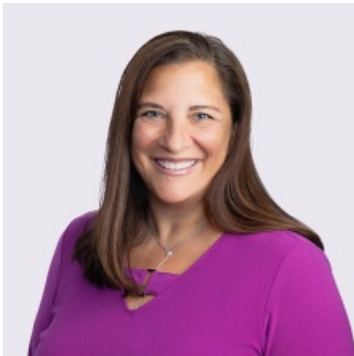


# Georgia Targets Elder Abuse with Tough New Long-Term Care Background Check Law

By Emily S. Borna & Todd Van Dyke

May 11, 2018

## Meet the Authors



**Emily S. Borna**

(She/Her)

Principal

(404) 586-1817

Emily.Borna@jacksonlewis.com



**Todd Van Dyke**

(He/Him)

Principal

(404) 586-1814

Todd.VanDyke@jacksonlewis.com

## Related Services

Background Checks

Healthcare

A new Georgia law will require nursing home and other long-term care workers to submit to extensive background checks. The “Georgia Long-Term Care Background Check Program” will take effect on October 1, 2019. Georgia joins the majority of other states mandating enhanced satisfactory background check for care workers.

The new law, signed by Governor Nathan Deal on May 7, 2018, is intended to promote public safety for a growing and vulnerable aging population. Reports of elder abuse have been on the rise in recent years as the elderly population grows. Investigations into abuse of elders and adults with disabilities by the Georgia Bureau of Investigation have increased 145 percent in the last five years, according to the agency.

The new law, codified at O.C.G.A. Section 31-7-350, *et seq.*, will require care workers with “direct access” to seniors in long-term care facilities to pass a national background check. A new fingerprinting requirement is expected to go into effect in January 2021, allowing employers time to conduct more extensive background checks on current employees.

The new law applies to owners, applicants for employment, and employees providing care or owning a personal care home, assisted living community, private home care provider, home health agency, hospice care, nursing home, skilled nursing facility, or adult day-care.

Currently, Georgia caretakers must only submit to a name-based background check that is limited to crimes committed in Georgia. This offers limited protection at best; information about an individual from another state with a criminal history or who is using an assumed name would not be uncovered. The enhanced background check requirement would more comprehensively incorporate reviews of the FBI database, state and national databases of criminal records, the nurse aide registry, and state sexual offender and other registries.

### Terms Defined

Under the new law, “direct access” means having, or expecting to have, duties that involve routine personal contact with a patient, resident, or client. Direct access include 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, 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.

Further, “employee” is defined as 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, dietitians, and any volunteer who has duties that are equivalent to the duties of an employee providing such services. Expressly excluded from this definition are physicians, dentists, nurses, and pharmacists who are licensed by the state. Also excluded from the mandatory background check are individuals

who contract with a facility, personally or through a company, to provide utility, construction, communications, accounting, quality assurance, human resource management, information technology, legal, or other services that are not directly related to providing services to a patient, resident or client of the facility. Families (*i.e.*, a spouse, parent, sibling, or grandparent) and guardians of elderly persons (age 65+) seeking personal care services will have the same access to a central state caregiver registry for care-worker employment determinations as licensed facilities.

## Violations

Penalties for violations can range from monetary penalties to license revocation.

Failure to comply with the new law subjects the facility to liability for civil monetary penalties of \$500 for each day that a violation occurs (up to \$10,000).

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

## Next Steps

Covered Georgia employers in the care-taking industry should comply with the new law and ensure that:

- Each application form provided by a covered facility to an applicant conspicuously state: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A NATIONAL AND STATE BACKGROUND CHECK AS A CONDITION OF EMPLOYMENT"; and
- Personnel records for covered entities include evidence of each employee's satisfactory determination, registry check, and licensure check, as applicable.

Please contact a Jackson Lewis attorney to discuss the new law and your specific organizational needs.

©2018 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on labor and employment law since 1958, Jackson Lewis P.C.'s 1000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged, stable and diverse, and share our clients' goals to emphasize inclusivity and respect for the contribution of every employee. For more information, visit <https://www.jacksonlewis.com>.