

110TH CONGRESS
1ST SESSION

H. R. 3078

To amend titles XVIII and XIX of the Social Security Act to require screening, including national criminal history background checks, of direct patient access employees of skilled nursing facilities, nursing facilities, and other long-term care facilities and providers, and to provide for nationwide expansion of the pilot program for National and State background checks on direct patient access employees of long-term care facilities or providers.

IN THE HOUSE OF REPRESENTATIVES

JULY 18, 2007

Mr. MAHONEY of Florida (for himself, Mr. EMANUEL, Mrs. BOYDA of Kansas, and Mr. KLEIN of Florida) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means and the Judiciary, 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 require screening, including national criminal history background checks, of direct patient access employees of skilled nursing facilities, nursing facilities, and other long-term care facilities and providers, and to provide for nationwide expansion of the pilot program for National and State background checks on direct patient access employees of long-term care facilities or providers.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Patient Safety and
5 Abuse Prevention Act of 2007”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress makes the following find-
8 ings:

9 (1) Frail elders are a highly vulnerable popu-
10 lation who often lack the ability to give consent or
11 defend themselves. Since the best predictor of future
12 behavior is past behavior, individuals with histories
13 of abuse pose a definite risk to patients and resi-
14 dents of long-term care facilities.

15 (2) Every month, there are stories in the media
16 of health care employees who commit criminal mis-
17 conduct on the job and are later found, through a
18 background check conducted after the fact, to have
19 a history of convictions for similar crimes.

20 (3) A 2006 study conducted by the Department
21 of Health and Human Services determined that—

22 (A) criminal background checks are a valu-
23 able tool for employers during the hiring proc-
24 ess;

1 (B) the use of criminal background checks
2 during the hiring process does not limit the pool
3 of potential job applicants;

4 (C) “a correlation exists between criminal
5 history and incidences of abuse”; and

6 (D) the long-term care industry supports
7 the practice of conducting background checks
8 on potential employees in order to reduce the
9 likelihood of hiring someone who has potential
10 to harm residents.

11 (4) In 2005, the Michigan Attorney General
12 found that 10 percent of employees who were then
13 providing services to frail elders had criminal back-
14 grounds.

15 (5) In 2004, the staffs of State Adult Protec-
16 tive Services agencies received more than 500,000
17 reports of elder and vulnerable adult abuse, and an
18 ombudsman report concluded that more than 15,000
19 nursing home complaints involved abuse, including
20 nearly 4,000 complaints of physical abuse, more
21 than 800 complaints of sexual abuse, and nearly
22 1,000 complaints of financial exploitation;

23 (6) The Department of Health and Human
24 Services has determined that while 41 States now
25 require criminal background checks on certified

1 nurse aides prior to employment, only half of those
2 (22) require criminal background checks at the Fed-
3 eral level.

4 (b) PURPOSES.—The purposes of this Act are to—

5 (1) create a coordinated, nationwide system of
6 State criminal background checks that would greatly
7 enhance the chances of identifying individuals with
8 problematic backgrounds who move across State
9 lines;

10 (2) stop individuals who have a record of sub-
11 stantiated abuse, or a serious criminal record, from
12 preying on helpless elders and individuals with dis-
13 abilities; and

14 (3) provide assurance to long-term care employ-
15 ers and the residents they care for that potentially
16 abusive workers will not be hired into positions of
17 providing services to the extremely vulnerable resi-
18 dents of our Nation’s long-term care facilities.

19 **SEC. 3. NATIONWIDE EXPANSION OF PILOT PROGRAM FOR**
20 **NATIONAL AND STATE BACKGROUND**
21 **CHECKS ON DIRECT PATIENT ACCESS EM-**
22 **PLOYEES OF LONG-TERM CARE FACILITIES**
23 **OR PROVIDERS.**

24 Section 307 of the Medicare Prescription Drug, Im-
25 provement, and Modernization Act of 2003 (42 U.S.C.

1 1395aa note) is amended by adding at the end the fol-
2 lowing new subsection:

3 “(h) NATIONWIDE EXPANSION PROGRAM.—

4 “(1) IN GENERAL.—Beginning on the date of
5 enactment of the Patient Safety and Abuse Preven-
6 tion Act of 2007, the Secretary shall expand the
7 pilot program under this section to be conducted on
8 a nationwide basis (in this subsection, such ex-
9 panded pilot program shall be referred to as the ‘na-
10 tionwide expansion program’). Except for the fol-
11 lowing modifications, the provisions of this section
12 shall apply to the nationwide expansion program:

13 “(A) AGREEMENTS.—

14 “(i) NEWLY PARTICIPATING
15 STATES.—The Secretary shall enter into
16 agreements with each State—

17 “(I) that the Secretary has not
18 entered into an agreement with under
19 subsection (c)(1);

20 “(II) that agrees to conduct
21 background checks under the nation-
22 wide expansion program on a State-
23 wide basis; and

24 “(III) that submits an applica-
25 tion to the Secretary containing such

1 information and at such time as the
2 Secretary may specify.

3 “(ii) CERTAIN PREVIOUSLY PARTICI-
4 PATING STATES.—The Secretary shall
5 enter into agreements with each State—

6 “(I) that the Secretary has en-
7 tered into an agreement with under
8 subsection (c)(1) in the case where
9 such agreement did not require the
10 State to conduct background checks
11 under the pilot program established
12 under subsection (a) on a Statewide
13 basis;

14 “(II) that agrees to conduct
15 background checks under the nation-
16 wide expansion program on a State-
17 wide basis; and

18 “(III) that submits an applica-
19 tion to the Secretary containing such
20 information and at such time as the
21 Secretary may specify.

22 “(B) NONAPPLICATION OF SELECTION CRI-
23 TERIA.—The selection criteria required under
24 subsection (c)(3)(B) shall not apply.

1 “(C) REQUIRED FINGERPRINT CHECK AS
2 PART OF CRIMINAL HISTORY BACKGROUND
3 CHECK.—The procedures established under sub-
4 section (b)(1) shall require that the facility or
5 provider obtain State and national criminal his-
6 tory background checks on the prospective em-
7 ployee utilizing a search of State and Federal
8 criminal history records and including a finger-
9 print check using the Integrated Automated
10 Fingerprint Identification System of the Fed-
11 eral Bureau of Investigation.

12 “(D) PAYMENTS.—

13 “(i) NEWLY PARTICIPATING
14 STATES.—

15 “(I) IN GENERAL.—As part of
16 the application submitted by a State
17 under subparagraph (A)(i)(III), the
18 State shall guarantee, with respect to
19 the costs to be incurred by the State
20 in carrying out the nationwide expan-
21 sion program, that the State will
22 make available (directly or through
23 donations from public or private enti-
24 ties) a particular amount of non-Fed-
25 eral contributions.

1 “(II) FEDERAL MATCH.—The
2 payment amount to each State that
3 the Secretary enters into an agree-
4 ment with under subparagraph (A)(i)
5 shall be 3 times the amount that the
6 State guarantees to make available
7 under subclause (I), except that in no
8 case may the payment amount exceed
9 \$3,000,000.

10 “(ii) PREVIOUSLY PARTICIPATING
11 STATES.—

12 “(I) IN GENERAL.—As part of
13 the application submitted by a State
14 under subparagraph (A)(ii)(III), the
15 State shall guarantee, with respect to
16 the costs to be incurred by the State
17 in carrying out the nationwide expan-
18 sion program, that the State will
19 make available (directly or through
20 donations from public or private enti-
21 ties) a particular amount of non-Fed-
22 eral contributions.

23 “(II) FEDERAL MATCH.—The
24 payment amount to each State that
25 the Secretary enters into an agree-

1 ment with under subparagraph (A)(ii)
2 shall be 3 times the amount that the
3 State guarantees to make available
4 under subclause (I), except that in no
5 case may the payment amount exceed
6 \$1,500,000.

7 “(iii) NO RESERVATION FOR EVALUA-
8 TION.—There shall be no reservation of
9 any portion of the payment amount pro-
10 vided under clauses (i) or (ii) for con-
11 ducting an evaluation.

12 “(E) EVALUATIONS AND REPORT.—

13 “(i) EVALUATIONS.—The Inspector
14 General of the Department of Health and
15 Human Services shall conduct an annual
16 evaluation of the nationwide expansion
17 program in each of calendar years 2008
18 and 2009.

19 “(ii) REPORTS.—Not later than 6
20 months after completion of the second year
21 of the nationwide expansion program, the
22 Inspector General of the Department of
23 Health and Human Services shall submit a
24 report to Congress containing the results
25 of the annual evaluations conducted under

1 clause (i), together with recommendations
2 for the implementation of the requirements
3 of sections 1819(b)(9) and 1919(b)(9) of
4 the Social Security Act, as added by sec-
5 tion (3)(a) of the Patient Safety and
6 Abuse Prevention Act of 2007.

7 “(2) FUNDING.—

8 “(A) NOTIFICATION.—The Secretary shall
9 notify the Secretary of the Treasury of the
10 amount necessary to carry out the nationwide
11 expansion program under this subsection for
12 the period of fiscal years 2008 through 2010,
13 except that in no case shall such amount exceed
14 \$156,000,000.

15 “(B) TRANSFER OF FUNDS.—Out of any
16 funds in the Treasury not otherwise appro-
17 priated, the Secretary of the Treasury shall
18 provide for the transfer to the Secretary of the
19 amount specified as necessary to carry out the
20 nationwide expansion program under subpara-
21 graph (A).”.

1 **SEC. 4. BACKGROUND CHECKS ON DIRECT PATIENT AC-**
2 **CESS EMPLOYEES OF LONG-TERM CARE FA-**
3 **CILITIES AND PROVIDERS.**

4 (a) SCREENING OF SKILLED NURSING FACILITY AND
5 NURSING FACILITY EMPLOYEE APPLICANTS.—

6 (1) MEDICARE PROGRAM.—

7 (A) IN GENERAL.—Section 1819(b) of the
8 Social Security Act (42 U.S.C. 1395i–3(b)) is
9 amended by adding at the end the following
10 new paragraph:

11 “(9) SCREENING OF DIRECT PATIENT ACCESS
12 EMPLOYEES.—

13 “(A) SCREENING AND CRIMINAL HISTORY
14 BACKGROUND CHECKS ON APPLICANTS.—

15 “(i) SCREENING.—Beginning on Jan-
16 uary 1, 2011, before hiring a direct patient
17 access employee, a skilled nursing facility
18 shall screen the employee for any disquali-
19 fying information in accordance with such
20 procedures as the State shall establish
21 through a search of—

22 “(I) State-based abuse and ne-
23 glect registries and databases, includ-
24 ing the abuse and neglect registries
25 and databases of another State in the

1 case where a prospective employee
2 previously resided in that State; and

3 “(II) criminal records and the
4 records of any proceedings that may
5 contain disqualifying information
6 about applicants, such as proceedings
7 conducted by State professional licens-
8 ing and disciplinary boards and State
9 medicaid fraud control units.

10 “(ii) CRIMINAL HISTORY BACK-
11 GROUND CHECKS.—As part of such screen-
12 ing, the skilled nursing facility shall re-
13 quest that the State agency designated
14 under subsection (e)(6)(E) oversee the co-
15 ordination of a State and national criminal
16 history background check that utilizes a
17 search of State and Federal criminal his-
18 tory records and includes a fingerprint
19 check using the Integrated Automated Fin-
20 gerprint Identification System of the Fed-
21 eral Bureau of Investigation.

22 “(iii) USE OF PROCEDURES PRE-
23 VIOUSLY ESTABLISHED.—Nothing in this
24 paragraph shall be construed as preventing
25 a State from using procedures established

1 for purposes of the pilot program for Na-
2 tional and State background checks on di-
3 rect patient access employees of long-term
4 care facilities or providers under section
5 307 of the Medicare Prescription Drug,
6 Improvement, and Modernization Act of
7 2003, or the nationwide expansion pro-
8 gram under subsection (h) of such section,
9 to satisfy the requirements of paragraph
10 (6).

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

13 “(i) IN GENERAL.—Subject to clause
14 (ii), a skilled nursing facility may not
15 knowingly employ any direct patient access
16 employee who has any disqualifying infor-
17 mation (as defined in subparagraph
18 (F)(ii)).

19 “(ii) PROVISIONAL EMPLOYMENT.—
20 Subject to clause (iii), the State may per-
21 mit a skilled nursing facility to provide for
22 a provisional period of employment (not to
23 exceed 30 days) for a direct patient access
24 employee—

1 “(I) pending completion of the
2 screening and background check re-
3 quired under subparagraph (A); and

4 “(II) in the case where the em-
5 ployee has appealed the results of
6 such screening and background check,
7 pending completion of the appeals
8 process.

9 “(iii) SUPERVISION.—The facility
10 shall maintain direct on-site supervision of
11 the employee during such provisional pe-
12 riod of employment.

13 “(C) PROCEDURES.—

14 “(i) IN GENERAL.—The procedures
15 established by the State under subpara-
16 graph (A) shall be designed to accomplish
17 the following:

18 “(I) Give a prospective direct pa-
19 tient access employee notice that the
20 skilled nursing facility is required to
21 perform background checks with re-
22 spect to new employees, including a
23 fingerprint check as part of the na-
24 tional criminal history background
25 check conducted under subparagraph

1 (A)(ii) in the case of any new em-
2 ployee who does not have a certificate
3 indicating that a fingerprint check has
4 been completed and has not found any
5 disqualifying information (as de-
6 scribed in subclause (V)).

7 “(II) Require, as a condition of
8 employment, that the employee—

9 “(aa) provide a written
10 statement disclosing any disquali-
11 fying information;

12 “(bb) provide a statement
13 signed by the employee author-
14 izing the facility to request a
15 background check that includes a
16 search of the registries and data-
17 bases described in clause (i)(I) of
18 subparagraph (A) and the
19 records described in clause (i)(II)
20 of such subparagraph and a
21 criminal history background
22 check conducted in accordance
23 with clause (ii) of such subpara-
24 graph that includes a fingerprint
25 check using the Integrated Auto-

1 mated Fingerprint System of the
2 Federal Bureau of Investigation;

3 “(cc) provide the facility
4 with a rolled set of the employ-
5 ee’s fingerprints or submit to
6 being fingerprinted; and

7 “(dd) provide any other
8 identification information the
9 State may require.

10 “(III) Require the skilled nursing
11 facility to check any available reg-
12 istries that would be likely to contain
13 disqualifying information about a pro-
14 spective employee, including the reg-
15 istries and databases described in sub-
16 clause (I) of subparagraph (A)(i) and
17 the records described in clause (II) of
18 such subparagraph.

19 “(IV) Provide a prospective di-
20 rect patient access employee the op-
21 portunity to request a copy of the re-
22 sults of the background check con-
23 ducted with respect to such employee
24 and to correct any errors by providing

1 appropriate documentation to the
2 State and the facility.

3 “(V) Upon completion of a fin-
4 gerprint check as part of the national
5 criminal history background check
6 conducted with respect to a direct pa-
7 tient access employee under subpara-
8 graph (A)(ii), provide the skilled nurs-
9 ing facility and the direct patient ac-
10 cess employee with a certificate indi-
11 cating that such fingerprint check has
12 been completed and no disqualifying
13 information was found. Such certifi-
14 cate shall—

15 “(aa) be valid for 2 years;

16 and

17 “(bb) in the case where such
18 direct patient access employee is
19 hired by any other skilled nursing
20 facility located in the State dur-
21 ing such 2-year period, satisfy
22 the requirement that such facility
23 have a fingerprint check con-
24 ducted as part of such national

1 criminal history background
2 check.

3 “(ii) ELIMINATION OF UNNECESSARY
4 CHECKS.—The procedures established by
5 the State under subparagraph (A) shall
6 permit a skilled nursing facility to termi-
7 nate the background check at any stage at
8 which the facility obtains disqualifying in-
9 formation regarding a prospective direct
10 patient access employee.

11 “(iii) DEVELOPMENT OF MODEL FORM
12 OF CERTIFICATE.—The Secretary shall de-
13 velop a model form of the certificate de-
14 scribed in clause (i)(V) that States may
15 use to satisfy the requirements of such
16 clause.

17 “(D) USE OF INFORMATION; IMMUNITY
18 FROM LIABILITY.—

19 “(i) USE OF INFORMATION.—A skilled
20 nursing facility that obtains information
21 about a direct patient access employee pur-
22 suant to screening or a criminal history
23 background check shall use such informa-
24 tion only for the purpose of determining

1 the suitability of the employee for employ-
2 ment.

3 “(ii) IMMUNITY FROM LIABILITY.—A
4 skilled nursing facility that, in denying em-
5 ployment for an applicant, reasonably and
6 in good faith relies upon credible informa-
7 tion about such applicant provided by a
8 criminal history background check shall
9 not be liable in any action brought by such
10 applicant based on the employment deter-
11 mination resulting from the information.

12 “(iii) PROHIBITION ON CHARGING EM-
13 PLOYEES FEES FOR CONDUCTING BACK-
14 GROUND CHECKS.—A skilled nursing facil-
15 ity shall not charge a prospective direct pa-
16 tient access employee a fee for the screen-
17 ing or criminal history background check
18 conducted under this paragraph.

19 “(E) PENALTIES.—

20 “(i) IN GENERAL.—

21 “(I) STATE PENALTIES.—Subject
22 to subclause (II), a skilled nursing fa-
23 cility that violates the provisions of
24 this paragraph shall be subject to
25 such penalties as the State determines

1 appropriate to enforce the require-
2 ments of this paragraph. A skilled
3 nursing facility shall report to the
4 Secretary on a quarterly basis any
5 penalties imposed by the State under
6 the preceding sentence.

7 “(II) EXCLUSION FROM PARTICI-
8 PATION.—In any case where the Sec-
9 retary determines that a State is not
10 sufficiently enforcing the requirements
11 of this paragraph, the Secretary may
12 exclude a skilled nursing facility lo-
13 cated within the State that violates
14 the provisions of this paragraph from
15 participating in the programs under
16 this title and title XIX (in accordance
17 with the procedures of section 1128).

18 “(ii) KNOWING RETENTION OF WORK-
19 ER.—In addition to any penalty under
20 clause (i), a skilled nursing facility that
21 knowingly continues to employ a direct pa-
22 tient access employee in violation of sub-
23 paragraph (A) or (B) shall be subject to a
24 civil penalty in an amount not to exceed
25 \$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 of-
11 fenses, including violent crimes, as the
12 State may specify.

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 substantiated
17 patient or resident abuse.

18 “(iii) DIRECT PATIENT ACCESS EM-
19 PLOYEE.—The term ‘direct patient access
20 employee’ means any individual who has
21 access to a patient or resident of a skilled
22 nursing facility through employment or
23 through a contract with such facility and
24 has duties that involve (or may involve)
25 one-on-one contact with a patient or resi-

1 dent of the facility, as determined by the
2 State for purposes of this paragraph. Such
3 term does not include a volunteer unless
4 the volunteer has duties that are equiva-
5 lent to the duties of a direct patient access
6 employee and those duties involve (or may
7 involve) one-on-one contact with a patient
8 or resident of the facility.”.

9 (B) CONFORMING AMENDMENT.—Section
10 1819(e) of the Social Security Act (42 U.S.C.
11 1395i–3(e)) is amended by adding at the end
12 the following new paragraph:

13 “(6) SCREENING OF DIRECT PATIENT ACCESS
14 EMPLOYEES.—Beginning on January 1, 2011, the
15 State must—

16 “(A) have procedures in place for the con-
17 duct of screening and criminal history back-
18 ground checks under subparagraph (A) of sub-
19 section (b)(9), in accordance with the require-
20 ments of subparagraph (C) of such subsection;

21 “(B) be responsible for monitoring compli-
22 ance with the procedures and requirements of
23 such subsection;

24 “(C) as appropriate, provide for a provi-
25 sional period of employment of a direct patient

1 access employee under clause (ii) of subpara-
2 graph (B) of such subsection, including proce-
3 dures to ensure that a skilled nursing facility
4 provides direct on-site supervision of the em-
5 ployee in accordance with clause (iii) of such
6 subparagraph;

7 “(D) provide an independent process by
8 which a provisional employee or an employee
9 may appeal or dispute the accuracy of the infor-
10 mation obtained in a background check per-
11 formed under such subsection; and

12 “(E) designate a single State agency as re-
13 sponsible for—

14 “(i) overseeing the coordination of any
15 State and national criminal history back-
16 ground checks requested by a skilled nurs-
17 ing facility utilizing a search of State and
18 Federal criminal history records, including
19 a fingerprint check of such records;

20 “(ii) reviewing, using appropriate pri-
21 vacy and security safeguards, the results of
22 any State or national criminal history
23 background checks conducted regarding a
24 prospective direct patient access employee

1 to determine whether the employee has any
2 conviction for a relevant crime;

3 “(iii) immediately reporting to the
4 skilled nursing facility that requested the
5 criminal history background checks the re-
6 sults of such review; and

7 “(iv) in the case of an employee with
8 a conviction for a relevant crime that is
9 subject to reporting under section 1128E
10 of the Social Security Act (42 U.S.C.
11 1320a–7e), reporting the existence of such
12 conviction to the database established
13 under that section;

14 “(F) have a system in place for deter-
15 mining and levying appropriate penalties for
16 violations of the provisions of such subsection;

17 “(G) have a system in place for deter-
18 mining which individuals are direct patient ac-
19 cess employees for purposes of subparagraph
20 (F)(iii) of such subsection;

21 “(H) as appropriate, specify offenses, in-
22 cluding violent crimes, for purposes of subpara-
23 graph (F)(i)(II) of such subsection; and

24 “(I) develop ‘rap back’ capability such
25 that, if a direct patient access employee of a

1 skilled nursing facility is convicted of a crime
2 following the initial criminal history background
3 check conducted with respect to such employee,
4 and the employee's fingerprints match the
5 prints on file with the State law enforcement
6 department, the department will immediately
7 inform the State agency designated under sub-
8 paragraph (E).”.

9 (2) MEDICAID PROGRAM.—

10 (A) IN GENERAL.—Section 1919(b) of the
11 Social Security Act (42 U.S.C. 1396r(b)) is
12 amended by adding at the end the following
13 new paragraph:

14 “(9) SCREENING OF DIRECT PATIENT ACCESS
15 EMPLOYEES.—

16 “(A) SCREENING AND CRIMINAL HISTORY
17 BACKGROUND CHECKS ON APPLICANTS.—

18 “(i) SCREENING.—Beginning on Jan-
19 uary 1, 2011, before hiring a direct patient
20 access employee, a nursing facility shall
21 screen the employee for any disqualifying
22 information in accordance with such proce-
23 dures as the State shall establish through
24 a search of—

1 “(I) State-based abuse and ne-
2 glect registries and databases, includ-
3 ing the abuse and neglect registries
4 and databases of another State in the
5 case where a prospective employee
6 previously resided in that State; and

7 “(II) criminal records and the
8 records of any proceedings that may
9 contain disqualifying information
10 about applicants, such as proceedings
11 conducted by State professional licens-
12 ing and disciplinary boards and State
13 medicaid fraud control units.

14 “(ii) CRIMINAL HISTORY BACK-
15 GROUND CHECKS.—As part of such screen-
16 ing, the nursing facility shall request that
17 the State agency designated under sub-
18 section (e)(6)(E) oversee the coordination
19 of a State and national criminal history
20 background check that utilizes a search of
21 State and Federal criminal history records
22 and includes a fingerprint check using the
23 Integrated Automated Fingerprint Identifi-
24 cation System of the Federal Bureau of
25 Investigation.

1 “(iii) USE OF PROCEDURES PRE-
2 VIOUSLY ESTABLISHED.—Nothing in this
3 paragraph shall be construed as preventing
4 a State from using procedures established
5 for purposes of the pilot program for Na-
6 tional and State background checks on di-
7 rect patient access employees of long-term
8 care facilities or providers under section
9 307 of the Medicare Prescription Drug,
10 Improvement, and Modernization Act of
11 2003, or the nationwide expansion pro-
12 gram under subsection (h) of such section,
13 to satisfy the requirements of paragraph
14 (6).

15 “(B) PROHIBITION ON HIRING OF ABUSIVE
16 WORKERS.—

17 “(i) IN GENERAL.—Subject to clause
18 (ii), a nursing facility may not knowingly
19 employ any direct patient access employee
20 who has any disqualifying information (as
21 defined in subparagraph (F)(ii)).

22 “(ii) PROVISIONAL EMPLOYMENT.—
23 Subject to clause (iii), the State may per-
24 mit a nursing facility to provide for a pro-
25 visional period of employment (not to ex-

1 ceed 30 days) for a direct patient access
2 employee—

3 “(I) pending completion of the
4 screening and background check re-
5 quired under subparagraph (A); and

6 “(II) in the case where the em-
7 ployee has appealed the results of
8 such screening and background check,
9 pending completion of the appeals
10 process.

11 “(iii) SUPERVISION.—The facility
12 shall maintain direct on-site supervision of
13 the employee during such provisional pe-
14 riod of employment.

15 “(C) PROCEDURES.—

16 “(i) IN GENERAL.—The procedures
17 established by the State under subpara-
18 graph (A) shall be designed to accomplish
19 the following:

20 “(I) Give a prospective direct pa-
21 tient access employee notice that the
22 nursing facility is required to perform
23 background checks with respect to
24 new employees, including a fingerprint
25 check as part of the national criminal

1 history background check conducted
2 under subparagraph (A)(ii) in the
3 case of any new employee who does
4 not have a certificate indicating that a
5 fingerprint check has been completed
6 and has not found any disqualifying
7 information (as described in subclause
8 (V))

9 “(II) Require, as a condition of
10 employment, that the employee—

11 “(aa) provide a written
12 statement disclosing any disquali-
13 fying information;

14 “(bb) provide a statement
15 signed by the employee author-
16 izing the facility to request a
17 background check that includes a
18 search of the registries and data-
19 bases described in clause (i)(I) of
20 subparagraph (A) and the
21 records described in clause (i)(II)
22 of such subparagraph and a
23 criminal history background
24 check conducted in accordance
25 with clause (ii) of such subpara-

1 graph that includes a fingerprint
2 check using the Integrated Auto-
3 mated Fingerprint System of the
4 Federal Bureau of Investigation;

5 “(cc) provide the facility
6 with a rolled set of the employ-
7 ee’s fingerprints or submit to
8 being fingerprinted; and

9 “(dd) provide any other
10 identification information the
11 State may require.

12 “(III) Require the nursing facil-
13 ity to check any available registries
14 that would be likely to contain dis-
15 qualifying information about a pro-
16 spective employee, including the reg-
17 istries and databases described in sub-
18 clause (I) of subparagraph (A)(i) and
19 the records described in clause (II) of
20 such subparagraph.

21 “(IV) Provide a prospective di-
22 rect patient access employee the op-
23 portunity to request a copy of the re-
24 sults of the background check con-
25 ducted with respect to such employee

1 and to correct any errors by providing
2 appropriate documentation to the
3 State and the nursing facility.

4 “(V) Upon completion of a fin-
5 gerprint check as part of the national
6 criminal history background check
7 conducted with respect to a direct pa-
8 tient access employee under subpara-
9 graph (A)(ii), provide the nursing fa-
10 cility and the direct patient access em-
11 ployee with a certificate indicating
12 that such fingerprint check has been
13 completed and no disqualifying infor-
14 mation was found. Such certificate
15 shall—

16 “(aa) be valid for 2 years;

17 and

18 “(bb) in the case where such
19 direct patient access employee is
20 hired by any other nursing facil-
21 ity located in the State during
22 such 2-year period, satisfy the re-
23 quirement that such facility have
24 a fingerprint check conducted as

1 part of such national criminal
2 history background check.

3 “(ii) ELIMINATION OF UNNECESSARY
4 CHECKS.—The procedures established by
5 the State under subparagraph (A) shall
6 permit a nursing facility to terminate the
7 background check at any stage at which
8 the facility obtains disqualifying informa-
9 tion regarding a prospective direct patient
10 access employee.

11 “(iii) DEVELOPMENT OF MODEL FORM
12 OF CERTIFICATE.—The Secretary shall de-
13 velop a model form of the certificate de-
14 scribed in clause (i)(V) that States may
15 use to satisfy the requirements of such
16 clause.

17 “(D) USE OF INFORMATION; IMMUNITY
18 FROM LIABILITY.—

19 “(i) USE OF INFORMATION.—A nurs-
20 ing facility that obtains information about
21 a direct patient access employee pursuant
22 to screening or a criminal history back-
23 ground check shall use such information
24 only for the purpose of determining the
25 suitability of the employee for employment.

1 “(ii) IMMUNITY FROM LIABILITY.—A
2 nursing facility that, in denying employ-
3 ment for an applicant, reasonably and in
4 good faith relies upon credible information
5 about such applicant provided by a crimi-
6 nal history background check shall not be
7 liable in any action brought by such appli-
8 cant based on the employment determina-
9 tion resulting from the information.

10 “(iii) PROHIBITION ON CHARGING EM-
11 PLOYEES FEES FOR CONDUCTING BACK-
12 GROUND CHECKS.—A nursing facility shall
13 not charge a prospective direct patient ac-
14 cess employee a fee for the screening or
15 criminal history background check con-
16 ducted under this paragraph.

17 “(E) PENALTIES.—

18 “(i) IN GENERAL.—

19 “(I) STATE PENALTIES.—Subject
20 to subclause (II), a nursing facility
21 that violates the provisions of this
22 paragraph shall be subject to such
23 penalties as the State determines ap-
24 propriate to enforce the requirements
25 of this paragraph. A nursing facility

1 shall report to the Secretary on a
2 quarterly basis any penalties imposed
3 by the State under the preceding sen-
4 tence.

5 “(II) EXCLUSION FROM PARTICI-
6 PATION.—In any case where the Sec-
7 retary determines that a State is not
8 sufficiently enforcing the requirements
9 of this paragraph, the Secretary may
10 exclude a nursing facility located with-
11 in the State that violates the provi-
12 sions of this paragraph from partici-
13 pating in the programs under this
14 title and title XVIII (in accordance
15 with the procedures of section 1128).

16 “(ii) KNOWING RETENTION OF WORK-
17 ER.—In addition to any penalty under
18 clause (i), a nursing facility that knowingly
19 continues to employ a direct patient access
20 employee in violation of subparagraph (A)
21 or (B) shall be subject to a civil penalty in
22 an amount not to exceed \$5,000 for the
23 first such violation, and \$10,000 for the
24 second and each subsequent violation with-
25 in any 5-year period.

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

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

6 “(I) any offense described in sec-
7 tion 1128(a); and

8 “(II) such other types of of-
9 fenses, including violent crimes, as the
10 State may specify.

11 “(ii) DISQUALIFYING INFORMATION.—
12 The term ‘disqualifying information’ means
13 information about a conviction for a rel-
14 evant crime or a finding of substantiated
15 patient or resident abuse.

16 “(iii) DIRECT PATIENT ACCESS EM-
17 PLOYEE.—The term ‘direct patient access
18 employee’ means any individual who has
19 access to a patient or resident of a nursing
20 facility through employment or through a
21 contract with such facility and has duties
22 that involve (or may involve) one-on-one
23 contact with a patient or resident of the
24 facility, as determined by the State for
25 purposes of this paragraph. Such term

1 does not include a volunteer unless the vol-
2 unteer has duties that are equivalent to the
3 duties of a direct patient access employee
4 and those duties involve (or may involve)
5 one-on-one contact with a patient or resi-
6 dent of the facility.”.

7 (B) CONFORMING AMENDMENT.—Section
8 1919(e) of the Social Security Act (42 U.S.C.
9 1396r(e)) is amended by adding at the end the
10 following new paragraph:

11 “(8) SCREENING OF DIRECT PATIENT ACCESS
12 EMPLOYEES.—Beginning on January 1, 2011, the
13 State must—

14 “(A) have procedures in place for the con-
15 duct of screening and criminal history back-
16 ground checks under subparagraph (A) of sub-
17 section (b)(9), in accordance with the require-
18 ments of subparagraph (C) of such subsection;

19 “(B) be responsible for monitoring compli-
20 ance with the procedures and requirements of
21 such subsection;

22 “(C) as appropriate, provide for a provi-
23 sional period of employment of a direct patient
24 access employee under clause (ii) of subpara-
25 graph (B) of such subsection, including proce-

1 dures to ensure that a nursing facility provides
2 direct on-site supervision of the employee in ac-
3 cordance with clause (iii) of such subparagraph;

4 “(D) provide an independent process by
5 which a provisional employee or an employee
6 may appeal or dispute the accuracy of the infor-
7 mation obtained in a background check per-
8 formed under such subsection; and

9 “(E) designate a single State agency as re-
10 sponsible for—

11 “(i) overseeing the coordination of any
12 State and national criminal history back-
13 ground checks requested by a nursing fa-
14 cility utilizing a search of State and Fed-
15 eral criminal history records, including a
16 fingerprint check of such records;

17 “(ii) reviewing, using appropriate pri-
18 vacy and security safeguards, the results of
19 any State or national criminal history
20 background checks conducted regarding a
21 prospective direct patient access employee
22 to determine whether the employee has any
23 conviction for a relevant crime;

24 “(iii) immediately reporting to the
25 nursing facility that requested the criminal

1 history background checks the results of
2 such review; and

3 “(iv) in the case of an employee with
4 a conviction for a relevant crime that is
5 subject to reporting under section 1128E
6 of the Social Security Act (42 U.S.C.
7 1320a–7e), reporting the existence of such
8 conviction to the database established
9 under that section;

10 “(F) have a system in place for deter-
11 mining and levying appropriate penalties for
12 violations of the provisions of such subsection;

13 “(G) have a system in place for deter-
14 mining which individuals are direct patient ac-
15 cess employees for purposes of subparagraph
16 (F)(iii) of such subsection;

17 “(H) as appropriate, specify offenses, in-
18 cluding violent crimes, for purposes of subpara-
19 graph (F)(i)(II) of such subsection; and

20 “(I) develop ‘rap back’ capability such
21 that, if a direct patient access employee of a
22 nursing facility is convicted of a crime following
23 the initial criminal history background check
24 conducted with respect to such employee, and
25 the employee’s fingerprints match the prints on

1 file with the State law enforcement department,
 2 the department will immediately inform the
 3 State agency designated under subparagraph
 4 (E).”.

5 (b) APPLICATION TO OTHER LONG-TERM CARE FA-
 6 CILITIES OR PROVIDERS.—

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

10 “APPLICATION OF SKILLED NURSING FACILITY PREVEN-
 11 TIVE ABUSE PROVISIONS TO LONG-TERM CARE FA-
 12 CILITIES AND PROVIDERS

13 “SEC. 1898. (a) The provisions of section 1819(b)(9)
 14 shall apply to a long-term care facility or provider (as de-
 15 fined in subsection (b)) in the same manner as such provi-
 16 sions apply to a skilled nursing facility.

17 “(b) LONG-TERM CARE FACILITY OR PROVIDER.—
 18 In this section, the term ‘long-term care facility or pro-
 19 vider’ means the following facilities or providers which re-
 20 ceive payment for services under this title or title XIX:

21 “(1) A home health agency.

22 “(2) A provider of hospice care.

23 “(3) A long-term care hospital.

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

25 “(5) A provider of adult day care.

1 “(6) A residential care provider that arranges
2 for, or directly provides, long-term care services, in-
3 cluding an assisted living facility that provides a
4 level of care established by the Secretary.

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

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

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

11 (B) in paragraph (70)(B)(iv), by striking
12 the period at the end and inserting “; and”;
13 and

14 (C) by inserting after paragraph
15 (70)(B)(iv) the following:

16 “(71) provide that the provisions of section
17 1919(b)(9) apply to a long-term care facility or pro-
18 vider (as defined in section 1898(b)) in the same
19 manner as such provisions apply to a nursing facil-
20 ity.”.

21 (3) EFFECTIVE DATE.—The amendments made
22 by this subsection shall take effect on January 1,
23 2011.

24 (c) PAYMENTS.—

1 (1) PROCEDURES TO REIMBURSE COSTS OF NA-
2 TIONAL BACKGROUND CHECK.—

3 (A) IN GENERAL.—The Secretary of
4 Health and Human Services shall establish pro-
5 cedures to reimburse the costs of conducting
6 national criminal history background checks
7 under sections 1819(b)(9), 1919(b)(9), 1898,
8 and 1902(a)(71) of the Social Security Act, as
9 added by subsections (a)(1), (a)(2), (b)(1), and
10 (b)(2), respectively, through the following mech-
11 anisms, in such proportion as the Secretary de-
12 termines appropriate:

13 (i) By providing payments to skilled
14 nursing facilities and long-term care facili-
15 ties or providers for costs incurred as are
16 attributable to the conduct of such na-
17 tional criminal history background checks
18 under such section 1819(b)(9).

19 (ii) By making a payment, from sums
20 appropriated therefore, under section
21 1903(a) of the Social Security Act (42
22 U.S.C. 1396b(a)) to each State which has
23 a plan approved under title XIX of the So-
24 cial Security Act (42 U.S.C. 1396 et seq.),
25 for each quarter, beginning with the quar-

1 ter commencing on January 1, 2011, in an
2 amount equal to 90 percent of the sums
3 expended with respect to costs incurred
4 during such quarter as are attributable to
5 the conduct of such national criminal his-
6 tory background checks under such section
7 1919(b)(9).

8 (B) FUNDING FOR PAYMENTS FOR COSTS
9 INCURRED UNDER MEDICARE PROGRAM.—The
10 Secretary of Health and Human Services shall
11 provide for the transfer, in appropriate part
12 from the Federal Hospital Insurance Trust
13 Fund established under section 1817 of the So-
14 cial Security Act (42 U.S.C. 1395i) and the
15 Federal Supplementary Insurance Trust Fund
16 established under section 1841 of such Act (42
17 U.S.C. 1395t), of such funds as are necessary
18 to make payments under subparagraph (A)(i)
19 for fiscal year 2011 and each fiscal year there-
20 after.

21 (C) DETERMINATION OF APPROPRIATE
22 PROPORTION.—In establishing the procedures
23 under subparagraph (A), the Secretary of
24 Health and Human Services shall determine
25 what proportion of payments using the mecha-

1 nisms described in such subparagraph would re-
2 sult in an equitable allocation of the costs of
3 such reimbursement between the Medicare pro-
4 gram under title XVIII of the Social Security
5 Act and the Medicaid program under title XIX
6 of such Act.

7 (2) ENSURING NO DUPLICATIVE PAYMENTS.—

8 The procedures established under paragraph (1)(A)
9 shall ensure that no duplicative payments are made
10 for the costs of conducting such national criminal
11 history background checks, including any duplication
12 of payments made under the pilot program for na-
13 tional and State background checks on direct patient
14 access employees of long-term care facilities or pro-
15 viders under section 307 of the Medicare Prescrip-
16 tion Drug, Improvement, and Modernization Act of
17 2007, including the nationwide expansion program
18 under subsection (h) of such section, as added by
19 section 3.

20 (3) SUBMISSION OF COSTS INCURRED BY FA-
21 CILITIES IN PERFORMING CHECKS.—

22 (A) IN GENERAL.—The procedures estab-
23 lished under paragraph (1)(A) shall provide a
24 process, such as through submission of a bill,
25 by which a skilled nursing facility, a nursing fa-

1 cility, and a long-term care facility or provider
2 may submit information regarding the costs in-
3 curred by such facility in conducting national
4 criminal history background checks under sec-
5 tions 1819(b)(9), 1919(b)(9), 1898, and
6 1902(a)(71) of the Social Security Act, as
7 added by subsections (a)(1), (a)(2), (b)(1), and
8 (b)(2), respectively.

9 (B) MODEL FORMS.—The Secretary of
10 Health and Human Services shall develop
11 model forms that may be used by a skilled
12 nursing facility, a nursing facility, and a long-
13 term care facility or provider to submit a claim
14 for reimbursement of the costs described in
15 paragraph (1)(A) that contains the information
16 described in subparagraph (A).

17 (4) REGULATIONS.—Not later than 3 years
18 after the date of enactment of this Act, the Sec-
19 retary of Health and Human Services shall promul-
20 gate regulations to carry out this subsection.

21 **SEC. 5. BACKGROUND CHECKS PROVIDED BY THE FED-**
22 **ERAL BUREAU OF INVESTIGATION.**

23 (a) DEVELOPMENT OF RAP BACK CAPABILITIES.—

24 (1) IN GENERAL.—Not later than January 1,
25 2011, the Director of the Federal Bureau of Inves-

1 tigation (in this section referred to as the “Direc-
2 tor”) shall ensure that the Integrated Automated
3 Fingerprint Identification System of the Federal Bu-
4 reau of Investigation has the capacity to store and
5 retrieve fingerprints from its database.

6 (2) NOTIFICATION OF CONVICTION OF DIRECT
7 PATIENT ACCESS EMPLOYEE.—In the case where a
8 direct patient access employee (as defined in sub-
9 paragraph (F)(iii) of sections 1819(b)(9) and
10 1919(b)(9) of the Social Security Act, as added by
11 section 4(a)) is convicted of a crime following the
12 initial national criminal history background check
13 conducted with respect to such employee under such
14 sections 1819(b)(9) and 1919(b)(9), and the employ-
15 ee’s fingerprint matches the prints on file with the
16 Federal Bureau of Investigation, the Bureau shall
17 inform the State law enforcement department, in
18 order for the State to inform the skilled nursing fa-
19 cility, nursing facility, or long-term care facility or
20 provider of such conviction in accordance with the
21 requirements of sections 1819(e)(6)(I) and
22 1919(e)(8)(I) of the Social Security Act, as added by
23 section 4(a).

24 (b) REASONABLE FEE FOR NATIONAL CRIMINAL
25 HISTORY BACKGROUND CHECKS CONDUCTED ON EM-

1 PLOYEES OF LONG-TERM CARE FACILITIES.—The Direc-
2 tor may charge a reasonable fee, in consultation with the
3 Secretary of Health and Human Services, for a national
4 criminal history background check using the Integrated
5 Automated Fingerprint Identification System of the Fed-
6 eral Bureau of Investigation that is conducted under sec-
7 tion 1819(b)(9), 1919(b)(9), 1898, or 1902(a)(71) of the
8 Social Security Act, as added by subsections (a)(1), (a)(2),
9 (b)(1), and (b)(2) of section 4, respectively, that rep-
10 resents the actual cost of conducting such national crimi-
11 nal history background check.

○