

Information in State statutes and regulations relevant to the National Background Check Program: Georgia

This document describes what was included as of January 2011 in Georgia statutes and regulations relevant to the Centers for Medicare & Medicaid Services' National Background Check Program. Georgia has six relevant statutes and regulations, all of which were used in gathering information for this document, and which are listed below in the State Statutes and Regulations section.

| Key Feature | Description |
|--|---|
| Specific facility and provider types | The State covers three of the long term care (LTC) facility and provider types named in the Patient Protection and Affordable Care Act of 2010 (Affordable Care Act), namely: skilled nursing facilities, nursing facilities, and residential care providers. |
| Registry checks | Not addressed. |
| Fingerprinting | Not addressed. |
| Rap back | Not addressed. |
| Provisional employment | Not addressed. |
| Definition of direct patient access employee | Georgia does not define direct patient access employee; however, it requires background checks for both licensed and unlicensed employees of certain LTC facilities and providers, to include skilled nursing facilities, nursing facilities, home health providers, and personal care service providers. There are no background check requirements for contractors or volunteers. |
| Provision of criminal background check results to employee | Not addressed. |
| Expiration of criminal history background check results | Not addressed. |

| Key Feature | Description |
|---|---|
| <p>Inclusion of disqualifying crimes specified in section 6201 of the Affordable Care Act:</p> <ol style="list-style-type: none"> 1. Medicare/Medicaid program-related crimes (42 U.S.C § 1320a-7(a)(1)) 2. Convictions related to patient abuse/neglect (42 U.S.C § 1320a-7(a)(2)) 3. Felony convictions related to health care fraud (42 U.S.C § 1320a-7(a)(3)) 4. Certain felony convictions related to controlled substances (42 U.S.C § 1320a-7(a)(4)) | <ol style="list-style-type: none"> 1. Not addressed. 2. Not addressed. 3. Not addressed 4. Not addressed. |
| <p>State-identified convictions</p> | <p>See Appendix A – State-identified Disqualifying Convictions. Georgia identifies various disqualifying convictions. More information on the disqualifying convictions can be found in Appendix A.</p> |
| <p>Opportunity to contest accuracy of background check findings</p> | <p>Not addressed.</p> |
| <p>Ability to remove hiring prohibition based on rehabilitation factors</p> | <p>Not addressed.</p> |
| <p>Rehabilitation/mitigation process for negative fitness determinations</p> | <p>The State’s process takes into account extenuating circumstances and rehabilitation.</p> |
| <p>Independence of appeal or review process</p> | <p>The State provides an independent appeal or review process.</p> |

State Statutes and Regulations

| Citation | Description |
|--|--|
| Official Code of Georgia Annotated (O.C.G.A.) §§ 31-7-250 through 31-7-265 | This is about the requirement for criminal record checks for directors of personal care homes and the requirement for pre-employment criminal record checks for personal care home employees whose duties involve personal contact with residents. This is a comprehensive statute that includes a list of disqualifying crimes and information on appeal procedures and immunity from liability for good-faith actions in compliance with this law. |
| O.C.G.A. §§ 31-7-350 through 31-7-354 | This indicates that criminal record checks are required for nursing home employees. |
| O.C.G.A. § 31-2-9 | This indicates that criminal record checks are required for owners of personal care homes, assisted living communities, private home care providers, and licensed community living arrangements. |
| Georgia Rules and Regulations: Department of Community Health, Rule 111-8-62-.10 | This is about personal care home personnel. |
| Georgia Rules and Regulations: Department of Community Health, Rule 290-5-8-.26 | This deals with criminal background checks for nursing home personnel, covering issues including obtaining information from former employers, registries, licensure boards, the Georgia Nurse Aide Registry, and, if appropriate, other States' nurse aide registries. |
| Georgia Rules and Regulations: Department of Community Health, Rule 290-5-54-.05(b)-(c) and 290-5-54-.03 | The first reference indicates that a criminal history background check is required for the owner of a private home care provider as condition of licensure. The second reference includes relevant definitions. |

Key

§ - Section

§§ - Sections

Appendix A – State-identified Disqualifying Convictions

The State-identified disqualifying convictions for employees of personal care homes are:

- aggravated assault,
- aggravated battery,
- rape,
- felony theft by taking,
- felony theft by deception,

- felony theft by conversion,
- forgery in the first and second degrees,
- murder and felony murder,
- criminal attempt as it concerns attempted murder,
- robbery,
- armed robbery,
- controlled substances violations,
- battery,
- sexual assault against a person in custody,
- abuse, neglect, or exploitation of a disabled adult or elder person, and
- any other offense committed in another jurisdiction which, if committed in this State, would be deemed to be such a crime without regard to its designation elsewhere.

The State-identified disqualifying convictions for employees of nursing homes are:

- any offense which constitutes a felony with respect to aggravated assault,
- aggravated battery,
- rape,
- felony theft by taking,
- felony theft by deception,
- felony theft by conversion,
- forgery in the first and second degrees,
- murder and felony murder,
- criminal attempt as it concerns attempted murder,
- robbery,
- armed robbery,
- controlled substances violations, and
- any other offense committed in another jurisdiction which, if committed in this State, would be deemed to be such a crime without regard to its designation elsewhere, if conviction or other final disposition occurred within 10 years of the date of the criminal record check.