

110TH CONGRESS
1ST SESSION

H. R. 1476

To amend titles XVIII and XIX of the Social Security Act to expand the nursing home patients' bill of rights to include the right to receive care from a credible caregiver by requiring background checks on direct access employees and the right to a safe environment during an emergency or natural disaster by requiring nursing long-term care facilities to establish disaster emergency and evacuation plans.

IN THE HOUSE OF REPRESENTATIVES

MARCH 12, 2007

Ms. GINNY BROWN-WAITE of Florida (for herself, Mr. KIRK, Mr. FEENEY, Mr. BOUSTANY, Mr. SHAYS, Mrs. BIGGERT, Mrs. MILLER of Michigan, Mr. PORTER, Mr. GINGREY, Mr. CHABOT, Mr. GILCHREST, Mr. BARTLETT of Maryland, Mr. UPTON, and Mr. ROSKAM) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend titles XVIII and XIX of the Social Security Act to expand the nursing home patients' bill of rights to include the right to receive care from a credible caregiver by requiring background checks on direct access employees and the right to a safe environment during an emergency or natural disaster by requiring nursing long-term care facilities to establish disaster emergency and evacuation plans.

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 “Senior Safety and Dig-
 5 nity Act of 2007”.

6 **SEC. 2. SECURING RIGHT TO RECEIVE CARE FROM A CRED-**
 7 **IBLE CAREGIVER BY REQUIRING PERFORM-**
 8 **ANCE OF BACKGROUND CHECKS ON DIRECT**
 9 **ACCESS EMPLOYEES OF LONG-TERM CARE**
 10 **FACILITIES OR PROVIDERS.**

11 (a) ADDITION TO NURSING HOME PATIENTS’ BILL
 12 OF RIGHTS OF RIGHT TO RECEIVE CARE FROM A CRED-
 13 IBLE CAREGIVER.—Sections 1819(c)(1)(A) and
 14 1919(c)(1)(A) of the Social Security Act (42 U.S.C.
 15 1395i–3(c)(1)(A), 1396r(c)(1)(A)) are each amended—

16 (1) by redesignating clause (xi) as clause (xiii);

17 and

18 (2) by inserting after clause (x) the following

19 new clause:

20 “(xi) RECEIPT OF CARE FROM CRED-

21 IBLE CAREGIVER.—The right to receive

22 care from a credible caregiver.”.

23 (b) SCREENING OF SKILLED NURSING FACILITY AND
 24 NURSING FACILITY EMPLOYEE APPLICANTS.—

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

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

6 “(A) BACKGROUND CHECKS ON APPLI-
7 CANTS.—Before hiring a skilled nursing facility
8 worker, a skilled nursing facility shall conduct
9 a background check on the employee in accord-
10 ance with such procedures as the Secretary
11 shall establish.

12 “(B) PROHIBITION ON HIRING OF ABUSIVE
13 WORKERS.—

14 “(I) IN GENERAL.—Subject to clause
15 (ii), a skilled nursing facility may not
16 knowingly employ any skilled nursing facil-
17 ity worker who has any disqualifying infor-
18 mation (as defined in subparagraph
19 (F)(ii)).

20 “(ii) PROVISIONAL EMPLOYMENT.—A
21 skilled nursing facility may provide for a
22 provisional period of employment for a
23 skilled nursing facility worker pending
24 completion of the background check re-
25 quired under subparagraph (A). Such facil-

1 ity shall maintain direct supervision of the
2 covered individual during the worker’s pro-
3 visional period of employment.

4 “(C) PROCEDURES.—The procedures es-
5 tablished by the Secretary under subparagraph
6 (A) shall—

7 “(I) provide a process by which a
8 skilled nursing facility worker may appeal
9 or dispute the accuracy of the information
10 obtained in a background check conducted
11 under this paragraph;

12 “(ii) take into account the needs of
13 skilled nursing facilities that serve a low
14 volume of patients (as determined by the
15 Secretary) with respect to providing super-
16 vision for provisional employees who are
17 awaiting the results of a background check
18 conducted under this paragraph; and

19 “(iii) provide for the reimbursement
20 of nursing facilities for 100 percent of the
21 costs incurred by such facilities in com-
22 plying with the requirements of this sec-
23 tion.

24 “(D) IMMUNITY FROM LIABILITY.—A
25 skilled nursing facility that, in denying employ-

1 ment for an applicant, reasonably relies upon
2 information about such applicant provided by
3 the criminal background check shall not be lia-
4 ble in any action brought by such applicant
5 based on the employment determination result-
6 ing from the information.

7 “(E) CIVIL PENALTY.—

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

12 “(I) for the first such violation,
13 \$2,000; and

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

17 “(ii) KNOWING RETENTION OF WORK-
18 ER.—In addition to any civil penalty under
19 clause (I), a skilled nursing facility that
20 knowingly continues to employ a skilled
21 nursing facility worker in violation of sub-
22 paragraph (A) or (B) shall be subject to a
23 civil penalty in an amount not to exceed
24 \$5,000 for the first such violation, and

1 \$10,000 for the second and each subse-
2 quent violation within any 5-year period.

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

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

8 “(I) any offense described in sec-
9 tion 1128(a); and

10 “(II) such other types of offenses
11 as the Secretary may specify in regu-
12 lations.

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) SKILLED NURSING FACILITY
19 WORKER.—The term ‘skilled nursing facil-
20 ity worker’ means any individual that has
21 direct access to a patient of a skilled nurs-
22 ing facility under an employment or other
23 contract, or both, with such facility. Such
24 term includes individuals who are licensed
25 or certified by the State to provide long-

1 term care services, and nonlicensed individ-
2 uals providing such services, as defined by
3 the Secretary, including nurse assistants,
4 nurse aides, home health aides, and per-
5 sonal care workers and attendants.”.

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

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

12 “(A) BACKGROUND CHECKS ON APPLI-
13 CANTS.—Before hiring a nursing facility work-
14 er, a nursing facility shall conduct a back-
15 ground check on the employee in accordance
16 with such procedures as the Secretary shall es-
17 tablish.

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

20 “(I) IN GENERAL.—Subject to clause
21 (ii), a nursing facility may not knowingly
22 employ any nursing facility worker who
23 has any disqualifying information (as de-
24 fined in subparagraph (F)(ii)).

1 “(ii) PROVISIONAL EMPLOYMENT.—A
2 nursing facility may provide for a provi-
3 sional period of employment for a nursing
4 facility worker pending completion of the
5 background check required under subpara-
6 graph (A). Such facility shall maintain di-
7 rect supervision of the covered individual
8 during the worker’s provisional period of
9 employment.

10 “(C) PROCEDURES.—The procedures es-
11 tablished by the Secretary under subparagraph
12 (A) shall—

13 “(I) provide a process by which a
14 nursing facility worker may appeal or dis-
15 pute the accuracy of the information ob-
16 tained in a background check conducted
17 under this paragraph;

18 “(ii) take into account the needs of
19 nursing facilities that serve a low volume
20 of patients (as determined by the Sec-
21 retary) with respect to providing super-
22 vision for provisional employees who are
23 awaiting the results of a background check
24 conducted under this paragraph; and

1 “(iii) provide for the reimbursement
2 of nursing facilities for 100 percent of the
3 costs incurred by such facilities in com-
4 plying with the requirements of this sec-
5 tion.

6 “(D) IMMUNITY FROM LIABILITY.—A
7 nursing facility that, in denying employment for
8 an applicant, reasonably relies upon information
9 about such applicant provided by the criminal
10 background check shall not be liable in any ac-
11 tion brought by such applicant based on the
12 employment determination resulting from the
13 information.

14 “(E) CIVIL PENALTY.—

15 “(I) IN GENERAL.—A nursing facility
16 that violates the provisions of this para-
17 graph shall be subject to a civil penalty in
18 an amount not to exceed—

19 “(I) for the first such violation,
20 \$2,000; and

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

24 “(ii) KNOWING RETENTION OF WORK-
25 ER.—In addition to any civil penalty under

1 clause (I), a nursing facility that know-
2 ingly continues to employ a nursing facility
3 worker in violation of subparagraph (A) or
4 (B) 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 sec-
15 tion 1128(a); and

16 “(II) such other types of offenses
17 as the Secretary may specify in regu-
18 lations.

19 “(ii) DISQUALIFYING INFORMATION.—
20 The term ‘disqualifying information’ means
21 information about a conviction for a rel-
22 evant crime or a finding of patient or resi-
23 dent abuse.

24 “(iii) NURSING FACILITY WORKER.—
25 The term ‘nursing facility worker’ means

1 any individual that has direct access to a
2 patient of a nursing facility under an em-
3 ployment or other contract, or both, with
4 such facility. Such term includes individ-
5 uals who are licensed or certified by the
6 State to provide long-term care services,
7 and nonlicensed individuals providing such
8 services, as defined by the Secretary, in-
9 cluding nurse assistants, nurse aides, home
10 health aides, and personal care workers
11 and attendants.”.

12 (3) EFFECTIVE DATE.—The amendments made
13 by this subsection and subsection (a) shall take ef-
14 fect on the date that is 1 year after the date on
15 which the evaluation is completed under subsection
16 (d)(1).

17 (c) APPLICATION TO OTHER LONG-TERM CARE FA-
18 CILITIES OR PROVIDERS.—

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

22 “APPLICATION OF SKILLED NURSING FACILITY PREVEN-
23 TIVE ABUSE PROVISIONS TO LONG-TERM CARE FA-
24 CILITIES AND PROVIDERS

25 “SEC. 1898. (a) IN GENERAL.—The provisions of
26 section 1819(b)(9) shall apply to a long-term care facility

1 or provider (as defined in subsection (b)) in the same man-
 2 ner as such provisions apply to a skilled nursing facility.

3 “(b) LONG-TERM CARE FACILITY OR PROVIDER.—

4 In this section, the term ‘long-term care facility or pro-
 5 vider’ means the following facilities or providers which re-
 6 ceive payment for services under this title or title XIX:

7 “(1) A home health agency.

8 “(2) A provider of hospice care.

9 “(3) A long-term care hospital.

10 “(4) A provider of personal care services.

11 “(5) A residential care provider that arranges
 12 for, or directly provides, long-term care services.

13 “(6) An intermediate care facility for the men-
 14 tally retarded (as defined in section 1905(d)).”.

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

17 (A) in paragraph (69), by striking “and”
 18 at the end;

19 (B) in paragraph (70), by striking the pe-
 20 riod and inserting “; and”; and

21 (C) by inserting after paragraph (70) the
 22 following:

23 “(71) provide that the provisions of section
 24 1919(b)(9) apply to a long-term care facility or pro-
 25 vider (as defined in section 1898(b)) in the same

1 manner as such provisions apply to a nursing facil-
2 ity.”.

3 (3) EFFECTIVE DATE.—The amendments made
4 by this subsection shall take effect on the date that
5 is 1 year after the date on which the evaluation is
6 completed under subsection (d)(1).

7 (d) NATIONAL CRIMINAL BACKGROUND CHECK PRO-
8 GRAM.—

9 (1) COMPLETION OF PILOT PROGRAM EVALUA-
10 TION.—Not later than the date that is 6 months
11 after the completion of the pilot program for na-
12 tional and State background checks on direct patient
13 access employees of long-term care facilities or pro-
14 viders established under section 307 of the Medicare
15 Prescription Drug, Improvement, and Modernization
16 Act of 2003 (Public Law 108–173), the Secretary
17 shall complete the evaluation required under sub-
18 section (e) of such section of such Act.

19 (2) ESTABLISHMENT.—

20 (A) IN GENERAL.—Not later than the date
21 that is 1 year after the completion of the eval-
22 uation of the program described in paragraph
23 (1), the Secretary, in consultation with the At-
24 torney General, shall establish a national crimi-
25 nal background check program in order to pre-

1 vent abuse of nursing facility and skilled nurs-
2 ing facility residents and individuals receiving
3 home health care services and other long-term
4 care services under the medicare or medicaid
5 programs, taking into account the findings and
6 recommendations contained in the evaluation.

7 (B) USE IN CONDUCTING REQUIRED BACK-
8 GROUND CHECKS.—The national criminal back-
9 ground check program shall be made available
10 to a long-term care facility or provider for the
11 purpose of conducting criminal background
12 checks, including the criminal background
13 checks required under sections 1819(b)(9) and
14 1919(b)(9) of the Social Security Act (42
15 U.S.C. 1395i–3(b), 1396r(b)) (as added by sub-
16 section (a)).

17 (C) CONDUCT OF BACKGROUND CHECKS
18 BY THE FEDERAL BUREAU OF INVESTIGA-
19 TION.—The Secretary, in consultation with the
20 Attorney General, shall establish procedures for
21 the background checks to be conducted by the
22 Federal Bureau of Investigation, in cooperation
23 with appropriate State and Federal agencies.

24 (D) CONSULTATION.—In establishing the
25 national criminal background check program,

1 the Secretary shall consult with appropriate in-
2 terested parties, including—

3 (I) representatives of long-term care
4 facilities or providers;

5 (ii) representatives of employees of
6 long-term care facilities or providers;

7 (iii) consumers of long-term care serv-
8 ices;

9 (iv) consumer advocates; and

10 (v) appropriate Federal and State of-
11 ficials.

12 (3) DEFINITIONS.—In this subsection:

13 (A) LONG-TERM CARE FACILITY OR PRO-
14 VIDER.—The term “long-term care facility or
15 provider” means the following facilities or pro-
16 viders which receive payment for services under
17 title XVIII or XIX of the Social Security Act:

18 (I) A nursing facility (as defined in
19 subparagraph (B)).

20 (ii) A skilled nursing facility (as de-
21 fined in subparagraph ©)).

22 (iii) A home health agency.

23 (iv) A provider of hospice care (as de-
24 fined in section 1861(dd)(1) of the Social
25 Security Act) (42 U.S.C. 1395x(dd)(1)).

1 (v) A long-term care hospital (as de-
2 scribed in section 1886(d)(1)(B)(iv) of
3 such Act) (42 U.S.C.
4 1395ww(d)(1)(B)(iv)).

5 (vi) A provider of personal care serv-
6 ices.

7 (vii) A residential care provider that
8 arranges for, or directly provides, long-
9 term care services.

10 (viii) An intermediate care facility for
11 the mentally retarded (as defined in sec-
12 tion 1905(d) of such Act) (42 U.S.C.
13 1396d(d)).

14 (B) NURSING FACILITY.—The term “nurs-
15 ing facility” has the meaning given such term
16 in section 1919(a) of the Social Security Act
17 (42 U.S.C. 1396r(a)).

18 (C) SKILLED NURSING FACILITY.—The
19 term “skilled nursing facility” has the meaning
20 given such term in 1819(a) of the Social Secu-
21 rity Act (42 U.S.C. 1395i–3(a)).

1 **SEC. 3. SECURING THE RIGHT TO A SAFE ENVIRONMENT IN**
2 **LONG-TERM CARE FACILITIES DURING AN**
3 **EMERGENCY OR NATURAL DISASTER BY RE-**
4 **QUIRING THESE FACILITIES TO ESTABLISH**
5 **DISASTER EMERGENCY AND EVACUATION**
6 **PLANS.**

7 (a) ADDITION TO NURSING HOME PATIENTS' BILL
8 OF RIGHTS OF RIGHT TO A SAFE ENVIRONMENT DURING
9 AN EMERGENCY OR NATURAL DISASTER.—Sections
10 1819(c)(1)(A) and 1919(c)(1)(A) of the Social Security
11 Act (42 U.S.C. 1395i–3(c)(1)(A), 1396r(c)(1)(A)), as
12 amended by section 2(a), are each amended by inserting
13 after clause (xi) the following new clause:

14 “(xii) SAFE ENVIRONMENT DURING
15 EMERGENCY OR NATURAL DISASTER.—The
16 right to a safe environment during an
17 emergency or natural disaster.”.

18 (b) APPLICATION UNDER MEDICARE.—Section
19 1819(d)(4) of such Act (42 U.S.C. 1395i–3(d)(4)) is
20 amended—

21 (1) by redesignating subparagraph (B) as sub-
22 paragraph (C); and

23 (2) by inserting after subparagraph (A) the fol-
24 lowing new subparagraph:

1 “(B) DISASTER EMERGENCY AND EVACU-
2 ATION PLANS.—A skilled nursing facility
3 must—

4 “(I) have a clear and pre-established
5 disaster plan to ensure the safety of all its
6 patients during an emergency or natural
7 disaster and possible evacuation; and

8 “(ii) inform residents and next-of-kin
9 regarding such plan and the location of
10 possible evacuation in case of an emer-
11 gency or disaster.”.

12 (c) MEDICAID.—Section 1919(d)(4) of such Act (42
13 U.S.C. 1396r(d)(4)) is amended—

14 (1) by redesignating subparagraph (B) as sub-
15 paragraph (C); and

16 (2) by inserting after subparagraph (A) the fol-
17 lowing new subparagraph:

18 “(B) DISASTER EMERGENCY AND EVACU-
19 ATION PLANS.—A nursing facility must—

20 “(I) have a clear and pre-established
21 disaster plan to ensure the safety of all its
22 patients during an emergency or natural
23 disaster and possible evacuation; and

24 “(ii) inform residents and next-of-kin
25 regarding such plan and the location of

1 possible evacuation in case of an emer-
2 gency or disaster.”.

3 (d) APPLICATION TO OTHER LONG-TERM CARE FA-
4 CILITIES.—

5 (1) MEDICARE.—Section 1898(a) of such Act,
6 as added by section 2(c)(1), is amended by inserting
7 “and section 1819(d)(4)(B)” after “section
8 1819(b)(9)”.

9 (2) MEDICAID.—Section 1902(a)(71) of such
10 Act, as inserted by section 2(c)(2)(C), is amended by
11 inserting “and section 1919(d)(4)(B)” after “section
12 1919(b)(9)”.

13 (e) EFFECTIVE DATE.—The amendments made by
14 this section shall apply as of the date that is one year
15 after the date of the enactment of this Act.

○