

106TH CONGRESS
1ST SESSION

H. R. 2627

To amend titles XVIII and XIX of the Social Security Act to prevent abuse of recipients of long-term care services under the Medicare and Medicaid programs.

IN THE HOUSE OF REPRESENTATIVES

JULY 27, 1999

Mr. STARK introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on Ways and Means, 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

A BILL

To amend titles XVIII and XIX of the Social Security Act to prevent abuse of recipients of long-term care services under the Medicare and Medicaid programs.

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 “Patient Abuse Preven-
5 tion Act”.

1 **SEC. 2. ESTABLISHMENT OF PROGRAM TO PREVENT ABUSE**
2 **OF NURSING FACILITY RESIDENTS.**

3 (a) NURSING FACILITY AND SKILLED NURSING FA-
4 CILITY REQUIREMENTS.—

5 (1) MEDICAID PROGRAM.—Section 1919(b) of
6 the Social Security Act (42 U.S.C. 1396r(b)) is
7 amended by adding at the end the following:

8 “(8) SCREENING OF NURSING FACILITY WORK-
9 ERS.—

10 “(A) BACKGROUND CHECKS ON APPLI-
11 CANTS.—Subject to subparagraph (B)(ii), be-
12 fore hiring a nursing facility worker, a nursing
13 facility shall—

14 “(i) give the worker written notice
15 that the facility is required to perform
16 background checks with respect to appli-
17 cants;

18 “(ii) require, as a condition of employ-
19 ment, that such worker—

20 “(I) provide a written statement
21 disclosing any conviction for a rel-
22 evant crime or finding of patient or
23 resident abuse;

24 “(II) provide a statement signed
25 by the worker authorizing the facility

1 to request the search and exchange of
2 criminal records;

3 “(III) provide in person a copy of
4 the worker’s fingerprints; and

5 “(IV) provide any other identi-
6 fication information the Secretary
7 may specify in regulation;

8 “(iii) initiate a check of the data col-
9 lection system established under section
10 1128E in accordance with regulations pro-
11 mulgated by the Secretary to determine
12 whether such system contains any disquali-
13 fying information with respect to such
14 worker; and

15 “(iv) if that system does not contain
16 any such disqualifying information—

17 “(I) request that the State ini-
18 tiate a State and national criminal
19 background check on such worker in
20 accordance with the provisions of sub-
21 section (e)(8); and

22 “(II) furnish to the State the in-
23 formation described in subclauses (II)
24 through (IV) of clause (ii) not more
25 than 7 days (excluding Saturdays,

1 Sundays, and legal public holidays
2 under section 6103(a) of title 5,
3 United States Code) after completion
4 of the check against the system initi-
5 ated under clause (iii).

6 “(B) PROHIBITION ON HIRING OF ABUSIVE
7 WORKERS.—

8 “(i) IN GENERAL.—A nursing facility
9 may not knowingly employ any nursing fa-
10 cility worker who has any conviction for a
11 relevant crime or with respect to whom a
12 finding of patient or resident abuse has
13 been made.

14 “(ii) PROVISIONAL EMPLOYMENT.—
15 After complying with the requirements of
16 clauses (i), (ii), and (iii) of subparagraph
17 (A), a nursing facility may provide for a
18 provisional period of employment for a
19 nursing facility worker pending completion
20 of the check against the data collection
21 system described under subparagraph
22 (A)(iii) and the background check de-
23 scribed under subparagraph (A)(iv). Such
24 facility shall maintain direct supervision of

1 the worker during the worker’s provisional
2 period of employment.

3 “(C) REPORTING REQUIREMENTS.—A
4 nursing facility shall report to the State any in-
5 stance in which the facility determines that a
6 nursing facility worker has committed an act of
7 resident neglect or abuse or misappropriation of
8 resident property in the course of employment
9 by the facility.

10 “(D) USE OF INFORMATION.—

11 “(i) IN GENERAL.—A nursing facility
12 that obtains information about a nursing
13 facility worker pursuant to clauses (iii) and
14 (iv) of subparagraph (A) may use such in-
15 formation only for the purpose of deter-
16 mining the suitability of the worker for
17 employment.

18 “(ii) IMMUNITY FROM LIABILITY.—A
19 nursing facility that, in denying employ-
20 ment for an applicant (including during
21 the period described in subparagraph
22 (B)(ii)), reasonably relies upon information
23 about such applicant provided by the State
24 pursuant to subsection (e)(8) or section
25 1128E shall not be liable in any action

1 brought by such applicant based on the
2 employment determination resulting from
3 the information.

4 “(iii) CRIMINAL PENALTY.—Whoever
5 knowingly violates the provisions of clause
6 (i) shall be fined in accordance with title
7 18, United States Code, imprisoned for not
8 more than 2 years, or both.

9 “(E) CIVIL PENALTY.—

10 “(i) IN GENERAL.—A nursing facility
11 that violates the provisions of this para-
12 graph shall be subject to a civil penalty in
13 an amount not to exceed—

14 “(I) for the first such violation,
15 \$2,000; and

16 “(II) for the second and each
17 subsequent violation within any 5-year
18 period, \$5,000.

19 “(ii) KNOWING RETENTION OF WORK-
20 ER.—In addition to any civil penalty under
21 clause (i), a nursing facility that—

22 “(I) knowingly continues to em-
23 ploy a nursing facility worker in viola-
24 tion of subparagraph (A) or (B); or

1 “(II) knowingly fails to report a
2 nursing facility worker under subpara-
3 graph (C); shall be subject to a civil
4 penalty in an amount not to exceed
5 \$5,000 for the first such violation,
6 and \$10,000 for the second and each
7 subsequent violation within any 5-year
8 period.

9 “(F) DEFINITIONS.—In this paragraph:

10 “(i) CONVICTION FOR A RELEVANT
11 CRIME.—The term ‘conviction for a rel-
12 evant crime’ means any Federal or State
13 criminal conviction for—

14 “(I) any offense described in
15 paragraphs (1) through (4) of section
16 1128(a); and

17 “(II) such other types of offenses
18 as the Secretary may specify in regu-
19 lations, taking into account the sever-
20 ity and relevance of such offenses, and
21 after consultation with representatives
22 of long-term care providers, represent-
23 atives of long-term care employees,
24 consumer advocates, and appropriate
25 Federal and State officials.

1 “(ii) DISQUALIFYING INFORMATION.—

2 The term ‘disqualifying information’ means
3 information about a conviction for a rel-
4 evant crime or a finding of patient or resi-
5 dent abuse.

6 “(iii) FINDING OF PATIENT OR RESI-

7 DENT ABUSE.—The term ‘finding of pa-
8 tient or resident abuse’ means any sub-
9 stantiated finding by a State agency under
10 subsection (g)(1)(C) or a Federal agency
11 that a nursing facility worker has
12 committed—

13 “(I) an act of patient or resident
14 abuse or neglect or a misappropriation
15 of patient or resident property; or

16 “(II) such other types of acts as
17 the Secretary may specify in regula-
18 tions.

19 “(iv) NURSING FACILITY WORKER.—

20 The term ‘nursing facility worker’ means
21 any individual (other than any volunteer)
22 that has direct access to a patient of a
23 nursing facility under an employment or
24 other contract, or both, with such facility.
25 Such term includes individuals who are li-

1 censed or certified by the State to provide
2 such services, and nonlicensed individuals
3 providing such services, as defined by the
4 Secretary, including nurse assistants,
5 nurse aides, home health aides, and per-
6 sonal care workers and attendants.”.

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

10 “(8) SCREENING OF SKILLED NURSING FACIL-
11 ITY WORKERS.—

12 “(A) BACKGROUND CHECKS ON APPLI-
13 CANTS.—Subject to subparagraph (B)(ii), be-
14 fore hiring a skilled nursing facility worker, a
15 skilled nursing facility shall—

16 “(i) give the worker written notice
17 that the facility is required to perform
18 background checks with respect to appli-
19 cants;

20 “(ii) require, as a condition of employ-
21 ment, that such worker—

22 “(I) provide a written statement
23 disclosing any conviction for a rel-
24 evant crime or finding of patient or
25 resident abuse;

1 “(II) provide a statement signed
2 by the worker authorizing the facility
3 to request the search and exchange of
4 criminal records;

5 “(III) provide in person a copy of
6 the worker’s fingerprints; and

7 “(IV) provide any other identi-
8 fication information the Secretary
9 may specify in regulation;

10 “(iii) initiate a check of the data col-
11 lection system established under section
12 1128E in accordance with regulations pro-
13 mulgated by the Secretary to determine
14 whether such system contains any disquali-
15 fying information with respect to such
16 worker; and

17 “(iv) if that system does not contain
18 any such disqualifying information—

19 “(I) request that the State ini-
20 tiate a State and national criminal
21 background check on such worker in
22 accordance with the provisions of sub-
23 section (e)(6); and

24 “(II) furnish to the State the in-
25 formation described in subclauses (II)

1 through (IV) of clause (ii) not more
2 than 7 days (excluding Saturdays,
3 Sundays, and legal public holidays
4 under section 6103(a) of title 5,
5 United States Code) after completion
6 of the check against the system initi-
7 ated under clause (iii).

8 “(B) PROHIBITION ON HIRING OF ABUSIVE
9 WORKERS.—

10 “(i) IN GENERAL.—A skilled nursing
11 facility may not knowingly employ any
12 skilled nursing facility worker who has any
13 conviction for a relevant crime or with re-
14 spect to whom a finding of patient or resi-
15 dent abuse has been made.

16 “(ii) PROVISIONAL EMPLOYMENT.—
17 After complying with the requirements of
18 clauses (i), (ii), and (iii) of subparagraph
19 (A), a skilled nursing facility may provide
20 for a provisional period of employment for
21 a skilled nursing facility worker pending
22 completion of the check against the data
23 collection system described under subpara-
24 graph (A)(iii) and the background check
25 described under subparagraph (A)(iv).

1 Such facility shall maintain direct super-
2 vision of the covered individual during the
3 worker’s provisional period of employment.

4 “(C) REPORTING REQUIREMENTS.—A
5 skilled nursing facility shall report to the State
6 any instance in which the facility determines
7 that a skilled nursing facility worker has com-
8 mitted an act of resident neglect or abuse or
9 misappropriation of resident property in the
10 course of employment by the facility.

11 “(D) USE OF INFORMATION.—

12 “(i) IN GENERAL.—A skilled nursing
13 facility that obtains information about a
14 skilled nursing facility worker pursuant to
15 clauses (iii) and (iv) of subparagraph (A)
16 may use such information only for the pur-
17 pose of determining the suitability of the
18 worker for employment.

19 “(ii) IMMUNITY FROM LIABILITY.—A
20 skilled nursing facility that, in denying em-
21 ployment for an applicant (including dur-
22 ing the period described in subparagraph
23 (B)(ii)), reasonably relies upon information
24 about such applicant provided by the State
25 pursuant to subsection (e)(6) or section

1 1128E shall not be liable in any action
2 brought by such applicant based on the
3 employment determination resulting from
4 the information.

5 “(iii) CRIMINAL PENALTY.—Whoever
6 knowingly violates the provisions of clause
7 (i) shall be fined in accordance with title
8 18, United States Code, imprisoned for not
9 more than 2 years, or both.

10 “(E) CIVIL PENALTY.—

11 “(i) IN GENERAL.—A skilled nursing
12 facility that violates the provisions of this
13 paragraph shall be subject to a civil pen-
14 alty in an amount not to exceed—

15 “(I) for the first such violation,
16 \$2,000; and

17 “(II) for the second and each
18 subsequent violation within any 5-year
19 period, \$5,000.

20 “(ii) KNOWING RETENTION OF WORK-
21 ER.—In addition to any civil penalty under
22 clause (i), a skilled nursing facility that—

23 “(I) knowingly continues to em-
24 ploy a skilled nursing facility worker

1 in violation of subparagraph (A) or
2 (B); or

3 “(II) knowingly fails to report a
4 skilled nursing facility worker under
5 subparagraph (C);

6 shall be subject to a civil penalty in an
7 amount not to exceed \$5,000 for the first
8 such violation, and \$10,000 for the second
9 and each subsequent violation within any
10 5-year period.

11 “(F) DEFINITIONS.—In this paragraph:

12 “(i) CONVICTION FOR A RELEVANT
13 CRIME.—The term ‘conviction for a rel-
14 evant crime’ means any Federal or State
15 criminal conviction for—

16 “(I) any offense described in
17 paragraphs (1) through (4) of section
18 1128(a); and

19 “(II) such other types of offenses
20 as the Secretary may specify in regu-
21 lations, taking into account the sever-
22 ity and relevance of such offenses, and
23 after consultation with representatives
24 of long-term care providers, represent-
25 atives of long-term care employees,

1 consumer advocates, and appropriate
2 Federal and State officials.

3 “(ii) DISQUALIFYING INFORMATION.—

4 The term ‘disqualifying information’ means
5 information about a conviction for a rel-
6 evant crime or a finding of patient or resi-
7 dent abuse.

8 “(iii) FINDING OF PATIENT OR RESI-
9 DENT ABUSE.—The term ‘finding of pa-
10 tient or resident abuse’ means any sub-
11 stantiated finding by a State agency under
12 subsection (g)(1)(C) or a Federal agency
13 that a skilled nursing facility worker has
14 committed—

15 “(I) an act of patient or resident
16 abuse or neglect or a misappropriation
17 of patient or resident property; or

18 “(II) such other types of acts as
19 the Secretary may specify in regula-
20 tions.

21 “(iv) SKILLED NURSING FACILITY
22 WORKER.—The term ‘skilled nursing facil-
23 ity worker’ means any individual (other
24 than any volunteer) that has direct access
25 to a patient of a skilled nursing facility

under an employment or other contract, or both, with such facility. Such term includes individuals who are licensed or certified by the State to provide such services, and nonlicensed individuals providing such services, as defined by the Secretary, including nurse assistants, nurse aides, home health aides, and personal care workers and attendants.”.

(b) STATE REQUIREMENTS.—

(1) MEDICAID PROGRAM.—

(A) EXPANSION OF STATE REGISTRY TO COLLECT INFORMATION ABOUT NURSING FACILITY EMPLOYEES OTHER THAN NURSE AIDES.—

Section 1919 of the Social Security Act (42 U.S.C. 1396r) is amended—

(i) in subsection (e)(2)—

(I) in the paragraph heading, by striking “NURSE AIDE REGISTRY” and inserting “NURSING FACILITY EMPLOYEE REGISTRY”;

(II) in subparagraph (A)—

(aa) by striking “By not later than January 1, 1989, the” and inserting “The”;

1 (bb) by striking “a registry
2 of all individuals” and inserting
3 “a registry of (I) all individuals”;
4 and

5 (cc) by inserting before the
6 period “, and (II) all other nurs-
7 ing facility employees with re-
8 spect to whom the State has
9 made a finding described in sub-
10 paragraph (B)”;

11 (III) in subparagraph (B), by
12 striking “involving an individual listed
13 in the registry” and inserting “involv-
14 ing a nursing facility employee”; and

15 (IV) in subparagraph (C), by
16 striking “nurse aide” and inserting
17 “nursing facility employee or appli-
18 cant for employment”; and

19 (ii) in subsection (g)(1)—

20 (I) in subparagraph (C)—

21 (aa) in the first sentence, by
22 striking “nurse aide” and insert-
23 ing “nursing facility employee”;
24 and

1 (bb) in the third sentence,
 2 by striking “nurse aide” each
 3 place it appears and inserting
 4 “nursing facility employee”; and
 5 (II) in subparagraph (D), by
 6 striking “nurse aide” each place it ap-
 7 pears and inserting “nursing facility
 8 employee”.

9 (B) FEDERAL AND STATE REQUIREMENT
 10 TO CONDUCT BACKGROUND CHECKS.—Section
 11 1919(e) of the Social Security Act (42 U.S.C.
 12 1396r(e)) is amended by adding at the end the
 13 following:

14 “(8) FEDERAL AND STATE REQUIREMENTS
 15 CONCERNING CRIMINAL BACKGROUND CHECKS ON
 16 NURSING FACILITY EMPLOYEES.—

17 “(A) IN GENERAL.—Upon receipt of a re-
 18 quest by a nursing facility pursuant to sub-
 19 section (b)(8) that is accompanied by the infor-
 20 mation described in subclauses (II) through
 21 (IV) of subsection (b)(8)(A)(ii), a State, after
 22 checking appropriate State records and finding
 23 no disqualifying information (as defined in sub-
 24 section (b)(8)(F)(ii)), shall submit such request
 25 and information to the Attorney General and

1 shall request the Attorney General to conduct a
2 search and exchange of records with respect to
3 the individual as described in subparagraph
4 (B).

5 “(B) SEARCH AND EXCHANGE OF
6 RECORDS BY ATTORNEY GENERAL.—Upon re-
7 ceipt of a submission pursuant to subparagraph
8 (A), the Attorney General shall direct a search
9 of the records of the Federal Bureau of Inves-
10 tigation for any criminal history records cor-
11 responding to the fingerprints or other positive
12 identification information submitted. The Attor-
13 ney General shall provide any corresponding in-
14 formation resulting from the search to the
15 State.

16 “(C) STATE REPORTING OF INFORMATION
17 TO NURSING FACILITY.—Upon receipt of the in-
18 formation provided by the Attorney General
19 pursuant to subparagraph (B), the State
20 shall—

21 “(i) review the information to deter-
22 mine whether the individual has any con-
23 viction for a relevant crime (as defined in
24 subsection (b)(8)(F)(i));

1 “(ii) report to the nursing facility the
2 results of such review; and

3 “(iii) in the case of an individual with
4 a conviction for a relevant crime, report
5 the existence of such conviction of such in-
6 dividual to the database established under
7 section 1128E.

8 “(D) FEES FOR PERFORMANCE OF CRIMI-
9 NAL BACKGROUND CHECKS.—

10 “(i) AUTHORITY TO CHARGE FEES.—

11 “(I) ATTORNEY GENERAL.—The
12 Attorney General may charge a fee to
13 any State requesting a search and ex-
14 change of records pursuant to this
15 paragraph and subsection (b)(8) for
16 conducting the search and providing
17 the records. The amount of such fee
18 shall not exceed the lesser of the ac-
19 tual cost of such activities or \$50.
20 Such fees shall be available to the At-
21 torney General, or, in the Attorney
22 General’s discretion, to the Federal
23 Bureau of Investigation, until ex-
24 pended.

1 “(II) STATE.—A State may
2 charge a nursing facility a fee for ini-
3 tiating the criminal background check
4 under this paragraph and subsection
5 (b)(8), including fees charged by the
6 Attorney General, and for performing
7 the review and report required by sub-
8 paragraph (C). The amount of such
9 fee shall not exceed the actual cost of
10 such activities.

11 “(ii) PROHIBITION ON CHARGING AP-
12 PLICANTS OR EMPLOYEES.—An entity may
13 not impose on an applicant for employment
14 or an employee any charges relating to the
15 performance of a background check under
16 this paragraph.

17 “(E) REGULATIONS.—

18 “(i) IN GENERAL.—In addition to the
19 Secretary’s authority to promulgate regula-
20 tions under this title, the Attorney Gen-
21 eral, in consultation with the Secretary,
22 may promulgate such regulations as are
23 necessary to carry out the Attorney Gen-
24 eral’s responsibilities under this paragraph
25 and subsection (b)(8), including regula-

1 tions regarding the security, confiden-
2 tiality, accuracy, use, destruction, and dis-
3 semination of information, audits and rec-
4 ordkeeping, and the imposition of fees.

5 “(ii) APPEAL PROCEDURES.—The At-
6 torney General, in consultation with the
7 Secretary, shall promulgate such regula-
8 tions as are necessary to establish proce-
9 dures by which an applicant or employee
10 may appeal or dispute the accuracy of the
11 information obtained in a background
12 check conducted under this paragraph. Ap-
13 peals shall be limited to instances in which
14 an applicant or employee is incorrectly
15 identified as the subject of the background
16 check, or when information about the ap-
17 plicant or employee has not been updated
18 to reflect changes in the applicant’s or em-
19 ployee’s criminal record.

20 “(F) REPORT.—Not later than 2 years
21 after the date of enactment of this paragraph,
22 the Attorney General shall submit a report to
23 Congress on—

1 “(i) the number of requests for
2 searches and exchanges of records made
3 under this section;

4 “(ii) the disposition of such requests;
5 and

6 “(iii) the cost of responding to such
7 requests.”.

8 (2) MEDICARE PROGRAM.—

9 (A) EXPANSION OF STATE REGISTRY TO
10 COLLECT INFORMATION ABOUT SKILLED NURS-
11 ING FACILITY EMPLOYEES OTHER THAN NURSE
12 AIDES.—Section 1819 of the Social Security
13 Act (42 U.S.C. 1395i–3) is amended—

14 (i) in subsection (e)(2)—

15 (I) in the paragraph heading, by
16 striking “NURSE AIDE REGISTRY” and
17 inserting “SKILLED NURSING CARE
18 EMPLOYEE REGISTRY”;

19 (II) in subparagraph (A)—

20 (aa) by striking “By not
21 later than January 1, 1989, the”
22 and inserting “The”;

23 (bb) by striking “a registry
24 of all individuals” and inserting

1 “a registry of (I) all individuals”;
2 and

3 (cc) by inserting before the
4 period “, and (II) all other
5 skilled nursing facility employees
6 with respect to whom the State
7 has made a finding described in
8 subparagraph (B)”;

9 (III) in subparagraph (B), by
10 striking “involving an individual listed
11 in the registry” and inserting “involv-
12 ing a skilled nursing facility em-
13 ployee”; and

14 (IV) in subparagraph (C), by
15 striking “nurse aide” and inserting
16 “skilled nursing facility employee or
17 applicant for employment”; and

18 (ii) in subsection (g)(1)—

19 (I) in subparagraph (C)—

20 (aa) in the first sentence, by
21 striking “nurse aide” and insert-
22 ing “skilled nursing facility em-
23 ployee”; and

24 (bb) in the third sentence,
25 by striking “nurse aide” each

1 place it appears and inserting
2 “skilled nursing facility em-
3 ployee”; and

4 (II) in subparagraph (D), by
5 striking “nurse aide” each place it ap-
6 pears and inserting “skilled nursing
7 facility employee”.

8 (B) FEDERAL AND STATE REQUIREMENT
9 TO CONDUCT BACKGROUND CHECKS.—Section
10 1819(e) of the Social Security Act (42 U.S.C.
11 1395i–3(e)) is amended by adding at the end
12 the following:

13 “(6) FEDERAL AND STATE REQUIREMENTS
14 CONCERNING CRIMINAL BACKGROUND CHECKS ON
15 SKILLED NURSING FACILITY EMPLOYEES.—

16 “(A) IN GENERAL.—Upon receipt of a re-
17 quest by a skilled nursing facility pursuant to
18 subsection (b)(8) that is accompanied by the in-
19 formation described in subclauses (II) through
20 (IV) of subsection (b)(8)(A)(ii), a State, after
21 checking appropriate State records and finding
22 no disqualifying information (as defined in sub-
23 section (b)(8)(F)(ii)), shall submit such request
24 and information to the Attorney General and
25 shall request the Attorney General to conduct a

1 search and exchange of records with respect to
2 the individual as described in subparagraph
3 (B).

4 “(B) SEARCH AND EXCHANGE OF
5 RECORDS BY ATTORNEY GENERAL.—Upon re-
6 ceipt of a submission pursuant to subparagraph
7 (A), the Attorney General shall direct a search
8 of the records of the Federal Bureau of Inves-
9 tigation for any criminal history records cor-
10 responding to the fingerprints or other positive
11 identification information submitted. The Attor-
12 ney General shall provide any corresponding in-
13 formation resulting from the search to the
14 State.

15 “(C) STATE REPORTING OF INFORMATION
16 TO SKILLED NURSING FACILITY.—Upon receipt
17 of the information provided by the Attorney
18 General pursuant to subparagraph (B), the
19 State shall—

20 “(i) review the information to deter-
21 mine whether the individual has any con-
22 viction for a relevant crime (as defined in
23 subsection (b)(8)(F)(i));

24 “(ii) report to the skilled nursing fa-
25 cility the results of such review; and

1 “(iii) in the case of an individual with
2 a conviction for a relevant crime, report
3 the existence of such conviction of such in-
4 dividual to the database established under
5 section 1128E.

6 “(D) FEES FOR PERFORMANCE OF CRIMI-
7 NAL BACKGROUND CHECKS.—

8 “(i) AUTHORITY TO CHARGE FEES.—

9 “(I) ATTORNEY GENERAL.—The
10 Attorney General may charge a fee to
11 any State requesting a search and ex-
12 change of records pursuant to this
13 paragraph and subsection (b)(8) for
14 conducting the search and providing
15 the records. The amount of such fee
16 shall not exceed the lesser of the ac-
17 tual cost of such activities or \$50.
18 Such fees shall be available to the At-
19 torney General, or, in the Attorney
20 General’s discretion, to the Federal
21 Bureau of Investigation until ex-
22 pended.

23 “(II) STATE.—A State may
24 charge a skilled nursing facility a fee
25 for initiating the criminal background

1 check under this paragraph and sub-
2 section (b)(8), including fees charged
3 by the Attorney General, and for per-
4 forming the review and report re-
5 quired by subparagraph (C). The
6 amount of such fee shall not exceed
7 the actual cost of such activities.

8 “(ii) PROHIBITION ON CHARGING AP-
9 PPLICANTS OR EMPLOYEES.—An entity may
10 not impose on an applicant for employment
11 or an employee any charges relating to the
12 performance of a background check under
13 this paragraph.

14 “(E) REGULATIONS.—

15 “(i) IN GENERAL.—In addition to the
16 Secretary’s authority to promulgate regula-
17 tions under this title, the Attorney Gen-
18 eral, in consultation with the Secretary,
19 may promulgate such regulations as are
20 necessary to carry out the Attorney Gen-
21 eral’s responsibilities under this paragraph
22 and subsection (b)(9), including regula-
23 tions regarding the security confidentiality,
24 accuracy, use, destruction, and dissemina-

1 tion of information, audits and record-
2 keeping, and the imposition of fees.

3 “(ii) APPEAL PROCEDURES.—The At-
4 torney General, in consultation with the
5 Secretary, shall promulgate such regula-
6 tions as are necessary to establish proce-
7 dures by which an applicant or employee
8 may appeal or dispute the accuracy of the
9 information obtained in a background
10 check conducted under this paragraph. Ap-
11 peals shall be limited to instances in which
12 an applicant or employee is incorrectly
13 identified as the subject of the background
14 check, or when information about the ap-
15 plicant or employee has not been updated
16 to reflect changes in the applicant’s or em-
17 ployee’s criminal record.

18 “(F) REPORT.—Not later than 2 years
19 after the date of enactment of this paragraph,
20 the Attorney General shall submit a report to
21 Congress on—

22 “(i) the number of requests for
23 searches and exchanges of records made
24 under this section;

1 “(ii) the disposition of such requests;
2 and
3 “(iii) the cost of responding to such
4 requests.”.

5 (c) APPLICATION TO OTHER ENTITIES PROVIDING
6 LONG-TERM CARE SERVICES.—

7 (1) MEDICAID.—Section 1902(a) of the Social
8 Security Act (42 U.S.C. 1396a) is amended—

9 (A) in paragraph (65), by striking the pe-
10 riod and inserting “; and”; and

11 (B) by inserting after paragraph (65) the
12 following:

13 “(66) provide that any entity that is eligible to
14 be paid under the State plan for providing long-term
15 care services for which medical assistance is avail-
16 able under the State plan to individuals requiring
17 long-term care complies with the requirements of
18 subsections (b)(8) and (e)(8) of section 1919.”.

19 (2) MEDICARE.—Part D of title XVIII of the
20 Social Security Act (42 U.S.C. 1395x et seq.) is
21 amended by adding at the end the following:

1 “APPLICATION OF SKILLED NURSING FACILITY PREVEN-
2 TIVE ABUSE PROVISIONS TO ANY PROVIDER OF
3 SERVICES OR OTHER ENTITY PROVIDING LONG-TERM
4 CARE SERVICES

5 “SEC. 1897. The requirements of subsections (b)(8)
6 and (e)(6) of section 1819 shall apply to any provider of
7 services or any other entity that is eligible to be paid under
8 this title for providing long-term care services to an indi-
9 vidual entitled to benefits under part A or enrolled under
10 part B (including an individual provided with a
11 Medicare+Choice plan offered by a Medicare+Choice or-
12 ganization under part C).”.

13 (d) REIMBURSEMENT OF REASONABLE COSTS FOR
14 BACKGROUND CHECKS.—The Secretary of Health and
15 Human Services shall factor into any payment system
16 under titles XVIII and XIX of the Social Security Act the
17 reasonable costs of the requirements of sections
18 1819(b)(8) and 1919(b)(8) of such Act, as added by this
19 section, incurred by any entity subject to such require-
20 ments.

1 **SEC. 3. INCLUSION OF ABUSIVE NURSING FACILITY WORK-**
 2 **ERS IN THE DATABASE ESTABLISHED AS**
 3 **PART OF NATIONAL HEALTH CARE FRAUD**
 4 **AND ABUSE DATA COLLECTION PROGRAM.**

5 (a) INCLUSION OF ABUSIVE ACTS WITHIN A LONG-
 6 TERM CARE FACILITY.—Section 1128E(g)(1)(A) of the
 7 Social Security Act (42 U.S.C. 1320a–7e(g)(1)(A)) is
 8 amended—

9 (1) by redesignating clause (v) as clause (vi);

10 and

11 (2) by inserting after clause (iv), the following:

12 “(v) A finding of abuse or neglect of
 13 a patient or a resident of a long-term care
 14 facility, or misappropriation of such a pa-
 15 tient’s or resident’s property.”.

16 (b) COVERAGE OF LONG-TERM CARE FACILITY EM-
 17 PLOYEES.—Section 1128E(g)(2) of the Social Security
 18 Act (42 U.S.C. 1320a–7e(g)(2)) is amended by inserting
 19 “, and includes any individual of a long-term care facility
 20 (other than any volunteer) that has direct access to a pa-
 21 tient or resident of such a facility under an employment
 22 or other contract, or both, with the facility (including indi-
 23 viduals who are licensed or certified by the State to pro-
 24 vide services at the facility, and nonlicensed individuals,
 25 as defined by the Secretary, providing services at the facil-
 26 ity, including nurse assistants, nurse aides, home health

1 aides, and personal care workers and attendants)” before
 2 the period.

3 (c) REPORTING BY LONG-TERM CARE FACILITIES.—

4 (1) IN GENERAL.—Section 1128E(b)(1) of the
 5 Social Security Act (42 U.S.C. 1320a–7e(b)(1)) is
 6 amended by striking “and health plan” and insert-
 7 ing “, health plan, and long-term care facility”.

8 (2) CORRECTION OF INFORMATION.—Section
 9 1128E(c)(2) of the Social Security Act (42 U.S.C.
 10 1320a–7e(c)(2)) is amended by striking “and health
 11 plan” and inserting “, health plan, and long-term
 12 care facility”.

13 (d) ACCESS TO REPORTED INFORMATION.—Section
 14 1128E(d)(1) of the Social Security Act (42 U.S.C. 1320a–
 15 7e(d)(1)) is amended by striking “and health plans” and
 16 inserting “, health plans, and long-term care facilities”.

17 (e) MANDATORY CHECK OF DATABASE BY LONG-
 18 TERM CARE FACILITIES.—Section 1128E(d) of the Social
 19 Security Act (42 U.S.C. 1320a–7e(d)) is amended by add-
 20 ing at the end the following:

21 “(3) MANDATORY CHECK OF DATABASE BY
 22 LONG-TERM CARE FACILITIES.—A long-term care fa-
 23 cility shall check the database maintained under this
 24 section prior to hiring under an employment or other
 25 contract, or both, any individual as an employee of

1 such a facility who will have direct access to a pa-
 2 tient or resident of the facility (including individuals
 3 who are licensed or certified by the State to provide
 4 services at the facility, and nonlicensed individuals,
 5 as defined by the Secretary, that will provide serv-
 6 ices at the facility, including nurse assistants, nurse
 7 aides, home health aides, and personal care workers
 8 and attendants).”.

9 (f) DEFINITION OF LONG-TERM CARE FACILITY.—
 10 Section 1128E(g) of the Social Security Act (42 U.S.C.
 11 1320a–7e(g)) is amended by adding at the end the fol-
 12 lowing:

13 “(6) LONG-TERM CARE FACILITY.—The term
 14 ‘long-term care facility’ means a skilled nursing fa-
 15 cility (as defined in section 1819(a)), a nursing facil-
 16 ity (as defined in section 1919(a)), a home health
 17 agency, a hospice facility, an intermediate care facil-
 18 ity for the mentally retarded (as defined in section
 19 1905(d)), or any other facility that provides long-
 20 term care services and receives payment for such
 21 services under the medicare program under title
 22 XVIII or the medicaid program under title XIX.”.

23 (g) AUTHORIZATION OF APPROPRIATIONS.—There is
 24 authorized to be appropriated to carry out the amend-

1 ments made by this section, \$10,200,000 for fiscal year
2 2000.

3 **SEC. 4. PREVENTION AND TRAINING DEMONSTRATION**
4 **PROJECT.**

5 (a) ESTABLISHMENT.—The Secretary of Health and
6 Human Services shall establish a demonstration program
7 to provide grants to develop information on best practices
8 in patient abuse prevention training (including behavior
9 training and interventions) for managers and staff of hos-
10 pital and health care facilities.

11 (b) ELIGIBILITY.—To be eligible to receive a grant
12 under subsection (a), an entity shall be a public or private
13 nonprofit entity and prepare and submit to the Secretary
14 of Health and Human Services an application at such
15 time, in such manner, and containing such information as
16 the Secretary may require.

17 (c) USE OF FUNDS.—Amounts received under a
18 grant under this section shall be used to—

19 (1) examine ways to improve collaboration be-
20 tween State health care survey and provider certifi-
21 cation agencies, long-term care ombudsman pro-
22 grams, the long-term care industry, and local com-
23 munity members;

24 (2) examine patient care issues relating to regu-
25 latory oversight, community involvement, and facility

1 staffing and management with a focus on staff
2 training, staff stress management, and staff super-
3 vision;

4 (3) examine the use of patient abuse prevention
5 training programs by long-term care entities, includ-
6 ing the training program developed by the National
7 Association of Attorneys General, and the extent to
8 which such programs are used; and

9 (4) identify and disseminate best practices for
10 preventing and reducing patient abuse.

11 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
12 authorized to be appropriated such sums as may be nec-
13 essary to carry out this section.

14 **SEC. 5. EFFECTIVE DATE.**

15 The provisions of and amendments made by the Act
16 shall apply, without regard to whether implementing regu-
17 lations are in effect, to any individual applying for employ-
18 ment or hired for such employment—

19 (1) by any skilled nursing facility (as defined in
20 section 1819(a) of the Social Security Act) or any
21 nursing facility (as defined in section 1919(a) of
22 such Act), on or after the date which is 6 months
23 after the date of enactment of this Act,

1 (2) by any home health agency, on or after the
2 date which is 12 months after such date of enact-
3 ment, and

4 (3) by any hospice facility, any intermediate
5 care facility for the mentally retarded (as defined in
6 section 1905(d) of the Social Security Act), or any
7 other facility that provides long-term care services
8 and receives payment for such services under the
9 medicare program under title XVIII of such Act or
10 the medicaid program under title XIX of such Act,
11 on or after the date which is 18 months after such
12 date of enactment.

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