

106TH CONGRESS
2D SESSION

S. 3066

To amend titles XVIII and XIX of the Social Security Act to require criminal background checks for nursing facility workers.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19, 2000

Mr. ASHCROFT introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend titles XVIII and XIX of the Social Security Act to require criminal background checks for nursing facility workers.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Senior Care Safety
5 Act of 2000”.

6 **SEC. 2. CRIMINAL BACKGROUND CHECKS FOR NURSING**
7 **FACILITY WORKERS.**

8 (a) MEDICARE.—

9 (1) REQUIREMENT TO CONDUCT CRIMINAL
10 BACKGROUND CHECKS.—Section 1819(d)(4) of the

1 Social Security Act (42 U.S.C. 1395i–3(d)(4)) is
2 amended—

3 (A) by redesignating subparagraph (B) as
4 subparagraph (C); and

5 (B) by inserting after subparagraph (A)
6 the following new subparagraph:

7 “(B) SCREENING OF WORKERS.—

8 “(i) IN GENERAL.—A skilled nursing
9 facility shall not knowingly employ an indi-
10 vidual unless the individual has passed a
11 criminal background check conducted in
12 accordance with the requirements of clause
13 (ii).

14 “(ii) REQUIREMENTS.—

15 “(I) NOTIFICATION.—Not later
16 than 180 days after the date of enact-
17 ment of this subparagraph, the Sec-
18 retary, in consultation with the Attor-
19 ney General, shall notify skilled nurs-
20 ing facilities of the requirements of
21 this subparagraph.

22 “(II) SKILLED NURSING FACIL-
23 ITY REQUIREMENTS.—

24 “(aa) PROVISION OF STATE-
25 MENTS TO APPLICANTS.—Not

1 later than 180 days after a
2 skilled nursing facility receives a
3 notice in accordance with sub-
4 clause (I), the skilled nursing fa-
5 cility shall adopt and enforce the
6 requirement that each applicant
7 for employment at the skilled
8 nursing facility shall complete the
9 written statement described in
10 subclause (III).

11 “(bb) TRANSMITTAL OF
12 COMPLETED STATEMENTS.—Not
13 later than 5 business days after a
14 skilled nursing facility receives
15 such completed written state-
16 ment, the skilled nursing facility
17 shall transmit such statement to
18 the Attorney General.

19 “(III) STATEMENT DE-
20 SCRIBED.—The written statement de-
21 scribed in this subclause shall contain
22 the following:

23 “(aa) The name, address,
24 and date of birth appearing on a
25 valid identification document (as

1 defined section 1028(d)(2) of
2 title 18, United States Code) of
3 the applicant, a description of the
4 identification document used, and
5 the applicant's social security ac-
6 count number.

7 “(bb) A statement that the
8 applicant has never been con-
9 victed of a crime of violence or of
10 a Federal or State offense con-
11 sisting of the distribution of con-
12 trolled substances (as that term
13 is defined in section 102(6) of
14 the Controlled Substances Act
15 (21 U.S.C. 802(6)).

16 “(cc) The date the state-
17 ment is made.

18 “(IV) ATTORNEY GENERAL RE-
19 QUIREMENTS.—

20 “(aa) IN GENERAL.—Upon
21 receipt of a completed written
22 statement from a skilled nursing
23 facility, the Attorney General,
24 using information available to the
25 Department of Justice, shall no-

1 tify the facility of the receipt of
2 such statement and promptly de-
3 termine whether the applicant
4 completing the statement has
5 ever been convicted of a crime
6 described in subclause (III)(bb).

7 “(bb) NOTIFICATION OF
8 FAILURE TO PASS.—Not later
9 than 5 business days after the re-
10 ceipt of such statement, the At-
11 torney General shall inform the
12 skilled nursing facility transmit-
13 ting the statement if the appli-
14 cant completing the statement
15 did not pass the background
16 check. A skilled nursing facility
17 not so informed within such pe-
18 riod shall consider the applicant
19 completing the statement to have
20 passed the background check.

21 “(cc) NO FEE.—In no case
22 shall a skilled nursing facility or
23 an applicant be charged a fee in
24 connection with the background

1 check process conducted under
2 this clause.

3 “(iii) LIMITATION ON USE OF INFOR-
4 MATION.—A skilled nursing facility that
5 obtains criminal background information
6 about an applicant pursuant to this sub-
7 paragraph may use such information only
8 for the purpose of determining the suit-
9 ability of the worker for employment.

10 “(iv) NO ACTION BASED ON FAILURE
11 TO HIRE.—In any action against a skilled
12 nursing facility based on a failure or re-
13 fusal to hire an applicant, the fact that the
14 applicant did not pass a background check
15 conducted in accordance with this subpara-
16 graph shall be a complete defense to such
17 action.”.

18 (2) PENALTIES.—Section 1819(h)(1) of the So-
19 cial Security Act (42 U.S.C. 1395i-3(h)(1)) is
20 amended—

21 (A) by striking the heading and inserting

22 “STATE AUTHORITY”;

23 (B) in the first sentence—

1 (i) by redesignating subparagraphs
2 (A) and (B) as clauses (i) and (ii) and in-
3 denting such clauses appropriately; and

4 (ii) by striking “If a State” and in-
5 serting the following:

6 “(A) IN GENERAL.—If a State”;

7 (C) in the second sentence, by striking “If
8 a State” and inserting the following:

9 “(C) PENALTIES FOR PRIOR FAILURES.—
10 If a State”; and

11 (D) by inserting after subparagraph (A)
12 (as added by subparagraph (B)(ii) of this para-
13 graph) the following new subparagraph:

14 “(B) REQUIRED PENALTIES.—A civil
15 money penalty of not more than \$5000 shall be
16 assessed and collected, with interest, against
17 any facility which is or was out of compliance
18 with the requirements of clause (i), (ii)(II), or
19 (iii) of subsection (d)(4)(B).”.

20 (b) MEDICAID.—

21 (1) REQUIREMENT TO CONDUCT CRIMINAL
22 BACKGROUND CHECKS.—Section 1919(d)(4) of the
23 Social Security Act (42 U.S.C. 1396r(d)(4)) is
24 amended—

1 (A) by redesignating subparagraph (B) as
2 subparagraph (C); and

3 (B) by inserting after subparagraph (A)
4 the following new subparagraph:

5 “(B) SCREENING OF WORKERS.—

6 “(i) IN GENERAL.—A nursing facility
7 shall not knowingly employ an individual
8 unless the individual has passed a criminal
9 background check conducted in accordance
10 with the requirements of clause (ii).

11 “(ii) REQUIREMENTS.—

12 “(I) NOTIFICATION.—Not later
13 than 180 days after the date of enact-
14 ment of this subparagraph, the Sec-
15 retary, in consultation with the Attor-
16 ney General, shall notify nursing fa-
17 cilities of the requirements of this
18 subparagraph.

19 “(II) NURSING FACILITY RE-
20 QUIREMENTS.—

21 “(aa) PROVISION OF STATE-
22 MENTS TO APPLICANTS.—Not
23 later than 180 days after a nurs-
24 ing facility receives a notice in
25 accordance with subclause (I),

1 the nursing facility shall adopt
2 and enforce the requirement that
3 each applicant for employment at
4 the nursing facility shall complete
5 the written statement described
6 in subclause (III).

7 “(bb) TRANSMITTAL OF
8 COMPLETED STATEMENTS.—Not
9 later than 5 business days after a
10 nursing facility receives such
11 completed written statement, the
12 nursing facility shall transmit
13 such statement to the Attorney
14 General.

15 “(III) STATEMENT DE-
16 SCRIBED.—The written statement de-
17 scribed in this subclause shall contain
18 the following:

19 “(aa) The name, address,
20 and date of birth appearing on a
21 valid identification document (as
22 defined section 1028(d)(2) of
23 title 18, United States Code) of
24 the applicant, a description of the
25 identification document used, and

1 the applicant's social security ac-
2 count number.

3 “(bb) A statement that the
4 applicant has never been con-
5 victed of a crime of violence or of
6 a Federal or State offense con-
7 sisting of the distribution of con-
8 trolled substances (as that term
9 is defined in section 102(6) of
10 the Controlled Substances Act
11 (21 U.S.C. 802(6)).

12 “(cc) The date the state-
13 ment is made.

14 “(IV) ATTORNEY GENERAL RE-
15 QUIREMENTS.—

16 “(aa) IN GENERAL.—Upon
17 receipt of a completed written
18 statement from a nursing facility,
19 the Attorney General, using in-
20 formation available to the De-
21 partment of Justice, shall notify
22 the facility of the receipt of such
23 statement and promptly deter-
24 mine whether the applicant com-
25 pleting the statement has ever

1 been convicted of a crime de-
2 scribed in subclause (III)(bb).

3 “(bb) NOTIFICATION OF
4 FAILURE TO PASS.—Not later
5 than 5 business days after the re-
6 ceipt of such statement, the At-
7 torney General shall inform the
8 nursing facility transmitting the
9 statement if the applicant com-
10 pleting the statement did not
11 pass the background check. A
12 nursing facility not so informed
13 within such period shall consider
14 the applicant completing the
15 statement to have passed the
16 background check.

17 “(cc) NO FEE.—In no case
18 shall a nursing facility or an ap-
19 plicant be charged a fee in con-
20 nection with the background
21 check process conducted under
22 this clause.

23 “(iii) LIMITATION ON USE OF INFOR-
24 MATION.—A nursing facility that obtains
25 criminal background information about an

1 applicant pursuant to this subparagraph
2 may use such information only for the pur-
3 pose of determining the suitability of the
4 worker for employment.

5 “(iv) NO ACTION BASED ON FAILURE
6 TO HIRE.—In any action against a nursing
7 facility based on a failure or refusal to hire
8 an applicant, the fact that the applicant
9 did not pass a background check conducted
10 in accordance with this subparagraph shall
11 be a complete defense to such action.”.

12 (2) PENALTIES.—Section 1919(h)(2)(A) of the
13 Social Security Act (42 U.S.C. 1396r(h)(2)(A)) is
14 amended by inserting after clause (iv) the following
15 new clause:

16 “(v) A civil money penalty of not
17 more than \$5000 shall be assessed and col-
18 lected, with interest, against any facility
19 which is or was out of compliance with the
20 requirements of clause (i), (ii)(II), or (iii)
21 of subsection (d)(4)(B).”.

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section take effect on October 1, 2000.

1 **SEC. 3. REPORT ON CRIMINAL BACKGROUND CHECKS.**

2 (a) IN GENERAL.—Not later than 3 years after the
3 date of enactment of this Act, the Attorney General shall
4 conduct a study of the effects of background checks in
5 nursing facilities and submit a report to Congress that in-
6 cludes the following:

7 (1) The success of conducting background
8 checks on nursing facility employees.

9 (2) The impact of background checks on patient
10 care in such facilities.

11 (3) The need to conduct background checks in
12 other patient care settings outside of nursing facili-
13 ties.

14 (4) Suggested methods for further improving
15 the background check system and the estimated
16 costs of such improvements.

17 (b) DEFINITION OF NURSING FACILITY.—In sub-
18 section (a), the term “nursing facility” has the meaning
19 given that term in section 1919(a) of the Social Security
20 Act (42 U.S.C. 1396r(a)) and includes a skilled nursing
21 facility (as defined in section 1819(a) of such Act (42
22 U.S.C. 1395i–3(a))).

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