

White Paper

Continuous Background Screening: An Effective Workplace Safety Tool for Healthcare Employers



White Paper

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Introduction

Healthcare employers rely on effective screening tools in the hiring of qualified candidates. But how do employers maintain that peace of mind once those candidates become employees? This white paper focuses on an effective employment safety assessment tool valuable to healthcare employers: recurring criminal history checks. Continuous criminal history checks allow employers to make highly informed employment retention decisions and demonstrate their commitment to workplace and patient safety.

The Business Case for Recurring Criminal History Checks

For healthcare employers, mitigating risk, ensuring patient safety, and creating a safe work environment for employees are essential reasons to conduct post-hire, recurring criminal history checks. Conducting an initial criminal history background check at time of hire is simply not enough. When existing employees commit crimes, employers can't always rely on them to disclose their transgressions. Employers are responsible for knowing if its employees present a risk to patients, employees, and to the business itself. Being in the know as a healthcare employer is not a luxury, it's a necessity.



Case Study: Implementing an Annual Criminal Recheck Program

The following case study examines an actual crisis faced by a healthcare employer and evaluates the solution that best served them.

ABC Health System is located in a major US city and is one of the largest healthcare employers in its state. In the spring of 2015, law enforcement agents descended upon one of its hospitals and arrested an employee. It was a chaotic scene with employees, patients, hospital officials, and visitors looking on with great concern. Much to their shock, the hospital's leaders were informed that this employee had been charged with a similar crime the previous year and was currently on probation. The hospital had no knowledge of the employee's criminal history; after all, he passed the initial background check when he was hired three years earlier.

The employee's arrest and details of the recent crime for which he was serving probation were covered extensively in the evening news. The reporter and the community at large wondered, "How could this hospital not know that its own employee was convicted of a crime while working for them?"

The health system felt completely vulnerable. But they now faced a much more important question: how could they prevent a similar incident from occurring in the future?

The first annual criminal history rechecks conducted on the health system's employees in 2016 yielded a considerable number of criminal records. Some of the convictions were over 20 years old, while others occurred within the previous month.

Although ABC Health System conducted thorough employment background checks at time of hire, the findings from the rechecks suggest the health system could not rely solely on its employees

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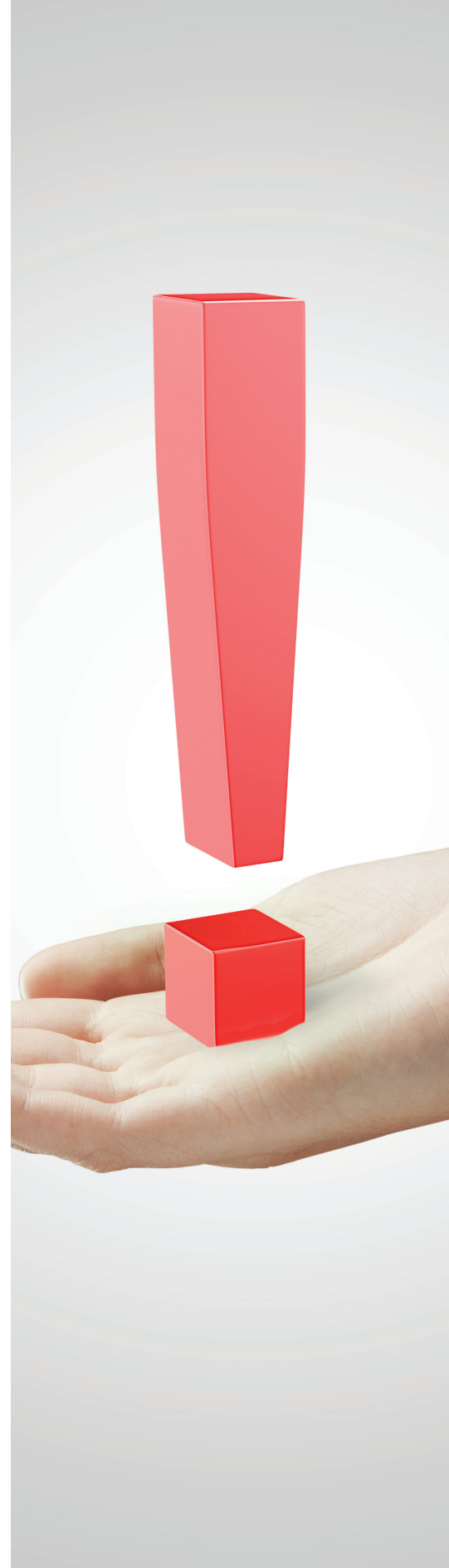
to disclose criminal violations, despite having a policy in place requiring timely disclosure. The rechecks for ABC Health System uncovered the following types of crimes, including but not limited to:

- Felony Possession of Child Pornography
- Felony Drug Possession
- Felony Theft
- Felony Organized Crime
- Misdemeanor Assault Resulting in Serious Bodily Injury
- Misdemeanor Terroristic Threat

In the months that followed the public relations and security crisis in 2015, ABC Health System witnessed more and more episodes of the media bringing to light the inadequate security practices of other well-known employers whose staff had been arrested and, in some cases, convicted while still on the job. As a large and renowned employer, it understood that its practices would be scrutinized, so ABC took great comfort in its adoption of recurring criminal history checks. It was clear that as a prominent healthcare organization that already suffered one adverse incident, it could no longer run the risk of not knowing.

Only Checking at Time of Hire is Not Enough

In a November 2013 *Star Tribune* article about Minnesota barring 107 nurses with criminal records, Department of Human Services Inspector General Jerry Kerber explains that “due to gaps in its background check system, the agency was unaware of the nurses’ criminal histories.” In analyzing Minnesota’s data, Kerber explains, “What we’re seeing in [the] data is that there are people on whom we did a background study, and who later offended, and we didn’t know about it, because we didn’t repeat a background study... and some of those offenses are even in the serious categories of [criminal sexual conduct].”



Employers and agencies are recognizing that only performing an initial background check is no longer sufficient. Some of the data in ABC Health System's first recheck reports revealed employees who were convicted of crimes but allowed to complete their jail time on the weekends. And yet, the health system had absolutely no knowledge of the employee's criminal event. If employers don't continue to recheck the criminal histories of their workers, they won't know to properly evaluate a criminal incident in order to make an informed decision to suspend, place on leave, transfer, terminate, or to take no action against an employee.

Not only is there value in the ability to identify and quantify these findings, the deterrent effect alone of instituting a continuous criminal record recheck program is also highly valuable. Adding recurring background checks to an existing work safety program proves an employer's commitment to maintaining security on an ongoing basis. This work culture tells patients, employees, and prospective employees that their safety and security are a priority. The truth is, employees would be shocked to learn that one of their colleagues was convicted of a crime while employed. They would be even more shocked to learn their employer had no knowledge of the conviction. Depending on the offense, ignorance of the conviction could lead to the employer unknowingly placing patients and other staff at risk.

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Essential Employer Considerations

The benefits of conducting recurring criminal history searches are clear, but it is absolutely critical for employers to prepare before adopting this practice. Employers that plan to conduct recurring criminal history checks on existing employees should consider the following in advance and make sure to document them before starting a recheck program:

- **Proper Notice:** It's essential for employers to invest time into creating a comprehensive policy before announcing criminal history rechecks to their staff and well before they run the initial recheck. It's most fair to openly communicate to staff that recurring background checks will be adopted and performed as a condition of retention. The employer should also explain that the rechecks are performed for the safety of patients and fellow employees.
- **Consent:** Unless it already has written consent to run background checks from all employees, for the initial recheck, employers should consider having all employees sign an electronic authorization at the same time. If a digital version is not available or feasible, a paper authorization will work, but it's important to ensure everyone has signed consent on file. A properly worded authorization form containing evergreen language gives the employer permission to run background checks at any time during the course of employment, so consent would not have to be re-obtained before conducting every recheck. Organizations should work with their legal counsel to draft the proper consent language. Logistically, collecting consent on potentially thousands or tens of thousands of employees can be a daunting task. Some employers bundle this one-time effort with employees' mandatory review and acknowledgement of the HR handbook or required compliance training.



- **Written Policies:** Does the employer have a policy that requires employees to report arrests and convictions and does it stipulate that they can be subject to termination if they fail to do so?

The employer should consider specifying if the employee must provide supporting documentation within a specified time frame (e.g. court documents within two days of adjudication of a pending case, etc.). If no such policy exists, employers should consult with counsel to consider if the roll out of such a policy hand-in-hand with the recheck policy is an option for the organization.

- **Treatment of Results:** Before it even runs the first continuous criminal recheck, the employer must have an internal policy in place specifying how results will be treated. It should anticipate different scenarios and outcomes. What is the employer prepared to do if it discovers a five year old criminal record on an otherwise consistent performing, veteran employee? Or if it learns an employee has recently been charged with a crime, what does the policy specify? Employers should work with counsel to prepare a thorough policy outlining how it intends to respond to these various scenarios. The policy should also take care to acknowledge and incorporate the EEOC's position on employers' consideration of criminal history, published in its April 2012 Enforcement Guidance. The Commission advises employers to consider the age of the offense, the nature and gravity of the offense, and importantly, how the offense relates to the employee's position and responsibilities. Whether an offense is discovered at time of hire or during a recheck, the offense's relevance to the position is a critical consideration. Additionally, the EEOC guidance states that if the employer is considering taking action based on the offense, an individualized assessment should be conducted which allows the employee the opportunity to provide any relevant information to be considered before a final decision is made.

Best Practice Tip

Employers should remember these questions when creating an internal policy and be as specific as possible when addressing them:

- What would the employer do if it discovers a five year old criminal record on an otherwise consistent performing, veteran employee?
- What does the policy specify in regards to an employee who has recently been charged with a crime?



- **The First Continuous Recheck:** Depending on the size of the employee population, the initial recheck will likely yield the greatest number of criminal hits that will require a considerable amount of the employer's time and attention to carefully evaluate and adjudicate. Additionally, the employer will need to determine what actions it should take, if any at all. Potentially, employee interviews will also likely need to take place to learn more about the criminal incident. As with any HR function, documentation is absolutely critical.

- **FCRA Compliance:** Because the employer is relying on a third party to run these rechecks, it must comply with the federal Fair Credit Reporting Act (FCRA). In addition to the FCRA requirement that the employer make a proper disclosure to the employee, to obtain the employee's written consent, the employer must also make a specific certification to the screening provider before the screening firm can create the report. As far as the criminal searches conducted, the employer should always run county level criminal record searches, because they are the most accurate sources, before taking an adverse employment action. A national criminal history search or other database searches will not produce the most up-to-date or accurate records. Lastly, in accordance with the FCRA, the employer must comply with the two-step adverse action process outlined in the statute and ensure the employee: 1) receives a pre-adverse notice, 2) receives a copy of the background check report, and 3) has the opportunity to dispute the accuracy of the findings before any final adverse employment decision is made.

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- **Cultural Impact and Employee Messaging:**

While the benefits of implementing recurring rechecks are compelling to employers, successful program adoption also rests on sensitivity around cultural impact. Program efficacy can be supported by effective employee communication strategies. Employers should consider that long term, valued employees may feel nervous and resistant, particularly if they fear exposure as a result of the criminal recheck. Likely, employers adopting continuous background screening may not be concerned with older offenses that are not relevant to the employee's responsibilities and job duties.

Employers may want to consider communicating that to the employees. In short, employers may want to re-emphasize that continuous background checks demonstrate that they value the safety of patients and employees; therefore, they are committed to making informed decisions on an ongoing basis. Employers should also consider acknowledging that most employees expect that if their colleague were convicted of a crime while employed, their employer should be aware in order take appropriate actions. At the same time, just as the presence of criminal history does not necessarily present a bar to hiring, employers may want to re-assure employees that depending on the severity and nature of the offense, as long as the employee is forthcoming, termination from employment is not necessarily the only outcome. It's extremely important for employers to work closely with their legal counsel to craft the most appropriate message to employees. Particularly in healthcare, where vulnerable populations are served, employees want to have confidence that those serving alongside them should remain in those positions.

Conclusion

While the value and necessity of criminal history rechecks is clear, the success of the program relies heavily on the employer's sufficient preparation and its sensitive and effective messaging in communicating the program roll-out to employees.



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About PreCheck

PreCheck, Inc. was founded in 1983 as a background investigation services firm. Responding to the healthcare industry's need for background investigation services, the company started focusing on the specialized requirements of hospitals, clinics and other healthcare providers in 1993. Our client-focused business approach has allowed the company to develop products to meet the growing and evolving needs of the healthcare industry.

PreCheck is now the largest provider of background and credentialing services to the healthcare industry and has expanded its services to assist hospital executives, healthcare human resources and compliance professionals, medical staffing managers, and clinical program directors with other essential functions. Our suite of products includes outsourcing solutions for license management, health and drug screening, exclusion and sanction screening, immunization tracking, and online I-9 and E-Verify processing.



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