

Calendar No. 1035110TH CONGRESS
2^D SESSION**S. 1577****[Report No. 110-474]**

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 SENATE OF THE UNITED STATES

JUNE 7, 2007

Mr. KOHL (for himself, Mr. DOMENICI, Mrs. MCCASKILL, Ms. STABENOW, Mrs. LINCOLN, Mr. LEVIN, Mrs. CLINTON, Mr. BINGAMAN, Mr. WHITEHOUSE, Ms. COLLINS, Mr. CASEY, Mr. COLEMAN, Mr. COCHRAN, Mr. BAYH, Ms. KLOBUCHAR, Mr. OBAMA, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on Finance

SEPTEMBER 22 (legislative day, SEPTEMBER 17), 2008

Reported by Mr. BAUCUS, with an amendment and an amendment to the title

[Strike out all after the enacting clause and insert the part printed in *italic*]

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—

1 (A) criminal background checks are a valu-
2 able tool for employers during the hiring proe-
3 ess;

4 (B) the use of criminal background checks
5 during the hiring process does not limit the pool
6 of potential job applicants;

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

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

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

18 (5) In 2004, the staffs of State Adult Protec-
19 tive Services agencies received more than 500,000
20 reports of elder and vulnerable adult abuse, and an
21 ombudsman report concluded that more than 15,000
22 nursing home complaints involved abuse, including
23 nearly 4,000 complaints of physical abuse, more
24 than 800 complaints of sexual abuse, and nearly
25 1,000 complaints of financial exploitation;

1 (6) The Department of Health and Human
2 Services has determined that while 41 States now
3 require criminal background checks on certified
4 nurse aides prior to employment, only half of those
5 (22) require criminal background checks at the Fed-
6 eral level.

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

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

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

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

1 **SEC. 3. NATIONWIDE EXPANSION OF PILOT PROGRAM FOR**
 2 **NATIONAL AND STATE BACKGROUND**
 3 **CHECKS ON DIRECT PATIENT ACCESS EM-**
 4 **PLOYEES OF LONG-TERM CARE FACILITIES**
 5 **OR PROVIDERS.**

6 Section 307 of the Medicare Prescription Drug, Im-
 7 provement, and Modernization Act of 2003 (42 U.S.C.
 8 1395aa note) is amended by adding at the end the fol-
 9 lowing new subsection:

10 “(h) **NATIONWIDE EXPANSION PROGRAM.**—

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

20 “(A) **AGREEMENTS.**—

21 “(i) **NEWLY PARTICIPATING**
 22 **STATES.**—The Secretary shall enter into
 23 agreements with each State—

24 “(I) that the Secretary has not
 25 entered into an agreement with under
 26 subsection (e)(1);

1 “(II) that agrees to conduct
2 background checks under the nation-
3 wide expansion program on a State-
4 wide basis; and

5 “(III) that submits an applica-
6 tion to the Secretary containing such
7 information and at such time as the
8 Secretary may specify.

9 “(ii) CERTAIN PREVIOUSLY PARTICI-
10 PATING STATES.—The Secretary shall
11 enter into agreements with each State—

12 “(I) that the Secretary has en-
13 tered into an agreement with under
14 subsection (e)(1) in the case where
15 such agreement did not require the
16 State to conduct background checks
17 under the pilot program established
18 under subsection (a) on a Statewide
19 basis;

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 “(B) NONAPPLICATION OF SELECTION CRI-
4 TERIA.—The selection criteria required under
5 subsection (e)(3)(B) shall not apply.

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

17 “(D) PAYMENTS.—

18 “(i) NEWLY PARTICIPATING
19 STATES.—

20 “(I) IN GENERAL.—As part of
21 the application submitted by a State
22 under subparagraph (A)(i)(III), the
23 State shall guarantee, with respect to
24 the costs to be incurred by the State
25 in carrying out the nationwide expan-

1 sion program, that the State will
 2 make available (directly or through
 3 donations from public or private enti-
 4 ties) a particular amount of non-Fed-
 5 eral contributions.

6 “(H) FEDERAL MATCH.—The
 7 payment amount to each State that
 8 the Secretary enters into an agree-
 9 ment with under subparagraph (A)(i)
 10 shall be 3 times the amount that the
 11 State guarantees to make available
 12 under subclause (I), except that in no
 13 case may the payment amount exceed
 14 \$3,000,000.

15 “(ii) PREVIOUSLY PARTICIPATING
 16 STATES.—

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

1 ties) a particular amount of non-Fed-
2 eral contributions.

3 “(H) FEDERAL MATCH.—The
4 payment amount to each State that
5 the Secretary enters into an agree-
6 ment with under subparagraph (A)(ii)
7 shall be 3 times the amount that the
8 State guarantees to make available
9 under subclause (I), except that in no
10 case may the payment amount exceed
11 \$1,500,000.

12 “(iii) NO RESERVATION FOR EVALUA-
13 TION.—There shall be no reservation of
14 any portion of the payment amount pro-
15 vided under clauses (i) or (ii) for con-
16 ducting an evaluation.

17 “(E) EVALUATIONS AND REPORT.—

18 “(i) EVALUATIONS.—The Inspector
19 General of the Department of Health and
20 Human Services shall conduct an annual
21 evaluation of the nationwide expansion
22 program in each of calendar years 2008
23 and 2009.

24 “(ii) REPORTS.—Not later than 6
25 months after completion of the second year

1 of the nationwide expansion program; the
2 Inspector General of the Department of
3 Health and Human Services shall submit a
4 report to Congress containing the results
5 of the annual evaluations conducted under
6 clause (i); together with recommendations
7 for the implementation of the requirements
8 of sections 1819(b)(9) and 1919(b)(9) of
9 the Social Security Act, as added by sec-
10 tion (3)(a) of the Patient Safety and
11 Abuse Prevention Act of 2007.

12 ~~“(2) FUNDING.—~~

13 ~~“(A) NOTIFICATION.—The Secretary shall~~
14 ~~notify the Secretary of the Treasury of the~~
15 ~~amount necessary to carry out the nationwide~~
16 ~~expansion program under this subsection for~~
17 ~~the period of fiscal years 2008 through 2010,~~
18 ~~except that in no case shall such amount exceed~~
19 ~~\$156,000,000.~~

20 ~~“(B) TRANSFER OF FUNDS.—Out of any~~
21 ~~funds in the Treasury not otherwise appro-~~
22 ~~priated; the Secretary of the Treasury shall~~
23 ~~provide for the transfer to the Secretary of the~~
24 ~~amount specified as necessary to carry out the~~

1 nationwide expansion program under subpara-
 2 graph (A).”.

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

6 (a) SCREENING OF SKILLED NURSING FACILITY AND
 7 NURSING FACILITY EMPLOYEE APPLICANTS.—

8 (1) MEDICARE PROGRAM.—

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

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

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

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

24 “(I) State-based abuse and ne-
 25 glect registries and databases, includ-

1 ing the abuse and neglect registries
2 and databases of another State in the
3 ease where a prospective employee
4 previously resided in that State; and

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

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

24 “(iii) USE OF PROCEDURES PRE-
25 VIOUSLY ESTABLISHED.—Nothing in this

1 paragraph shall be construed as preventing
 2 a State from using procedures established
 3 for purposes of the pilot program for Na-
 4 tional and State background checks on di-
 5 rect patient access employees of long-term
 6 care facilities or providers under section
 7 307 of the Medicare Prescription Drug,
 8 Improvement, and Modernization Act of
 9 2003, or the nationwide expansion pro-
 10 gram under subsection (h) of such section,
 11 to satisfy the requirements of paragraph
 12 (6).

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

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

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

1 exceed 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 skilled nursing facility is required to
23 perform background checks with re-
24 spect to new employees, including a
25 fingerprint check as part of the na-

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

9 “(H) 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 eriminal 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 skilled nursing
13 facility to check any available reg-
14 istries that would be likely to contain
15 disqualifying 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 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 skilled nurs-
10 ing facility and the direct patient ac-
11 cess employee with a certificate indi-
12 cating that such fingerprint check has
13 been completed and no disqualifying
14 information was found. Such certifi-
15 cate 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 skilled nursing
21 facility located in the State dur-
22 ing such 2-year period, satisfy
23 the requirement that such facility
24 have a fingerprint check con-
25 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 “(H) 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 see-
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-

ceed 30 days) for a direct patient access employee—

“(I) pending completion of the screening and background check required under subparagraph (A); and

“(II) in the case where the employee has appealed the results of such screening and background check, pending completion of the appeals process.

“(iii) SUPERVISION.—The facility shall maintain direct on-site supervision of the employee during such provisional period of employment.

“(C) PROCEDURES.—

“(i) IN GENERAL.—The procedures established by the State under subparagraph (A) shall be designed to accomplish the following:

“(I) Give a prospective direct patient access employee notice that the nursing facility is required to perform background checks with respect to new employees, including a fingerprint check as part of the national criminal

1 history background check conducted
2 under subparagraph (A)(ii) in the
3 ease 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 “(H) 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 eriminal 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 “(ee) 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 subelause (H), 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)(H) 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 eility, 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 ~~EMPLOYEES 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.

12 **SECTION 1. SHORT TITLE.**

13 *This Act may be cited as the “Patient Safety and*
 14 *Abuse Prevention Act”.*

15 **SEC. 2. FINDINGS AND PURPOSES.**

16 *(a) FINDINGS.—Congress makes the following findings:*

17 *(1) Frail elders are a highly vulnerable popu-*
 18 *lation who often lack the ability to give consent or de-*
 19 *fend themselves. Since the best predictor of future be-*
 20 *havior is past behavior, individuals with histories of*
 21 *abuse pose a definite risk to patients and residents of*
 22 *long-term care facilities.*

23 *(2) Every month, there are stories in the media*
 24 *of health care employees who commit criminal mis-*
 25 *conduct on the job and are later found, through a*

1 *background check conducted after the fact, to have a*
2 *history of convictions for similar crimes.*

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

5 (A) *criminal background checks are a valu-*
6 *able tool for employers during the hiring process;*

7 (B) *the use of criminal background checks*
8 *during the hiring process does not limit the pool*
9 *of potential job applicants;*

10 (C) *a correlation exists between criminal*
11 *history and incidences of abuse; and*

12 (D) *the long-term care industry supports*
13 *the practice of conducting background checks on*
14 *potential employees in order to reduce the likeli-*
15 *hood of hiring someone who has the potential to*
16 *harm residents of long-term care facilities.*

17 (4) *In 2004, the staff of State Adult Protective*
18 *Services agencies received more than 500,000 reports*
19 *of elder and vulnerable adult abuse, and an ombuds-*
20 *man report concluded that more than 15,000 nursing*
21 *home complaints involved abuse, including nearly*
22 *4,000 complaints of physical abuse, more than 800*
23 *complaints of sexual abuse, and nearly 1,000 com-*
24 *plaints of financial exploitation.*

1 (5) *The Department of Health and Human Serv-*
2 *ices has determined that, while 41 States now require*
3 *criminal background checks on certified nurse aides*
4 *prior to employment, only half of those (22) require*
5 *criminal background checks at the Federal level.*

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

7 (1) *lay the foundation for a coordinated, nation-*
8 *wide system of State criminal background checks that*
9 *would greatly enhance the chances of identifying indi-*
10 *viduals with problematic backgrounds who move*
11 *across State lines;*

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

16 (3) *provide assurance to long-term care employ-*
17 *ers and the residents they care for that potentially*
18 *abusive workers will not be hired into positions of*
19 *providing services to the extremely vulnerable resi-*
20 *dents of long-term care facilities in the United States.*

1 **SEC. 3. NATIONWIDE PROGRAM FOR NATIONAL AND STATE**
 2 **BACKGROUND CHECKS ON DIRECT PATIENT**
 3 **ACCESS EMPLOYEES OF LONG-TERM CARE FA-**
 4 **CILITIES AND PROVIDERS.**

5 (a) *IN GENERAL.*—*The Secretary of Health and*
 6 *Human Services (in this section referred to as the “Sec-*
 7 *retary”), shall establish a program to identify efficient, ef-*
 8 *fective, and economical procedures for long term care facili-*
 9 *ties or providers to conduct background checks on prospec-*
 10 *tive direct patient access employees on a nationwide basis*
 11 *(in this subsection, such program shall be referred to as the*
 12 *“nationwide program”). Except for the following modifica-*
 13 *tions, the Secretary shall carry out the nationwide program*
 14 *under similar terms and conditions as the pilot program*
 15 *under section 307 of the Medicare Prescription Drug, Im-*
 16 *provement, and Modernization Act of 2003 (Public Law*
 17 *108–173; 117 Stat. 2257), including the prohibition on hir-*
 18 *ing abusive workers and the authorization of the imposition*
 19 *of penalties by a participating State under subsection*
 20 *(b)(3)(A) and (b)(6), respectively, of such section 307:*

21 (1) *AGREEMENTS.*—

22 (A) *NEWLY PARTICIPATING STATES.*—*The*
 23 *Secretary shall enter into agreements with each*
 24 *State—*

1 (i) that the Secretary has not entered
2 into an agreement with under subsection
3 (c)(1) of such section 307;

4 (ii) that agrees to conduct background
5 checks under the nationwide program on a
6 Statewide basis; and

7 (iii) that submits an application to the
8 Secretary containing such information and
9 at such time as the Secretary may specify.

10 (B) CERTAIN PREVIOUSLY PARTICIPATING
11 STATES.—The Secretary shall enter into agree-
12 ments with each State—

13 (i) that the Secretary has entered into
14 an agreement with under such subsection
15 (c)(1), but only in the case where such
16 agreement did not require the State to con-
17 duct background checks under the program
18 established under subsection (a) of such sec-
19 tion 307 on a Statewide basis;

20 (ii) that agrees to conduct background
21 checks under the nationwide program on a
22 Statewide basis; and

23 (iii) that submits an application to the
24 Secretary containing such information and
25 at such time as the Secretary may specify.

1 (2) *NONAPPLICATION OF SELECTION CRITERIA.—*
2 *The selection criteria required under subsection*
3 *(c)(3)(B) of such section 307 shall not apply.*

4 (3) *REQUIRED FINGERPRINT CHECK AS PART OF*
5 *CRIMINAL HISTORY BACKGROUND CHECK.—The proce-*
6 *dures established under subsection (b)(1) of such sec-*
7 *tion 307 shall—*

8 (A) *require that the long-term care facility*
9 *or provider (or the designated agent of the long-*
10 *term care facility or provider) obtain State and*
11 *national criminal history background checks on*
12 *the prospective employee through such means as*
13 *the Secretary determines appropriate that utilize*
14 *a search of State-based abuse and neglect reg-*
15 *istries and databases, including the abuse and*
16 *neglect registries of another State in the case*
17 *where a prospective employee previously resided*
18 *in that State, State criminal history records, the*
19 *records of any proceedings in the State that may*
20 *contain disqualifying information about prospec-*
21 *tive employees (such as proceedings conducted by*
22 *State professional licensing and disciplinary*
23 *boards and State Medicaid Fraud Control*
24 *Units), and Federal criminal history records, in-*
25 *cluding a fingerprint check using the Integrated*

1 *Automated Fingerprint Identification System of*
2 *the Federal Bureau of Investigation; and*

3 *(B) encourage States to test methods to re-*
4 *duce duplicative fingerprinting, including pro-*
5 *viding for the development of “rap back” capa-*
6 *bility by the State such that, if a direct patient*
7 *access employee of a long-term care facility or*
8 *provider is convicted of a crime following the*
9 *initial criminal history background check con-*
10 *ducted with respect to such employee, and the*
11 *employee’s fingerprints match the prints on file*
12 *with the State law enforcement department, the*
13 *department will immediately inform the State*
14 *and the State will immediately inform the long-*
15 *term care facility or provider of such conviction.*

16 (4) *STATE REQUIREMENTS.—An agreement en-*
17 *tered into under paragraph (1) shall require that a*
18 *participating State—*

19 (A) *be responsible for monitoring compli-*
20 *ance with the requirements of the nationwide*
21 *program;*

22 (B) *have procedures in place to—*

23 (i) *conduct screening and criminal his-*
24 *tory background checks under the nation-*

1 *wide program in accordance with the re-*
2 *quirements of this section;*

3 *(ii) monitor compliance by long-term*
4 *care facilities and providers with the proce-*
5 *dures and requirements of the nationwide*
6 *program;*

7 *(iii) as appropriate, provide for a pro-*
8 *visional period of employment by a long-*
9 *term care facility or provider of a direct*
10 *patient access employee, not to exceed 30*
11 *days, pending completion of the required*
12 *criminal history background check and, in*
13 *the case where the employee has appealed*
14 *the results of such background check, pend-*
15 *ing completion of the appeals process, dur-*
16 *ing which the employee shall be subject to*
17 *direct on-site supervision (in accordance*
18 *with procedures established by the State to*
19 *ensure that a long-term care facility or pro-*
20 *vider furnishes such direct on-site super-*
21 *vision);*

22 *(iv) provide an independent process by*
23 *which a provisional employee or an em-*
24 *ployee may appeal or dispute the accuracy*
25 *of the information obtained in a back-*

1 *ground check performed under the nation-*
2 *wide program, including the specification of*
3 *criteria for appeals for direct patient access*
4 *employees found to have disqualifying infor-*
5 *mation which shall include consideration of*
6 *the passage of time, extenuating cir-*
7 *cumstances, demonstration of rehabilitation,*
8 *and relevancy of the particular disquali-*
9 *fying information with respect to the cur-*
10 *rent employment of the individual;*

11 *(v) provide for the designation of a*
12 *single State agency as responsible for—*

13 *(I) overseeing the coordination of*
14 *any State and national criminal his-*
15 *tory background checks requested by a*
16 *long-term care facility or provider (or*
17 *the designated agent of the long-term*
18 *care facility or provider) utilizing a*
19 *search of State and Federal criminal*
20 *history records, including a fingerprint*
21 *check of such records;*

22 *(II) overseeing the design of ap-*
23 *propriate privacy and security safe-*
24 *guards for use in the review of the re-*
25 *sults of any State or national criminal*

1 *history background checks conducted*
2 *regarding a prospective direct patient*
3 *access employee to determine whether*
4 *the employee has any conviction for a*
5 *relevant crime;*

6 *(III) immediately reporting to the*
7 *long-term care facility or provider that*
8 *requested the criminal history back-*
9 *ground check the results of such review;*
10 *and*

11 *(IV) in the case of an employee*
12 *with a conviction for a relevant crime*
13 *that is subject to reporting under sec-*
14 *tion 1128E of the Social Security Act*
15 *(42 U.S.C. 1320a-7e), reporting the ex-*
16 *istence of such conviction to the data-*
17 *base established under that section;*

18 *(vi) determine which individuals are*
19 *direct patient access employees (as defined*
20 *in paragraph (6)(B)) for purposes of the*
21 *nationwide program;*

22 *(vii) as appropriate, specify offenses,*
23 *including convictions for violent crimes, for*
24 *purposes of the nationwide program; and*

1 (viii) provide for the development of
2 “rap back” capability such that, if a direct
3 patient access employee of a long-term care
4 facility or provider is convicted of a crime
5 following the initial criminal history back-
6 ground check conducted with respect to such
7 employee, and the employee’s fingerprints
8 match the prints on file with the State law
9 enforcement department—

10 (I) the department will imme-
11 diately inform the State agency des-
12 ignated under clause (v) and such
13 agency will immediately inform the fa-
14 cility or provider of such conviction;
15 and

16 (II) the State will provide, or will
17 require the facility to provide, to the
18 employee a copy of the results of the
19 criminal history background check con-
20 ducted with respect to the employee at
21 no charge in the case where the indi-
22 vidual requests such a copy.

23 (5) PAYMENTS.—

24 (A) NEWLY PARTICIPATING STATES.—

1 (i) *IN GENERAL.*—As part of the appli-
2 cation submitted by a State under para-
3 graph (1)(A)(iii), the State shall guarantee,
4 with respect to the costs to be incurred by
5 the State in carrying out the nationwide
6 program, that the State will make available
7 (directly or through donations from public
8 or private entities) a particular amount of
9 non-Federal contributions, as a condition of
10 receiving the Federal match under clause
11 (ii).

12 (ii) *FEDERAL MATCH.*—The payment
13 amount to each State that the Secretary en-
14 ters into an agreement with under para-
15 graph (1)(A) shall be 3 times the amount
16 that the State guarantees to make available
17 under clause (i), except that in no case may
18 the payment amount exceed \$3,000,000.

19 (B) *PREVIOUSLY PARTICIPATING STATES.*—

20 (i) *IN GENERAL.*—As part of the appli-
21 cation submitted by a State under para-
22 graph (1)(B)(iii), the State shall guarantee,
23 with respect to the costs to be incurred by
24 the State in carrying out the nationwide
25 program, that the State will make available

1 *(directly or through donations from public*
 2 *or private entities) a particular amount of*
 3 *non-Federal contributions, as a condition of*
 4 *receiving the Federal match under clause*
 5 *(ii).*

6 *(ii) FEDERAL MATCH.—The payment*
 7 *amount to each State that the Secretary en-*
 8 *ters into an agreement with under para-*
 9 *graph (1)(B) shall be 3 times the amount*
 10 *that the State guarantees to make available*
 11 *under clause (i), except that in no case may*
 12 *the payment amount exceed \$1,500,000.*

13 *(6) DEFINITIONS.—Under the nationwide pro-*
 14 *gram:*

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

20 *(i) A skilled nursing facility (as de-*
 21 *defined in section 1819(a) of the Social Secu-*
 22 *rity Act (42 U.S.C. 1395i–3(a)).*

23 *(ii) A nursing facility (as defined in*
 24 *section 1919(a) of such Act (42 U.S.C.*
 25 *1396r(a)).*

1 (iii) *A home health agency.*

2 (iv) *A provider of hospice care (as de-*
3 *defined in section 1861(dd)(1) of such Act (42*
4 *U.S.C. 1395x(dd)(1)).*

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

8 (vi) *A provider of personal care serv-*
9 *ices.*

10 (vii) *A provider of adult day care.*

11 (viii) *A residential care provider that*
12 *arranges for, or directly provides, long-term*
13 *care services, including an assisted living*
14 *facility that provides a level of care estab-*
15 *lished by the Secretary.*

16 (ix) *An intermediate care facility for*
17 *the mentally retarded (as defined in section*
18 *1905(d) of such Act (42 U.S.C. 1396d(d)).*

19 (x) *Any other facility or provider of*
20 *long-term care services under such titles as*
21 *the participating State determines appro-*
22 *priate.*

23 (B) *DIRECT PATIENT ACCESS EMPLOYEE.—*

24 *The term “direct patient access employee” means*
25 *any individual who has access to a patient or*

1 *resident of a long-term care facility or provider*
2 *through employment or through a contract with*
3 *such facility or provider and has duties that in-*
4 *volve (or may involve) one-on-one contact with a*
5 *patient or resident of the facility or provider, as*
6 *determined by the State for purposes of the na-*
7 *tionwide program. Such term does not include a*
8 *volunteer unless the volunteer has duties that are*
9 *equivalent to the duties of a direct patient access*
10 *employee and those duties involve (or may in-*
11 *volve) one-on-one contact with a patient or resi-*
12 *dent of the long-term care facility or provider.*

13 (7) *EVALUATION AND REPORT.*—

14 (A) *EVALUATION.*—*The Inspector General of*
15 *the Department of Health and Human Services*
16 *shall conduct an evaluation of the nationwide*
17 *program.*

18 (B) *REPORT.*—*Not later than 180 days*
19 *after the completion of the nationwide program,*
20 *the Inspector General of the Department of*
21 *Health and Human Services shall submit a re-*
22 *port to Congress containing the results of the*
23 *evaluation conducted under subparagraph (A).*

24 (b) *FUNDING.*—

1 (1) *NOTIFICATION.*—*The Secretary of Health and*
2 *Human Services shall notify the Secretary of the*
3 *Treasury of the amount necessary to carry out the na-*
4 *tionwide program under this section for the period of*
5 *fiscal years 2009 through 2011, except that in no case*
6 *shall such amount exceed \$160,000,000.*

7 (2) *TRANSFER OF FUNDS.*—*Out of any funds in*
8 *the Treasury not otherwise appropriated, the Sec-*
9 *retary of the Treasury shall provide for the transfer*
10 *to the Secretary of Health and Human Services of the*
11 *amount specified as necessary to carry out the na-*
12 *tionwide program under paragraph (1). Such amount*
13 *shall remain available until expended.*

14 **SEC. 4. MANDATORY STATE USE OF NATIONAL CORRECT**
15 **CODING INITIATIVE.**

16 (a) *IN GENERAL.*—*Section 1903(r) of the Social Secu-*
17 *urity Act (42 U.S.C. 1396b(r)) is amended—*

18 (1) *in paragraph (1)(B)—*

19 (A) *in clause (ii), by striking “and” at the*
20 *end;*

21 (B) *in clause (iii), by adding “and” after*
22 *the semi-colon; and*

23 (C) *by adding at the end the following new*
24 *clause:*

1 “(iv) effective for claims filed on or
2 after October 1, 2009, incorporate compat-
3 ible methodologies of the National Correct
4 Coding Initiative administered by the Sec-
5 retary (or any successor initiative to pro-
6 mote correct coding and to control improper
7 coding leading to inappropriate payment)
8 and such other methodologies of that Initia-
9 tive (or such other national correct coding
10 methodologies) as the Secretary identifies in
11 accordance with paragraph (3);”;

12 (2) by adding at the end the following new para-
13 graph:

14 “(3) Not later than September 1, 2009, the Secretary
15 shall do the following:

16 “(A) Identify those methodologies of the National
17 Correct Coding Initiative administered by the Sec-
18 retary (or any successor initiative to promote correct
19 coding and to control improper coding leading to in-
20 appropriate payment) which are compatible to claims
21 filed under this title.

22 “(B) Identify those methodologies of such Initia-
23 tive (or such other national correct coding methodolo-
24 gies) that should be incorporated into claims filed
25 under this title with respect to items or services for

1 *which States provide medical assistance under this*
2 *title and no national correct coding methodologies*
3 *have been established under such Initiative with re-*
4 *spect to title XVIII.*

5 “(C) Notify States of—

6 “(i) the methodologies identified under sub-
7 paragraphs (A) and (B) (and of any other na-
8 tional correct coding methodologies identified
9 under subparagraph (B)); and

10 “(ii) how States are to incorporate such
11 methodologies into claims filed under this title.

12 “(D) Submit a report to Congress that includes
13 *the notice to States under subparagraph (C) and an*
14 *analysis supporting the identification of the meth-*
15 *odologies made under subparagraphs (A) and (B).”.*

16 (b) *EXTENSION FOR STATE LAW AMENDMENT.*—*In the*
17 *case of a State plan under title XIX of the Social Security*
18 *Act (42 U.S.C. 1396 et seq.) which the Secretary of Health*
19 *and Human Services determines requires State legislation*
20 *in order for the plan to meet the additional requirements*
21 *imposed by the amendment made by subsection (a)(1)(C),*
22 *the State plan shall not be regarded as failing to comply*
23 *with the requirements of such title solely on the basis of*
24 *its failure to meet these additional requirements before the*
25 *first day of the first calendar quarter beginning after the*

1 *close of the first regular session of the State legislature that*
 2 *begins after the date of enactment of this Act. For purposes*
 3 *of the previous sentence, in the case of a State that has a*
 4 *2-year legislative session, each year of the session is consid-*
 5 *ered to be a separate regular session of the State legislature.*

6 **SEC. 5. FUNDING FOR THE MEDICARE IMPROVEMENT**

7 **FUND.**

8 *Section 1898(b)(1) of the Social Security Act, as added*
 9 *by section 7002(a) of the Supplemental Appropriations Act,*
 10 *2008 (Public Law 110–252) and amended by section*
 11 *188(a)(2) of the Medicare Improvements for Patients and*
 12 *Providers Act of 2008 (Public Law 110–275), is amended*
 13 *to read as follows:*

14 *“(1) IN GENERAL.—There shall be available to*
 15 *the Fund, for expenditures from the Fund for services*
 16 *furnished during—*

17 *“(A) fiscal year 2014, \$2,220,000,000; and*

18 *“(B) fiscal years 2014 through 2017,*

19 *\$20,200,000,000.”.*

Amend the title so as to read: “A bill 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.”.

Calendar No. 1035

110TH CONGRESS
2^D SESSION

S. 1577

[Report No. 110-474]

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.

SEPTEMBER 22 (legislative day, SEPTEMBER 17), 2008

Reported with an amendment and an amendment to the title