

107TH CONGRESS
2D SESSION

H. R. 5565

To amend the Social Security Act with respect to the employment of persons with criminal backgrounds by long-term care providers.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 2002

Mr. THOMPSON of California (for himself, Mr. RADANOVICH, and Mr. OWENS) introduced the following bill; which was referred to the Committee on Energy and 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 the Social Security Act with respect to the employment of persons with criminal backgrounds by long-term care providers.

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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Senior Safety Protection Act of 2002”.

6 (b) **TABLE OF CONTENTS.**—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Long-term care provider criminal background check.

Sec. 3. Expansion of state register to collect information about long-term care provider employees other than nurse aides.

Sec. 4. Inclusion of abusive workers in the database established as part of National Health Care Fraud and Abuse Data Collection Program.

Sec. 5. Prevention and training demonstration project.

Sec. 6. Improved background check system.

Sec. 7. State funding.

1 SEC. 2. LONG-TERM CARE PROVIDER CRIMINAL BACK-
2 GROUND CHECK.

3 (a) IN GENERAL.—Title XI of the Social Security Act
4 is amended by inserting after section 1134 the following
5 new sections:

6 “SCREENING OF LONG-TERM CARE WORKERS

7 “SEC. 1135. (a) BACKGROUND CHECKS ON APPLI-
8 CANTS.—Subject to subsection (b)(2), before hiring a
9 long-term care worker, a long-term care provider shall—

10 “(1) give the worker written notice that the
11 provider is required to perform background checks
12 with respect to applicants;

13 “(2) require, as a condition of employment, that
14 such worker—

15 “(A) provide a written statement disclosing
16 any conviction for a relevant crime or finding of
17 patient or resident abuse;

18 “(B) provide a statement signed by the
19 worker authorizing the provider to request the
20 search and exchange of criminal records;

1 “(C) provide a copy of the worker’s finger-
2 prints;

3 “(D) provide the worker’s social security
4 account number (or taxpayer identification
5 number) and date of birth; and

6 “(E) provide any other identification infor-
7 mation the Secretary may specify in regulation;

8 “(3) initiate a check of the registry under sec-
9 tions 1819(e)(2) and 1919(e)(2) in accordance with
10 regulations promulgated by the Secretary to deter-
11 mine whether such system contains any disqualifying
12 information with respect to such worker; and

13 “(4) if that system does not contain any such
14 disqualifying information—

15 “(A) request that the State initiate a State
16 and national criminal background check on
17 such worker in accordance with the provisions
18 of section 1135A; and

19 “(B) furnish to the State the information
20 described in subparagraphs (B) through (D) of
21 paragraph (2) not more than 7 working days
22 after completion of the check against the sys-
23 tem initiated under paragraph (3).

24 “(b) PROHIBITION ON HIRING OF ABUSIVE WORK-
25 ERS.—

1 “(1) IN GENERAL.—A long-term care provider
2 may not knowingly employ any long-term care work-
3 er who has any conviction for a relevant crime or
4 with respect to whom a finding of patient or resident
5 abuse has been made.

6 “(2) PROVISIONAL EMPLOYMENT.—

7 “(A) IN GENERAL.—After complying with
8 the requirements of paragraph (1), (2), and (3)
9 of subsection (a), a long-term care provider may
10 provide for a provisional period of employment
11 for a long-term care worker pending completion
12 of the check against the data collection system
13 described under subsection (a)(3) and the back-
14 ground check described under subsection (a)(4).
15 Such provider shall maintain direct supervision
16 (or, in the case of home health care settings,
17 active monitoring or oversight) of the worker
18 during the worker’s provisional period of em-
19 ployment.

20 “(B) ACTIVE MONITORING OR OVERSIGHT
21 DEFINED.—For purposes of subparagraph (A),
22 the term ‘active monitoring or oversight’ means
23 a good faith effort by the home health agency
24 supervisor to ensure the safety of the bene-

1 ficiary through efforts such as making follow-
2 up phone calls and unannounced visits.

3 “(3) LIMITATION OF LIABILITY.—

4 “(A) IN GENERAL.—A long-term care pro-
5 vider that, in denying employment for an appli-
6 cant (including during the period described in
7 subsection (b)(2)), reasonably relies upon infor-
8 mation about such applicant provided by the
9 State under section 1135A shall not be liable in
10 any action brought by such applicant relating to
11 the employment determination resulting from
12 the use of such information.

13 “(B) DAMAGES ACTIONS.—In a tort or
14 other civil action for damages that is brought
15 as the result of an injury, death, or loss to per-
16 son or property caused by an individual who a
17 long-term care provider employs in a position
18 that involves providing direct care to older
19 adults, the following shall apply:

20 “(i) If the long-term care provider em-
21 ployed the individual in good faith and rea-
22 sonable reliance on the report of a criminal
23 records check requested under this section,
24 the provider shall not be found negligent
25 solely because of its reliance on the report,

1 even if the information in the report is de-
2 termined later to have been incomplete or
3 inaccurate.

4 “(ii) If the long-term care provider
5 employed the individual in good faith on a
6 provisional basis pursuant to subsection
7 (b)(2), the provider shall not be found neg-
8 ligent solely because it employed the indi-
9 vidual prior to receiving the report of a
10 criminal records check requested under
11 this section.

12 “(c) REPORTING REQUIREMENTS.—A long-term care
13 provider shall report to the State agency responsible for
14 surveys and certification of such providers any instance
15 in which the provider determines that a long-term care
16 worker has committed an act of resident neglect or abuse
17 or misappropriation of resident property in the course of
18 employment by the provider.

19 “(d) USE OF INFORMATION.—

20 “(1) IN GENERAL.—A long-term care provider
21 that obtains information about a long-term care
22 worker pursuant to paragraphs (3) and (4) of sub-
23 section (a) may use such information only for the
24 purpose of determining the suitability of the worker
25 for employment.

1 “(2) IMMUNITY FROM LIABILITY.—A long-term
 2 care provider that, in denying employment for an
 3 applicant (including during the period described in
 4 subsection (b)(2)) reasonably relies upon information
 5 about such applicant provided by the State pursuant
 6 to section 1135A or section 1919(e)(2) shall not be
 7 liable in any action brought by such applicant based
 8 on the employment determination resulting from the
 9 information.

10 “(e) CIVIL PENALTY.—

11 “(1) IN GENERAL.—A long-term care provider
 12 that violates the provisions of this section shall be
 13 subject to a civil penalty in an amount not to
 14 exceed—

15 “(A) for the first such violation, \$2,000;

16 and

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

19 “(2) KNOWING RETENTION OF WORKER.—In
 20 addition to any civil penalty under paragraph (1), a
 21 long-term care provider that—

22 “(A) knowingly continues to employ a
 23 long-term care worker in violation of subsection
 24 (a) or (b); or

1 “(B) knowingly fails to report a long-term
2 care worker under subsection (c),
3 shall be subject to a civil penalty in an amount not
4 to exceed \$5,000 for the first such violation, and
5 \$10,000 for the second and each subsequent viola-
6 tion within any 5-year period.

7 “(f) DEFINITIONS.—In this section and section
8 1135A:

9 “(1) CONVICTION FOR A RELEVANT CRIME.—
10 The term ‘conviction for a relevant crime’ means any
11 Federal or State criminal conviction for—

12 “(A) any offense described in paragraphs
13 (1) through (4) of section 1128(a); and

14 “(B) such other types of offenses as the
15 Secretary may specify in regulations, taking
16 into account the severity and relevance of such
17 offenses and the time frame of when such an
18 offense is committed and after consultation
19 with representatives of long-term care pro-
20 viders, representatives of long-term care em-
21 ployees, consumer advocates, and appropriate
22 Federal and State officials.

23 “(2) DISQUALIFYING INFORMATION.—The term
24 ‘disqualifying information’ means information about

1 a conviction for a relevant crime or a finding of pa-
2 tient or resident abuse.

3 “(3) FINDING OF PATIENT OR RESIDENT
4 ABUSE.—The term ‘finding of patient or resident
5 abuse’ means any substantiated finding by a State
6 agency under section 1919(g)(1)(C) or a Federal
7 agency that a long-term care worker has
8 committed—

9 “(A) an act of patient or resident abuse or
10 neglect or a misappropriation of patient or resi-
11 dent property; or

12 “(B) such other types of acts as the Sec-
13 retary may specify in regulations.

14 “(4) LONG-TERM CARE PROVIDER.—The term
15 ‘long-term care provider’ means—

16 “(A) a nursing facility (as defined in sec-
17 tion 1919(a));

18 “(B) a skilled nursing facility (as defined
19 in section 1819(a)), and includes a hospital-
20 based skilled nursing facility;

21 “(C) a home health agency (as defined in
22 section 1861(o));

23 “(D) a hospice program (as defined in sec-
24 tion 1861(dd) and section 1905(o));

1 “(E) an assisted living facility (as defined
2 under section 232(b)(6) of the National Hous-
3 ing Act (12 U.S.C. 1751w(b)(6)); and

4 “(F) any other facility (including any in-
5 termediate care facility for the mentally re-
6 tarded) that provides, or is a provider of, long-
7 term care services, hospice services, assisted liv-
8 ing services, or home health services and that
9 receives payment for such services under title
10 XVIII or title XIX;

11 and includes an agency that provides under contract
12 temporary staff to a long-term care provider.

13 “(5) LONG-TERM CARE WORKER.—The term
14 ‘long-term care worker’ means any individual (other
15 than a volunteer) that has direct access to a patient
16 of a long-term care provider under an employment
17 or other contract, or both, with such provider. Such
18 term includes an individual who is licensed or cer-
19 tified by the State to provide such services, and a
20 nonlicensed individual providing such services, as de-
21 fined by the Secretary, including a nurse assistant,
22 nurse aide, home health aide, and personal care
23 worker and attendant.

1 “FEDERAL AND STATE REQUIREMENTS TO CONDUCT
2 BACKGROUND CHECKS

3 “SEC. 1135A. (a) IN GENERAL.—Upon receipt of a
4 request by a long-term care provider pursuant to section
5 1135 that is accompanied by the information described in
6 subparagraph (B) through (D) of section 1135(a)(2), a
7 State, after checking appropriate State records and find-
8 ing no disqualifying information (as defined in section
9 1135(f)(2)), shall submit such request and information to
10 the Attorney General and shall request the Attorney Gen-
11 eral to conduct a search and exchange of records with re-
12 spect to the individual as described in subsection (b).

13 “(b) SEARCH AND EXCHANGE OF RECORDS BY AT-
14 TORNEY GENERAL.—Upon receipt of a submission pursu-
15 ant to subsection (a), the Attorney General shall direct
16 a search of the records of the Federal Bureau of Investiga-
17 tion for any criminal history records corresponding to the
18 fingerprints and other positive identification information
19 submitted. The Attorney General shall provide any cor-
20 responding information resulting from the search to the
21 State.

22 “(c) STATE REPORTING OF INFORMATION TO LONG-
23 TERM CARE PROVIDER.—Upon receipt of the information
24 provided by the Attorney General pursuant to subsection
25 (b), the State shall—

1 “(1) review the information to determine wheth-
2 er the individual has any conviction for a relevant
3 crime (as defined section 1135(f)(1)) or has a find-
4 ing of patient or resident abuse;

5 “(2) report to the long-term care provider the
6 results in writing of such review by indicating
7 whether a long-term care worker has any conviction
8 for a relevant crime or has a finding of patient or
9 resident abuse; and

10 “(3) in the case of an individual with a convic-
11 tion for a relevant crime, report the existence of
12 such conviction of such individual to the registry re-
13 ferred to in sections 1818(e)(2) and 1919(e)(2).

14 “(d) FEES FOR PERFORMANCE OF CRIMINAL BACK-
15 GROUND CHECKS.—

16 “(1) NO CHARGE TO PROVIDERS OR WORK-
17 ERS.—A State shall not charge a long-term care
18 provider or a prospective long-term care worker a fee
19 for initiating the criminal background check under
20 this section or section 1135, including fees charged
21 by the Attorney General, and for performing the re-
22 view and report required by subsection (c).

23 “(2) FUNDING.—A State may apply under sec-
24 tion 7 of the Senior Safety Protection Act of 2002
25 for funding to perform criminal background checks.

1 “(e) REGULATIONS.—

2 “(1) IN GENERAL.—In addition to the Sec-
3 retary’s authority to promulgate regulations under
4 this title, the Attorney General, in consultation with
5 the Secretary, may promulgate such regulations as
6 are necessary to carry out the Attorney General’s re-
7 sponsibilities under this section and section 1135,
8 including regulations regarding the security, con-
9 fidentiality, accuracy, use, destruction, and dissemi-
10 nation of information, audits and recordkeeping, and
11 the imposition of fees.

12 “(2) APPEAL PROCEDURES.—The Attorney
13 General, in consultation with the Secretary, shall
14 promulgate such regulations as are necessary to es-
15 tablish procedures by which an applicant or em-
16 ployee may appeal or dispute the accuracy of the in-
17 formation obtained in a background check conducted
18 under this section or section 1135. Appeals shall be
19 limited to instances in which an applicant or em-
20 ployee is incorrectly identified as the subject of the
21 background check, or when information about the
22 applicant or employee has not been updated to re-
23 flect changes in the applicant’s or employee’s crimi-
24 nal record.

1 “(f) REPORT.—Not later than 2 years after the date
2 of enactment of this section, the Secretary shall submit
3 a report to Congress on—

4 “(1) the number of requests for searches and
5 exchanges of records made under this section;

6 “(2) the disposition of such requests; and

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

8 “(g) LIMITATION ON PREEMPTION OF STATE LAW.—

9 “(1) IN GENERAL.—Subject to paragraph (2),
10 the requirements under this section and section
11 1135 shall not preempt existing State laws that are
12 in effect on the date of the enactment of this sec-
13 tion.

14 “(2) NATIONAL FLOOR.—Notwithstanding
15 paragraph (1), States shall work with the Attorney
16 General to avoid duplicative requirements under this
17 section and section 1135.”.

18 “(b) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to any individual applying for em-
20 ployment or hired for such employment by any long-term
21 care provider on or after the date which is the later of—

22 (1) 6 months after the date of the enactment
23 of this Act; or

24 (2) upon implementation by the State of the re-
25 quirements under this Act.

1 **SEC. 3. EXPANSION OF STATE REGISTER TO COLLECT IN-**
2 **FORMATION ABOUT LONG-TERM CARE PRO-**
3 **VIDER EMPLOYEES OTHER THAN NURSE**
4 **AIDES.**

5 (a) MEDICAID PROGRAM.—Section 1919 of the Social
6 Security Act (42 U.S.C. 1396r) is amended—

7 (1) in subsection (e)(2)—

8 (A) in the paragraph heading, by striking
9 “NURSE AIDE REGISTRY” and inserting “LONG-
10 TERM CARE REGISTRY”;

11 (B) in subparagraph (A)—

12 (i) by striking “By not later than
13 January 1, 1989, the” and inserting
14 “The”;

15 (ii) by striking “a registry of all indi-
16 viduals” and inserting “a registry of (i) all
17 individuals”; and

18 (iii) by inserting before the period “,
19 and (ii) all other long-term care provider
20 employees with respect to whom the State
21 has made a finding described in subpara-
22 graph (B)”;

23 (C) in subparagraph (B), by striking “in-
24 volving an individual listed in the registry” and
25 inserting “involving a long-term care em-
26 ployee”; and

1 (D) in subparagraph (C), by striking
2 “nurse aide” and inserting “long-term care em-
3 ployee or applicant for employment”; and
4 (2) in subsection (g)(1)—

5 (A) in subparagraph (C)—

6 (i) in the first sentence, by striking
7 “nurse aide” and inserting “long-term care
8 employee”; and

9 (ii) in the third sentence, by striking
10 “nurse aide” and inserting “long-term care
11 employee” each place it appears; and

12 (B) in subparagraph (D)—

13 (i) in the heading, by striking
14 “NURSE AIDE REGISTRY” and inserting
15 “LONG-TERM CARE PROVIDER REGISTRY”;
16 and

17 (ii) by striking “nurse aide” and in-
18 serting “long-term care provider employee”
19 each place it appears.

20 (b) MEDICARE PROGRAM.—Section 1819 of the So-
21 cial Security Act (42 U.S.C. 1395i–3) is amended—

22 (1) in subsection (e)(2)—

23 (A) in the paragraph heading, by striking
24 “NURSE AIDE REGISTRY” and inserting “LONG-
25 TERM CARE EMPLOYEE REGISTRY”;

1 (B) in subparagraph (A)—

2 (i) by striking “By not later than
3 January 1, 1989, the” and inserting
4 “The”;

5 (ii) by striking “a registry of all indi-
6 viduals” and inserting “a registry of (i) all
7 individuals”; and

8 (iii) by inserting before the period “,
9 and (ii) all other long-term care employees
10 with respect to whom the State has made
11 a finding described in subparagraph (B)”;

12 (C) in subparagraph (B), by striking “in-
13 volving an individual listed in the registry” and
14 inserting “involving a long-term care em-
15 ployee”; and

16 (D) in subparagraph (C), by striking
17 “nurse aide” and inserting “skilled long-term
18 care provider employee or applicant for employ-
19 ment”; and

20 (2) in subsection (g)(1)—

21 (A) in subparagraph (C)—

22 (i) in the first sentence, by striking
23 “nurse aide” and inserting “skilled long-
24 term care employee”; and

- 1 (ii) in the third sentence, by striking
 2 “nurse aide” and inserting “long-term care
 3 employee” each place it appears; and
 4 (B) in subparagraph (D)—
 5 (i) in the heading, by striking
 6 “NURSE AIDE REGISTRY” and inserting
 7 “LONG-TERM CARE EMPLOYEE REGISTRY”;
 8 and
 9 (ii) by striking “nurse aide” and in-
 10 serting “long-term care employee” each
 11 place it appears.

12 **SEC. 4. INCLUSION OF ABUSIVE WORKERS IN THE DATA-**
 13 **BASE ESTABLISHED AS PART OF NATIONAL**
 14 **HEALTH CARE FRAUD AND ABUSE DATA COL-**
 15 **LECTION PROGRAM.**

16 (a) COVERAGE OF LONG-TERM CARE WORKERS.—
 17 Section 1128E(g)(2) of the Social Security Act (42 U.S.C.
 18 1320a–7e(g)(2)) is amended by adding at the end the fol-
 19 lowing: “Such term also includes any individual of a long-
 20 term care provider (other than a volunteer) that has direct
 21 access to a patient or resident of such a provider under
 22 an employment or other contract, or both, with the pro-
 23 vider (including individuals who are licensed or certified
 24 by the Secretary to provide services at or through the pro-
 25 vider, and non-licensed individuals, as defined by the Sec-

1 retary, providing services at or through the provider, in-
2 cluding nurse assistants, nurse aides, home health aides,
3 and personal care workers and attendants)”.
4

5 (b) MANDATORY CHECK OF DATABASE BY LONG-
6 TERM CARE FACILITIES OR PROVIDERS.—Section 1135
7 of the Social Security Act, as added by section 2(a), is
8 amended by adding at the end the following new sub-
9 section:

10 “(g) MANDATORY CHECK OF DATABASE BY LONG-
11 TERM CARE FACILITIES OR PROVIDERS.—A long-term
12 care provider shall check the registry maintained under
13 sections 1818(e)(2) and 1919(e)(2) prior to hiring under
14 an employment or other contract, or both, any individual
15 as an employee of such a provider who will have direct
16 access to a patient or resident of the provider (including
17 individuals who are licensed or certified by the State to
18 provide services at or through the provider, and non-
19 licensed individuals, as defined by the Secretary, that will
20 provide services at or through the provider, including
21 nurse assistants, nurse aides, home health aides, and per-
22 sonal care workers and attendants).”.

23 (c) DEFINITION OF LONG-TERM CARE PROVIDER.—
24 Section 1128E(g) of the Social Security Act (42 U.S.C.
25 1320a–7e(g)) is amended by adding at the end the fol-
lowing:

1 “(6) LONG-TERM CARE PROVIDER.—The term
2 ‘long-term care provider’ has the meaning given such
3 term in section 1135(f)(4).”.

4 **SEC. 5. PREVENTION AND TRAINING DEMONSTRATION**
5 **PROJECT.**

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

12 (b) ELIGIBILITY.—To be eligible to receive a grant
13 under subsection (a), an entity shall be a public or private
14 entity and prepare and submit to the Secretary an applica-
15 tion at such time, in such manner, and containing such
16 information as 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 pro-

1 vider 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
12 are authorized to be appropriated such sums as may be
13 necessary to carry out this section.

14 **SEC. 6. IMPROVED BACKGROUND CHECK SYSTEM.**

15 (a) The ESTABLISHMENT.—The Secretary of Health
16 and Human Services and the Attorney General shall es-
17 tablish a more efficient background check system that pro-
18 vides for a more immediate determination of criminal sta-
19 tus.

20 (b) IMPLEMENTATION.—The Secretary of Health and
21 Human Services and the Attorney General shall imple-
22 ment such more efficient background check system under
23 subsection (a) not later than 5 years after the date of the
24 enactment of this Act.

1 (c) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated such sums as may be
3 necessary to carry out this section.

4 **SEC. 7. STATE FUNDING.**

5 (a) IN GENERAL.—The Secretary of Health and
6 Human Services, upon application by a State, may provide
7 an annual grant to carry out the provisions of this Act.
8 (b) AUTHORIZATION OF APPROPRIATIONS.—There
9 are authorized to be appropriated to carry out the provi-
10 sions of this Act (other than sections 5 and 6)
11 \$50,000,000 in each of fiscal years 2003 through 2007.

○