

106TH CONGRESS  
1ST SESSION

# S. 1445

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

JULY 27, 1999

Mr. KOHL (for himself and Mr. REID) 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”.

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

8 (a) NURSING FACILITY AND SKILLED NURSING FA-  
9 CILITY REQUIREMENTS.—

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

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

6           “(A) BACKGROUND CHECKS ON APPLI-  
7 CANTS.—Subject to subparagraph (B)(ii), be-  
8 fore hiring a nursing facility worker, a nursing  
9 facility shall—

10           “(i) give the worker written notice  
11 that the facility is required to perform  
12 background checks with respect to appli-  
13 cants;

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

16           “(I) provide a written statement  
17 disclosing any conviction for a rel-  
18 evant crime or finding of patient or  
19 resident abuse;

20           “(II) provide a statement signed  
21 by the worker authorizing the facility  
22 to request the search and exchange of  
23 criminal records;

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

1                   “(IV) provide any other identi-  
2                   fication information the Secretary  
3                   may specify in regulation;

4                   “(iii) initiate a check of the data col-  
5                   lection system established under section  
6                   1128E in accordance with regulations pro-  
7                   mulgated by the Secretary to determine  
8                   whether such system contains any disquali-  
9                   fying information with respect to such  
10                  worker; and

11                  “(iv) if that system does not contain  
12                  any such disqualifying information—

13                         “(I) request that the State ini-  
14                         tiate a State and national criminal  
15                         background check on such worker in  
16                         accordance with the provisions of sub-  
17                         section (e)(8); and

18                         “(II) furnish to the State the in-  
19                         formation described in subclauses (II)  
20                         through (IV) of clause (ii) not more  
21                         than 7 days (excluding Saturdays,  
22                         Sundays, and legal public holidays  
23                         under section 6103(a) of title 5,  
24                         United States Code) after completion

1 of the check against the system initi-  
2 ated under clause (iii).

3 “(B) PROHIBITION ON HIRING OF ABUSIVE  
4 WORKERS.—

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

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

24 “(C) REPORTING REQUIREMENTS.—A  
25 nursing facility shall report to the State any in-

1           stance in which the facility determines that a  
2           nursing facility worker has committed an act of  
3           resident neglect or abuse or misappropriation of  
4           resident property in the course of employment  
5           by the facility.

6           “(D) USE OF INFORMATION.—

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

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

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

6           “(E) CIVIL PENALTY.—

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

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

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

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

19                   “(I) knowingly continues to em-  
20 ploy a nursing facility worker in viola-  
21 tion of subparagraph (A) or (B); or

22                   “(II) knowingly fails to report a  
23 nursing facility worker under subpara-  
24 graph (C); shall be subject to a civil  
25 penalty in an amount not to exceed

1                   \$5,000 for the first such violation,  
2                   and \$10,000 for the second and each  
3                   subsequent violation within any 5-year  
4                   period.

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

6                   “(i) CONVICTION FOR A RELEVANT  
7                   CRIME.—The term ‘conviction for a rel-  
8                   evant crime’ means any Federal or State  
9                   criminal conviction for—

10                   “(I) any offense described in  
11                   paragraphs (1) through (4) of section  
12                   1128(a); and

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

22                   “(ii) DISQUALIFYING INFORMATION.—  
23                   The term ‘disqualifying information’ means  
24                   information about a conviction for a rel-

1           evant crime or a finding of patient or resi-  
2           dent abuse.

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

10           “(I) an act of patient or resident  
11           abuse or neglect or a misappropriation  
12           of patient or resident property; or

13           “(II) such other types of acts as  
14           the Secretary may specify in regula-  
15           tions.

16           “(iv) NURSING FACILITY WORKER.—  
17           The term ‘nursing facility worker’ means  
18           any individual (other than any volunteer)  
19           that has direct access to a patient of a  
20           nursing facility under an employment or  
21           other contract, or both, with such facility.  
22           Such term includes individuals who are li-  
23           censed or certified by the State to provide  
24           such services, and nonlicensed individuals  
25           providing such services, as defined by the

1 Secretary, including nurse assistants,  
2 nurse aides, home health aides, and per-  
3 sonal care workers and attendants.”.

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

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

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

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

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

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

23 “(II) provide a statement signed  
24 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)(6); 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 skilled nursing  
9           facility may not knowingly employ any  
10          skilled nursing facility worker who has any  
11          conviction for a relevant crime or with re-  
12          spect to whom a finding of patient or resi-  
13          dent abuse has been made.

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

1 vision of the covered individual during the  
2 worker's provisional period of employment.

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

10 “(D) USE OF INFORMATION.—

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

18 “(ii) IMMUNITY FROM LIABILITY.—A  
19 skilled nursing facility that, in denying em-  
20 ployment for an applicant (including dur-  
21 ing 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)(6) 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 skilled nursing  
11 facility that violates the provisions of this  
12 paragraph shall be subject to a civil pen-  
13 alty in 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 skilled nursing facility that—

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

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

4 shall be subject to a civil penalty in an  
5 amount not to exceed \$5,000 for the first  
6 such violation, and \$10,000 for the second  
7 and each subsequent violation within any  
8 5-year 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 skilled 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) SKILLED NURSING FACILITY

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

1 individuals who are licensed or certified by  
 2 the State to provide such services, and  
 3 nonlicensed individuals providing such  
 4 services, as defined by the Secretary, in-  
 5 cluding nurse assistants, nurse aides, home  
 6 health aides, and personal care workers  
 7 and attendants.”.

8 (b) STATE REQUIREMENTS.—

9 (1) MEDICAID PROGRAM.—

10 (A) EXPANSION OF STATE REGISTRY TO  
 11 COLLECT INFORMATION ABOUT NURSING FACIL-  
 12 ITY EMPLOYEES OTHER THAN NURSE AIDES.—

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

15 (i) in subsection (e)(2)—

16 (I) in the paragraph heading, by  
 17 striking “NURSE AIDE REGISTRY” and  
 18 inserting “NURSING FACILITY EM-  
 19 PLOYEE REGISTRY”;

20 (II) in subparagraph (A)—

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

24 (bb) by striking “a registry  
 25 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 nurs-  
5 ing facility employees with re-  
6 spect to whom the State has  
7 made a finding described in sub-  
8 paragraph (B)”;

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

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

17 (ii) in subsection (g)(1)—

18 (I) in subparagraph (C)—

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

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

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

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

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

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

1 the individual as described in subparagraph  
2 (B).

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

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

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

23 “(ii) report to the nursing facility the  
24 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 nursing facility a fee for ini-  
25          tiating the criminal background check

1 under this paragraph and subsection  
2 (b)(8), including fees charged by the  
3 Attorney General, and for performing  
4 the review and report required by sub-  
5 paragraph (C). The amount of such  
6 fee shall not exceed the actual cost of  
7 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)(8), including regula-  
23 tions regarding the security, confiden-  
24 tiality, accuracy, use, destruction, and dis-

1           semination of information, audits and rec-  
2           ordkeeping, 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                   (2) MEDICARE PROGRAM.—

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

11                  (i) in subsection (e)(2)—

12                         (I) in the paragraph heading, by  
13                         striking “NURSE AIDE REGISTRY” and  
14                         inserting “SKILLED NURSING CARE  
15                         EMPLOYEE REGISTRY”;

16                         (II) in subparagraph (A)—

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

20                                 (bb) by striking “a registry  
21                                 of all individuals” and inserting  
22                                 “a registry of (I) all individuals”;  
23                                 and

24                                 (cc) by inserting before the  
25                                 period “, and (II) all other

1 skilled nursing facility employees  
2 with respect to whom the State  
3 has made a finding described in  
4 subparagraph (B)’’;

5 (III) in subparagraph (B), by  
6 striking ‘‘involving an individual listed  
7 in the registry’’ and inserting ‘‘involv-  
8 ing a skilled nursing facility em-  
9 ployee’’; and

10 (IV) in subparagraph (C), by  
11 striking ‘‘nurse aide’’ and inserting  
12 ‘‘skilled nursing facility employee or  
13 applicant for employment’’; and

14 (ii) in subsection (g)(1)—

15 (I) in subparagraph (C)—

16 (aa) in the first sentence, by  
17 striking ‘‘nurse aide’’ and insert-  
18 ing ‘‘skilled nursing facility em-  
19 ployee’’; and

20 (bb) in the third sentence,  
21 by striking ‘‘nurse aide’’ each  
22 place it appears and inserting  
23 ‘‘skilled nursing facility em-  
24 ployee’’; and

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

5 (B) FEDERAL AND STATE REQUIREMENT  
6 TO CONDUCT BACKGROUND CHECKS.—Section  
7 1819(e) of the Social Security Act (42 U.S.C.  
8 1395i–3(e)) is amended by adding at the end  
9 the following:

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

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

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

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

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

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

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

1           dividual to the database established under  
2           section 1128E.

3           “(D) FEES FOR PERFORMANCE OF CRIMI-  
4           NAL BACKGROUND CHECKS.—

5           “(i) AUTHORITY TO CHARGE FEES.—

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

20          “(II) STATE.—A State may  
21          charge a skilled nursing facility a fee  
22          for initiating the criminal background  
23          check under this paragraph and sub-  
24          section (b)(8), including fees charged  
25          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.”.

1 (c) APPLICATION TO OTHER ENTITIES PROVIDING  
2 LONG-TERM CARE SERVICES.—

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

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

7 (B) by inserting after paragraph (65) the  
8 following:

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

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

18 “APPLICATION OF SKILLED NURSING FACILITY PREVEN-  
19 TIVE ABUSE PROVISIONS TO ANY PROVIDER OF  
20 SERVICES OR OTHER ENTITY PROVIDING LONG-TERM  
21 CARE SERVICES

22 “SEC. 1897. The requirements of subsections (b)(8)  
23 and (e)(6) of section 1819 shall apply to any provider of  
24 services or any other entity that is eligible to be paid under  
25 this title for providing long-term care services to an indi-  
26 vidual entitled to benefits under part A or enrolled under

1 part B (including an individual provided with a  
 2 Medicare+Choice plan offered by a Medicare+Choice or-  
 3 ganization under part C).”.

4 (d) REIMBURSEMENT OF REASONABLE COSTS FOR  
 5 BACKGROUND CHECKS.—The Secretary of Health and  
 6 Human Services shall factor into any payment system  
 7 under titles XVIII and XIX of the Social Security Act the  
 8 reasonable costs of the requirements of sections  
 9 1819(b)(8) and 1919(b)(8) of such Act, as added by this  
 10 section, incurred by any entity subject to such require-  
 11 ments.

12 **SEC. 3. INCLUSION OF ABUSIVE NURSING FACILITY WORK-**  
 13 **ERS IN THE DATABASE ESTABLISHED AS**  
 14 **PART OF NATIONAL HEALTH CARE FRAUD**  
 15 **AND ABUSE DATA COLLECTION PROGRAM.**

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

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

21 and

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

23 “(v) A finding of abuse or neglect of  
 24 a patient or a resident of a long-term care

1 facility, or misappropriation of such a pa-  
2 tient’s or resident’s property.”.

3 (b) COVERAGE OF LONG-TERM CARE FACILITY EM-  
4 PLOYEES.—Section 1128E(g)(2) of the Social Security  
5 Act (42 U.S.C. 1320a–7e(g)(2)) is amended by inserting  
6 “, and includes any individual of a long-term care facility  
7 (other than any volunteer) that has direct access to a pa-  
8 tient or resident of such a facility under an employment  
9 or other contract, or both, with the facility (including indi-  
10 viduals who are licensed or certified by the State to pro-  
11 vide services at the facility, and nonlicensed individuals,  
12 as defined by the Secretary, providing services at the facil-  
13 ity, including nurse assistants, nurse aides, home health  
14 aides, and personal care workers and attendants)” before  
15 the period.

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

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

21 (2) CORRECTION OF INFORMATION.—Section  
22 1128E(c)(2) of the Social Security Act (42 U.S.C.  
23 1320a–7e(c)(2)) is amended by striking “and health  
24 plan” and inserting “, health plan, and long-term  
25 care facility”.

1 (d) ACCESS TO REPORTED INFORMATION.—Section  
2 1128E(d)(1) of the Social Security Act (42 U.S.C. 1320a–  
3 7e(d)(1)) is amended by striking “and health plans” and  
4 inserting “, health plans, and long-term care facilities”.

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

9 “(3) MANDATORY CHECK OF DATABASE BY  
10 LONG-TERM CARE FACILITIES.—A long-term care fa-  
11 cility shall check the database maintained under this  
12 section prior to hiring under an employment or other  
13 contract, or both, any individual as an employee of  
14 such a facility who will have direct access to a pa-  
15 tient or resident of the facility (including individuals  
16 who are licensed or certified by the State to provide  
17 services at the facility, and nonlicensed individuals,  
18 as defined by the Secretary, that will provide serv-  
19 ices at the facility, including nurse assistants, nurse  
20 aides, home health aides, and personal care workers  
21 and attendants).”.

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



1 of Health and Human Services an application at such  
2 time, in such manner, and containing such information as  
3 the Secretary may require.

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

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

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

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

21 (4) identify and disseminate best practices for  
22 preventing and reducing patient abuse.

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

1 **SEC. 5. EFFECTIVE DATE.**

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

6 (1) by any skilled nursing facility (as defined in  
7 section 1819(a) of the Social Security Act) or any  
8 nursing facility (as defined in section 1919(a) of  
9 such Act), on or after the date which is 6 months  
10 after the date of enactment of this Act,

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

14 (3) by any hospice facility, any intermediate  
15 care facility for the mentally retarded (as defined in  
16 section 1905(d) of the Social Security Act), or any  
17 other facility that provides long-term care services  
18 and receives payment for such services under the  
19 medicare program under title XVIII of such Act or  
20 the medicaid program under title XIX of such Act,  
21 on or after the date which is 18 months after such  
22 date of enactment.

○