Section 16-7-2;
 - Subsection (f) of Code Section 31-7-12.1; or

Any other offense committed in another jurisdiction which, if committed in Georgia, would be deemed to be such a crime constitute an offense identified in this paragraph without regard to its designation elsewhere.

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 crimes 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 OIG will have more information regarding the appeals process in the weeks to come at dch.georgia.gov and dch.georgia.gov/office-inspector-general.

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>.

FAQ



GEORGIA DEPARTMENT
OF COMMUNITY HEALTH

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>.

If I am an owner of a facility and 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.

What is Rap Back?

Rap Back is a process in which fingerprints are retained at the time of fingerprinting and provides for continuous monitoring. Should there be a criminal history event such as an arrest or conviction, the GBI notifies the department of the incident. Email DCH at ga.rapback@dch.ga.gov for additional information.