

107TH CONGRESS
2D SESSION

S. 3091

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 SENATE OF THE UNITED STATES

OCTOBER 10, 2002

Mr. KOHL (for himself, Mr. REID, Mr. ROCKEFELLER, Mr. KERRY, Mr. BINGAMAN, Mr. GRAHAM, Mr. MILLER, Mr. BREAUX, Mr. NELSON of Florida, Ms. LANDRIEU, and Mrs. LINCOLN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend titles XVIII and XIX of the Social Security Act to 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) SCREENING OF SKILLED NURSING FACILITY AND
4 NURSING FACILITY EMPLOYEE APPLICANTS.—

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

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

10 “(A) BACKGROUND CHECKS ON APPLI-
11 CANTS.—Subject to subparagraph (B)(ii), be-
12 fore hiring a skilled nursing facility worker, a
13 skilled nursing 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 to the
4 facility a copy of the worker’s finger-
5 prints or thumb print, depending
6 upon available technology; 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 through the appro-
20 priate State agency that the State ini-
21 tiate a State and national criminal
22 background check on such worker in
23 accordance with the provisions of sub-
24 section (e)(6); and

1 “(II) submit to such State agen-
 2 cy the information described in sub-
 3 clauses (II) through (IV) of clause (ii)
 4 not more than 7 days (excluding Sat-
 5 urdays, Sundays, and legal public
 6 holidays under section 6103(a) of title
 7 5, United States Code) after comple-
 8 tion of the check against the system
 9 initiated under clause (iii).

10 “(B) PROHIBITION ON HIRING OF ABUSIVE
 11 WORKERS.—

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

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

graph (A)(iii) and the background check described under subparagraph (A)(iv). Such facility shall maintain direct supervision of the covered individual during the worker's provisional period of employment.

“(C) REPORTING REQUIREMENTS.—A skilled nursing facility shall report to the State any instance in which the facility determines that a skilled nursing facility worker has committed an act of resident neglect or abuse or misappropriation of resident property in the course of employment by the facility.

“(D) USE OF INFORMATION.—

“(i) IN GENERAL.—A skilled nursing facility that obtains information about a skilled nursing facility worker pursuant to clauses (iii) and (iv) of subparagraph (A) may use such information only for the purpose of determining the suitability of the worker for employment.

“(ii) IMMUNITY FROM LIABILITY.—A skilled nursing facility that, in denying employment for an applicant (including during the period described in subparagraph (B)(ii)), reasonably relies upon information

about such applicant provided by the State pursuant to subsection (e)(6) or section 1128E shall not be liable in any action brought by such applicant based on the employment determination resulting from the information.

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

“(E) CIVIL PENALTY.—

“(i) IN GENERAL.—A skilled nursing facility that violates the provisions of this paragraph shall be subject to a civil penalty in an amount not to exceed—

“(I) for the first such violation,

\$2,000; and

“(II) for the second and each

subsequent violation within any 5-year

period, \$5,000.

“(ii) KNOWING RETENTION OF WORKER.—In addition to any civil penalty under clause (i), a skilled nursing facility that—

1 “(I) knowingly continues to em-
 2 ploy a skilled nursing facility worker
 3 in violation of subparagraph (A) or
 4 (B); or

5 “(II) knowingly fails to report a
 6 skilled nursing facility worker under
 7 subparagraph (C),

8 shall be subject to a civil penalty in an
 9 amount not to exceed \$5,000 for the first
 10 such violation, and \$10,000 for the second
 11 and each subsequent violation within any
 12 5-year period.

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

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

18 “(I) any offense described in
 19 paragraphs (1) through (4) of section
 20 1128(a); and

21 “(II) such other types of offenses
 22 as the Secretary may specify in regu-
 23 lations, taking into account the sever-
 24 ity and relevance of such offenses, and
 25 after consultation with representatives

of long-term care providers, representatives of long-term care employees, consumer advocates, and appropriate Federal and State officials.

“(ii) DISQUALIFYING INFORMATION.—

The term ‘disqualifying information’ means information about a conviction for a relevant crime or a finding of patient or resident abuse.

“(iii) FINDING OF PATIENT OR RESIDENT ABUSE.—

The term ‘finding of patient or resident abuse’ means any substantiated finding by a State agency under subsection (g)(1)(C) or a Federal agency that a skilled nursing facility worker has committed—

“(I) an act of patient or resident

abuse or neglect or a misappropriation of patient or resident property; or

“(II) such other types of acts as

the Secretary may specify in regulations.

“(iv) SKILLED NURSING FACILITY

WORKER.—The term ‘skilled nursing facility worker’ means any individual (other

1 than a volunteer) that has access to a pa-
 2 tient of a skilled nursing facility under an
 3 employment or other contract, or both,
 4 with such facility. Such term includes indi-
 5 viduals who are licensed or certified by the
 6 State to provide such services, and non-
 7 licensed individuals providing such services,
 8 as defined by the Secretary, including
 9 nurse assistants, nurse aides, home health
 10 aides, and personal care workers and at-
 11 tendants.”.

12 (2) MEDICAID PROGRAM.—Section 1919(b) of
 13 the Social Security Act (42 U.S.C. 1396r(b)) is
 14 amended by adding at the end the following new
 15 paragraph:

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

18 “(A) BACKGROUND CHECKS ON APPLI-
 19 CANTS.—Subject to subparagraph (B)(ii), be-
 20 fore hiring a nursing facility worker, a nursing
 21 facility shall—

22 “(i) give the worker written notice
 23 that the facility is required to perform
 24 background checks with respect to appli-
 25 cants;

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

3 “(I) provide a written statement
4 disclosing any conviction for a rel-
5 evant crime or finding of patient or
6 resident abuse;

7 “(II) provide a statement signed
8 by the worker authorizing the facility
9 to request the search and exchange of
10 criminal records;

11 “(III) provide in person to the
12 facility a copy of the worker’s finger-
13 prints or thumb print, depending
14 upon available technology; and

15 “(IV) provide any other identi-
16 fication information the Secretary
17 may specify in regulation;

18 “(iii) initiate a check of the data col-
19 lection system established under section
20 1128E in accordance with regulations pro-
21 mulgated by the Secretary to determine
22 whether such system contains any disquali-
23 fying information with respect to such
24 worker; and

1 “(iv) if that system does not contain
2 any such disqualifying information—

3 “(I) request through the appro-
4 priate State agency that the State ini-
5 tiate a State and national criminal
6 background check on such worker in
7 accordance with the provisions of sub-
8 section (e)(8); and

9 “(II) submit to such State agen-
10 cy the information described in sub-
11 clauses (II) through (IV) of clause (ii)
12 not more than 7 days (excluding Sat-
13 urdays, Sundays, and legal public
14 holidays under section 6103(a) of title
15 5, United States Code) after comple-
16 tion of the check against the system
17 initiated under clause (iii).

18 “(B) PROHIBITION ON HIRING OF ABUSIVE
19 WORKERS.—

20 “(i) IN GENERAL.—A nursing facility
21 may not knowingly employ any nursing fa-
22 cility worker who has any conviction for a
23 relevant crime or with respect to whom a
24 finding of patient or resident abuse has
25 been made.

1 “(ii) PROVISIONAL EMPLOYMENT.—

2 After complying with the requirements of
3 clauses (i), (ii), and (iii) of subparagraph
4 (A), a nursing facility may provide for a
5 provisional period of employment for a
6 nursing facility worker pending completion
7 of the check against the data collection
8 system described under subparagraph
9 (A)(iii) and the background check de-
10 scribed under subparagraph (A)(iv). Such
11 facility shall maintain direct supervision of
12 the worker during the worker’s provisional
13 period of employment.

14 “(C) REPORTING REQUIREMENTS.—A
15 nursing facility shall report to the State any in-
16 stance in which the facility determines that a
17 nursing facility worker has committed an act of
18 resident neglect or abuse or misappropriation of
19 resident property in the course of employment
20 by the facility.

21 “(D) USE OF INFORMATION.—

22 “(i) IN GENERAL.—A nursing facility
23 that obtains information about a nursing
24 facility worker pursuant to clauses (iii) and
25 (iv) of subparagraph (A) may use such in-

1 formation only for the purpose of deter-
2 mining the suitability of the worker for
3 employment.

4 “(ii) IMMUNITY FROM LIABILITY.—A
5 nursing facility that, in denying employ-
6 ment for an applicant (including during
7 the period described in subparagraph
8 (B)(ii)), reasonably relies upon information
9 about such applicant provided by the State
10 pursuant to subsection (e)(8) or section
11 1128E shall not be liable in any action
12 brought by such applicant based on the
13 employment determination resulting from
14 the information.

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

20 “(E) CIVIL PENALTY.—

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

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

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

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

9 “(I) knowingly continues to em-
10 ploy a nursing facility worker in viola-
11 tion of subparagraph (A) or (B); or

12 “(II) knowingly fails to report a
13 nursing facility worker under subpara-
14 graph (C),

15 shall be subject to a civil penalty in an
16 amount not to exceed \$5,000 for the first
17 such violation, and \$10,000 for the second
18 and each subsequent violation within any
19 5-year period.

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

21 “(i) CONVICTION FOR A RELEVANT
22 CRIME.—The term ‘conviction for a rel-
23 evant crime’ means any Federal or State
24 criminal conviction for—

1 “(I) any offense described in
2 paragraphs (1) through (4) of section
3 1128(a); and

4 “(II) such other types of offenses
5 as the Secretary may specify in regu-
6 lations, taking into account the sever-
7 ity and relevance of such offenses, and
8 after consultation with representatives
9 of long-term care providers, represent-
10 atives of long-term care employees,
11 consumer advocates, and appropriate
12 Federal and State officials.

13 “(ii) DISQUALIFYING INFORMATION.—
14 The term ‘disqualifying information’ means
15 information about a conviction for a rel-
16 evant crime or a finding of patient or resi-
17 dent abuse.

18 “(iii) FINDING OF PATIENT OR RESI-
19 DENT ABUSE.—The term ‘finding of pa-
20 tient or resident abuse’ means any sub-
21 stantiated finding by a State agency under
22 subsection (g)(1)(C) or a Federal agency
23 that a nursing facility worker has com-
24 mitted—

1 “(I) an act of patient or resident
 2 abuse or neglect or a misappropriation
 3 of patient or resident property; or

4 “(II) such other types of acts as
 5 the Secretary may specify in regula-
 6 tions.

7 “(iv) NURSING FACILITY WORKER.—
 8 The term ‘nursing facility worker’ means
 9 any individual (other than a volunteer)
 10 that has access to a patient of a nursing
 11 facility under an employment or other con-
 12 tract, or both, with such facility. Such
 13 term includes individuals who are licensed
 14 or certified by the State to provide such
 15 services, and nonlicensed individuals pro-
 16 viding such services, as defined by the Sec-
 17 retary, including nurse assistants, nurse
 18 aides, home health aides, and personal care
 19 workers and attendants.”.

20 (3) FEDERAL RESPONSIBILITIES.—

21 (A) DEVELOPMENT OF STANDARD FED-
 22 ERAL AND STATE BACKGROUND CHECK
 23 FORM.—The Secretary of Health and Human
 24 Services, in consultation with the Attorney Gen-
 25 eral and representatives of appropriate State

1 agencies, shall develop a model form that an
 2 applicant for employment at a nursing facility
 3 may complete and Federal and State agencies
 4 may use to conduct the criminal background
 5 checks required under sections 1819(b)(8) and
 6 1919(b)(8) of the Social Security Act (42
 7 U.S.C. 1395i-3(b), 1396r(b)) (as added by this
 8 section).

9 (B) PERIODIC EVALUATION.—The Sec-
 10 retary of Health and Human Services, in con-
 11 sultation with the Attorney General, periodically
 12 shall evaluate the background check system im-
 13 posed under sections 1819(b)(8) and
 14 1919(b)(8) of the Social Security Act (42
 15 U.S.C. 1395i-3(b), 1396r(b)) (as added by this
 16 section) and shall implement changes, as nec-
 17 essary, based on available technology, to make
 18 the background check system more efficient and
 19 able to provide a more immediate response to
 20 long-term care providers using the system.

21 (4) NO PREEMPTION OF STRICTER STATE
 22 LAWS.—Nothing in section 1819(b)(8) or 1919(b)(8)
 23 of the Social Security Act (42 U.S.C. 1395i-3(b)(8),
 24 1396r(b)(8)) (as so added) shall be construed to su-
 25 percede any provision of State law that—

1 (A) specifies a relevant crime for purposes
2 of prohibiting the employment of an individual
3 at a long-term care facility (as defined in sec-
4 tion 1128E(g)(6) of the Social Security Act (as
5 added by section 3(f) of this Act) that is not in-
6 cluded in the list of such crimes specified in
7 such sections or in regulations promulgated by
8 the Secretary of Health and Human Services to
9 carry out such sections; or

10 (B) requires a long-term care facility (as
11 so defined) to conduct a background check prior
12 to employing an individual in an employment
13 position that is not included in the positions for
14 which a background check is required under
15 such sections.

16 (5) TECHNICAL AMENDMENTS.—Effective as if
17 included in the enactment of section 941 of the
18 Medicare, Medicaid, and SCHIP Benefits Improve-
19 ment and Protection Act of 2000 (114 Stat. 2763A–
20 585), as enacted into law by section 1(a)(6) of Pub-
21 lic Law 106–554, sections 1819(b) and 1919(b) of
22 the Social Security Act (42 U.S.C. 1395i–3(b),
23 1396r(b)), as amended by such section 941 (as so
24 enacted into law) are each amended by redesignating

1 the paragraph (8) added by such section as para-
 2 graph (9).

3 (b) FEDERAL AND STATE REQUIREMENTS CON-
 4 CERNING BACKGROUND CHECKS.—

5 (1) MEDICARE.—Section 1819(e) of the Social
 6 Security Act (42 U.S.C. 1395i–3(e)) is amended by
 7 adding at the end the following:

8 “(6) FEDERAL AND STATE REQUIREMENTS
 9 CONCERNING CRIMINAL BACKGROUND CHECKS ON
 10 SKILLED NURSING FACILITY EMPLOYEES.—

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

24 “(B) SEARCH AND EXCHANGE OF
 25 RECORDS BY ATTORNEY GENERAL.—Upon re-

1 ceipt of a submission pursuant to subparagraph
2 (A), the Attorney General shall direct a search
3 of the records of the Federal Bureau of Inves-
4 tigation for any criminal history records cor-
5 responding to the fingerprints and other posi-
6 tive identification information submitted. The
7 Attorney General shall provide any cor-
8 responding information resulting from the
9 search to the State.

10 “(C) STATE REPORTING OF INFORMATION
11 TO SKILLED NURSING FACILITY.—Upon receipt
12 of the information provided by the Attorney
13 General pursuant to subparagraph (B), the
14 State shall—

15 “(i) review the information to deter-
16 mine whether the individual has any con-
17 viction for a relevant crime (as defined in
18 subsection (b)(8)(F)(i));

19 “(ii) immediately report to the skilled
20 nursing facility in writing the results of
21 such review; and

22 “(iii) in the case of an individual with
23 a conviction for a relevant crime, report
24 the existence of such conviction of such in-

dividual to the database established under
section 1128E.

“(D) FEES FOR PERFORMANCE OF CRIMINAL
BACKGROUND CHECKS.—

“(i) AUTHORITY TO CHARGE FEES.—

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

“(II) STATE.—A State may
charge a skilled nursing facility a fee
for initiating the criminal background
check under this paragraph and sub-
section (b)(8), including fees charged
by the Attorney General, and for per-

1 forming the review and report re-
2 quired by subparagraph (C). The
3 amount of such fee shall not exceed
4 the actual cost of such activities.

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

11 “(E) REGULATIONS.—

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

24 “(ii) APPEAL PROCEDURES.—The At-
25 torney General, in consultation with the

1 Secretary, shall promulgate such regula-
2 tions as are necessary to establish proce-
3 dures by which an applicant or employee
4 may appeal or dispute the accuracy of the
5 information obtained in a background
6 check conducted under this paragraph. Ap-
7 peals shall be limited to instances in which
8 an applicant or employee is incorrectly
9 identified as the subject of the background
10 check, or when information about the ap-
11 plicant or employee has not been updated
12 to reflect changes in the applicant's or em-
13 ployee's criminal record.

14 “(F) REPORT.—Not later than 2 years
15 after the date of enactment of this paragraph,
16 the Attorney General shall submit a report to
17 Congress on—

18 “(i) the number of requests for
19 searches and exchanges of records made
20 under this section;

21 “(ii) the disposition of such requests;
22 and

23 “(iii) the cost of responding to such
24 requests.”.

(2) MEDICAID.—Section 1919(e) of the Social Security Act (42 U.S.C. 1396r(e)) is amended by adding at the end the following:

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

“(A) IN GENERAL.—Upon receipt of a request by a nursing facility pursuant to subsection (b)(8) that is accompanied by the information described in subclauses (II) through (IV) of subsection (b)(8)(A)(ii), a State, after checking appropriate State records and finding no disqualifying information (as defined in subsection (b)(8)(F)(ii)), shall immediately submit such request and information to the Attorney General and shall request the Attorney General to conduct a search and exchange of records with respect to the individual as described in subparagraph (B).

“(B) SEARCH AND EXCHANGE OF RECORDS BY ATTORNEY GENERAL.—Upon receipt of a submission pursuant to subparagraph (A), the Attorney General shall direct a search of the records of the Federal Bureau of Investigation for any criminal history records cor-

1 responding to the fingerprints and other posi-
2 tive identification information submitted. The
3 Attorney General shall provide any cor-
4 responding information resulting from the
5 search to the State.

6 “(C) STATE REPORTING OF INFORMATION
7 TO NURSING FACILITY.—Upon receipt of the in-
8 formation provided by the Attorney General
9 pursuant to subparagraph (B), the State
10 shall—

11 “(i) review the information to deter-
12 mine whether the individual has any con-
13 viction for a relevant crime (as defined in
14 subsection (b)(8)(F)(i));

15 “(ii) immediately report to the nurs-
16 ing facility in writing the results of such
17 review; and

18 “(iii) in the case of an individual with
19 a conviction for a relevant crime, report
20 the existence of such conviction of such in-
21 dividual to the database established under
22 section 1128E.

23 “(D) FEES FOR PERFORMANCE OF CRIMI-
24 NAL BACKGROUND CHECKS.—

25 “(i) AUTHORITY TO CHARGE FEES.—

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

15 “(II) STATE.—A State may
16 charge a nursing facility a fee for ini-
17 tiating the criminal background check
18 under this paragraph and subsection
19 (b)(8), including fees charged by the
20 Attorney General, and for performing
21 the review and report required by sub-
22 paragraph (C). The amount of such
23 fee shall not exceed the actual cost of
24 such activities.

1 “(ii) PROHIBITION ON CHARGING AP-
2 PLICANTS OR EMPLOYEES.—An entity may
3 not impose on an applicant for employment
4 or an employee any charges relating to the
5 performance of a background check under
6 this paragraph.

7 “(E) REGULATIONS.—

8 “(i) IN GENERAL.—In addition to the
9 Secretary’s authority to promulgate regula-
10 tions under this title, the Attorney Gen-
11 eral, in consultation with the Secretary,
12 may promulgate such regulations as are
13 necessary to carry out the Attorney Gen-
14 eral’s responsibilities under this paragraph
15 and subsection (b)(8), including regula-
16 tions regarding the security, confiden-
17 tiality, accuracy, use, destruction, and dis-
18 semination of information, audits and rec-
19 ordkeeping, and the imposition of fees.

20 “(ii) APPEAL PROCEDURES.—The At-
21 torney General, in consultation with the
22 Secretary, shall promulgate such regula-
23 tions as are necessary to establish proce-
24 dures by which an applicant or employee
25 may appeal or dispute the accuracy of the

information obtained in a background check conducted under this paragraph. Appeals shall be limited to instances in which an applicant or employee is incorrectly identified as the subject of the background check, or when information about the applicant or employee has not been updated to reflect changes in the applicant's or employee's criminal record.

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

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

“(ii) the disposition of such requests; and

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

(c) APPLICATION TO OTHER ENTITIES PROVIDING HOME HEALTH OR LONG-TERM CARE SERVICES.—

(1) MEDICARE.—Part D of title XVIII of the Social Security Act (42 U.S.C. 1395x et seq.) is 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 HOME
 4 HEALTH OR LONG-TERM CARE SERVICES

5 “SEC. 1897. (a) IN GENERAL.—The requirements of
 6 subsections (b)(8) and (e)(6) of section 1819 shall apply
 7 to any provider of services or any other entity that is eligi-
 8 ble to be paid under this title for providing home health
 9 services, hospice care (including routine home care and
 10 other services included in hospice care under this title),
 11 or long-term care services to an individual entitled to bene-
 12 fits under part A or enrolled under part B, including an
 13 individual provided with a Medicare+Choice plan offered
 14 by a Medicare+Choice organization under part C (in this
 15 section referred to as a ‘medicare beneficiary’).

16 “(b) SUPERVISION OF PROVISIONAL EMPLOYEES.—

17 “(1) IN GENERAL.—With respect to an entity
 18 that provides home health services, such entity shall
 19 be considered to have satisfied the requirements of
 20 section 1819(b)(8)(B)(ii) or 1919(b)(8)(B)(ii) if the
 21 entity meets such requirements for supervision of
 22 provisional employees of the entity as the Secretary
 23 shall, by regulation, specify in accordance with para-
 24 graph (2).

1 “(2) REQUIREMENTS.—The regulations re-
2 quired under paragraph (1) shall provide the fol-
3 lowing:

4 “(A) Supervision of a provisional employee
5 shall consist of ongoing, good faith, verifiable
6 efforts by the supervisor of the provisional em-
7 ployee to conduct monitoring and oversight ac-
8 tivities to ensure the safety of a medicare bene-
9 ficiary.

10 “(B) For purposes of subparagraph (A),
11 monitoring and oversight activities may include
12 (but are not limited to) the following:

13 “(i) Follow-up telephone calls to the
14 medicare beneficiary.

15 “(ii) Unannounced visits to the medi-
16 care beneficiary’s home while the provi-
17 sional employee is serving the medicare
18 beneficiary.

19 “(iii) To the extent practicable, lim-
20 iting the provisional employee’s duties to
21 serving only those medicare beneficiaries in
22 a home or setting where another family
23 member or resident of the home or setting
24 of the medicare beneficiary is present.”.

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

(A) in paragraph (64), by striking “and” at the end;

(B) in paragraph (65), by striking the period and inserting “; and”; and

(C) by inserting after paragraph (65) the following:

“(66) provide that any entity that is eligible to be paid under the State plan for providing home health services, hospice care (including routine home care and other services included in hospice care under title XVIII), or long-term care services for which medical assistance is available under the State plan to individuals requiring long-term care complies with the requirements of subsections (b)(8) and (e)(8) of section 1919 and section 1897(b) (in the same manner as such section applies to a medicare beneficiary).”.

(3) EXPANSION OF STATE NURSE AIDE REGISTRY.—

(A) MEDICARE.—Section 1819 of the Social Security Act (42 U.S.C. 1395i–3) is amended—

(i) in subsection (e)(2)—

1 (I) in the paragraph heading, by
2 striking “NURSE AIDE REGISTRY” and
3 inserting “EMPLOYEE REGISTRY”;

4 (II) in subparagraph (A)—

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

8 (bb) by striking “a registry
9 of all individuals” and inserting
10 “a registry of (i) all individuals”;
11 and

12 (cc) by inserting before the
13 period the following: “, (ii) all
14 other skilled nursing facility em-
15 ployees with respect to whom the
16 State has made a finding de-
17 scribed in subparagraph (B), and
18 (iii) any employee of any provider
19 of services or any other entity
20 that is eligible to be paid under
21 this title for providing home
22 health services, hospice care (in-
23 cluding routine home care and
24 other services included in hospice
25 care under this title), or long-

1 term care services and with re-
2 spect to whom the entity has re-
3 ported to the State a finding of
4 patient neglect or abuse or a mis-
5 appropriation of patient prop-
6 erty”; and

7 (III) in subparagraph (C), by
8 striking “a nurse aide” and inserting
9 “an individual”; and
10 (ii) in subsection (g)(1)—

11 (I) by striking the first sentence
12 of subparagraph (C) and inserting the
13 following: “The State shall provide,
14 through the agency responsible for
15 surveys and certification of skilled
16 nursing facilities under this sub-
17 section, for a process for the receipt
18 and timely review and investigation of
19 allegations of neglect and abuse and
20 misappropriation of resident property
21 by a nurse aide or a skilled nursing
22 facility employee of a resident in a
23 skilled nursing facility, by another in-
24 dividual used by the facility in pro-
25 viding services to such a resident, or

1 by an individual described in sub-
 2 section (e)(2)(A)(iii).”;

3 (II) in the fourth sentence of
 4 subparagraph (C), by inserting “or
 5 described in subsection (e)(2)(A)(iii)”
 6 after “used by the facility”; and

7 (III) in subparagraph (D)—

8 (aa) in the subparagraph
 9 heading, by striking “NURSE
 10 AIDE”;

11 (bb) in clause (i), in the
 12 matter preceding subclause (I),
 13 by striking “a nurse aide” and
 14 inserting “an individual”; and

15 (cc) in clause (i)(I), by strik-
 16 ing “nurse aide” and inserting
 17 “individual”.

18 (B) MEDICAID.—Section 1919 of the So-
 19 cial Security Act (42 U.S.C. 1396r) is amend-
 20 ed—

21 (i) in subsection (e)(2)—

22 (I) in the paragraph heading, by
 23 striking “NURSE AIDE REGISTRY” and
 24 inserting “EMPLOYEE REGISTRY”;

25 (II) in subparagraph (A)—

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

4 (bb) by striking “a registry
5 of all individuals” and inserting
6 “a registry of (i) all individuals”;
7 and

8 (cc) by inserting before the
9 period the following: “, (ii) all
10 other nursing facility employees
11 with respect to whom the State
12 has made a finding described in
13 subparagraph (B), and (iii) any
14 employee of an entity that is eli-
15 gible to be paid under the State
16 plan for providing home health
17 services, hospice care (including
18 routine home care and other
19 services included in hospice care
20 under title XVIII), or long-term
21 care services and with respect to
22 whom the entity has reported to
23 the State a finding of patient ne-
24 glect or abuse or a misappropria-
25 tion of patient property”; and

1 (III) in subparagraph (C), by
2 striking “a nurse aide” and inserting
3 “an individual”; and

4 (ii) in subsection (g)(1)—

5 (I) by striking the first sentence
6 of subparagraph (C) and inserting the
7 following: “The State shall provide,
8 through the agency responsible for
9 surveys and certification of nursing
10 facilities under this subsection, for a
11 process for the receipt and timely re-
12 view and investigation of allegations
13 of neglect and abuse and misappro-
14 priation of resident property by a
15 nurse aide or a nursing facility em-
16 ployee of a resident in a nursing facil-
17 ity, by another individual used by the
18 facility in providing services to such a
19 resident, or by an individual described
20 in subsection (e)(2)(A)(iii).”; and

21 (II) in the fourth sentence of
22 subparagraph (C), by inserting “or
23 described in subsection (e)(2)(A)(iii)”
24 after “used by the facility”; and

25 (III) in subparagraph (D)—

1 (aa) in the subparagraph
 2 heading, by striking “NURSE
 3 AIDE”; and

4 (bb) in clause (i), in the
 5 matter preceding subclause (I),
 6 by striking “a nurse aide” and
 7 inserting “an individual”; and

8 (cc) in clause (i)(I), by strik-
 9 ing “nurse aide” and inserting
 10 “individual”.

11 (d) REIMBURSEMENT OF COSTS FOR BACKGROUND
 12 CHECKS.—The Secretary of Health and Human Services
 13 shall reimburse nursing facilities, skilled nursing facilities,
 14 and other entities for costs incurred by the facilities and
 15 entities in order to comply with the requirements imposed
 16 under sections 1819(b)(8) and 1919(b)(8) of such Act (42
 17 U.S.C. 1395i–3(b)(8), 1396r(b)(8)), as added by this sec-
 18 tion.

19 **SEC. 3. INCLUSION OF ABUSIVE WORKERS IN THE DATA-**
 20 **BASE ESTABLISHED AS PART OF NATIONAL**
 21 **HEALTH CARE FRAUD AND ABUSE DATA COL-**
 22 **LECTION PROGRAM.**

23 (a) INCLUSION OF ABUSIVE ACTS WITHIN A LONG-
 24 TERM CARE FACILITY OR PROVIDER.—Section

1 1128E(g)(1)(A) of the Social Security Act (42 U.S.C.
2 1320a-7e(g)(1)(A)) is amended—

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

4 and

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

6 “(v) A finding of abuse or neglect of
7 a patient or a resident of a long-term care
8 facility, or misappropriation of such a pa-
9 tient’s or resident’s property.”.

10 (b) COVERAGE OF LONG-TERM CARE FACILITY OR
11 PROVIDER EMPLOYEES.—Section 1128E(g)(2) of the So-
12 cial Security Act (42 U.S.C. 1320a-7e(g)(2)) is amended
13 by inserting “, and includes any individual of a long-term
14 care facility or provider (other than any volunteer) that
15 has access to a patient or resident of such a facility under
16 an employment or other contract, or both, with the facility
17 or provider (including individuals who are licensed or cer-
18 tified by the State to provide services at the facility or
19 through the provider, and nonlicensed individuals, as de-
20 fined by the Secretary, providing services at the facility
21 or through the provider, including nurse assistants, nurse
22 aides, home health aides, individuals who provide home
23 care, and personal care workers and attendants)” before
24 the period.

1 (c) REPORTING BY LONG-TERM CARE FACILITIES OR
2 PROVIDERS.—

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

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 or provider”.

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 or
17 providers”.

18 (e) MANDATORY CHECK OF DATABASE BY LONG-
19 TERM CARE FACILITIES OR PROVIDERS.—Section
20 1128E(d) of the Social Security Act (42 U.S.C. 1320a–
21 7e(d)) is amended by adding at the end the following:

22 “(3) MANDATORY CHECK OF DATABASE BY
23 LONG-TERM CARE FACILITIES OR PROVIDERS.—A
24 long-term care facility or provider shall check the
25 database maintained under this section prior to hir-

1 ing under an employment or other contract, or both,
 2 any individual as an employee of such a facility or
 3 provider who will have access to a patient or resident
 4 of the facility or provider (including individuals who
 5 are licensed or certified by the State to provide serv-
 6 ices at the facility or through the provider, and non-
 7 licensed individuals, as defined by the Secretary,
 8 that will provide services at the facility or through
 9 the provider, including nurse assistants, nurse aides,
 10 home health aides, individuals who provide home
 11 care, and personal care workers and attendants).”.

12 (f) DEFINITION OF LONG-TERM CARE FACILITY OR
 13 PROVIDER.—Section 1128E(g) of the Social Security Act
 14 (42 U.S.C. 1320a–7e(g)) is amended by adding at the end
 15 the following:

16 “(6) LONG-TERM CARE FACILITY OR PRO-
 17 VIDER.—The term ‘long-term care facility or pro-
 18 vider’ means a skilled nursing facility (as defined in
 19 section 1819(a)), a nursing facility (as defined in
 20 section 1919(a)), a home health agency, a provider
 21 of hospice care (as defined in section 1861(dd)(1)),
 22 a long-term care hospital (as described in section
 23 1886(d)(1)(B)(iv)), an intermediate care facility for
 24 the mentally retarded (as defined in section
 25 1905(d)), or any other facility or entity that pro-

1 vides, or is a provider of, long-term care services,
2 home health services, or hospice care (including rou-
3 tine home care and other services included in hospice
4 care under title XVIII), and receives payment for
5 such services under the medicare program under
6 title XVIII or the medicaid program under title
7 XIX.”.

8 (g) AUTHORIZATION OF APPROPRIATIONS.—There is
9 authorized to be appropriated to carry out the amend-
10 ments made by this section, \$10,200,000 for fiscal year
11 2003.

12 **SEC. 4. PREVENTION AND TRAINING DEMONSTRATION**
13 **PROJECT.**

14 (a) ESTABLISHMENT.—The Secretary of Health and
15 Human Services shall establish a demonstration program
16 to provide grants to develop information on best practices
17 in patient abuse prevention training (including behavior
18 training and interventions) for managers and staff of hos-
19 pital and health care facilities.

20 (b) ELIGIBILITY.—To be eligible to receive a grant
21 under subsection (a), an entity shall be a public or private
22 nonprofit entity and prepare and submit to the Secretary
23 of Health and Human Services an application at such
24 time, in such manner, and containing such information as
25 the Secretary may require.

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

3 (1) examine ways to improve collaboration be-
4 tween State health care survey and provider certifi-
5 cation agencies, long-term care ombudsman pro-
6 grams, the long-term care industry, and local com-
7 munity members;

8 (2) examine patient care issues relating to regu-
9 latory oversight, community involvement, and facility
10 staffing and management with a focus on staff
11 training, staff stress management, and staff super-
12 vision;

13 (3) examine the use of patient abuse prevention
14 training programs by long-term care entities, includ-
15 ing the training program developed by the National
16 Association of Attorneys General, and the extent to
17 which such programs are used; and

18 (4) identify and disseminate best practices for
19 preventing and reducing patient abuse.

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

23 **SEC. 5. EFFECTIVE DATE.**

24 This Act and the amendments made by the Act shall
25 take effect on the date that is 6 months after the effective

- 1 date of final regulations promulgated to carry out this Act
- 2 and such amendments.

