

106TH CONGRESS  
1ST SESSION

# H. R. 1984

To prevent the abuse of elderly people.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 27, 1999

Mr. CROWLEY (for himself, Ms. SLAUGHTER, Mrs. CLAYTON, Ms. KILPATRICK, Ms. EDDIE BERNICE JOHNSON of Texas, and Mr. BENTSEN) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committees on the Judiciary, Banking and Financial Services, Ways and Means, Commerce, and Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To prevent the abuse of elderly people.

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 “Elderly Protection  
5 Act”.

1 **TITLE I—FEDERAL PROHIBITION**  
 2 **OF VIOLENCE AGAINST THE**  
 3 **ELDERLY AND ADDITIONAL**  
 4 **ASSISTANCE FOR PROGRAMS**  
 5 **TO COMBAT THAT VIOLENCE**

6 **SEC. 101. FEDERAL PROHIBITION OF VIOLENCE AGAINST**  
 7 **THE ELDERLY.**

8 (a) IN GENERAL.—Title 18, United States Code, is  
 9 amended by inserting after chapter 27 the following new  
 10 chapter:

11 **““CHAPTER 28—ELDER ABUSE**

“Sec.

“571. Elder abuse.

12 **“§ 571. Elder abuse**

13 “(a) Whoever, in a circumstance described in sub-  
 14 section (b), willfully, because of a senior’s age, causes bod-  
 15 ily or psychological injury to that senior, or attempts to  
 16 cause bodily injury to that senior shall be punished as pro-  
 17 vided in subsection (c).

18 “(b) The circumstances referred to in subsection (a)  
 19 are any of the following:

20 “(1) The defendant or the victim are travelling  
 21 in interstate or foreign commerce at the time of the  
 22 offense or in connection with the offense.

1           “(2) The defendant or the victim use an instru-  
 2           mentality of interstate or foreign commerce at the  
 3           time of the offense or in connection with the offense.

4           “(3) The offense is in or affect interstate or  
 5           foreign commerce.

6           “(c) A person who violates subsection (a) shall be  
 7           fined under this title or imprisoned not more than 10  
 8           years, or both, except that if death results from the of-  
 9           fense, or the victim of the offense was kidnapped or sub-  
 10          jected to an actual or attempted act that would constitute  
 11          aggravated sexual abuse as defined in section 2241 had  
 12          that act occurred in a Federal prison, the maximum term  
 13          of imprisonment is any term or years of for life.

14          “(d) In this section, the term ‘senior’ means a person  
 15          who has attained the age of 62 years.”.

16          (b) CLERICAL AMENDMENT.—The table of chapters  
 17          for part I of title 18, United States Code, is amended by  
 18          adding after the item relating to chapter 27 the following  
 19          new item:

**“28. Elder abuse ..... 571”.**

20          (c) AUTHORIZATION OF APPROPRIATIONS.—In addi-  
 21          tion to any other authorization of appropriations for this  
 22          purpose, there are authorized to be appropriated such  
 23          sums as may be necessary for additional personnel and  
 24          other resources for the enforcement of section 571 of title  
 25          18, United States Code.

1   **TITLE II—DOMESTIC VIOLENCE**  
2                   **PREVENTION**

3   **SEC. 201. AUTHORIZATION OF APPROPRIATIONS.**

4       The budget authority under section 5(c) of the  
5   United States Housing Act of 1937 for assistance under  
6   subsections (b) and (o) of section 8 of such Act is author-  
7   ized to be increased by \$50,000,000 on or after October  
8   1, 1998, and by such sums as may be necessary on or  
9   after October 1, 1999.

10   **SEC. 202. USE OF AMOUNTS FOR HOUSING ASSISTANCE**  
11                   **FOR VICTIMS OF DOMESTIC VIOLENCE.**

12       Amounts available pursuant to section 201 shall be  
13   made available by the Secretary of Housing and Urban  
14   Development only to public housing agencies and qualified  
15   nonprofit organizations only for use for providing tenant-  
16   based rental assistance on behalf of families victimized by  
17   domestic violence who have left or are leaving a residence  
18   as a result of the domestic violence.

19   **SEC. 203. TRANSITIONAL COMPENSATION.**

20       Section 1059 of title 10, United States Code, is  
21   amended—

22               (1) in subsection (e)(1)(A), by inserting “that  
23       includes dependent-abuse as an underlying or prin-  
24       cipal factor” after “for a dependent-abuse offense”;

1           (2) in subsection (e)(1)(B), by inserting “un-  
2           derlying, partial, or principal” before “basis”; and  
3           (3) in subsection (g)(2), by striking “the Sec-  
4           retary may not resume such payments” and insert-  
5           ing “the Secretary may resume such payments if the  
6           Secretary determines that there was ongoing abuse.  
7           Any such determination as to such a resumption of  
8           payments shall be reviewed by the Secretary on a  
9           case-by-case basis.”.

10 **SEC. 204. HEALTH BENEFITS.**

11           Paragraph (1) of section 1076(e) of title 10, United  
12 States Code, is amended to read as follows:

13           “(1) The administering Secretary shall furnish  
14           an abused dependent of a former member of a uni-  
15           formed service described in paragraph (4), during  
16           that period that the abused dependent is in receipt  
17           of transitional compensation under section 1059 of  
18           this title, with medical and dental care, including  
19           mental health services, in facilities of the uniformed  
20           services in accordance with the same eligibility and  
21           benefits as were applicable for that abused depend-  
22           ent during the period of active service of the former  
23           member.”.

1 **SEC. 205. DOMESTIC VIOLENCE SHELTERS AND PROGRAMS**  
2 **FOR OLDER INDIVIDUALS.**

3 Section 422(b) of the Older Americans Act of 1965  
4 (42 U.S.C. 3035a(b)) is amended—

5 (1) by striking “and” at the end of paragraph  
6 (11);

7 (2) by striking the period at the end of para-  
8 graph (12) and inserting a semicolon; and

9 (3) by adding at the end the following:

10 “(13) expand access to domestic violence shel-  
11 ters and programs for older individuals and encour-  
12 age the use of senior housing, nursing homes, or  
13 other suitable facilities or services when appropriate  
14 as emergency short-term shelters or measures for  
15 older individuals who are the victims of elder abuse,  
16 including domestic violence, and sexual assault,  
17 against older individuals; and

18 “(14) promote research on legal, organizational,  
19 or training impediments to providing services to  
20 older individuals through shelters, such as impedi-  
21 ments to provision of the services in coordination  
22 with delivery of health care or senior services.”.

23 **SEC. 206. AUTHORIZATION OF APPROPRIATIONS.**

24 (a) OMBUDSMAN PROGRAM.—Section 702(a) of the  
25 Older Americans Act of 1965 (42 U.S.C. 3058a(a)) is  
26 amended to read as follows:

1 “(a) OMBUDSMAN PROGRAM.—There are authorized  
 2 to be appropriated to carry out chapter 2 such sums as  
 3 may be necessary without fiscal year limitation.”.

4 (b) ELDER ABUSE PREVENTION PROGRAM.—Section  
 5 702(b) of the Older Americans Act of 1965 (42 U.S.C.  
 6 3058a(b)) is amended to read as follows:

7 “(b) PREVENTION OF ELDER ABUSE, NEGLECT, AND  
 8 EXPLOITATION.—There are authorized to be appropriated  
 9 to carry out chapter 3 such sums as may be necessary  
 10 without fiscal year limitation.”.

11 **SEC. 207. COMMUNITY INITIATIVES AND OUTREACH.**

12 Title VII of the Older Americans Act of 1965 (42  
 13 U.S.C. 3058 et seq.) is amended—

14 (1) by redesignating subtitle C as subtitle D;

15 (2) by redesignating sections 761 through 764  
 16 as sections 771 through 774, respectively; and

17 (3) by inserting after subtitle B the following:

18 **“Subtitle C—Community Initiatives**  
 19 **and Outreach**

20 **“SEC. 761. COMMUNITY INITIATIVES TO COMBAT ELDER**  
 21 **ABUSE, NEGLECT, AND EXPLOITATION.**

22 “The Secretary shall make grants to nonprofit pri-  
 23 vate organizations to support projects in local commu-  
 24 nities, involving diverse sectors of each community, to co-  
 25 ordinate activities concerning intervention in and preven-

tion of elder abuse, neglect, and exploitation, including domestic violence, and sexual assault, against older individuals.

**“SEC. 762. OUTREACH TO OLDER INDIVIDUALS.**

“The Secretary shall make grants to develop and implement outreach programs directed toward assisting older individuals who are victims of elder abuse, neglect, and exploitation (including domestic violence, and sexual assault, against older individuals), including programs directed toward assisting the individuals in senior housing complexes and senior centers.

**“SEC. 763. AUTHORIZATION OF APPROPRIATIONS.**

“There are authorized to be appropriated to carry out this subtitle such sums as may be necessary without fiscal year limitation.”.

**SEC. 208. ESTABLISHMENT, FOR CERTAIN HEALTH PROFESSIONS PROGRAMS, OF PROVISIONS REGARDING IDENTIFICATION AND REFERRAL FOR ELDER ABUSE AND NEGLECT.**

(a) TITLE VII PROGRAMS; PREFERENCES IN FINANCIAL AWARDS.—Section 791 of the Public Health Service Act (42 U.S.C. 295j) as amended in title VIII of this Act, is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following subsection:



1       “(d) PREFERENCES REGARDING TRAINING IN IDEN-  
2       TIFICATION AND REFERRAL OF VICTIMS OF ELDER  
3       ABUSE AND NEGLECT.—

4               “(1) IN GENERAL.—In the case of a health pro-  
5       fessions entity specified in paragraph (2), the Sec-  
6       retary shall, in making awards of grants or contracts  
7       under this title, give preference to any such entity  
8       (if otherwise a qualified applicant for the award in-  
9       volved) that has in effect the requirement that, as a  
10      condition of receiving a degree or certificate (as ap-  
11      plicable) from the entity, each student have had sig-  
12      nificant training (such as training conducted in ac-  
13      cordance with curricula or programs authorized  
14      under section 411(f) of the Older Americans Act of  
15      1965 (42 U.S.C. 3031(f))), in carrying out the fol-  
16      lowing functions as a provider of health care:

17               “(A) Identifying victims of elder abuse and  
18      neglect, including domestic violence, and sexual  
19      assault, against older individuals, and maintain-  
20      ing complete medical records that include docu-  
21      mentation of the examination, treatment given,  
22      and referrals made, and recording the location  
23      and nature of the victim’s injuries.

24               “(B) Examining and treating such victims,  
25      within the scope of the health professional’s dis-

1           cipline, training, and practice, including, at a  
2           minimum, providing medical advice regarding  
3           the dynamics and nature of elder abuse and ne-  
4           glect.

5           “(C) Referring the victims to public and  
6           nonprofit private entities that provide services  
7           for such victims.

8           “(2) RELEVANT HEALTH PROFESSIONS ENTI-  
9           TIES.—For purposes of paragraph (1), a health pro-  
10          fessions entity specified in this paragraph is any en-  
11          tity that is a school of medicine, a school of osteo-  
12          pathic medicine, a graduate program in mental  
13          health practice, a school of nursing (as defined in  
14          section 298b), a program for the training of physi-  
15          cian assistants, or a program for the training of al-  
16          lied health professionals.

17          “(3) REPORT TO CONGRESS.—Not later than 2  
18          years after the date of the enactment of the Elder  
19          Abuse Identification and Referral Act of 1998, the  
20          Secretary shall submit to the Committee on Com-  
21          merce of the House of Representatives, and the  
22          Committee on Labor and Human Resources of the  
23          Senate, a report specifying—

24                 “(A) the health professions entities that  
25                 are receiving preference under paragraph (1);

1           “(B) the number of hours of training re-  
2           quired by the entities for purposes of such  
3           paragraph;

4           “(C) the extent of clinical experience so re-  
5           quired; and

6           “(D) the types of courses through which  
7           the training is being provided.

8           “(4) DEFINITIONS.—In this subsection:

9           “(A) IN GENERAL.—The terms ‘abuse’,  
10          ‘neglect’, ‘domestic violence’, and ‘older indi-  
11          vidual’ have the meanings given the terms in  
12          section 102 of the Older Americans Act of 1965  
13          (42 U.S.C. 3002).

14          “(B) ELDER ABUSE AND NEGLECT.—The  
15          term ‘elder abuse and neglect’ means abuse and  
16          neglect of an older individual.

17          “(C) SEXUAL ASSAULT.—The term ‘sexual  
18          assault’ has the meaning given the term in sec-  
19          tion 2003 of the Omnibus Crime Control and  
20          Safe Streets Act of 1968 (42 U.S.C. 3796gg-  
21          2).”.

22          (b) TITLE VIII PROGRAMS; PREFERENCES IN FI-  
23          NANCIAL AWARDS.—Section 860 of the Public Health  
24          Service Act (42 U.S.C. 298b-7) as amended by title VIII  
25          of this Act is amended by adding at the end the following:

1       “(g) PREFERENCES REGARDING TRAINING IN IDEN-  
2       TIFICATION AND REFERRAL OF VICTIMS OF ELDER  
3       ABUSE AND NEGLECT.—

4               “(1) IN GENERAL.—In the case of a health pro-  
5       fessions entity specified in paragraph (2), the Sec-  
6       retary shall, in making awards of grants or contracts  
7       under this title, give preference to any such entity  
8       (if otherwise a qualified applicant for the award in-  
9       volved) that has in effect the requirement that, as a  
10      condition of receiving a degree or certificate (as ap-  
11      plicable) from the entity, each student have had sig-  
12      nificant training (such as training conducted in ac-  
13      cordance with curricula or programs authorized  
14      under section 411(g) of the Older Americans Act of  
15      1965 (42 U.S.C. 3031(f))), in carrying out the fol-  
16      lowing functions as a provider of health care:

17               “(A) Identifying victims of elder abuse and  
18      neglect, including domestic violence, and sexual  
19      assault, against older individuals, and maintain-  
20      ing complete medical records that include docu-  
21      mentation of the examination, treatment given,  
22      and referrals made, and recording the location  
23      and nature of the victim’s injuries.

24               “(B) Examining and treating such victims,  
25      within the scope of the health professional’s dis-

1 cipline, training, and practice, including, at a  
2 minimum, providing medical advice regarding  
3 the dynamics and nature of elder abuse and ne-  
4 glect.

5 “(C) Referring the victims to public and  
6 nonprofit private entities that provide services  
7 for such victims.

8 “(2) RELEVANT HEALTH PROFESSIONS ENTI-  
9 TIES.—For purposes of paragraph (1), a health pro-  
10 fessions entity specified in this paragraph is any en-  
11 tity that is a school of nursing or other public or  
12 nonprofit private entity that is eligible to receive an  
13 award described in such paragraph.

14 “(3) REPORT TO CONGRESS.—Not later than 2  
15 years after the date of the enactment of the Elder  
16 Abuse Identification and Referral Act of 1998, the  
17 Secretary shall submit to the Committee on Com-  
18 merce of the House of Representatives, and the  
19 Committee on Labor and Human Resources of the  
20 Senate, a report specifying—

21 “(A) the health professions entities that  
22 are receiving preference under paragraph (1);

23 “(B) the number of hours of training re-  
24 quired by the entities for purposes of such  
25 paragraph;

1 “(C) the extent of clinical experience so re-  
2 quired; and

3 “(D) the types of courses through which  
4 the training is being provided.”.

5 (c) CONFORMING AMENDMENT.—Section 411(f) of  
6 the Older Americans Act of 1965 (as added by section  
7 605–4) is amended by adding at the end the following:

8 “(3) In carrying out paragraph (1), the Secretary  
9 shall provide information about the curricula and training  
10 programs to entities described in sections 791(d)(2) and  
11 860(f)(2) of the Public Health Service Act (42 U.S.C.  
12 295j(c)(2) and 298b–7(f)(2)) that seek grants or con-  
13 tracts under title VII or VIII of such Act.”.

## 14 **TITLE III—ELDERLY AND** 15 **DISABLED PROTECTION**

### 16 **SEC. 301. SHORT TITLE; TABLE OF CONTENTS.**

17 (a) SHORT TITLE.—This title may be cited as the  
18 “Elderly and Disabled Protection Act of 1999”.

19 (b) TABLE OF CONTENTS.—The table of contents of  
20 this title is as follows:

Sec. 301. Short title; table of contents.

Sec. 302. Requiring background checks for direct care employees in nursing fa-  
cilities, home health agencies, and hospice programs.

Sec. 303. Expanded role of State direct care employee registries; national reg-  
istry coordination system; procedures for background checks.

Sec. 304. Definitions.

1 **SEC. 302. REQUIRING BACKGROUND CHECKS FOR DIRECT**  
2 **CARE EMPLOYEES IN NURSING FACILITIES,**  
3 **HOME HEALTH AGENCIES, AND HOSPICE**  
4 **PROGRAMS.**

5 (a) REQUIREMENTS.—

6 (1) IN GENERAL.—A covered facility in a  
7 State—

8 (A) may not employ (directly or through  
9 an agency) any individual as a direct care em-  
10 ployee unless the facility has requested from the  
11 State direct care employee registry a back-  
12 ground check;

13 (B) may not employ such an individual or  
14 continue such employment if the report on such  
15 background check reveals that the individual  
16 has been convicted of a disqualifying crime; and

17 (C) shall report to such registry docu-  
18 mented findings of patient abuse by a direct  
19 care employee.

20 (2) EMPLOYMENT PENDING REPORT.—Nothing  
21 in this subsection shall be construed as preventing a  
22 covered facility from—

23 (A) seeking a background check on pro-  
24 spective direct care employees before they are  
25 employed; or

1 (B) employing direct care employees dur-  
2 ing the period in which a background check has  
3 been sought under paragraph (1)(A) and before  
4 a report on such check has been provided to the  
5 facility under paragraph (1)(B).

6 (b) PENALTIES.—In addition to any other sanctions  
7 provided under law—

8 (1) IN GENERAL.—A covered facility that vio-  
9 lates subsection (a)(1)(A) shall be subject to a civil  
10 penalty in an amount not to exceed—

11 (A) for the first such violation, \$2,000;  
12 and

13 (B) for the second and each subsequent  
14 violation within any 5-year period, \$5,000.

15 (2) KNOWING RETENTION OF WORKER.—In ad-  
16 dition to any civil penalty under paragraph (1), a  
17 covered facility that—

18 (A) knowingly continues to employ a direct  
19 care employee in violation of subsection  
20 (a)(1)(B); or

21 (B) knowingly fails to submit a report re-  
22 quired under subsection (a)(1)(C);

23 shall be subject to a civil penalty in an amount not  
24 to exceed \$5,000 for the first such violation, and



1       \$10,000 for the second and each subsequent viola-  
2       tion within any 5-year period.

3       (c) ENFORCEMENT THROUGH MEDICARE AND MED-  
4       ICAID PROGRAMS.—

5               (1) NURSING FACILITIES.—

6                       (A)       MEDICARE       PROGRAM.—Section  
7               1819(b) of the Social Security Act (42 U.S.C.  
8               1395i–3(b)) is amended by adding at the end  
9               the following new paragraph:

10               “(8) REQUIREMENT FOR BACKGROUND CHECKS  
11       FOR DIRECT CARE PERSONNEL.—A skilled nursing  
12       facility shall comply with the requirements of section  
13       2(a) of the Elderly and Disabled Protection Act of  
14       1998 with respect to any direct care employee it em-  
15       ploys.”.

16                       (B)       MEDICAID       PROGRAM.—Section  
17               1919(b) of such Act (42 U.S.C. 1396r(b)) is  
18               amended by adding at the end the following  
19               new paragraph:

20               “(8) REQUIREMENT FOR BACKGROUND CHECKS  
21       FOR DIRECT CARE PERSONNEL.—A nursing facility  
22       shall comply with the requirements of section 2(a) of  
23       the Elderly and Disabled Protection Act of 1998  
24       with respect to any direct care employee it em-  
25       ploys.”.

1           (2) HOME HEALTH AGENCIES AND HOSPICE  
2 PROGRAMS.—

3           (A) MEDICARE PROGRAM.—

4           (i) HOME HEALTH AGENCIES.—Sec-  
5 tion 1891(a) of such Act (42 U.S.C.  
6 1395bbb(a)) is amended by adding at the  
7 end the following:

8           “(7) The agency complies with the requirements  
9 of section 2(a) of the Elderly and Disabled Protec-  
10 tion Act of 1998 with respect to any direct care em-  
11 ployee it employs.”.

12           (ii) HOSPICE PROGRAMS.—Section  
13 1861(dd)(2)(G) of such Act (42 U.S.C.  
14 1395x(dd)(2)(G)) is amended by inserting  
15 before the period at the end the following:  
16 “, including compliance with the require-  
17 ments of section 2(a) of the Elderly and  
18 Disabled Protection Act of 1998 with re-  
19 spect to any direct care employee it em-  
20 ploys”.

21           (B) MEDICAID PROGRAM.—Section  
22 1902(a)(57) of such Act (42 U.S.C.  
23 1396a(a)(57)) is amended—

24           (i) by inserting “(A)” after “(57)”;  
25 and

1 (ii) by adding at the end the fol-  
 2 lowing:

3 “(B) provide that each provider of home health  
 4 care or personal care services and each hospice pro-  
 5 gram receiving funds under the plan shall comply  
 6 with the requirements of section 2(a) of the Elderly  
 7 and Disabled Protection Act of 1998 with respect to  
 8 any direct care employee it employs;”.

9 (d) EFFECTIVE DATES.—The requirements of sub-  
 10 section (a) shall apply with respect to a covered facility—

11 (1) beginning as of such date (specified by the  
 12 Secretary and not later than 60 days after the date  
 13 the Secretary has established the national registry  
 14 coordination system under section 3(b)), with re-  
 15 spect to the hiring of individuals as a direct care em-  
 16 ployee by the facility on and after such date; and

17 (2) as of 1 year after the date described in  
 18 paragraph (1), with respect to individuals first em-  
 19 ployed as such an employee before the date de-  
 20 scribed in such paragraph.

21 **SEC. 303. EXPANDED ROLE OF STATE DIRECT CARE EM-**  
 22 **PLOYEE REGISTRIES; NATIONAL REGISTRY**  
 23 **COORDINATION SYSTEM; PROCEDURES FOR**  
 24 **BACKGROUND CHECKS.**

25 (a) EXPANDED ROLE OF REGISTRY.—

1           (1) IN GENERAL.—Each State shall expand its  
2       direct care employee registry established under sec-  
3       tions 1819(e)(2) and 1919(e)(2) of the Social Secu-  
4       rity Act to carry out the following functions:

5           (A) RECEIPT OF REQUESTS.—The registry  
6       shall provide for the receipt of requests for  
7       background checks described in section 2(a)(1).

8           (B) CONDUCT OF BACKGROUND  
9       CHECKS.—Upon receipt of such a request with  
10      respect to an individual, the registry, in coordi-  
11      nation with the national registry coordination  
12      system established by the Secretary under sub-  
13      section (b) and in accordance with this section,  
14      shall provide for the performance of (or the col-  
15      lection of information concerning) a background  
16      check (including a criminal background check  
17      and an abusive work history background check)  
18      requested under section 2(a) and for the sub-  
19      mittal of a background check report (as defined  
20      in paragraph (2)) on such check to the request-  
21      ing facility.

22          (C) PROVISION OF INFORMATION TO NA-  
23      TIONAL REGISTRY COORDINATION SYSTEM.—  
24      The registry shall provide for the reporting to  
25      the national registry coordination system of—

1 (i) a criminal background check sum-  
2 mary (as defined in paragraph (3)) on any  
3 individual on whom it obtains a criminal  
4 background check under subsection (c)(3);  
5 and

6 (ii) the identity of any individual for  
7 whom the registry has documented find-  
8 ings of patient abuse and such additional  
9 information as the State registry involved  
10 may disclose concerning such findings.

11 (2) BACKGROUND CHECK REPORT DEFINED.—  
12 For purposes of this section, the term “background  
13 check report” means, with respect to a background  
14 check concerning an individual, a statement con-  
15 taining the following:

16 (A) Whether the individual has been con-  
17 victed of a disqualifying crime.

18 (B) Whether there are documented find-  
19 ings of patient abuse by the individual in a  
20 State direct care employee registry and, if so,  
21 such additional information as the State reg-  
22 istry involved may disclose concerning such  
23 findings.

1 Such report shall not include information from the  
 2 criminal background check other than the informa-  
 3 tion described in subparagraph (A).

4 (3) CRIMINAL BACKGROUND CHECK SUMMARY  
 5 DEFINED.—For purposes of this section, the term  
 6 “criminal background check summary” means, with  
 7 respect to a criminal background check concerning  
 8 an individual, the following information:

9 (A) The identity of the individual.

10 (B) The date of the criminal background  
 11 check.

12 (C) Whether the check revealed that—

13 (i) the individual had not been con-  
 14 victed of any crime,

15 (ii) the individual has been convicted  
 16 of a national disqualifying crime, or

17 (iii) the individual has been convicted  
 18 of a crime that is not a national disquali-  
 19 fying crime.

20 (4) CONFORMING MEDICARE AND MEDICAID  
 21 AMENDMENTS.—Sections 1819(e)(2) and 1919(e)(2)  
 22 of the Social Security Act (42 U.S.C. 1395i–3(e)(2),  
 23 1396r(e)(2)) are each amended—

24 (A) in subparagraph (C), by striking “A  
 25 State” and inserting “Subject to section 3(e) of

1 the Elderly and Disabled Protection Act of  
2 1998, a State”, and

3 (B) by adding at the end the following new  
4 subparagraph:

5 “(D) EXPANDED FUNCTIONS.—Effective  
6 not later than 90 days after the date of the es-  
7 tablishment of the national registry coordina-  
8 tion system under section 3(b) of the Elderly  
9 and Disabled Protection Act of 1998, the State  
10 shall—

11 “(i) modify the operations of its reg-  
12 istry so it performs the functions required  
13 under section 3(a) of such Act; and

14 “(ii) provide for the specification of a  
15 State agency that is separate from the reg-  
16 istry and that will be responsible for the  
17 performance of criminal background checks  
18 under such section.”.

19 (b) NATIONAL REGISTRY COORDINATION SYSTEM.—

20 (1) ESTABLISHMENT.—The Secretary shall es-  
21 tablish methods by which State direct care registries  
22 can pool and share information regarding individuals  
23 concerning criminal background check summaries  
24 and the existence of documented findings of patient  
25 abuse.

1           (2) DEADLINE FOR ESTABLISHING SYSTEM.—

2           The Secretary shall provide for the establishment of  
3           the national registry coordination system by not  
4           later than 1 year after the date of the enactment of  
5           this Act.

6           (3) CONSULTATION WITH FBI ON CRIMINAL  
7           BACKGROUND CHECKS.—In carrying out this Act  
8           with respect to criminal background checks, the Sec-  
9           retary shall consult with the Director of the Federal  
10          Bureau of Investigation.

11          (c) PROCEDURES FOR CRIMINAL BACKGROUND  
12          CHECKS.—A registry shall carry out its responsibilities  
13          under subsection (a)(1)(B), in relation to a criminal back-  
14          ground check with respect to an individual, in a manner  
15          consistent with the following:

16               (1) DETERMINATION OF WHETHER RECENT  
17               CRIMINAL BACKGROUND CHECK DONE.—The reg-  
18               istry shall determine whether the registry (or,  
19               through the national registry coordination system,  
20               the direct care employee registry of another State)  
21               has obtained a criminal background check on the in-  
22               dividual within the previous year.

23               (2) USE OF PREVIOUS BACKGROUND CHECK.—  
24               If there has been such a check done within such pe-  
25               riod, if the check revealed that—



1 (A) the individual had not been convicted  
2 of any crime, the registry need not request a  
3 new criminal background check and may as-  
4 sume that the individual has not been convicted  
5 of any disqualifying crime;

6 (B) the individual has been convicted of a  
7 national or state disqualifying crime, the reg-  
8 istry need not request a new criminal back-  
9 ground check and shall treat the individual as  
10 having been convicted of a disqualifying crime;  
11 or

12 (C) the individual has been convicted of a  
13 crime that is not a national or state disquali-  
14 fying crime and the State has disqualifying  
15 crimes that are other than national disquali-  
16 fying crimes, the registry shall request a crimi-  
17 nal background check as provided under para-  
18 graph (3).

19 (3) REQUESTING STATE CRIMINAL BACK-  
20 GROUND CHECK AGENCY TO OBTAIN CRIMINAL  
21 BACKGROUND CHECK.—If there has not been such a  
22 check done within such period or in the case de-  
23 scribed in paragraph (2)(C), the registry shall re-  
24 quest the State criminal background check agency of  
25 the State—

1 (A) to perform a criminal background  
2 check on the individual;

3 (B) to determine, on the basis of such  
4 check, whether the individual—

5 (i) has not been convicted of any  
6 crime;

7 (ii) has been convicted of a national  
8 disqualifying crime; or

9 (iii) has been convicted of a crime  
10 that is a State disqualifying crime; and

11 (C) to submit to the registry a criminal  
12 background check summary on the individual.

13 (4) APPLICATION OF CERTAIN PROCEDURES  
14 FOR CRIMINAL BACKGROUND CHECKS.—Under regu-  
15 lations of the Secretary, the following provisions in  
16 section 3 of the National Child Protection Act of  
17 1993 (Public Law 103–209) shall apply to criminal  
18 background checks required of a direct care em-  
19 ployee with respect to a covered facility to be per-  
20 formed under this Act in the same manner as they  
21 apply to providers with respect to qualified entities:

22 (A) Subsection (a)(2) (relating to access to  
23 records and timeliness of response).

24 (B) Subsection (b) (relating to guidelines  
25 on background checks), other than paragraph

(1)(B), except that denial of unsupervised access under paragraph (1)(E) shall be treated for purposes of this section as a denial of unsupervised access to patients in covered facilities and determinations under paragraph (4) shall be made only with respect to crimes relating to patient abuse.

(C) Subsection (c) (relating to authority of Attorney General).

(D) Subsection (d) (relating to limitation on liability).

(d) PROCEDURES FOR ABUSIVE WORK HISTORY BACKGROUND CHECKS.—A registry shall carry out its responsibilities under subsection (a)(1)(B), in relation to abusive work history background check with respect to an individual, in a manner consistent with the following:

(1) INCLUSION OF INFORMATION ON DOCUMENTED FINDINGS OF PATIENT ABUSE.—The registry shall maintain a list of all individuals in the State who are (or were) direct care employees and with respect to whom there are specific documented findings of patient abuse, as well as any brief statement of the individual disputing the findings. Such findings shall be made available in the same manner

as findings described in sections 1819(c)(2)(B) and 1919(c)(2)(B) of the Social Security Act.

(2) FORWARDING INFORMATION ON INDIVIDUALS WITH DOCUMENTED FINDINGS OF PATIENT ABUSE.—If the registry has a documented finding described in paragraph (1) with respect to an individual, the registry—

(A) shall provide the national registry coordination system with—

(i) information on the identity of the individual and the State;

(ii) information on the fact that such a finding was made; and

(iii) such additional information respecting the finding as the Secretary may require; and

(B) shall provide, to another State direct care employee registry that requests information on an individual for whom such a documented finding has been made through the system, information respecting the finding.

(e) FEES.—A State may assess a covered facility a fee for the conduct of a background check under section 2(a) in an amount that does not exceed the actual cost to the State of obtaining the criminal background check

1 and the abusive work history background check on an indi-  
2 vidual. Such a facility may recover all of the fee from the  
3 individual involved.

4 **SEC. 304. DEFINITIONS.**

5 For purposes of this Act:

6 (1) BACKGROUND CHECK; CRIMINAL BACK-  
7 GROUND CHECK; ABUSIVE WORK HISTORY BACK-  
8 GROUND CHECK.—

9 (A) BACKGROUND CHECK.—The term  
10 “background check” includes a criminal back-  
11 ground check and an abusive work history back-  
12 ground check.

13 (B) CRIMINAL BACKGROUND CHECK.—The  
14 term “criminal background check” means a  
15 check of the criminal history record system  
16 maintained by the Federal Bureau of Investiga-  
17 tion based on fingerprint identification or any  
18 other method of positive identification for the  
19 purpose of determining whether an individual  
20 has been convicted of a disqualifying crime.

21 (C) ABUSIVE WORK HISTORY BACKGROUND  
22 CHECK.—The term “abusive work history back-  
23 ground check” means, with respect to an indi-  
24 vidual, a check of State direct care employee  
25 registries for the purpose of determining wheth-

1           er there is a documented finding that the indi-  
2           vidual was involved in patient abuse.

3           (2) COVERED FACILITY.—The term “covered  
4           facility” means a nursing facility (including a skilled  
5           nursing facility), home health agency, or hospice  
6           program which receives payment under any federally  
7           funded program.

8           (3) DIRECT CARE EMPLOYEE.—

9           (A) IN GENERAL.—The term “direct care  
10          employee” means a nurse aide, home health  
11          care aide, personal care assistant, private duty  
12          nurse aide, day attendant, housekeeper, library  
13          attendant, laundry assistant, or similar worker  
14          who performs nursing or related tasks involving  
15          direct patient care in a covered facility.

16          (B) EXCLUSIONS.—Such term does not in-  
17          clude an individual—

18               (i) who is a physician, physician as-  
19               sistant, nurse practitioner, physical,  
20               speech, or occupational therapist, physical  
21               or occupational therapy assistant, reg-  
22               istered professional nurse, licensed prac-  
23               tical nurse, or licensed or certified social  
24               worker, or registered dietitian;

1 (ii) who volunteers to provide such  
 2 services without monetary compensation;

3 or

4 (iii) who meets such other require-  
 5 ments as the Secretary may specify.

6 (4) DISQUALIFYING CRIME; NATIONAL DIS-  
 7 QUALIFYING CRIME; STATE DISQUALIFYING  
 8 CRIME.—

9 (A) DISQUALIFYING CRIME.—The term  
 10 “disqualifying crime” means, with respect to an  
 11 individual applying for employment in a State,  
 12 a criminal offense that is a national disquali-  
 13 fying crime or a State disqualifying crime in  
 14 that State.

15 (B) NATIONAL DISQUALIFYING CRIME.—  
 16 The term “national disqualifying crime”  
 17 means—

18 (i) a criminal offense described in sec-  
 19 tion 1128(a) of the Social Security Act; or

20 (ii) felony homicide, battery, or as-  
 21 sault (including sexual assault),  
 22 regardless of the date of conviction for the  
 23 crime.

24 (C) STATE DISQUALIFYING CRIME.—The  
 25 term “State disqualifying crime” means, with

1           respect to a State, such criminal offenses (other  
 2           than national disqualifying crimes) as the State  
 3           may under law treat as a State disqualifying  
 4           crime for purposes of this Act and for such pe-  
 5           riod of time as the State may provide.

6           (5) NATIONAL REGISTRY COORDINATION SYS-  
 7           TEM.—The term “national registry coordination sys-  
 8           tem” means a system established under section 3(b).

9           (6) PATIENT ABUSE.—The term “patient  
 10          abuse” means such incidence of abuse, neglect, mis-  
 11          treatment, or misappropriation of property of an in-  
 12          dividual receiving services in a covered facility as the  
 13          Secretary shall specify in regulations.

14          (7) SECRETARY.—The term “Secretary” means  
 15          the Secretary of Health and Human Services.

16          (8) STATE CRIMINAL BACKGROUND CHECK  
 17          AGENCY.—The term “State criminal background  
 18          check agency” means, with respect to a State, the  
 19          State agency specified by the State to provide for  
 20          the conduct of criminal background checks under  
 21          this Act.

22          (9) STATE DIRECT CARE EMPLOYEE REG-  
 23          ISTRY.—The term “State direct care employee reg-  
 24          istry” means a nurse aide registry that is established  
 25          under sections 1819(e)(2)(A) and 1919(e)(2)(A) of



1       the Social Security Act and that provides for func-  
2       tions required of such a registry under section 3 of  
3       this Act.

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