

110TH CONGRESS
1ST SESSION

S. 1577

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, and Mrs. CLINTON) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend titles XVIII and XIX of the Social Security Act to 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,*

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. FINDINGS AND PURPOSES.**

5 (a) FINDINGS.—Congress makes the following find-
6 ings:

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

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

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

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

23 (B) the use of criminal background checks
24 during the hiring process does not limit the pool
25 of potential job applicants;

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

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

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

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

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

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

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

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

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

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

21 Section 307 of the Medicare Prescription Drug, Im-
22 provement, and Modernization Act of 2003 (42 U.S.C.
23 1395aa note) is amended by adding at the end the fol-
24 lowing new subsection:

25 “(h) NATIONWIDE EXPANSION PROGRAM.—

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

10 “(A) AGREEMENTS.—

11 “(i) NEWLY PARTICIPATING
12 STATES.—The Secretary shall enter into
13 agreements with each State—

14 “(I) that the Secretary has not
15 entered into an agreement with under
16 subsection (c)(1);

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

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

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

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

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

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

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

23 “(C) REQUIRED FINGERPRINT CHECK AS
24 PART OF CRIMINAL HISTORY BACKGROUND
25 CHECK.—The procedures established under sub-

1 section (b)(1) shall require that the facility or
 2 provider obtain State and national criminal his-
 3 tory background checks on the prospective em-
 4 ployee utilizing a search of State and Federal
 5 criminal history records and including a finger-
 6 print check using the Integrated Automated
 7 Fingerprint Identification System of the Fed-
 8 eral Bureau of Investigation.

9 “(D) PAYMENTS.—

10 “(i) NEWLY PARTICIPATING
 11 STATES.—

12 “(I) IN GENERAL.—As part of
 13 the application submitted by a State
 14 under subparagraph (A)(i)(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)(i)
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 \$3,000,000.

7 “(ii) PREVIOUSLY PARTICIPATING
8 STATES.—

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

20 “(II) FEDERAL MATCH.—The
21 payment amount to each State that
22 the Secretary enters into an agree-
23 ment with under subparagraph (A)(ii)
24 shall be 3 times the amount that the
25 State guarantees to make available

1 under subclause (I), except that in no
2 case may the payment amount exceed
3 \$1,500,000.

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

9 “(E) EVALUATIONS AND REPORT.—

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

16 “(ii) REPORTS.—Not later than 6
17 months after completion of the second year
18 of the nationwide expansion program, the
19 Inspector General of the Department of
20 Health and Human Services shall submit a
21 report to Congress containing the results
22 of the annual evaluations conducted under
23 clause (i), together with recommendations
24 for the implementation of the requirements
25 of sections 1819(b)(9) and 1919(b)(9) of

1 the Social Security Act, as added by sec-
 2 tion (3)(a) of the Patient Safety and
 3 Abuse Prevention Act of 2007.

4 “(2) FUNDING.—

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

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

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

22 (a) SCREENING OF SKILLED NURSING FACILITY AND
 23 NURSING FACILITY EMPLOYEE APPLICANTS.—

24 (1) MEDICARE PROGRAM.—

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

5 “(9) SCREENING OF DIRECT PATIENT ACCESS
6 EMPLOYEES.—

7 “(A) SCREENING AND CRIMINAL HISTORY
8 BACKGROUND CHECKS ON APPLICANTS.—

9 “(i) SCREENING.—Beginning on Jan-
10 uary 1, 2011, before hiring a direct patient
11 access employee, a skilled nursing facility
12 shall screen the employee for any disquali-
13 fying information in accordance with such
14 procedures as the State shall establish
15 through a search of—

16 “(I) State-based abuse and ne-
17 glect registries and databases, includ-
18 ing the abuse and neglect registries
19 and databases of another State in the
20 case where a prospective employee
21 previously resided in that State; and

22 “(II) criminal records and the
23 records of any proceedings that may
24 contain disqualifying information
25 about applicants, such as proceedings

1 conducted by State professional licens-
2 ing and disciplinary boards and State
3 medicaid fraud control units.

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

16 “(iii) USE OF PROCEDURES PRE-
17 VIOUSLY ESTABLISHED.—Nothing in this
18 paragraph shall be construed as preventing
19 a State from using procedures established
20 for purposes of the pilot program for Na-
21 tional and State background checks on di-
22 rect patient access employees of long-term
23 care facilities or providers under section
24 307 of the Medicare Prescription Drug,
25 Improvement, and Modernization Act of

1 2003, or the nationwide expansion pro-
2 gram under subsection (h) of such section,
3 to satisfy the requirements of paragraph
4 (6).

5 “(B) PROHIBITION ON HIRING OF ABUSIVE
6 WORKERS.—

7 “(i) IN GENERAL.—Subject to clause
8 (ii), a skilled nursing facility may not
9 knowingly employ any direct patient access
10 employee who has any disqualifying infor-
11 mation (as defined in subparagraph
12 (F)(ii)).

13 “(ii) PROVISIONAL EMPLOYMENT.—
14 Subject to clause (iii), the State may per-
15 mit a skilled nursing facility to provide for
16 a provisional period of employment (not to
17 exceed 30 days) for a direct patient access
18 employee—

19 “(I) pending completion of the
20 screening and background check re-
21 quired under subparagraph (A); and

22 “(II) in the case where the em-
23 ployee has appealed the results of
24 such screening and background check,

1 pending completion of the appeals
2 process.

3 “(iii) SUPERVISION.—The facility
4 shall maintain direct on-site supervision of
5 the employee during such provisional pe-
6 riod of employment.

7 “(C) PROCEDURES.—

8 “(i) IN GENERAL.—The procedures
9 established by the State under subpara-
10 graph (A) shall be designed to accomplish
11 the following:

12 “(I) Give a prospective direct pa-
13 tient access employee notice that the
14 skilled nursing facility is required to
15 perform background checks with re-
16 spect to new employees, including a
17 fingerprint check as part of the na-
18 tional criminal history background
19 check conducted under subparagraph
20 (A)(ii) in the case of any new em-
21 ployee who does not have a certificate
22 indicating that a fingerprint check has
23 been completed and has not found any
24 disqualifying information (as de-
25 scribed in subclause (V)).

1 “(II) Require, as a condition of
2 employment, that the employee—

3 “(aa) provide a written
4 statement disclosing any disquali-
5 fying information;

6 “(bb) provide a statement
7 signed by the employee author-
8 izing the facility to request a
9 background check that includes a
10 search of the registries and data-
11 bases described in clause (i)(I) of
12 subparagraph (A) and the
13 records described in clause (i)(II)
14 of such subparagraph and a
15 criminal history background
16 check conducted in accordance
17 with clause (ii) of such subpara-
18 graph that includes a fingerprint
19 check using the Integrated Auto-
20 mated Fingerprint System of the
21 Federal Bureau of Investigation;

22 “(cc) provide the facility
23 with a rolled set of the employ-
24 ee’s fingerprints or submit to
25 being fingerprinted; and

1 “(dd) provide any other
2 identification information the
3 State may require.

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

13 “(IV) Provide a prospective di-
14 rect patient access employee the op-
15 portunity to request a copy of the re-
16 sults of the background check con-
17 ducted with respect to such employee
18 and to correct any errors by providing
19 appropriate documentation to the
20 State and the facility.

21 “(V) Upon completion of a fin-
22 gerprint check as part of the national
23 criminal history background check
24 conducted with respect to a direct pa-
25 tient access employee under subpara-

1 graph (A)(ii), provide the skilled nurs-
2 ing facility and the direct patient ac-
3 cess employee with a certificate indi-
4 cating that such fingerprint check has
5 been completed and no disqualifying
6 information was found. Such certifi-
7 cate shall—

8 “(aa) be valid for 2 years;

9 and

10 “(bb) in the case where such
11 direct patient access employee is
12 hired by any other skilled nursing
13 facility located in the State dur-
14 ing such 2-year period, satisfy
15 the requirement that such facility
16 have a fingerprint check con-
17 ducted as part of such national
18 criminal history background
19 check.

20 “(ii) ELIMINATION OF UNNECESSARY
21 CHECKS.—The procedures established by
22 the State under subparagraph (A) shall
23 permit a skilled nursing facility to termi-
24 nate the background check at any stage at
25 which the facility obtains disqualifying in-

1 formation regarding a prospective direct
2 patient access employee.

3 “(iii) DEVELOPMENT OF MODEL FORM
4 OF CERTIFICATE.—The Secretary shall de-
5 velop a model form of the certificate de-
6 scribed in clause (i)(V) that States may
7 use to satisfy the requirements of such
8 clause.

9 “(D) USE OF INFORMATION; IMMUNITY
10 FROM LIABILITY.—

11 “(i) USE OF INFORMATION.—A skilled
12 nursing facility that obtains information
13 about a direct patient access employee pur-
14 suant to screening or a criminal history
15 background check shall use such informa-
16 tion only for the purpose of determining
17 the suitability of the employee for employ-
18 ment.

19 “(ii) IMMUNITY FROM LIABILITY.—A
20 skilled nursing facility that, in denying em-
21 ployment for an applicant, reasonably and
22 in good faith relies upon credible informa-
23 tion about such applicant provided by a
24 criminal history background check shall
25 not be liable in any action brought by such

1 applicant based on the employment deter-
2 mination resulting from the information.

3 “(iii) PROHIBITION ON CHARGING EM-
4 PLOYEES FEES FOR CONDUCTING BACK-
5 GROUND CHECKS.—A skilled nursing facil-
6 ity shall not charge a prospective direct pa-
7 tient access employee a fee for the screen-
8 ing or criminal history background check
9 conducted under this paragraph.

10 “(E) PENALTIES.—

11 “(i) IN GENERAL.—

12 “(I) STATE PENALTIES.—Subject
13 to subclause (II), a skilled nursing fa-
14 cility that violates the provisions of
15 this paragraph shall be subject to
16 such penalties as the State determines
17 appropriate to enforce the require-
18 ments of this paragraph. A skilled
19 nursing facility shall report to the
20 Secretary on a quarterly basis any
21 penalties imposed by the State under
22 the preceding sentence.

23 “(II) EXCLUSION FROM PARTICI-
24 PATION.—In any case where the Sec-
25 retary determines that a State is not

1 sufficiently enforcing the requirements
2 of this paragraph, the Secretary may
3 exclude a skilled nursing facility lo-
4 cated within the State that violates
5 the provisions of this paragraph from
6 participating in the programs under
7 this title and title XIX (in accordance
8 with the procedures of section 1128).

9 “(ii) KNOWING RETENTION OF WORK-
10 ER.—In addition to any penalty under
11 clause (i), a skilled nursing facility that
12 knowingly continues to employ a direct pa-
13 tient access employee in violation of sub-
14 paragraph (A) or (B) shall be subject to a
15 civil penalty in an amount not to exceed
16 \$5,000 for the first such violation, and
17 \$10,000 for the second and each subse-
18 quent violation within any 5-year period.

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

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

24 “(I) any offense described in sec-
25 tion 1128(a); and

1 “(II) such other types of of-
2 fenses, including violent crimes, as the
3 State may specify.

4 “(ii) DISQUALIFYING INFORMATION.—
5 The term ‘disqualifying information’ means
6 information about a conviction for a rel-
7 evant crime or a finding of substantiated
8 patient or resident abuse.

9 “(iii) DIRECT PATIENT ACCESS EM-
10 PLOYEE.—The term ‘direct patient access
11 employee’ means any individual who has
12 access to a patient or resident of a skilled
13 nursing facility through employment or
14 through a contract with such facility and
15 has duties that involve (or may involve)
16 one-on-one contact with a patient or resi-
17 dent of the facility, as determined by the
18 State for purposes of this paragraph. Such
19 term does not include a volunteer unless
20 the volunteer has duties that are equiva-
21 lent to the duties of a direct patient access
22 employee and those duties involve (or may
23 involve) one-on-one contact with a patient
24 or resident of the facility.”.

1 (B) CONFORMING AMENDMENT.—Section
2 1819(e) of the Social Security Act (42 U.S.C.
3 1395i–3(e)) is amended by adding at the end
4 the following new paragraph:

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

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

13 “(B) be responsible for monitoring compli-
14 ance with the procedures and requirements of
15 such subsection;

16 “(C) as appropriate, provide for a provi-
17 sional period of employment of a direct patient
18 access employee under clause (ii) of subpara-
19 graph (B) of such subsection, including proce-
20 dures to ensure that a skilled nursing facility
21 provides direct on-site supervision of the em-
22 ployee in accordance with clause (iii) of such
23 subparagraph;

24 “(D) provide an independent process by
25 which a provisional employee or an employee

1 may appeal or dispute the accuracy of the infor-
2 mation obtained in a background check per-
3 formed under such subsection; and

4 “(E) designate a single State agency as re-
5 sponsible for—

6 “(i) overseeing the coordination of any
7 State and national criminal history back-
8 ground checks requested by a skilled nurs-
9 ing facility utilizing a search of State and
10 Federal criminal history records, including
11 a fingerprint check of such records;

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

19 “(iii) immediately reporting to the
20 skilled nursing facility that requested the
21 criminal history background checks the re-
22 sults of such review; and

23 “(iv) in the case of an employee with
24 a conviction for a relevant crime that is
25 subject to reporting under section 1128E

1 of the Social Security Act (42 U.S.C.
2 1320a–7e), reporting the existence of such
3 conviction to the database established
4 under that section;

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

8 “(G) have a system in place for deter-
9 mining which individuals are direct patient ac-
10 cess employees for purposes of subparagraph
11 (F)(iii) of such subsection;

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

15 “(I) develop ‘rap back’ capability such
16 that, if a direct patient access employee of a
17 skilled nursing facility is convicted of a crime
18 following the initial criminal history background
19 check conducted with respect to such employee,
20 and the employee’s fingerprints match the
21 prints on file with the State law enforcement
22 department, the department will immediately
23 inform the State agency designated under sub-
24 paragraph (E).”.

25 (2) MEDICAID PROGRAM.—

1 (A) IN GENERAL.—Section 1919(b) of the
2 Social Security Act (42 U.S.C. 1396r(b)) is
3 amended by adding at the end the following
4 new paragraph:

5 “(9) SCREENING OF DIRECT PATIENT ACCESS
6 EMPLOYEES.—

7 “(A) SCREENING AND CRIMINAL HISTORY
8 BACKGROUND CHECKS ON APPLICANTS.—

9 “(i) SCREENING.—Beginning on Jan-
10 uary 1, 2011, before hiring a direct patient
11 access employee, a nursing facility shall
12 screen the employee for any disqualifying
13 information in accordance with such proce-
14 dures as the State shall establish through
15 a search of—

16 “(I) State-based abuse and ne-
17 glect registries and databases, includ-
18 ing the abuse and neglect registries
19 and databases of another State in the
20 case where a prospective employee
21 previously resided in that State; and

22 “(II) criminal records and the
23 records of any proceedings that may
24 contain disqualifying information
25 about applicants, such as proceedings

1 conducted by State professional licens-
2 ing and disciplinary boards and State
3 medicaid fraud control units.

4 “(ii) CRIMINAL HISTORY BACK-
5 GROUND CHECKS.—As part of such screen-
6 ing, the nursing facility shall request that
7 the State agency designated under sub-
8 section (e)(6)(E) oversee the coordination
9 of a State and national criminal history
10 background check that utilizes a search of
11 State and Federal criminal history records
12 and includes a fingerprint check using the
13 Integrated Automated Fingerprint Identifi-
14 cation System of the Federal Bureau of
15 Investigation.

16 “(iii) USE OF PROCEDURES PRE-
17 VIOUSLY ESTABLISHED.—Nothing in this
18 paragraph shall be construed as preventing
19 a State from using procedures established
20 for purposes of the pilot program for Na-
21 tional and State background checks on di-
22 rect patient access employees of long-term
23 care facilities or providers under section
24 307 of the Medicare Prescription Drug,
25 Improvement, and Modernization Act of

1 2003, or the nationwide expansion pro-
2 gram under subsection (h) of such section,
3 to satisfy the requirements of paragraph
4 (6).

5 “(B) PROHIBITION ON HIRING OF ABUSIVE
6 WORKERS.—

7 “(i) IN GENERAL.—Subject to clause
8 (ii), a nursing facility may not knowingly
9 employ any direct patient access employee
10 who has any disqualifying information (as
11 defined in subparagraph (F)(ii)).

12 “(ii) PROVISIONAL EMPLOYMENT.—
13 Subject to clause (iii), the State may per-
14 mit a nursing facility to provide for a pro-
15 visional period of employment (not to ex-
16 ceed 30 days) for a direct patient access
17 employee—

18 “(I) pending completion of the
19 screening and background check re-
20 quired under subparagraph (A); and

21 “(II) in the case where the em-
22 ployee has appealed the results of
23 such screening and background check,
24 pending completion of the appeals
25 process.

1 “(iii) SUPERVISION.—The facility
2 shall maintain direct on-site supervision of
3 the employee during such provisional pe-
4 riod of employment.

5 “(C) PROCEDURES.—

6 “(i) IN GENERAL.—The procedures
7 established by the State under subpara-
8 graph (A) shall be designed to accomplish
9 the following:

10 “(I) Give a prospective direct pa-
11 tient access employee notice that the
12 nursing facility is required to perform
13 background checks with respect to
14 new employees, including a fingerprint
15 check as part of the national criminal
16 history background check conducted
17 under subparagraph (A)(ii) in the
18 case of any new employee who does
19 not have a certificate indicating that a
20 fingerprint check has been completed
21 and has not found any disqualifying
22 information (as described in subclause
23 (V)).

24 “(II) Require, as a condition of
25 employment, that the employee—

1 “(aa) provide a written
2 statement disclosing any disquali-
3 fying information;

4 “(bb) provide a statement
5 signed by the employee author-
6 izing the facility to request a
7 background check that includes a
8 search of the registries and data-
9 bases described in clause (i)(I) of
10 subparagraph (A) and the
11 records described in clause (i)(II)
12 of such subparagraph and a
13 criminal history background
14 check conducted in accordance
15 with clause (ii) of such subpara-
16 graph that includes a fingerprint
17 check using the Integrated Auto-
18 mated Fingerprint System of the
19 Federal Bureau of Investigation;

20 “(cc) provide the facility
21 with a rolled set of the employ-
22 ee’s fingerprints or submit to
23 being fingerprinted; and

1 “(dd) provide any other
2 identification information the
3 State may require.

4 “(III) Require the nursing facil-
5 ity to check any available registries
6 that would be likely to contain dis-
7 qualifying information about a pro-
8 spective employee, including the reg-
9 istries and databases described in sub-
10 clause (I) of subparagraph (A)(i) and
11 the records described in clause (II) of
12 such subparagraph.

13 “(IV) Provide a prospective di-
14 rect patient access employee the op-
15 portunity to request a copy of the re-
16 sults of the background check con-
17 ducted with respect to such employee
18 and to correct any errors by providing
19 appropriate documentation to the
20 State and the nursing facility.

21 “(V) Upon completion of a fin-
22 gerprint check as part of the national
23 criminal history background check
24 conducted with respect to a direct pa-
25 tient access employee under subpara-

1 graph (A)(ii), provide the nursing fa-
2 cility and the direct patient access em-
3 ployee with a certificate indicating
4 that such fingerprint check has been
5 completed and no disqualifying infor-
6 mation was found. Such certificate
7 shall—

8 “(aa) be valid for 2 years;

9 and

10 “(bb) in the case where such
11 direct patient access employee is
12 hired by any other nursing facil-
13 ity located in the State during
14 such 2-year period, satisfy the re-
15 quirement that such facility have
16 a fingerprint check conducted as
17 part of such national criminal
18 history background check.

19 “(ii) ELIMINATION OF UNNECESSARY
20 CHECKS.—The procedures established by
21 the State under subparagraph (A) shall
22 permit a nursing facility to terminate the
23 background check at any stage at which
24 the facility obtains disqualifying informa-

1 tion regarding a prospective direct patient
2 access employee.

3 “(iii) DEVELOPMENT OF MODEL FORM
4 OF CERTIFICATE.—The Secretary shall de-
5 velop a model form of the certificate de-
6 scribed in clause (i)(V) that States may
7 use to satisfy the requirements of such
8 clause.

9 “(D) USE OF INFORMATION; IMMUNITY
10 FROM LIABILITY.—

11 “(i) USE OF INFORMATION.—A nurs-
12 ing facility that obtains information about
13 a direct patient access employee pursuant
14 to screening or a criminal history back-
15 ground check shall use such information
16 only for the purpose of determining the
17 suitability of the employee for employment.

18 “(ii) IMMUNITY FROM LIABILITY.—A
19 nursing facility that, in denying employ-
20 ment for an applicant, reasonably and in
21 good faith relies upon credible information
22 about such applicant provided by a crimi-
23 nal history background check shall not be
24 liable in any action brought by such appli-

1 cant based on the employment determina-
2 tion resulting from the information.

3 “(iii) PROHIBITION ON CHARGING EM-
4 PLOYEES FEES FOR CONDUCTING BACK-
5 GROUND CHECKS.—A nursing facility shall
6 not charge a prospective direct patient ac-
7 cess employee a fee for the screening or
8 criminal history background check con-
9 ducted under this paragraph.

10 “(E) PENALTIES.—

11 “(i) IN GENERAL.—

12 “(I) STATE PENALTIES.—Subject
13 to subclause (II), a nursing facility
14 that violates the provisions of this
15 paragraph shall be subject to such
16 penalties as the State determines ap-
17 propriate to enforce the requirements
18 of this paragraph. A nursing facility
19 shall report to the Secretary on a
20 quarterly basis any penalties imposed
21 by the State under the preceding sen-
22 tence.

23 “(II) EXCLUSION FROM PARTICI-
24 PATION.—In any case where the Sec-
25 retary determines that a State is not

1 sufficiently enforcing the requirements
2 of this paragraph, the Secretary may
3 exclude a nursing facility located with-
4 in the State that violates the provi-
5 sions of this paragraph from partici-
6 pating in the programs under this
7 title and title XVIII (in accordance
8 with the procedures of section 1128).

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

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

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

24 “(I) any offense described in sec-
25 tion 1128(a); and

1 “(II) such other types of of-
2 fenses, including violent crimes, as the
3 State may specify.

4 “(ii) DISQUALIFYING INFORMATION.—
5 The term ‘disqualifying information’ means
6 information about a conviction for a rel-
7 evant crime or a finding of substantiated
8 patient or resident abuse.

9 “(iii) DIRECT PATIENT ACCESS EM-
10 PLOYEE.—The term ‘direct patient access
11 employee’ means any individual who has
12 access to a patient or resident of a nursing
13 facility through employment or through a
14 contract with such facility and has duties
15 that involve (or may involve) one-on-one
16 contact with a patient or resident of the
17 facility, as determined by the State for
18 purposes of this paragraph. Such term
19 does not include a volunteer unless the vol-
20 unteer has duties that are equivalent to the
21 duties of a direct patient access employee
22 and those duties involve (or may involve)
23 one-on-one contact with a patient or resi-
24 dent of the facility.”.

1 (B) CONFORMING AMENDMENT.—Section
2 1919(e) of the Social Security Act (42 U.S.C.
3 1396r(e)) is amended by adding at the end the
4 following new paragraph:

5 “(8) SCREENING OF DIRECT PATIENT ACCESS
6 EMPLOYEES.—Beginning on January 1, 2011, the
7 State must—

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

13 “(B) be responsible for monitoring compli-
14 ance with the procedures and requirements of
15 such subsection;

16 “(C) as appropriate, provide for a provi-
17 sional period of employment of a direct patient
18 access employee under clause (ii) of subpara-
19 graph (B) of such subsection, including proce-
20 dures to ensure that a nursing facility provides
21 direct on-site supervision of the employee in ac-
22 cordance with clause (iii) of such subparagraph;

23 “(D) provide an independent process by
24 which a provisional employee or an employee
25 may appeal or dispute the accuracy of the infor-

1 mation obtained in a background check per-
2 formed under such subsection; and

3 “(E) designate a single State agency as re-
4 sponsible for—

5 “(i) overseeing the coordination of any
6 State and national criminal history back-
7 ground checks requested by a nursing fa-
8 cility utilizing a search of State and Fed-
9 eral criminal history records, including a
10 fingerprint check of such records;

11 “(ii) reviewing, using appropriate pri-
12 vacy and security safeguards, the results of
13 any State or national criminal history
14 background checks conducted regarding a
15 prospective direct patient access employee
16 to determine whether the employee has any
17 conviction for a relevant crime;

18 “(iii) immediately reporting to the
19 nursing facility that requested the criminal
20 history background checks the results of
21 such review; and

22 “(iv) in the case of an employee with
23 a conviction for a relevant crime that is
24 subject to reporting under section 1128E
25 of the Social Security Act (42 U.S.C.

1 1320a–7e), reporting the existence of such
2 conviction to the database established
3 under that section;

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

7 “(G) have a system in place for deter-
8 mining which individuals are direct patient ac-
9 cess employees for purposes of subparagraph
10 (F)(iii) of such subsection;

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

14 “(I) develop ‘rap back’ capability such
15 that, if a direct patient access employee of a
16 nursing facility is convicted of a crime following
17 the initial criminal history background check
18 conducted with respect to such employee, and
19 the employee’s fingerprints match the prints on
20 file with the State law enforcement department,
21 the department will immediately inform the
22 State agency designated under subparagraph
23 (E).”.

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

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

4 “APPLICATION OF SKILLED NURSING FACILITY PREVEN-
5 TIVE ABUSE PROVISIONS TO LONG-TERM CARE FA-
6 CILITIES AND PROVIDERS

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

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

15 “(1) A home health agency.

16 “(2) A provider of hospice care.

17 “(3) A long-term care hospital.

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

19 “(5) A provider of adult day care.

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

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

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

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

5 (B) in paragraph (70)(B)(iv), by striking
6 the period at the end and inserting “; and”;
7 and

8 (C) by inserting after paragraph
9 (70)(B)(iv) the following:

10 “(71) provide that the provisions of section
11 1919(b)(9) apply to a long-term care facility or pro-
12 vider (as defined in section 1898(b)) in the same
13 manner as such provisions apply to a nursing facil-
14 ity.”.

15 (3) EFFECTIVE DATE.—The amendments made
16 by this subsection shall take effect on January 1,
17 2011.

18 (c) PAYMENTS.—

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

21 (A) IN GENERAL.—The Secretary of
22 Health and Human Services shall establish pro-
23 cedures to reimburse the costs of conducting
24 national criminal history background checks
25 under sections 1819(b)(9), 1919(b)(9), 1898,

1 and 1902(a)(71) of the Social Security Act, as
2 added by subsections (a)(1), (a)(2), (b)(1), and
3 (b)(2), respectively, through the following mech-
4 anisms, in such proportion as the Secretary de-
5 termines appropriate:

6 (i) By providing payments to skilled
7 nursing facilities and long-term care facili-
8 ties or providers for costs incurred as are
9 attributable to the conduct of such na-
10 tional criminal history background checks
11 under such section 1819(b)(9).

12 (ii) By making a payment, from sums
13 appropriated therefore, under section
14 1903(a) of the Social Security Act (42
15 U.S.C. 1396b(a)) to each State which has
16 a plan approved under title XIX of the So-
17 cial Security Act (42 U.S.C. 1396 et seq.),
18 for each quarter, beginning with the quar-
19 ter commencing on January 1, 2011, in an
20 amount equal to 90 percent of the sums
21 expended with respect to costs incurred
22 during such quarter as are attributable to
23 the conduct of such national criminal his-
24 tory background checks under such section
25 1919(b)(9).

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

14 (C) DETERMINATION OF APPROPRIATE
15 PROPORTION.—In establishing the procedures
16 under subparagraph (A), the Secretary of
17 Health and Human Services shall determine
18 what proportion of payments using the mecha-
19 nisms described in such subparagraph would re-
20 sult in an equitable allocation of the costs of
21 such reimbursement between the Medicare pro-
22 gram under title XVIII of the Social Security
23 Act and the Medicaid program under title XIX
24 of such Act.

1 (2) ENSURING NO DUPLICATIVE PAYMENTS.—

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

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

16 (A) IN GENERAL.—The procedures estab-
17 lished under paragraph (1)(A) shall provide a
18 process, such as through submission of a bill,
19 by which a skilled nursing facility, a nursing fa-
20 cility, and a long-term care facility or provider
21 may submit information regarding the costs in-
22 curred by such facility in conducting national
23 criminal history background checks under sec-
24 tions 1819(b)(9), 1919(b)(9), 1898, and
25 1902(a)(71) of the Social Security Act, as

1 added by subsections (a)(1), (a)(2), (b)(1), and
2 (b)(2), respectively.

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

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

15 **SEC. 5. BACKGROUND CHECKS PROVIDED BY THE FED-**
16 **ERAL BUREAU OF INVESTIGATION.**

17 (a) DEVELOPMENT OF RAP BACK CAPABILITIES.—

18 (1) IN GENERAL.—Not later than January 1,
19 2011, the Director of the Federal Bureau of Inves-
20 tigation (in this section referred to as the “Direc-
21 tor”) shall ensure that the Integrated Automated
22 Fingerprint Identification System of the Federal Bu-
23 reau of Investigation has the capacity to store and
24 retrieve fingerprints from its database.

1 (2) NOTIFICATION OF CONVICTION OF DIRECT
2 PATIENT ACCESS EMPLOYEE.—In the case where a
3 direct patient access employee (as defined in sub-
4 paragraph (F)(iii) of sections 1819(b)(9) and
5 1919(b)(9) of the Social Security Act, as added by
6 section 4(a)) is convicted of a crime following the
7 initial national criminal history background check
8 conducted with respect to such employee under such
9 sections 1819(b)(9) and 1919(b)(9), and the employ-
10 ee’s fingerprint matches the prints on file with the
11 Federal Bureau of Investigation, the Bureau shall
12 inform the State law enforcement department, in
13 order for the State to inform the skilled nursing fa-
14 cility, nursing facility, or long-term care facility or
15 provider of such conviction in accordance with the
16 requirements of sections 1819(e)(6)(I) and
17 1919(e)(8)(I) of the Social Security Act, as added by
18 section 4(a).

19 (b) REASONABLE FEE FOR NATIONAL CRIMINAL
20 HISTORY BACKGROUND CHECKS CONDUCTED ON EM-
21 PLOYEES OF LONG-TERM CARE FACILITIES.—The Direc-
22 tor may charge a reasonable fee, in consultation with the
23 Secretary of Health and Human Services, for a national
24 criminal history background check using the Integrated
25 Automated Fingerprint Identification System of the Fed-

1 eral Bureau of Investigation that is conducted under sec-
2 tion 1819(b)(9), 1919(b)(9), 1898, or 1902(a)(71) of the
3 Social Security Act, as added by subsections (a)(1), (a)(2),
4 (b)(1), and (b)(2) of section 4, respectively, that rep-
5 resents the actual cost of conducting such national crimi-
6 nal history background check.

○