



# Linking People with Criminal Records to Employment in the Healthcare Sector: 5 Things to Consider



## About This Report

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## **Linking People with Criminal Records to Employment in the Healthcare Sector: 5 Things to Consider**

Over the next decade the healthcare sector will have the most growth out of all occupational groups, creating 2.4 million new healthcare jobs to be filled, from entry level support staff to highly skilled direct service professionals.<sup>1</sup> In some geographic areas, and within specific healthcare occupations, there will be shortages in the number of qualified individuals to fill these positions. For example, in 2030 33 states are expected to not have sufficient Licensed Practical Nurses to meet demand.<sup>2</sup> There are an estimated 70 million individuals with criminal records, some of whom could help fill these jobs safely and effectively, but may be needlessly hampered by unnecessary education, licensing, and hiring restrictions.

This project—funded by the Office of the Assistant Secretary for Planning and Evaluation (ASPE) at the U.S. Department of Health and Human Services—explores how the need for workers in healthcare professions can be partially met by hiring individuals with criminal records who do not pose a risk to public safety, working to ultimately ensure, as President Trump has stated, “that those who enter the justice system are able to contribute to their communities after they leave prison.”<sup>3</sup>

Many occupational requirements and restrictions are in place to ensure safe, skilled delivery of health care. The safety and wellbeing of patients is an unparalleled priority. However, in some cases these safeguards may be overly broad and inefficient, serving as a barrier to qualified individuals providing much-needed labor and to supporting themselves and their families with no benefit to public safety. Providing individuals with criminal records consideration for employment while maintaining healthcare quality and public safety can help increase individual self-sufficiency and fulfill a need for workers. This is especially important as our nation works to address declines in labor force participation among working age men and the increased need for workers in substance use disorder treatment to help combat the opioid crisis.<sup>4,5</sup>

This report is a summary of our findings from a literature review, listening session with community stakeholders and federal staff, and individual conversations with academics, program managers, federal staff, and individuals with criminal records. In addition, we reviewed the National Inventory of Collateral Consequences of Conviction (NICCC) and created a Healthcare Employment Extract that contains all the state collateral consequences related to obtaining healthcare employment listed in the NICCC as of September 2016. This is available as a separate attachment to this report. More information about the NICCC Healthcare Employment Extract can be found in Appendix A. This report is organized around the following five things to consider for employing certain individuals with criminal records in the healthcare sector:

1. Growth in the healthcare sector has created a demand for healthcare employees that some individuals with criminal records are qualified to fill safely.
2. Improved methods for screening an applicant’s criminal record are being successfully used throughout the country.
3. Emergency Medical Technicians, Certified Nursing Assistants, and Community Health Workers are growing healthcare occupations that have been successfully filled by individuals with criminal records.
4. The federal government, states, and communities are engaging in efforts to eliminate unnecessary occupational licensing requirements and focus on requirements that are needed for health and safety.
5. With appropriate screening, hiring individuals with criminal records can improve the healthcare workforce.

## 1. Growth in the healthcare sector has created a demand for healthcare employees that some individuals with criminal records are qualified to fill safely.

**Figure 1. Projected Growth in Healthcare Employment, 2016 to 2026**

Occupation	Employment		Employment Change	
	2016	2026	Number	Percent
Personal care/Home health aides	2,927,600	4,136,400	1,208,800	41%
Registered nurses	2,955,200	3,393,300	438,100	15%
Nursing assistants and Orderlies	1,564,300	1,742,000	177,700	11%
Medical assistants	634,400	818,300	183,900	29%
Licensed practical and licensed vocational nurses	724,500	813,400	88,900	12%
<b>Total (all healthcare occupations)</b>	<b>17,845,300</b>	<b>21,345,300</b>	<b>3,500,000</b>	<b>18%</b>

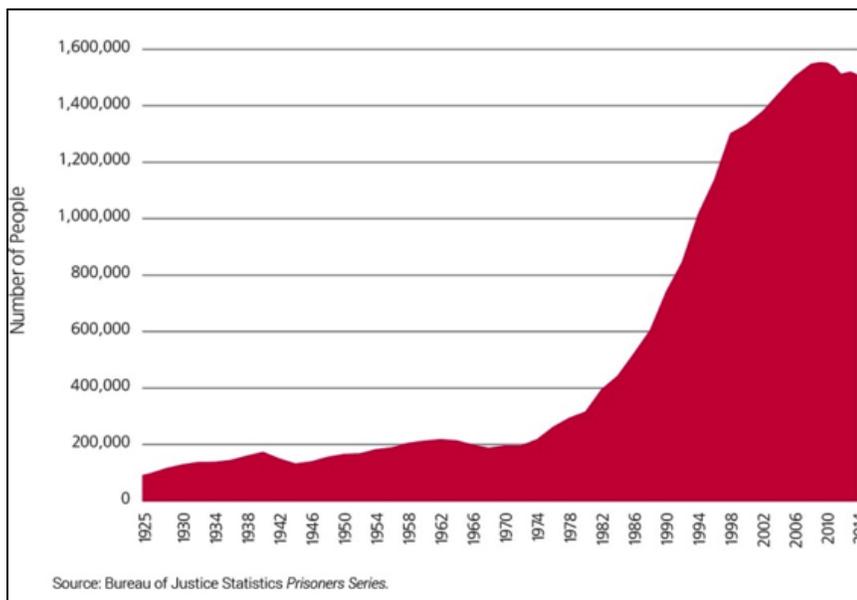
Source: “Occupational outlook handbook: Healthcare Occupations,” U.S. Department of Labor, Bureau of Labor Statistics.

The growing healthcare sector presents a major economic opportunity. The U.S. Bureau of Labor Statistics (BLS) projects an addition of 2.4 million healthcare jobs between 2016 and 2026. As shown in Figure 1, BLS projects that in the next decade some of the largest healthcare employment growth will be among healthcare support jobs, including an additional 1,208,800 personal care aides and 177,700 nursing assistants—increases of 41 percent and 15 percent, respectively.<sup>6</sup>

This projected growth in healthcare jobs parallels a substantial growth in the number of Americans with criminal records, including those previously incarcerated. U.S. federal and state prison populations escalated dramatically between 1970 and 2014—from approximately 200,000 to 1.56 million people (Figure 2). As is clear by the large numbers, the criminal histories of individuals with records can vary greatly and include offenses such as shoplifting and non-violent drug offenses. The Bureau of Justice Statistics (BJS) estimated that at the end of 2015, 6.7 million people were under adult criminal justice supervision of some type.<sup>7</sup>

As the incarceration rate rose, new policies also grew that excluded people with criminal

**Figure 2. U.S. State and Federal Prison Population, 1925–2014**



records from broad categories of activities. Often enacted through laws or regulations, these policies and procedures allow, and often mandate, that employers, postsecondary institutions, landlords, and treatment providers use criminal records to restrict access to education, housing, employment, social services, public benefits, and mental and behavioral health services. These post-release barriers are known as collateral consequences.

While these restrictions are intended to promote public safety, a recent Heritage Foundation report found that collateral consequences, 60 and 70 percent of which are related to barriers to employment, can impede successful reentry.<sup>8</sup> For example, as a result of having a criminal record job applicants with a non-violent drug offense are 50 percent less likely than their peers without a record to receive an interview or a job offer, even with identical resumes and qualifications.<sup>9</sup> However, when these challenges can be overcome without sacrificing safety, employment has been found to play an especially important stabilizing role for reentering individuals, their families, and in maintaining healthy and safe communities. Most research indicates a strong inverse relationship between employment and crime, suggesting that individuals who obtain steady employment after incarceration are less likely to reoffend.<sup>10,11,12</sup> Additionally, evidence is mixed, but some program evaluations have shown that for individuals with nonviolent offenses, programming designed to quickly place returning individuals in jobs, significantly reduces the likelihood of rearrest within three years.<sup>13</sup>

To ensure that appropriate hiring decisions are made, the U.S. Equal Employment Opportunity Commission (EEOC) guidance (see box below), published in 2012, outlines the appropriate use of criminal records in the hiring process under Title VII of the Civil Rights Act of 1964, as amended.<sup>14</sup> Additionally, research indicates the likelihood of committing an additional offense is influenced by several factors that should be considered, including:

- **Time elapsed since the offense.** Recidivism risk declines in direct relation to the elapsed time since the most recent conviction.<sup>15</sup>
- **Offense type.** Property and drug offenses are associated with greater risk of reoffending.<sup>16</sup>
- **Age of the person.** Older individuals generally are at lower risk of reoffending.<sup>17,18</sup>

#### EEOC Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions

- The employer's practices or policy should not treat people with the same criminal records differently based on their race and national origin.
- If specific criminal information (e.g., convictions for certain offenses) is used and does disproportionately exclude a protected group, then the exclusion must be "job-related and consistent with business necessity."
- To order for the exclusion to be job-related and consistent with business necessity, consider the following:
  - the nature of the crime (i.e., the specific offense);
  - the elapsed time since the offense or completion of sentence; and
  - the nature of the position.
- The EEOC also encourages employers to give an individual, who has been identified for exclusion based on a criminal record, the opportunity to show why he or she should not be rejected for this reason.

—U.S. Equal Employment Opportunity Commission, 2012

Restrictions on hiring individuals with criminal records may present challenges to healthcare employers and potential employees with criminal records. To ease this process many states and local governments have passed legislation and started programs to decrease barriers to employment for people with criminal records.

**State activities.** State governments across the country have been engaged in a variety of activities to safely strengthen employment opportunities for individuals with criminal records. Illinois and Kentucky have recently passed legislation that allows individuals with criminal records more opportunities to apply for initial or reinstatement of certain licenses, including in healthcare employment.<sup>19,20</sup> Ohio permits most individuals with a criminal conviction to apply for a Certificate of Qualification for Employment (COE), which allows the job applicant to present proof of suitability for employment notwithstanding the specific conviction.<sup>21</sup> More than half of all states have adopted some level of “ban the box” policies that have employers consider a candidate’s qualities before checking for a criminal record.<sup>1</sup> Other states have enacted legislation that makes it easier for eligible individuals to have their arrest or criminal record expunged or sealed. For example, in 2016 the Nebraska state legislature passed a law requiring Nebraska courts to automatically seal the records of individuals who were acquitted or whose charges were dropped.<sup>22</sup> Other states, such as Georgia, Montana, North Dakota, and Virginia, have launched larger reentry initiatives to provide better reintegration services, which often include employment services, to people returning to the community.<sup>23,24,25,26</sup>

**Local government activities.** Local governments across the nation have taken various actions to safely increase hiring of residents with criminal records. For example, both the city and the county of Durham, North Carolina, have “banned the box” and encouraged private businesses to do the same. This action has led to the county more than tripling the number of individuals with criminal records they hired in just two years.<sup>27</sup> The City of Baltimore has “banned the box” as well, not just for employees working for the city, but also for most private employers who employ 10 or more full-time workers.<sup>28</sup> In Palm Beach County, Florida, where there is substantial job growth, the Palm Beach County Criminal Justice Commission has contracted with reentry service providers to provide returning adults with appropriate employment services based on their individual needs and a risk assessment.<sup>29</sup> Another example of local government initiatives is in Travis County, Texas, which has a voluntary program that helps link individuals with criminal records to employers who will hire them and need their skill set.<sup>30</sup> The county also provides the employer and the job applicant with free fidelity bonding services.

These state and local actions are helping to open the door for people with criminal records who do not pose a safety risk, to enter the labor force. This can assist these individuals in obtaining crucial economic stability and in helping healthcare systems fill vacancies and meet the growing demand for services.

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<sup>1</sup> The states that have taken action are AZ (2017), CA (2017, 2013, 2010), CO (2012), CT (2016, 2010), DE (2014), GA (2015), HI (1998), IL (2014, 2013), IN (2017), KY (2017), LA (2016), MD (2013), MA (2010), MN (2013, 2009), MO (2016), NE (2014), NV (2017), NJ (2014), NM (2010), NY (2015), OH (2015), OK (2016), OR (2015), PA (2017), RI (2013), TN (2016), UT (2017), VT (2015, 2016), VA (2015), WA (2018), and WI (2016) ([Avery & Hernandez, 2018](#)).

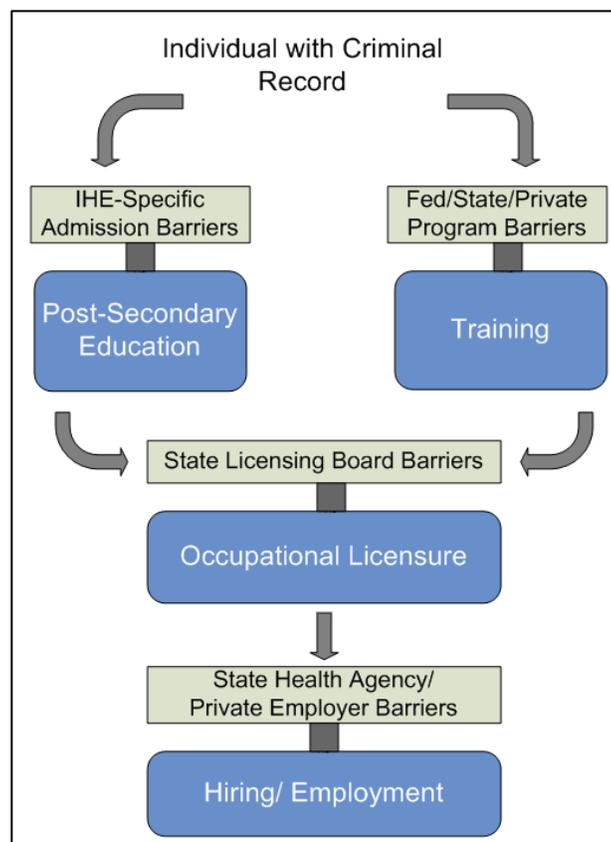
## 2. Improved methods for criminal records screening and clearance are being successfully used throughout the country.

Restrictions for a career path are often enforced during the criminal record screening process, vary depending on the occupation and jurisdiction, and can exist at multiple points in the career development process. As Figure 2 shows, there are potential barriers at entry points for education, formal training, licensing and credentialing, and hiring itself. The restrictions and requirements at each step also influence each other. For example, institutions of higher education (IHEs) may be unwilling to admit students because they believe the barriers toward licensing, training, or employment are too high. Improving transparency and consistency among these requirements can decrease unnecessary obstacles in the ultimate hiring of an individual with a criminal record. To accomplish this, an overview of the complex and comprehensive nature of the restrictions and requirements is useful for understanding how to successfully navigate a particular career path.

### State Healthcare Employment Restrictions

The National Inventory of the Collateral Consequences of Conviction (NICCC) was created by the American Bar Association and is updated and maintained by the Council of State Governments (CSG) Justice Center under a grant from the U.S. Department of Justice (DOJ).<sup>ii</sup> The NICCC identifies over 44,500 state restrictions, limitations, and requirements that can prevent individuals with criminal records from obtaining licensure and employment in various professions, including those in healthcare. Almost one-third of these collateral consequences apply to misdemeanor convictions, which can include offenses such as petty theft and public intoxication. The NICCC is limited to state collateral consequences and does not include municipal ordinances, government agency policies, or policies imposed by private entities that are not mandated by law. The information in the NICCC can be used to identify specific collateral consequences and determine the range of applicable consequences of a conviction or as a broad overview of collateral consequences contained in a state. However, due to states differing in how they categorize their laws and regulations and in the terminology they use, the ability to provide state-to-state comparisons and national totals is limited. The data can be filtered to depict specific professions or areas of interest and include the types of triggering offenses; restrictions noted as mandatory or discretionary; and whether relief, such as expungement or waiver, is included in the statute. Analyzing the collateral consequences can also identify inconsistencies within states. For

Figure 2. Cumulative Employment Barriers



Source: CNA

<sup>ii</sup>The NICCC database was initiated as a joint venture of the American Bar Association (ABA) and the Department of Justice. The database and the ABA discussion on collateral consequences can be found at <https://niccc.csjusticecenter.org/>. For a description of how to use the database click “Start Tour.”

example, states may have differing requirements for professional licensure versus employment within a specific health profession. These differences often pose difficulties such as individuals being able to obtain a professional license or certification but not being eligible for employment or vice versa.

A full listing of the state healthcare employment collateral consequences can be found in the NICCC Healthcare Employment Extract of this report. Below is further explanation of key components of the state collateral consequences in the NICCC.

### Discretionary versus Mandatory Consequences

State requirements are generally categorized as discretionary or mandatory (or automatic). A mandatory consequence is commonly included in law and requires an action—either exclusion from employment or denial of a license. An example would be “The Department of Health **shall revoke** or suspend a license, place on probation a person ....” A discretionary consequence allows for an exception or other consideration. For example, “the State Board of Optometry **shall have the power to revoke**, suspend, place a license on probation for....”

### Background Check Requirements

Criminal history background check requirements are also included in the NICCC. These regulations are coded as either a supplement to a specific collateral consequence or, if there is no collateral consequence, as a freestanding provision. Also included are provisions that require applicants for employment or other benefits to disclose their criminal record at the time they apply.<sup>iii</sup>

### Possibilities for Relief

Relief can be through expungement of the record, pardon, or an administrative process such as a waiver. Conditions for issuing a pardon or expungement are usually defined in state law, and the requirements vary by state. Generally, an expungement removes the criminal record from public view as though it did not exist, whereas a pardon invalidates the criminal record itself. A waiver is an administrative procedure allowing due process when an applicant is disqualified for licensure or employment because of a criminal history. The waiver process does not change an individual's criminal history, but provides eligibility for the individual to obtain a license or work in healthcare if appropriate.

## Federal Restrictions Related to Employment

The federal government also has restrictions relating to healthcare employment. These mechanisms include the System for Award Management (SAM), the Office of Inspector General's (OIG) List of Excluded Individuals and Entities (LEIE), the National Background Check Program (NBCP) and regulations governing long-term care programs receiving Medicare and Medicaid funding.

### System for Award Management

To receive payment from the federal government as an entity/individual, federal agencies require that the entity/individual be registered in SAM. SAM combines the functions of several predecessor

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<sup>iii</sup> NICCC User Guide, [https://niccc.csgjusticecenter.org/user\\_guide/](https://niccc.csgjusticecenter.org/user_guide/).

tracking systems, including ensuring that individuals ineligible for federal contract payments do not receive them, such as those who may be ineligible due to past criminal behavior.<sup>iv</sup>

### List of Excluded Individuals and Entities

OIG maintains the list of all those currently excluded from participation in federally funded healthcare programs.<sup>v</sup> Healthcare providers may be subject to civil monetary penalties for employing an excluded individual and can check the LEIE to ensure that new hires and current employees are not excluded. OIG is required by law to exclude individuals and entities convicted of: Medicare or Medicaid fraud and other offenses related to the delivery of items or services under Medicare, Medicaid, CHIP, or other state healthcare programs; patient abuse or neglect; felony convictions for other healthcare-related fraud, theft, or other financial misconduct; and felony convictions relating to the unlawful manufacture, distribution, prescription, or dispensing of controlled substances. OIG can also exclude individuals and entities for other reasons. See Appendix B for a list of exclusions.

No federal healthcare program payment will be provided for items or services furnished, ordered, or prescribed by excluded individuals or entities. A Notice of Intent to Exclude does not necessarily mean that the receiving individual or entity will be excluded. OIG carefully considers all material provided by the person who received the notice. All exclusions implemented by OIG may be appealed to a U.S. Department of Health and Human Services (HHS) Administrative Law Judge (ALJ), and adverse decisions may be appealed to the HHS Departmental Appeals Board (DAB). Judicial review in federal court is also available after a final decision by the DAB.<sup>vi</sup>

### National Background Check Program

The NBCP creates a standard framework for conducting background checks on applicants for employment in the long-term care (LTC) industry. Under the voluntary program, the Centers for Medicare and Medicaid Services (CMS) have awarded over \$60 million to 26 states and U.S. territories to design, implement, and operate background check programs to meet the program's criteria.

The screenings include state and national fingerprint-based criminal history checks and checks of other databases of abuse and fraud related to vulnerable populations and healthcare. The NBCP requires states to establish a waiver process that allows for independent review of applicant's deemed not eligible for healthcare employment. In addition to the four federally mandated barrier crimes, states are also required to stipulate an enumerated list of criminal convictions that will make an individual ineligible for LTC employment. Implementation of the NBCP has added transparency and consistency to the background check process in participating states.

### Long-Term Care Regulations

To reduce abuse, neglect, and exploitation of LTC service recipients, the revision of CMS's LTC regulation prohibits facilities from hiring or engaging any person having any of the following:<sup>31</sup>

- Have been found guilty of abuse, neglect, exploitation, misappropriation of property, or mistreatment by a court of law.

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<sup>iv</sup> More information about restrictions and exclusions of SAM registrants can be found at <https://www.gsa.gov/portal/content/192903>, Federal Register / Vol. 78, No. 33 / Tuesday, February 19, 2013 / Notices, pp11648-11650, and at SAM.gov.

<sup>v</sup> The Federal Employees Health Benefits Plan is the only exception.

<sup>vi</sup> For more information about the LEIE see <https://oig.hhs.gov/exclusions/> and <https://oig.hhs.gov/faqs/exclusions-faq.asp>

- Have had a finding entered into the state nurse aide registry concerning abuse, neglect, exploitation, mistreatment of residents, or misappropriation of their property.
- Have a disciplinary action in effect against his or her professional license by a state licensure body as a result of a finding of abuse, neglect, exploitation, mistreatment of residents, or misappropriation of resident property.

To comply with this revision, states will individually (1) authorize the collection of such information for job applicants; (2) specify which penal code sections include “abuse, neglect, exploitation, misappropriation of property, or mistreatment”; and (3) specify the procedures for notification and appeals or challenges to any employment prohibition.

## Resources to Safely Increase Employment

Reentry-related community organizations and legal services assist people with criminal records who are seeking employment with criminal record clearance.<sup>32</sup> For example, the National H.I.R.E. Network and the Legal Action Center connect job seekers with legal experts who will help them navigate the legal barriers in healthcare employment. DOJ Second Chance Act grantees can use their funding to help clients clear their criminal records if appropriate and necessary to secure employment. These resources can help individuals like Tiffany, who was incarcerated as a result of her opioid addiction, which began when she was prescribed opioids after a serious car accident. Twelve years after her incarceration she was denied entry into a nursing program, but is now working with legal aid to clean her criminal record and enroll in her local community college.

Although all 50 states and the District of Columbia have some clearance processes, criminal record clearance varies from state to state in the type of offenses that can be cleared, what the waiting period is before one is eligible, and whether the records are sealed or removed from public view.<sup>33</sup>

Three states with recent changes are Illinois, Kentucky, and Pennsylvania. Illinois legislation waived the waiting period for clearance if a person earns a specified educational achievement, such as a high school diploma, while serving their sentence, and Kentucky passed legislation for clearing records of low-level felonies, such as possession of an unlawful substance or theft, after a 5 year waiting period.<sup>34,35</sup> Pennsylvania expanded its expungement process to most persons with second- and third-degree misdemeanors who have had no arrests or prosecutions in the past 10 years.<sup>36</sup>

On the federal level, in partnership with DOJ, the Department of Labor (DOL) supports the Clean Slate Clearinghouse (CSC) to provide technical assistance for record clearance, expungement, and other means of mitigating criminal records.<sup>37</sup> CSC helps support criminal record clearance around the country by providing information on record clearance, contact information for legal service providers, providing tools and resources for legal service providers, and helping policy makers compare state record clearance policies.

In some cases, overly broad legal barriers are being eliminated through litigation. For example, in 2015 the Commonwealth Court in Pennsylvania found the lifetime mandatory employment bans in the state’s Older Adults Protective Services Act for individuals convicted of certain crimes to hold jobs in LTC facilities unconstitutional given the absence of any discretion allowing employers to consider individualized factors of each case.<sup>38</sup>

Therefore, in obtaining healthcare employment there can be restrictions at many points in the career development process, making it important that applicants and employers understand these barriers and that they are made as clear and consistent as possible, maintaining public safety without creating unnecessary barriers to employment.

### 3. Emergency Medical Technicians, Certified Nursing Assistants, and Community Health Workers are growing healthcare occupations that have been successfully filled by individuals with criminal records.

#### Emergency Medical Services/Emergency Medical Technician

Positions for emergency medical services (EMS), such as emergency medical technicians (EMTs) and paramedics, are among the fastest growing in the healthcare sector, with a projected growth rate of 15 percent, or 37,400 jobs expected to be added by 2026.<sup>39</sup> EMS staff care for the sick and injured in emergency settings, responding to individual calls for assistance or as first responders in emergency situations. EMS positions typically require some postsecondary non-degree training. EMS staff are usually licensed, and background checks are almost always required. Despite limitations, individuals with criminal records have been successful in obtaining EMS employment.

**The Alameda County (California) Public Health Department Emergency Medical Services Corps program** recruits and trains minority men between the ages of 18 to 26. EMS Corps is a five-month paid program that includes youth development, mentorship, and job training. The program objective is to produce competent entry-level EMTs who can serve their community. The program's director was formerly incarcerated and some of the trainees have had criminal justice involvement, such as Dexter who spent nine months in juvenile detention as a teenager, but through the EMS Corps has been able to support himself and family members by working full-time as an EMT.<sup>40</sup>

#### Certified Nursing Assistant

Certified Nursing Assistants (CNAs) are forecast for high growth—11 percent, or almost 177,700 new jobs, by 2026.<sup>41</sup> Though states may require a certification that can include restrictions for people with some criminal records, this profession can still be a viable path for entry into healthcare employment.

There are state-approved CNA training programs in every state, which are relatively short and inexpensive; some are offered through nursing home facilities, community or four-year colleges, and by private training firms. All CNA programs require supervised clinical practice hours. CMS sets minimum requirements and mandates state agencies to oversee these programs.

**Challenges to obtaining CNA training.** Barriers to training are typically statewide legal barriers that parallel the restrictions for occupational licensure/certification and/or hiring eligibility in the same types of facilities. In some states, a criminal record check is conducted as part of the training program, when the individual is applying for certification after training, and during the hiring process. Different exemption and waiver procedures and documentation may also be required.

**Opportunities in CNA training.** In states with consistent and transparent certification and hiring restrictions, CNA training programs can adopt the criteria and best practices outlined in [Beyond the Box](#), the U.S. Department of Education (ED) guidance for increasing education opportunities for individuals with criminal records.<sup>42</sup>

Consistency and transparency is facilitated in states where applicants for CNA training, certification, and employment all go through the same screening and waiver processes through the same state agency. For example, Florida has a consolidated licensing and employment screening process and makes its screening information available to CNA training programs. In New York, the training program provides applicants with the state's preemployment screening criteria. California has separate departments for certification and hiring but shares information between departments.

**Promising Practice in Action.** The Tri-County Care Center is a 90-bed skilled nursing facility (SNF) in a rural community. For the past 18 years, the SNF has participated in a work release program with the Missouri Department of Correction's (MDOC) Women's Eastern Reception, Diagnostic and Correction Center. The work release program creates training and employment opportunities for the incarcerated women and a workforce of CNAs for the care center. Limited to nonviolent offenders who have successfully participated in other MDOC work release programs, passed a test, and are within two years of release, the program provides participants with classroom and on-the-job training. A requirement of the program is that one-third of the participants' paycheck gets put into a savings account so that upon release the women have money in their bank account and a skill on their resume. The administrator of the Tri-County Care Center said that her work release employees are excellent and that the residents of the care center really appreciate them.<sup>43</sup>

## **Community Health Workers**

The predicted growth rate of community health workers (CHWs) is 16 percent, or 19,200 new jobs by 2026.<sup>44</sup> CHWs are known by many names, and can provide a wide range of services including language translation, informal counseling, first aid, taking vital signs, empowering patients through providing health information in a culturally relevant manner, and being a patient advocate.<sup>45</sup>

Formerly incarcerated people often lack guidance in navigating aspects of the healthcare system and many times feel uncomfortable with the healthcare system and do not seek needed care. Programs that train and hire CHWs with histories of incarceration can provide formerly incarcerated clients with culturally relevant health services and have had success in decreasing hospital emergency room visits while also providing formerly incarcerated individuals with meaningful employment.<sup>46</sup>

States set their own criteria for CHW certification, but most (31) do not have certification requirements.<sup>47</sup> The Center for Health Law and Policy Innovation at Harvard Law School, the National Council of La Raza, and Peers for Progress of the American Academy of Family Physicians Foundation developed guidelines for certifying individual CHWs and for organizations employing CHWs.<sup>48</sup> The guidelines recommend maximum flexibility and consideration of the community being served in determining "good moral character" when selecting CHW candidates. States have developed a variety of screening criteria. For example, Massachusetts has context-dependent restrictions based on setting and job duties. Ohio has a lifetime mandatory ban for conviction of 11 mostly violent offenses in a CHW licensing program under the Board of Nursing.<sup>49</sup>

The Bureau of Health Workforce within the HHS Health Resources and Services Administration (HRSA) have funded training opportunities through grants for specific types of CHW training—for example, the Health Careers Opportunity Program and the Health Careers Opportunity Program-Paraprofessionals. Additional funding that may be used has been provided by the Centers for Disease Control (CDC) through grants for specific disease- or other prevention-related activities.

**Models for formerly incarcerated CHWs.** The Transitions Clinic Network (TCN) and the Coming Home Program are dedicated to providing healthcare to people returning from prison and to employing formerly incarcerated CHWs as a foundational strategy in providing care to their patients. TCN is a national network of clinics for individuals with chronic conditions recently released from incarceration. Many TCN patients have high-risk/high-cost medical needs that, left untreated, can make reentry much harder. TCN's founders, Shira Shavit and Emily Wang, have seen that employing people with histories of incarceration is essential to providing comprehensive and culturally competent care to returning individuals, who have a variety of health needs. According to Shavit, such employees "connect with the community and act as 'cultural interpreters' in primary care settings,

which is a critical concept.”<sup>vii</sup> CHWs at TCN include individuals like Jerry Smart, who is a formerly incarcerated single father and is now able to give back to his community by coordinating medical care and social services supports for chronically ill patients returning home from prison.

With HHS funding, the City College of San Francisco (CCSF) worked with TCN to train formerly incarcerated people to become CHWs at TCN-affiliated clinics using the CCSF Post-Prison Health Worker Certificate Program. The CHW certificate program was made available to the entire TCN network through an online format. According to the program evaluators, CCSF faculty developed the online training materials to address the unique needs of formerly incarcerated people—for example, managing reentry and using technology.<sup>50</sup> Online training is currently available directly through TCN.

The leadership team also introduced a CHW assessment tool that provided additional guidance on CHW roles and expectations. This tool could be helpful whenever CHWs are intended to become an integral part of the primary healthcare delivery team. Interviewed clinicians, showed a genuine appreciation for the CHWs’ contributions to the delivery of health and supporting services.<sup>51</sup>

**The Mount Sinai Health System, Institute for Advanced Medicine, Coming Home program** is located in New York City. Since 2006, Coming Home has offered people with histories of incarceration a one-stop clinic that provides targeted services that address the particular social and health needs of people returning home from prison. As part of this care, Coming Home has created salient roles for formerly incarcerated staff and peers who educate providers about the unique needs of people with a history of criminal justice involvement and who work directly with patients, providing supportive individual and group counseling as well as case management.

The Coming Home program has been designed to support the care of both formerly incarcerated clients and staff. To make this possible, Emily Gertz, the director of special projects for the Mount Sinai Health System’s Spencer Cox Center for Health identified several important program components such as leadership support, training for staff at all levels, education onsite and in the community, sharing local health profile data that illuminate health disparities, providing consultation to manage feelings around “high-stigma” crimes and supporting new staff through the onboarding process. These activities recognize that integrating formerly incarcerated staff into a provider care model is about changing the entire provider culture to be open to and accepting of both clients and staff.

## **Training and Education Considerations**

As described these healthcare occupations and many others require specialized training and/or a college degree and there can be many barriers to receiving this education. Programs often do not allow individuals with criminal records to enroll in their healthcare training, and many employment programs specifically for people leaving the criminal justice system do not include healthcare jobs in the list of occupations they encourage clients to pursue. Some specific pathways do exist though; these show that if overly restrictive barriers are removed, individuals with criminal records can successfully complete the training and be licensed or certified in healthcare occupations.

### **Federal Job Training Opportunities**

A variety of job training programs are offered by the federal government, and although most do not target healthcare jobs or this population, that does not mean they are excluded. Likewise, federally

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<sup>vii</sup> Shira Shavit and Emily Wang, personal communication, October 22, 2015

supported job training programs that serve individuals with criminal records may have the potential to position these individuals for success in healthcare jobs.

The Health Profession Opportunity Grants (HPOG) Program, administered by the Administration for Children and Families (ACF), awards grant funding to provide education and training to Temporary Assistance for Needy Families recipients and other low-income individuals for healthcare careers that pay well and are in demand. Under the first round of HPOG most programs conducted criminal background checks as part of the eligibility screening process. An applicant with a criminal record was not necessarily rejected, as some programs tried to find career ladders and training for which an applicant could still qualify.<sup>52</sup> According to grantee data, the New Hampshire Health Profession Opportunity Project (NH HPOP) enrolled 110 individuals with criminal records and helped 58 of those enrolled submit annulment petitions to have their records cleared. Through NH HPOP, 86 percent of these participants successfully entered a health care occupational training program.<sup>53</sup>

Other federal reentry grant programs include the DOJ Bureau of Justice Assistance's (BJA) Second Chance Act grants and the DOL Employment and Training Administration's Reentry Employment Opportunities grant program, which support job training for justice-involved individuals and individuals returning to their communities after incarceration. Through the Second Chance Act, Sharon Hadley was able to receive the substance use treatment she needed with the assistance of a recovery coach, which prevented her from recidivating. She now works as a recovery coach herself and assists others reentering through their process of recovery.<sup>54</sup> DOL's ApprenticeshipUSA program although not focused on healthcare jobs or individuals with criminal records, is a flexible training system that combines job related instruction with on-the-job learning experiences through an "earn-while-you-learn" model.

## Barriers and Opportunities in Institutions of Higher Education

The [Beyond the Box](#) guidance from ED, provides a comprehensive look at the barriers in postsecondary education.<sup>55</sup> The guidance acknowledges the importance of campus safety; addresses "potential pitfalls with background checks"; and refers to related guidance from across the federal government, which caution against blanket exclusions based on criminal records.

Eligibility for financial assistance may be limited in some circumstances. If a student was convicted of a drug-related offense while they were receiving federal financial aid, or if a student is subject to an involuntary commitment after a conviction and subsequent incarceration for a sexual offense, they will not be eligible for a Pell grant.<sup>56</sup> There may also be limitations for male students if they did not register for the draft between the ages of 18 and 26 as required by law.<sup>57</sup>

While limited, there are also some college-in-prison opportunities for currently incarcerated students. For example, ED is running a Second Chance Pell Pilot program, which reinstates Pell Grant eligibility for currently incarcerated students on an experimental basis.<sup>58</sup> One Second Chance Pell recipient, Bard College, through their [Bard Prison Initiative](#) (BPI) offers a public health specialization in partnership with Columbia University's Mailman School of Public Health. The public health specialization prepares BPI students for graduate programs in public health and for careers as CHWs and other specialties within health agencies following completion of either an A.A. or a B.A. Two BPI alumni have gone on to earn a Master of Public Health degree from Columbia University post-release. Some alumni are working as CHWs and as researchers in a New York City hospital.

Therefore, while individuals with a criminal record face many challenges in receiving the necessary education and training for healthcare careers, pathways do exist for them to enter this workforce and successfully fill in-demand roles.

## 4. The federal government, states, and communities are engaging in efforts to eliminate unnecessary occupational licensing requirements and focus on requirements that are needed for health and safety.

Professional healthcare practitioners are the most heavily licensed occupational group in the United States, with nearly 75 percent being licensed. Healthcare support, which includes nursing assistant and technician occupations, is licensed at a rate of almost 50 percent.<sup>59</sup> Business leaders and the federal government have taken notice of the barriers to employment that these requirements create and are working to address them while still maintaining public safety.<sup>60,61</sup> Below is an overview of the current licensing and certification requirements that exist and some examples of what is being done to improve them.

### Licensing and Certification Requirements

State professional licensing boards are responsible for the issuance, suspension, discipline, and revocation of licenses for healthcare professionals. Every state has licensing restrictions for individuals with criminal records, though these restrictions vary widely by state.

In accordance with guidance from the U.S. Equal Employment Opportunity Commission on the consideration of arrest and conviction records in employment decisions, about half of all states have laws requiring that a criminal conviction be relevant to the job for it to be considered a barrier to general occupational licensing. Licensing boards in some states are allowed to consider criminal information such as arrests in addition to convictions.<sup>62</sup>

The National Inventory of the Collateral Consequences of Conviction (NICCC), shows that state licensing regulations for healthcare practitioners are often quite vague. Some laws require licensees be of “good moral character,” which is used by licensing boards when considering a criminal record. As a result, professional boards have wide-ranging power and latitude over which applicants ultimately receive healthcare licenses and thus obtain employment. Recourse of a denied license in states without an administrative process for appeal may require a legal challenge through the court system.

Licensing restrictions based on criminal records are often different for healthcare professional occupations from those for support-level positions. For example, in some states the CNA barriers can be more rigid than those for other healthcare professionals. Differences include CNA applicants with criminal records facing a longer list of disqualifying offenses or disqualification from employment for longer time periods and having less opportunity to demonstrate rehabilitation or “good moral character” than other professionals, such as physicians.

Healthcare licenses are often occupation-specific, with each occupation licensed by different boards within a state. For example, Maryland has over 20 different boards that license various healthcare professionals.<sup>63</sup> In Florida, to help standardize the process, the screening unit handling professional nurses (LPNs, RNs, and APNs) as well as support-level positions such as CNAs, has constructed

### *Economic Liberty Opening Doors to Opportunity*

The Federal Trade Commission (FTC) Economic Liberty Task Force is working with state partners and other interested stakeholders to promote economic licensing reform. The FTC recognizes that some licensing restrictions may be necessary to protect public health and safety. The FTC is concerned, however, that many licensing restrictions are excessive or unnecessary. Such undue restrictions erect barriers to entry and mobility and impose costs that harm American employers, consumers, the economy, workers including closing the door on job opportunities for people that are ready to work. The FTC Economic Liberty website provides states with information regarding licensing best practices.

*-Federal Trade Commission, 2017*

matrices for disqualifying misdemeanor and felony offenses, that includes discretionary disqualifiers, to guide decision-making about licensing for those with criminal records. “Mandatory” disqualifiers are referred to the board, who may grant exemptions from more serious or more recent offenses.

### Nursing Licensing Matrix for Disqualifying Misdemeanor Offenses

Disqualifying Misdemeanor Offenses					
Assault, if the victim of the offense was a minor Battery, if the victim of the offense was a minor Prostitution Similar Offenses in Other States or Jurisdictions			Lewdness and indecent exposure Contributing to the delinquency of a child Domestic violence		
Occurrence	Completed Confinement, Supervision or Sanction?	Time Period	Make Eligible?	Exemption	File to Board
One time only	Yes	No time Factor	Yes	Yes	No
	No	No time Factor	No	No	Yes
More than one time	Yes	Over 3 years	Yes	Yes	No
		Under 3 years	No	No	Yes
	No	No time Factor	No	No	Yes

Source: Florida Board of Nursing (2017).

## Review and Revision of Requirements

A National Association of Criminal Defense Lawyers (NACDL) survey found that many states have been changing how criminal records are being considered by occupational licensing authorities. Some legal features highlighted by the National Reentry Resource Center that can be used by jurisdictions to review the appropriateness of their requirements include:

- Prohibiting the denial of a license based solely on an applicant’s criminal record unless there is a conviction that directly relates to the occupation.
- Prohibiting the consideration of certain criminal record information.
- Requiring a licensing board to consider factors such as whether the offense is relevant to the occupation, the amount of time that has passed since the offense was committed, and evidence of rehabilitation.
- Requiring a licensing agency to supply an applicant with an explanation of denial and allow for an appeal process.<sup>64</sup>

## Guidelines on Criminal Background Checks (CBCs) for Licensing Nurses

The National Council of State Boards of Nursing (NCSBN), among other activities, is the custodian of the national exams that are used to certify nurses for competency. In guidelines issued in May 2014, NCSBN advised nursing boards to consider using factors such as the amount of time since a conviction, the type of offense, how the offense relates to nursing, and whether the individual has demonstrated rehabilitation when developing their criminal background check procedures.<sup>65</sup>

The EEOC guidance is tailored to the specific needs of licensing for nursing occupations. The NCSBN guidelines contain three main provisions:

- The applicant must provide truthful information about his or her criminal record.
- A decision tree evaluating information on “minor offenses” should ensure that the information is consistent and that any judicial requirements have been completed.
- Other (“nonminor”) offenses are to be evaluated completely and objectively.

The NCSBN guidelines also include the following features:

- A recommendation for forensic psychological evaluation when the individual criminal record includes “serious” (that is, not “minor”) sexual or substance abuse offenses.
- Consideration of factors included in the EEOC guidance to determine the relevance of the offense to nursing care and the applicant’s rehabilitation efforts, when other “serious” offenses are present.
- An additional criterion that is intended to address the risks inherent in many healthcare settings: “The extent to which the license might further the opportunity to engage in the criminal activity.”<sup>66</sup>

### Illinois Revisions to Its Licensing Requirements

Another type of change that some states are considering is to revise licensing requirements pertaining to criminal records. In 2017 Illinois changed its licensing requirements by updating its ban preventing people convicted of forcible felonies from obtaining healthcare licenses.<sup>67</sup>

This update allows individuals with certain forcible felonies the opportunity to have a denied healthcare license issued, or a revoked license reinstated, five years after finishing their sentence or three years after being released from incarceration through a petition process. This change has allowed individuals like LaTonya Anderson, a CNA who had studied and passed the state exams to become a licensed practical nurse, but was denied licensure because of a 20 year old battery conviction, a second chance. Chances like these have large impacts on improving the self-sufficiency of Anderson and her family, as her salary would increase from \$10.50 as a CNA to \$24 as a licensed practical nurse and provide her hope for leaving public assistance. The Illinois Department of Financial and Professional Regulation still determines whether to grant the license, but the new law lists what factors it may take into account, including the seriousness of the offense and prior disciplinary history.<sup>68,69</sup>

### Department of Labor State Occupational Licensing Review

The Department of Labor (DOL) awarded \$7.5 million to the National Conference of State Legislatures (NCSL) for a three-year project to improve geographic mobility for workers in licensed occupations.<sup>70</sup> NCSL, in partnership with the National Governors Association’s Center for Best Practices and the Council of State Governments, will direct a coalition of 10 states. Each state in the coalition will receive technical assistance, develop an action plan that identifies strategies to improve licensure portability and reduce licensure barriers to labor market entry, and work toward implementation of the action plan. The partners will also conduct five research projects including a research effort to collect comprehensive information on licensure requirements for selected occupations across all states and a review of research on barriers to entering the labor market for impacted populations, including individuals with criminal records. In 2018 DOL announced an additional \$7.5 million in grant funds to assist states and associations of states review and streamline occupational licensing rules.<sup>71</sup>

These types of licensing reviews have the potential to address barriers for individuals with a wide range of criminal records in the workforce including those who have old records from crimes committed in their youth and those with substance use disorder related records, while addressing

shortages of workers in particular geographic areas. HRSA estimates that 33 states are projected to experience a shortage - a smaller growth in the supply for Licensed Practical Nurses relative to their state-specific demand. For Texas, for example, that means an approximate deficit of 33,500 full-time employees by 2030.<sup>72</sup> Removing occupational licensing requirements that are not needed for health and safety can help to address these shortages, helping to fill the labor demand needs of healthcare employers.

## **5. With appropriate screening, hiring individuals with criminal records can improve the healthcare workforce.**

Healthcare employers may be tempted to implement strict hiring policies that err on the side of caution by screening out most individuals who have criminal records from being considered for employment, due to concerns about the risks of hiring individuals with a criminal record. Though some restrictions are warranted and necessary, employers who make their hiring policies overly restrictive and broad also face the risk of excluding qualified workers who can add value to their enterprise.

### **Benefits for Employers**

With appropriate screening and matching of individuals' qualifications and interest with employment opportunities, employers have found that employees with criminal records can increase the quality of the workforce. Two large data studies indicate that people with criminal records might out perform their peers who have not had involvement with the justice system. Researchers at Harvard and the University of Massachusetts/Amherst tracked 5,000 individuals admitted to the military with moral character waivers because of felony level criminal background. Compared to their peers who did not need such a waiver, these individuals were just as likely to successfully carry out their employment contract, no more likely to be terminated for reasons of poor performance or misconduct, and were more quickly promoted.<sup>73</sup> A second study, by the Wharton School and Evolve national human resources firm, found that persons with criminal records were one to one and a half percent more productive than other employees.<sup>74</sup> Small differences like these can represent significant profit for large employers.

While neither of the above studies were specific to the healthcare field, there are a few smaller studies that show that people with criminal records are valued employees in the healthcare sector as well. Johns Hopkins University Medical Center found that their employees with criminal records had a lower turnover rate after 40 months of employment than other employees and no reports of problematic terminations.<sup>75</sup> The implementation study of the Transitions Clinic Network (TCN) showed that physicians indicated community health workers (CHWs) who were formerly incarcerated helped to "bridge the gap" between the physicians and their patients, so that they could better understand and address the patient's needs. For example, one physician stated patients often are more relaxed after he tells them he worked with the CHW and noted that having the CHW "has been really essential in establishing trust and in helping patients know that we are there to help them."<sup>76</sup>

### **Prevalence of Hiring Individuals with Criminal Records in Certain Healthcare Settings**

In certain healthcare settings hiring individuals with criminal records is quite common. In 2011 the HHS Office of the Inspector General conducted a study to determine the prevalence of hiring individuals with criminal records in nursing homes. Analyzing a stratified random sample of 260 nursing facilities from the universe of 15,728 Medicare-certified nursing facilities, they found that the vast majority of them (92 percent) did employ at least one individual with a criminal record. They also found almost half of all nursing facilities had five or more employees with a criminal record. When analyzing all employees at the nursing facilities, the study found about five percent had at least one conviction recorded in the FBI criminal history records.<sup>77</sup>

## Accessing Financial Incentives

There are also a number of financial incentives available to employers for hiring individuals with criminal records. Because employment is a significant stabilizing force for those leaving prison and jail, federal, state, and local governments often offer incentives to employers to hire individuals with records who may otherwise face difficulty finding employment. The Work Opportunity Tax Credit (WOTC) provides employers who bring on employees from certain target groups, such as individuals recently released from prison, with a federal tax credit.<sup>viii</sup> The amount of the tax credit that employers can claim depends on the target group of the individual hired, the wages paid to that individual, and the number of hours that individual worked during the first year of employment. The maximum tax credit for hiring an individual with a criminal conviction is \$2,400.<sup>78</sup>

Some states also offer their own incentive programs. As of 2007 six states—California, Illinois, Iowa, Louisiana, Maryland, and Texas—give employers state income tax credits for hiring people with criminal records.<sup>79</sup>

## Reducing Liability through Federal Bonding

To address employers concerns about legal liability, the U.S. Department of Labor’s Federal Bonding Program provides employers with a degree of coverage and security through “Fidelity Bonds” for hard-to-place job seekers such as people with criminal records.<sup>80</sup> First established in 1966, there is no cost to the job applicant or the employer for the bonds, which cover the first six months of employment. In most states, the bonds are made available through the state agency responsible for workforce matters. Federal bonding can attach to both employers and also to employees, so job seekers have the potential to mitigate the fears of employers by being bonded. Federal bonding is limited in scope to issues such as theft and damage, and does not cover incidents of abuse or violence that may happen in the workplace. Therefore, its effectiveness in assuaging the concerns of some healthcare employers regarding risks to the vulnerable patient populations they serve is limited.<sup>ix</sup>

## Mitigating Risk with Certificates of Recovery or Rehabilitation

In addition to the Federal Bonding Program, eleven states (AL, AZ, CA, CT, HI, IL, IA, NJ, NY, NC, OH) and the District of Columbia offer certificates of recovery, often called certificates of relief or rehabilitation, that can ease the legal liability of employers who hire individuals with criminal records.<sup>81,82</sup> For example, a study conducted in Ohio found that individuals with a certificate of recovery applying for a job had statistically similar call-back rates to individuals without a criminal record and significantly better call-back rates than individuals with a criminal record, but without a certificate of recovery.<sup>83</sup> These certificates are granted to individuals with criminal records as a way to lift statutory bars to jobs, licenses, or other necessities. There are different rules in every state around these certificates, but generally, they are meant to signal to employers that the individual has been rehabilitated and is ready for work. For example in 2011, the North Carolina General Assembly created a Certificate of Relief program, enables individuals with no previous offenses convicted of up to two low-level felonies or misdemeanors to petition for a Certificate of Relief.<sup>84</sup>

## Developing Better Screening Practices

Some employers have expressed an openness to hiring people with criminal records but do not know what screening processes they should implement to yield appropriate hires. The Safer Foundation and

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<sup>viii</sup> For more information on the Work Opportunity Tax Credit, see <https://www.doleta.gov/business/incentives/opptax/> and <https://www.irs.gov/pub/irs-drop/n-16-22.pdf>.

<sup>ix</sup> For more information on the Federal Bonding Program, see <http://bonds4jobs.com/about-us>

the National Employment Law Project (NELP) have created a free [guide](#): *A Healthcare Employer Guide to Hiring People with Arrest and Conviction Records*, to help employers navigate the process of implementing safe and legal policies and procedures for hiring. The EEOC guidance also offers [best practices](#) for employers to help them establish fair screening procedures.<sup>85</sup> Some jurisdictions, e.g. Philadelphia and North Carolina, have developed jurisdiction specific guidance.<sup>86,87</sup>

## Promising Hiring Models

### Johns Hopkins Hospital and Health System

Johns Hopkins Hospital and Health System (JHHS) is a world-renowned hospital system and the largest private employer in the state of Maryland. JHHS' willingness to focus on and hire populations with barriers to employment in healthcare is a model that is embedded in the organization's mission and promoted by the hospital's leadership.

Typical entry-level JHHS jobs include: clerical, food services, and environmental services. The Johns Hopkins Hospital and Health System Hiring Model has Guidelines for Criminal Background Checks that consider many elements raised in the EEOC guidance and the Model includes the following processes:

- Strong partnerships with trusted community organizations that refer qualified job candidates.
- Normal application and interview process, no questions asked about criminal records.
- Once a conditional offer is made, a background check is performed.
- Applicants are not asked to self-disclose criminal records. Self-disclosure requests can have a chilling effect on the applicant pool. Further, many applicants may not know exactly what is on their records. Additionally, criminal background check records can be inaccurate. Applicants' answers on self-disclosure forms may not match their background check because of errors.
- Any information from the background check is reviewed by human resources and a former Baltimore City homicide detective, who serves as a full time specialist. The investigator reviews the applications of people with criminal records and occasionally participates in interviews.
- Results of background checks are kept away from day-to-day supervisors and colleagues.
- Peer mentors and coaches are utilized as needed.<sup>88</sup>

### Oregon's Criminal Record Evaluation Process

To maximize opportunities for qualified job candidates who have criminal records, Oregon has developed a robust and flexible criminal record review process for determining eligibility for employment in long-term care and other positions that have direct contact with vulnerable populations. This review process seeks to provide the safest environment possible for patients in a long-term care setting, while providing maximum employment opportunities to those that are qualified. To achieve these goals, Oregon employs a "weighing test" to determine an individual's fitness to provide care. The weighing test is defined in statute (ORS 181A.195(10)(d) and 181A.200(5)(c)) and is based on the "Green Factors" determined by the Supreme Court in *Green v. Missouri Pacific Railroad*, 549 F.2d 1158 (8th Cir. 1977): the nature of the crime, the time elapsed, and the nature of the job.<sup>89,90</sup> Oregon has expanded this to include other factors such as the age of the person at the time of the crime.

After an individual is offered a provisional position in a long-term care setting, they are then subject to a background check. During this time the individual "...*may participate in training, orientation, or work activities as assigned by the authorized [employer].*"<sup>91</sup> If the individual has an arrest or a conviction on their criminal record, the Fitness Determination Specialist conducts the "weighing test" to determine the individual's fitness to provide care. For example, under the weighing test an individual

who applied to be a caregiver at an assisted living facility and is offered the position would be subjected to a background check. If the weighing test revealed that the individual has a conviction for shoplifting, the State Agency's Fitness Determination Specialist would consider other aspects around this conviction such as the age of the person at the time of the crime, how long ago the crime was committed, and if the individual has any other criminal history, to determine whether the person demonstrates a risk to vulnerable populations. When an individual is denied based on the weighing test, they have the right to appeal the denial to the state's Office of Administrative Hearings.

## Conclusion

Over the next decade, roughly 2.4 million new healthcare jobs will need to be filled—from highly skilled professional occupations to entry-level direct care occupations. However, the ability to meet this growing demand may be unnecessarily hampered by restrictions around the 70 million people with some sort of arrest or criminal record who may be prevented from obtaining these jobs. As the United States grapples with addressing the opioid epidemic and the decreasing labor force participation among working age men, it is especially important to consider employment for these individuals, who may also have a criminal record, in the growing healthcare sector. Although employment restrictions are warranted, federal guidance and research indicate that restrictions should be job-related and consider the nature of the offense, completion of the sentence, and the amount of time that has passed.

This report covers a range of topics that are important to consider when connecting individuals with criminal records to employment in the healthcare sector, including the background check process, licensing and credentialing, benefits that are available for employers, and healthcare occupations that have been successfully filled by individuals with criminal records. Additional information on specific state collateral consequences can be found in the NICCC Healthcare Employment Extract.

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## Appendix A: How to Use the NICCC Healthcare Employment Extract

This Excel file contains the state collateral consequences related to obtaining healthcare employment that are listed in the National Inventory of the Collateral Consequences of Conviction (NICCC) as of September 2016.<sup>x</sup>

This document contains only collateral consequences that have gone through state legislative and regulatory processes; thus, sub-regulatory guidance or items implemented at a sub-state level are not included. Also, whereas some states may have multiple very specific collateral consequences, others may have fewer more general consequences. Therefore, it is not necessarily more difficult to obtain employment with a criminal record in a state with more consequences cited than in a state with fewer consequences cited.

Below is a guide to navigating the NICCC Healthcare Employment Extract.

### Tab 1 National Summary

The national summary contains aggregate information on all the state consequences combined, with information on the total number of:

- Mandatory and discretionary consequences and background check requirements (state breakdown in tab 3)
- Licensure and hiring barriers (state breakdown in tab 4)
- States with barriers for specific positions (state breakdown in tab 5)
- States with barriers for organizational categories (state breakdown in tab 6)
- Misdemeanor barriers (state breakdown in tab 7)
- Barriers with a specific duration (state breakdown in tab 8)
- Statutes including a mechanism for relief (state breakdown in tab 9)
- Statutes including a waiver for relief (state breakdown in tab 10)

### Tab 2 State Dashboard

The state summary contains the same information as the national summary but is specific to an individual state. You can select which state you would like to view by clicking on the dropdown menu in row 4. Once you have selected a state from the menu, you may have to wait a few seconds for the information to populate.

### Tabs 3 through 10

Tabs 3 through 10 go through each of the items covered in tab 1 individually to provide a state breakdown of the numbers. In tab 5 the first table provides a summary of the states with barriers for general position categories. If you scroll down you will see another table listing specific position titles and the number of barriers present per position in each state, tab 6 follows the same format.

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<sup>x</sup> The inventory is constantly being updated, so for the most recent list of collateral consequences please view the NICCC at the Council of State Governments Justice Center website: <https://niccc.csgjusticecenter.org/>.

## **Tabs 11 and Above**

The details of all the collateral consequences in a state are listed in tabs 11 and above with each state having its own tab in alphabetical order. In the state tabs you can sort the consequences by any of the headers in the first row by clicking on the arrow in the header you would like to sort by, such as “Consequence Type,” and selecting “Sort A to Z.”

## Appendix B: LEIE Exclusions

Legal references for the types of LEIE exclusions and the exclusionary time period. Except for those imposed under section 1128(b)(7) [42 USC 1320a-7b(b)(7)], and on rural physicians under section 1156 [42 USC 1320C-5], all exclusions are effective prior to a hearing.

### Mandatory Exclusions

Social Security Act	42 USC §	Amendment
1128(a)(1)	1320a-7(a)(1)	Conviction of program-related crimes. Minimum Period: 5 years
1128(a)(2)	1320a-7(a)(2)	Conviction relating to patient abuse or neglect. Minimum Period: 5 years
1128(a)(3)	1320a-7(a)(3)	Felony conviction relating to healthcare fraud. Minimum Period: 5 years
1128(a)(4)	1320a-7(a)(4)	Felony conviction relating to controlled substance. Minimum Period: 5 years
1128(c)(3)(G)(i)	1320a-7(c)(3)(G)(i)	Conviction of two mandatory exclusion offenses. Minimum Period: 10 years
1128(c)(3)(G)(ii)	1320a-7(c)(3)(G)(ii)	Conviction on 3 or more occasions of mandatory exclusion offenses. Permanent Exclusion

### Permissive Exclusions

Social Security Act	42 USC §	Amendment
1128(b)(1)(A)	1320a-7(b)(1)(A)	Misdemeanor conviction relating to healthcare fraud. Baseline Period: 3 years
1128(b)(1)(B)	1320a-7(b)(1)(B)	Conviction relating to fraud in non-healthcare programs. Baseline Period: 3
1128(b)(2)	1320a-7(b)(2)	Conviction relating to obstruction of an investigation. Baseline Period: 3 years
1128(b)(3)	1320a-7(b)(3)	Misdemeanor conviction relating to controlled substance. Baseline Period: 3 years
1128(b)(4)	1320a-7(b)(4)	License revocation or suspension. Minimum Period: No less than the period imposed by the state licensing authority.

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1128(b)(5)	1320a-7(b)(5)	Exclusion or suspension under federal or state healthcare program. Minimum Period: No less than the period imposed by federal or state healthcare program.
1128(b)(6)	1320a-7(b)(6)	Claims for excessive charges, unnecessary services, or services that fail to meet professionally recognized standards of healthcare, or failure of an HMO to furnish medically necessary services. Minimum Period: 1 year
1128(b)(7)	1320a-7(b)(7)	Fraud, kickbacks, and other prohibited activities. Minimum Period: None
1128(b)(8)	1320a-7(b)(8)	Entities controlled by a sanctioned individual. Minimum Period: Same as length of individual's exclusion.
1128(b)(8)(A)	1320a-7(b)(8)(A)	Entities controlled by a family or household member of an excluded individual and where there has been a transfer of ownership/control. Minimum Period: Same as length of individual's exclusion.
1128(b)(9), (10), and (11)	1320a-7(b)(9), (10), and (11)	Failure to disclose required information, supply requested information on subcontractors and suppliers, or supply payment information. Minimum Period: None
1128(b)(12)	1320a-7(b)(12)	Failure to grant immediate access. Minimum Period: None
1128(b)(13)	1320a-7(b)(13)	Failure to take corrective action. Minimum Period: None
1128(b)(14)	1320a-7(b)(14)	Default on health education loan or scholarship obligations. Minimum Period: Until default has been cured or obligations have been resolved to Public Health Service's (PHS) satisfaction.
1128(b)(15)	1320a-7(b)(15)	Individuals controlling a sanctioned entity. Minimum Period: Same period as entity.
1128(b)(16)	1320a-7(b)(16)	Making false statement or misrepresentations of material fact. Minimum period: None. The effective date for this new provision is the date of enactment, March 23, 2010.
1156	1320c-5	Failure to meet statutory obligations of practitioners and providers to provide' medically necessary services meeting professionally recognized standards of healthcare (Quality Improvement Organization (QIO) findings). Minimum Period: 1 year