



Massachusetts Department of Public Health

Protections for Persons with Substance Use Disorders

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Massachusetts

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ADA Protections: Generally

What? The ADA protects individuals with disabilities from discriminatory treatment, when that treatment is based on disability.

Who is protected? A disability is a physical or mental impairment that affects one or more major life functions.

What is covered?

- Places of Employment
- State or Local Governments
- Places of Public Accommodations

ADA: Addiction

Physical or mental impairment includes, but is not limited to, contagious and noncontagious diseases and conditions such as the following: orthopedic, visual, speech and hearing impairments, and cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, emotional illness, dyslexia and other specific learning disabilities, Attention Deficit Hyperactivity Disorder, Human Immunodeficiency Virus infection (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

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ADA: Addiction

Treatment is inherently linked to disability. So when barriers are created for treatment, those barriers are tied to disability.

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ADA: Health Care

Medical decisions (including admissions decisions) that rest on misconceptions about a disability rather than “an individualized inquiry into the patient’s condition” may be considered discriminatory.

Withholding or preventing a medication used to treat addiction without “an individualized inquiry into the patient’s condition” by a clinician may be considered discriminatory.

What? The ADA protects individuals with disabilities from discriminatory treatment, when that treatment is based on disability.

Who? A disability is a physical or mental impairment that affects one or more major life functions.

Where?

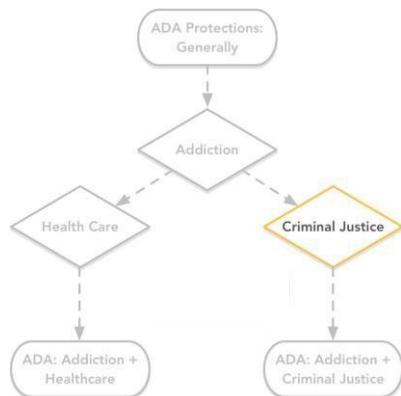
- Places of Employment
- State or Local Governments
- Places of Public Accommodations

Major Supreme Court Decisions on the ADA

Bragdon v Abbot



“As a health care professional, petitioner had the duty to assess the risk of infection based on the objective, scientific information available to him and others in his profession. His belief that a significant risk existed, even if maintained in good faith, would not relieve him from liability. To use the words of the question presented, petitioner receives no special deference simply because he is a health care professional.”



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ADA: Health Care

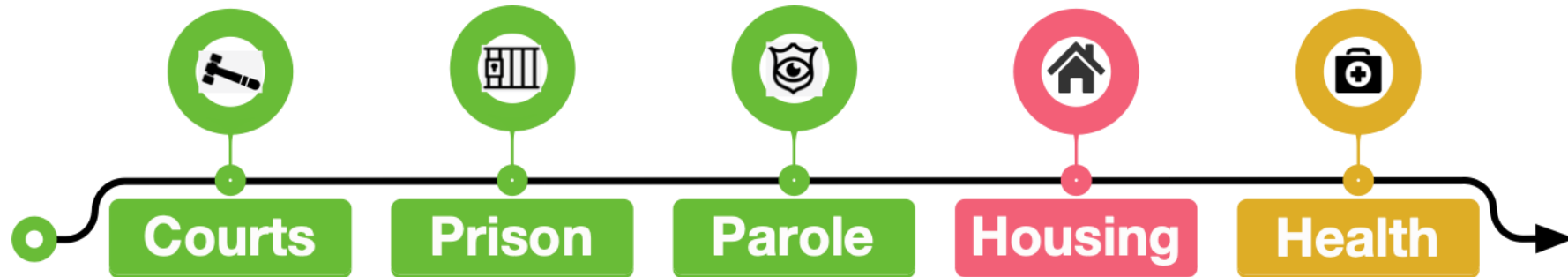
The question is not whether a SNF feels comfortable taking patients with SUD. SNFs have objective/scientific information available demonstrating that accommodating such patients is possible in a SNF setting.

Just because a patient has a history of drug use **does not make them dangerous**. This is a stereotype about a disability that the ADA was designed to address. You must look at the behavior of each particular individual to see if they have exhibited dangerous behavior.

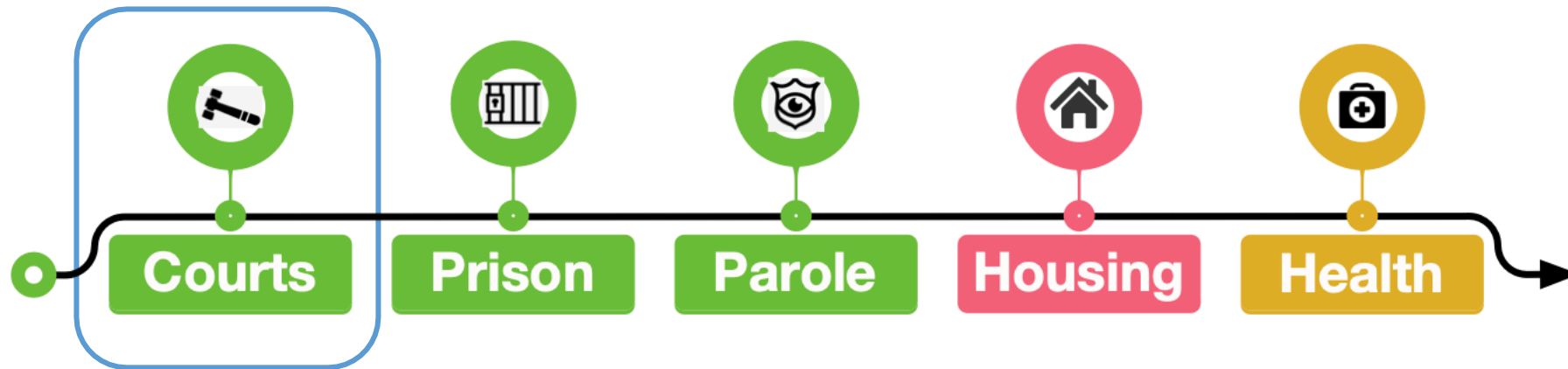
Methadone and buprenorphine can be maintained in a SNF setting even though the SNF is not a registered OTP. It is unlawful to reject a patient based on the patient requiring these medications.

This does not create a requirement that a SNF accommodate a patient going through active withdrawals. That is a misconception that leads to wrongful denials.

Agreements our office has entered



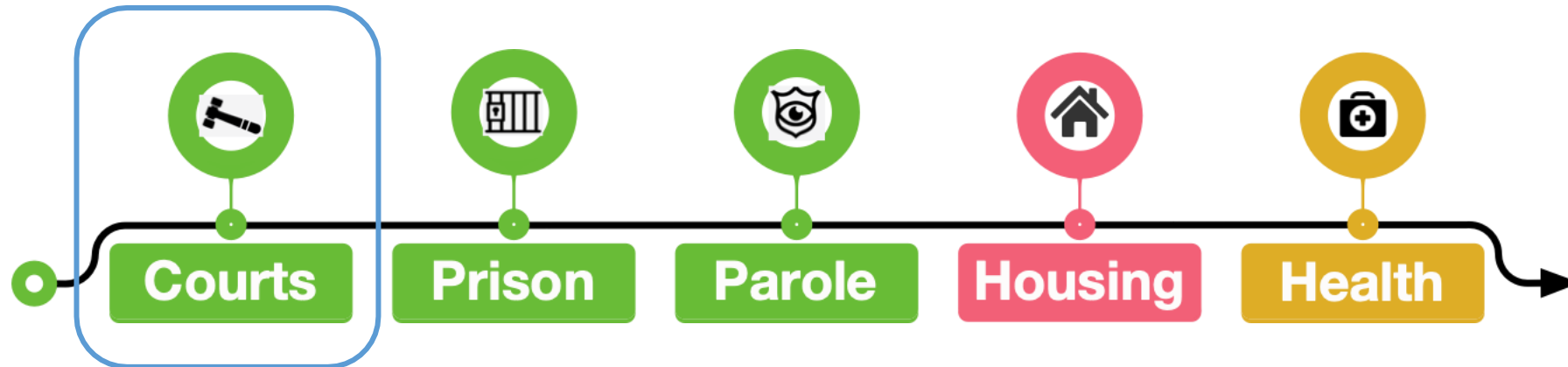
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What they did:

Order people off MOUD as a condition of probation.
Pressure people to take injectable naltrexone.

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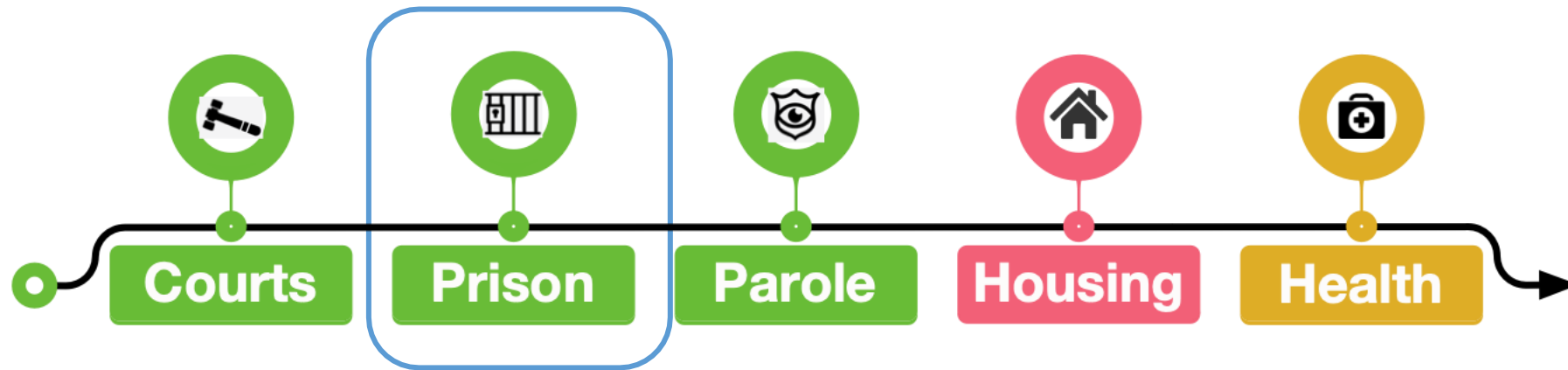


What they will do:

Judges will not interfere with community provider decisions about MOUD.

The court system will implement a non-appellate review system to address complaints.

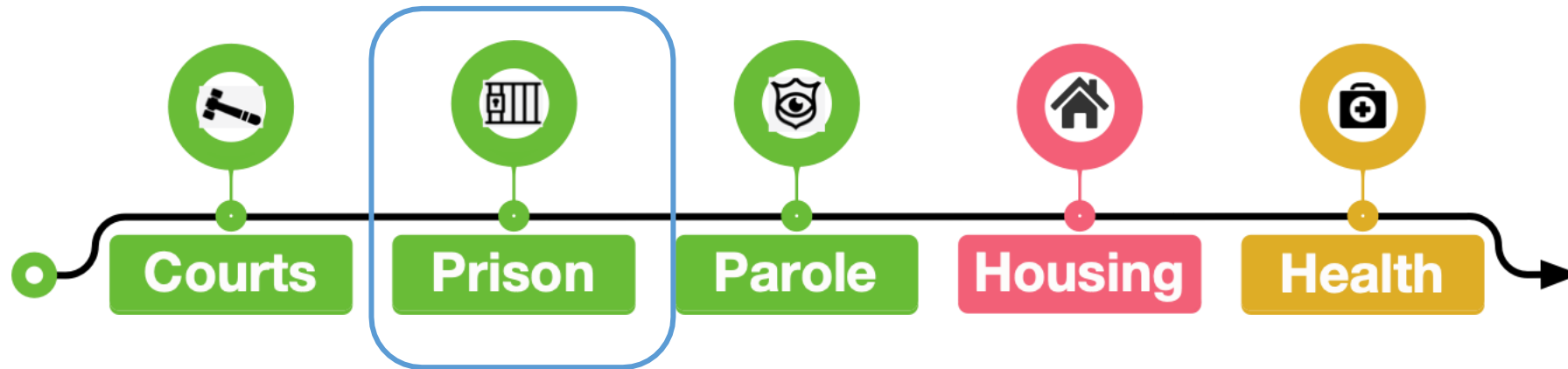
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What they did:

Not maintain MOUD.

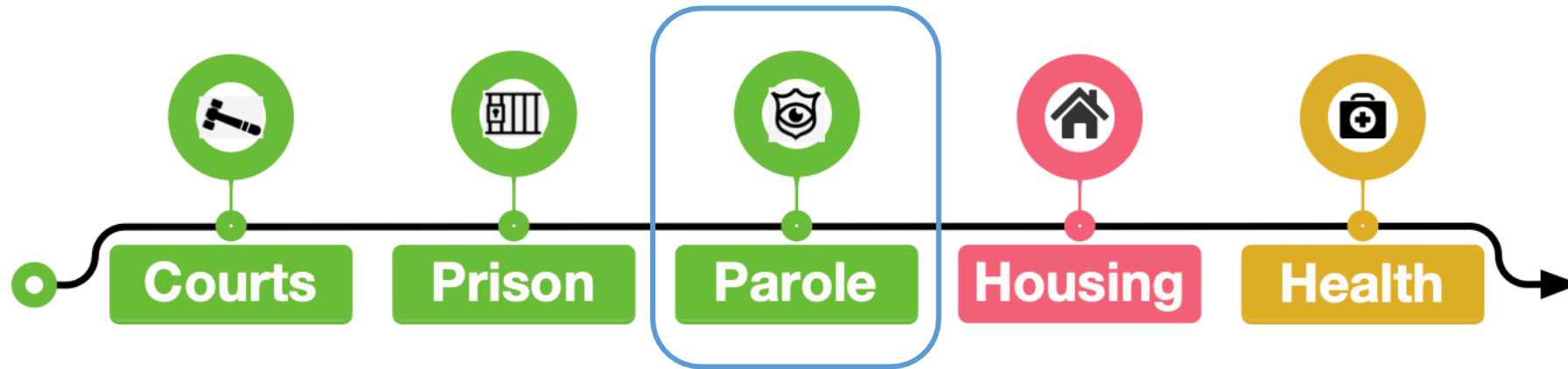
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What they will do:

Maintain MOUD.

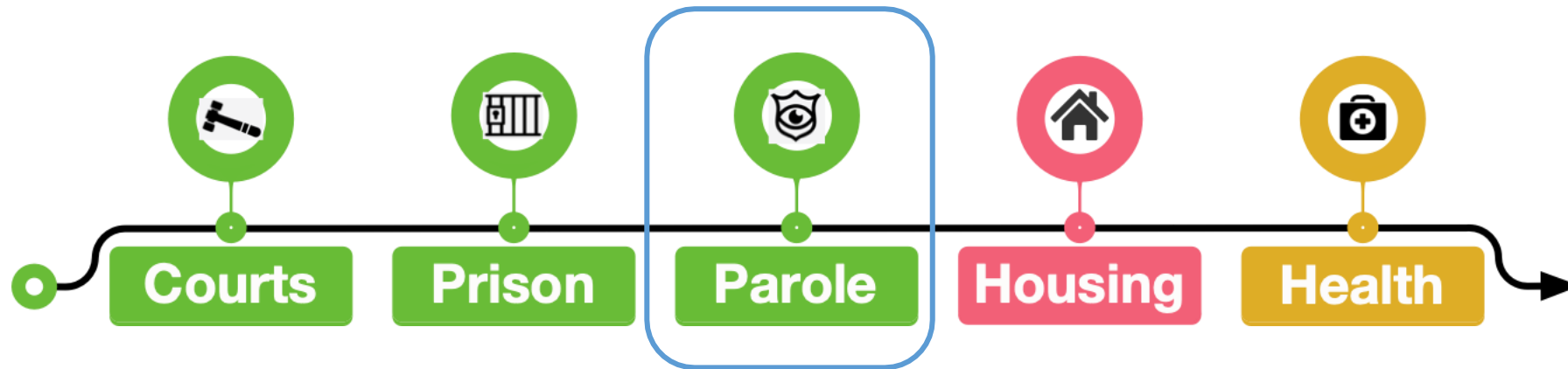
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What they did:

- Prior to 2020, mandated Vivitrol as a condition of parole.
- Post 2020, mandated specific forms of MOUD as a condition of parole.

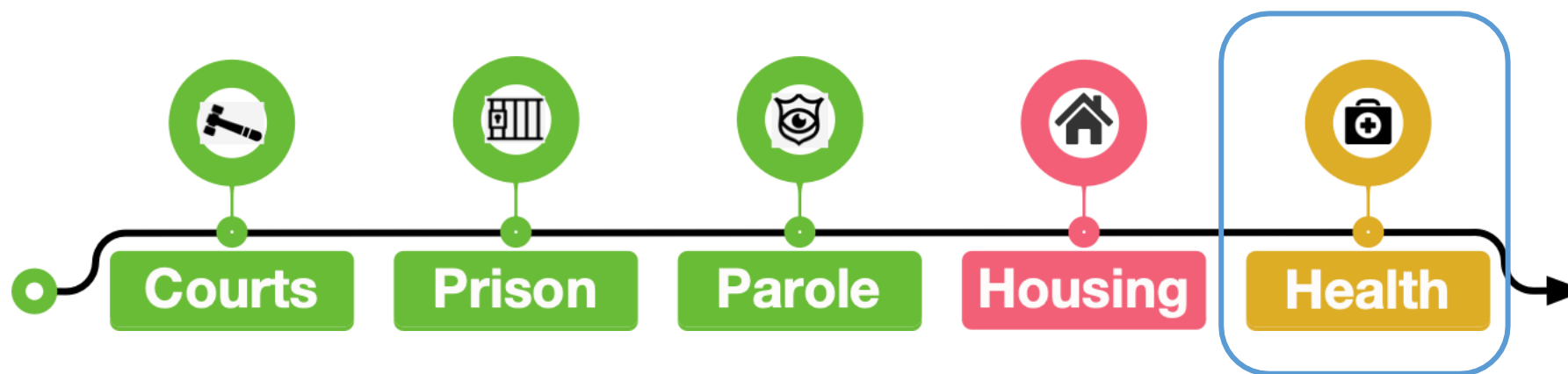
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What they will do:

Not mandate any particular form of treatment as a condition of parole. Instead, mandate following the treatment decisions of a clinician.

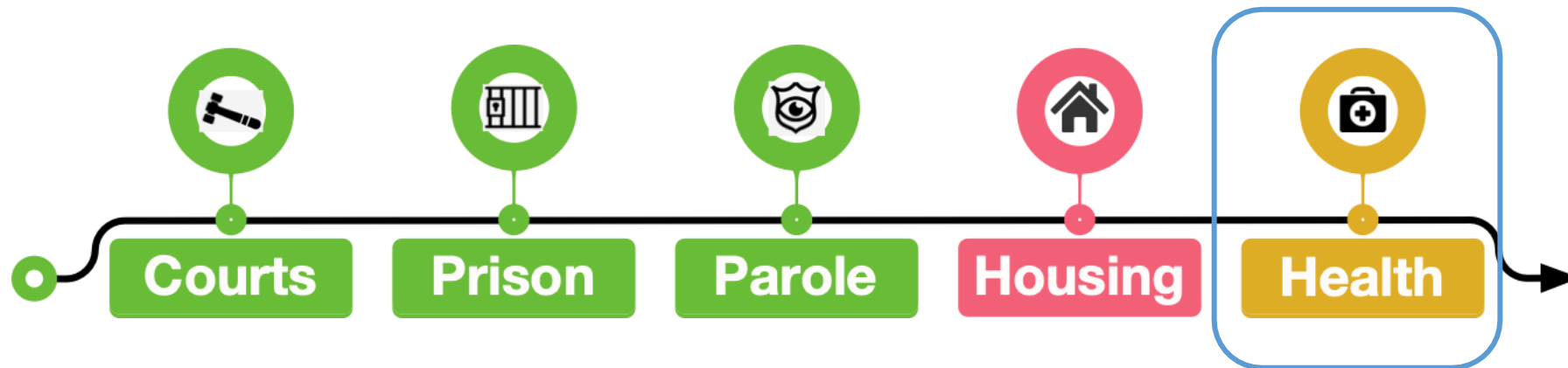
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What they did:

Some SNFs screened out individuals with a history of drug use or who were treated with MOUD.

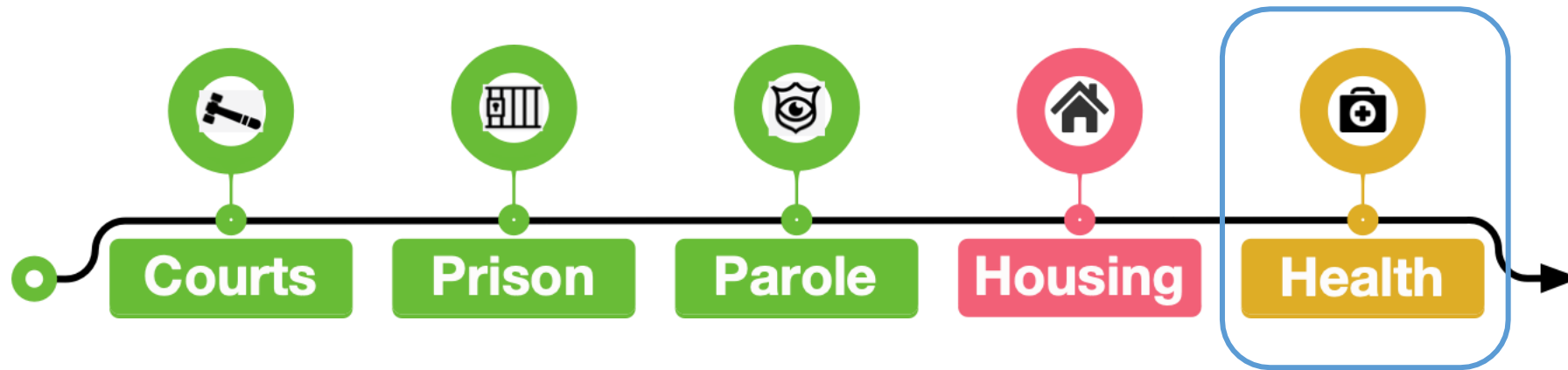
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What they will do:

Determine eligibility on an individualized basis using rationale not based on myths or stereotypes about people with a use disorder.

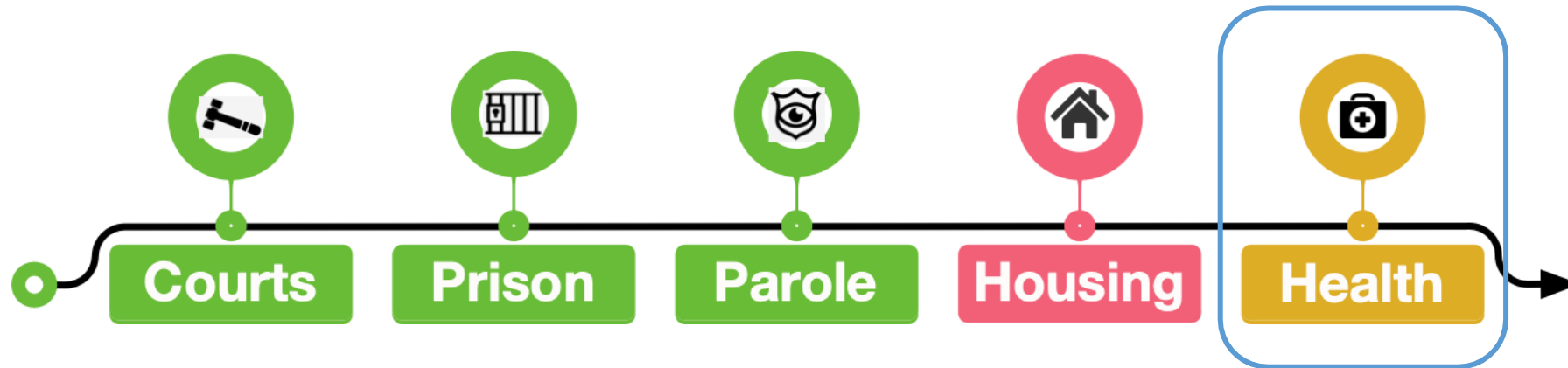
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What they did:

Some surgeons would not perform some procedures that were medically appropriate and possible on people taking MOUD.

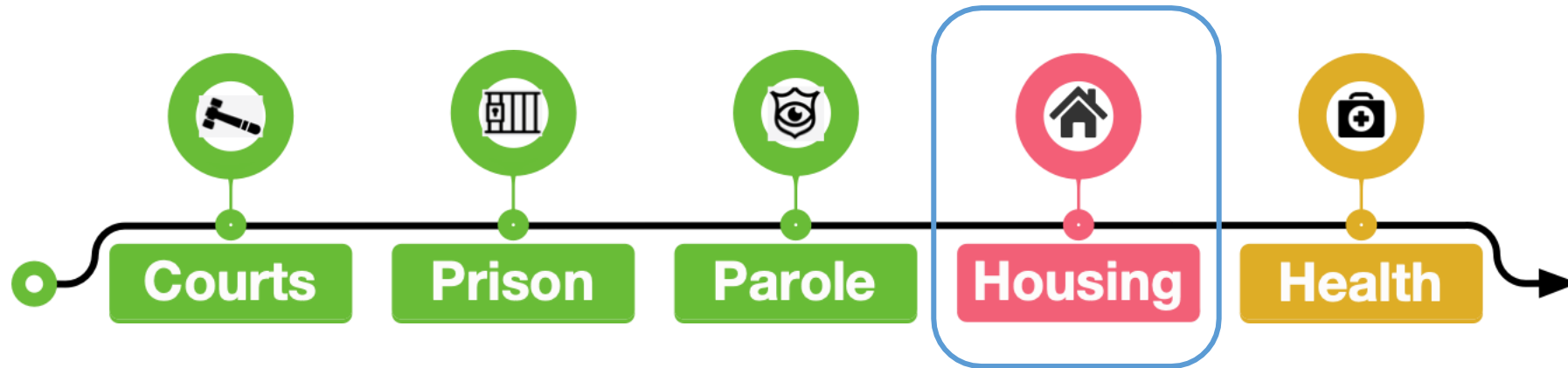
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What they will do:

Make medical decisions on an individualized basis using rationale not based on myths or stereotypes about people with a use disorder, and, when appropriate, in consultation with addiction specialist consistent with consultations to other specialists.

Work to be done



Under the Fair Housing Act, Sober homes cannot restrict admissions based on MOUD.



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