



U.S. COMMISSION ON CIVIL RIGHTS
**“Assessing the Impact of Criminal Background Checks and the Equal
Employment Opportunity Commission’s Conviction Records Policy on
the Employment of Black and Hispanic Workers”**

January 2013

Comments of Richard P. Grimes | President & CEO
ASSISTED LIVING FEDERATION OF AMERICA

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Comments of Richard P. Grimes | President & CEO
Assisted Living Federation of America

Thank you to each member of the U.S. Commission on Civil Rights for the opportunity to submit comments on this very important issue. The Assisted Living Federation of America (ALFA) is the largest national association exclusively dedicated to professionally-managed senior living communities. Our members own, operate, and provide services for assisted living, independent living, and memory care communities.

Senior living providers use criminal background checks to ensure applicants that would endanger residents are excluded from

employment and denied access to residents of senior living communities.

Although ALFA recognizes the need to reintegrate former offenders into the job market, complying with the Equal Employment Opportunity Commission’s new guidance is difficult for assisted

living providers, since we serve a

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Our communities are home to frail and vulnerable seniors. According to the National Survey of Residential Care Facilities (conducted by the Centers For Disease Control in 2010), 76 percent of

residents have been diagnosed with two or more of the ten most common chronic conditions, 38 percent of assisted living residents require assistance with three or more activities of daily living, and 42 percent of residents suffer from Alzheimer’s disease or some other form of dementia. According to the research, the average assisted living resident is an 87 year old female who needs assistance with two or more activities of daily living – which could include bathing, dressing, toileting, and transferring. This demonstrates the vulnerability of the residents we serve and highlights the importance of thoughtful hiring decisions in protecting these older adults.

Preventing Elder Abuse Is Critical

Preventing abuse of residents is a top priority for senior living providers. The National Center on Elder Abuse reports that as many as one in ten seniors has been a victim of elder abuse. Whether the abuse is physical, emotional, or financial, elder abuse robs seniors of their dignity, independence, and quality of life. While the vast majority of these cases are perpetrated by family members outside of long term care settings, our providers must still be vigilant. Background checks are one way we can prevent or significantly reduce the possibility of these horrendous crimes occurring in our senior living communities.

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Whether hiring a direct care worker, maintenance employee, or kitchen staff member, it is important that the position be filled with an individual who can be trusted to faithfully serve residents, since every staff member will come in contact with our residents at some time or another. Providers understand that hiring the wrong person could result in harm to a resident. Protecting residents’ safety is always a primary concern and conducting fair – but thorough – background checks is one of the best defenses against elder abuse.

Assisted Living Regulated by the States

In addition to our desire to protect residents, many state laws and regulations require that these

communities conduct background checks on all potential employees and discard applicants who have certain criminal histories. Since assisted living and memory care communities are largely regulated at a state level, requirements vary from state to state. Forty-six (46) states require criminal background checks before any employee is hired, and a number of states have a list of barrier crimes that prevent a job applicant from being hired, no matter the circumstances surrounding the individual's conviction.

The Case of Arkansas

For example, in Arkansas, criminal background checks are required for all job applicants in long term care facilities. If the applicant passes the background check and is hired for the position, a criminal background check must then be performed every five years that the individual is employed with the company. If the background check reveals a conviction of any of the over 60 offenses outlined in the rule or a related crime within the described period of time, the individual may not be hired or, if the individual is already employed by the community, must be terminated. Individuals with most misdemeanors may be hired if 5 years have passed since the conviction, and individuals with a felony may be hired after 10 years; although some offences may permanently disqualify an applicant.

The Case of California

California is another state that implements barrier crimes. The state requires that background checks be performed on all job applicants and prevents the hiring of individuals who have committed specified crimes within their lifetime. All convictions not outlined on this barrier crime list, other than minor traffic violations, require an approved exemption from the state. Taking at least 75 days to process, an exemption request requires character references, detailed information about the offense, and verification of training, classes, treatment, and/or counseling completed since the offense was committed. If an exemption is denied, the assisted living community by law cannot hire the individual.

The Case of Michigan

Another example, Michigan, also requires criminal background checks at the time of hire. The statutes list a variety of crimes that disqualify an individual from ever working in an assisted living community. The statutes also prescribe that a certain time period must pass since the conviction of many crimes before the applicant may be considered for employment. For example, for many felonies 15 years must have lapsed since the individual completed his or her parole, probation, or sentencing for the individual

to be considered for employment. Individuals charged with lesser crimes, such as a misdemeanor charge of possession of a controlled substance, require a 5 year lapse since his or her conviction.

These examples serve to show that the required use of background check information varies across states. Many states have a list of barrier crimes that prohibit individuals from ever working at assisted living communities. These lists can include violent crimes, drug related convictions, and non-violent theft or

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robbery. The circumstances surrounding convictions are irrelevant if a crime is listed as a barrier crime, and assisted living communities can be subject to citations, fines, and loss of license if applicants with these criminal histories are hired. Because the Equal Employment Opportunity Commission's guidance preempts state laws, many assisted living providers are put in a difficult position of trying to ensure compliance with both state laws and the newly issued guidance.

ALFA encourages you to consider these factors when evaluating the impact of the Equal Employment Opportunity Commission's guidance and to ensure clarification on the implementation of the new guidance. It is currently unclear how the guidance should be interpreted by assisted living communities that operate in states where state laws and regulations outline a number of barrier crimes and background check procedures.

Given the vulnerability of older adults who choose to call assisted living, independent living, and memory care communities home, background checks are always an important part of the hiring process. I have no doubt that many individuals with criminal histories can be trusted to work with seniors, and I believe that those who have served their time deserve to return to the workforce. However, our senior living providers have an obligation to protect their residents above all other considerations.

Thank you again for the opportunity to share comments on this issue of critical importance for senior living communities and their residents. Please do not hesitate to contact me with any questions or concerns.

Sincerely,

A handwritten signature in black ink that reads "Richard P. Grimes". The signature is written in a cursive style with a large, prominent "R" and "G".

Richard P. Grimes

President & CEO

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