

105TH CONGRESS
1ST SESSION

H. R. 2953

To require criminal and abusive work history background checks for nurse and home health aides in nursing facilities, home health agencies, and hospice programs under the Medicare and Medicaid programs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 8, 1997

Mr. KENNEDY of Massachusetts (for himself, Mr. REGULA, Mr. MARTINEZ, Mrs. MORELLA, Mrs. MALONEY of New York, Mr. BARRETT of Wisconsin, Mr. WEYGAND, and Mr. LIPINSKI) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To require criminal and abusive work history background checks for nurse and home health aides in nursing facilities, home health agencies, and hospice programs under the Medicare and Medicaid programs, and for other purposes.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Elder Care Safety Act of 1997”.

1 (b) TABLE OF CONTENTS.—The table of contents of
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
 Sec. 2. Requiring background checks for nurse and home health aides in nursing facilities, home health agencies, and hospice programs.
 Sec. 3. Expanded role of State nursing registries; national registry coordination system; procedures for background checks.
 Sec. 4. Prevention and training demonstration project.
 Sec. 5. Recommendations on personnel-to-patient levels.
 Sec. 6. Definitions.

3 **SEC. 2. REQUIRING BACKGROUND CHECKS FOR NURSE**
 4 **AND HOME HEALTH AIDES IN NURSING FA-**
 5 **CILITIES, HOME HEALTH AGENCIES, AND**
 6 **HOSPICE PROGRAMS.**

7 (a) REQUIREMENTS.—

8 (1) IN GENERAL.—A covered facility in a
 9 State—

10 (A) may not employ (directly or through
 11 an agency) any individual as a nurse or home
 12 health aide unless the facility has requested
 13 from the State nurse and home health aide reg-
 14 istry a background check;

15 (B) may not employ such an individual or
 16 continue such employment if the report on such
 17 background check reveals that the individual
 18 has been convicted of a disqualifying crime; and

19 (C) shall report to such registry docu-
 20 mented findings of patient abuse by a nurse or
 21 home health aide.

1 (2) EMPLOYMENT PENDING REPORT.—Nothing
2 in this subsection shall be construed as preventing a
3 covered facility from—

4 (A) seeking a background check on pro-
5 spective nurse or home health aides before they
6 are employed, or

7 (B) employing nurse or home health aides
8 during the period in which a background check
9 has been sought under paragraph (1)(A) and
10 before a report on such check has been provided
11 to the facility under paragraph (1)(B).

12 (b) PENALTIES.—In addition to any other sanctions
13 provided under law—

14 (1) IN GENERAL.—A covered facility that vio-
15 lates subsection (a)(1)(A) shall be subject to a civil
16 penalty in an amount not to exceed—

17 (A) for the first such violation, \$2,000;
18 and

19 (B) for the second and each subsequent
20 violation within any 5-year period, \$5,000.

21 (2) KNOWING RETENTION OF WORKER.—In ad-
22 dition to any civil penalty under paragraph (1), a
23 covered facility that—

1 (A) knowingly continues to employ a nurse
2 or home health aide in violation of subsection
3 (a)(1)(B), or

4 (B) knowingly fails to submit a report re-
5 quired under subsection (a)(1)(C),
6 shall be subject to a civil penalty in an amount not
7 to exceed \$5,000 for the first such violation, and
8 \$10,000 for the second and each subsequent viola-
9 tion within any 5-year period.

10 (c) ENFORCEMENT THROUGH MEDICARE AND MED-
11 ICAID PROGRAMS.—

12 (1) NURSING FACILITIES.—

13 (A) MEDICARE PROGRAM.—Section
14 1819(b) of the Social Security Act (42 U.S.C.
15 1395i–3(b)) is amended by adding at the end
16 the following new paragraph:

17 “(8) REQUIREMENT FOR BACKGROUND CHECKS
18 FOR NURSING PERSONNEL.—A skilled nursing facil-
19 ity shall comply with the requirements of section
20 2(a) of the Elder Care Safety Act of 1997 with re-
21 spect to any nurse or home health aide it employs.”

22 (B) MEDICAID PROGRAM.—Section
23 1919(b) of such Act (42 U.S.C. 1396r(b)) is
24 amended by adding at the end the following
25 new paragraph:

1 “(8) REQUIREMENT FOR BACKGROUND CHECKS
2 FOR NURSING PERSONNEL.—A nursing facility shall
3 comply with the requirements of section 2(a) of the
4 Elder Care Safety Act of 1997 with respect to any
5 nurse or home health aide it employs.”.

6 (2) HOME HEALTH AGENCIES AND HOSPICE
7 PROGRAMS.—

8 (A) MEDICARE PROGRAM.—

9 (i) HOME HEALTH AGENCIES.—Sec-
10 tion 1891(a) of such Act (42 U.S.C.
11 1395bbb(a)) is amended by adding at the
12 end the following:

13 “(7) The agency complies with the requirements
14 of section 2(a) of the Elder Care Safety Act of 1997
15 with respect to any nurse or home health aide it em-
16 ploys.”.

17 (ii) HOSPICE PROGRAMS.—Section
18 1861(dd)(2)(G) of such Act (42 U.S.C.
19 1395x(dd)(2)(G)) is amended by inserting
20 before the period at the end the following:
21 “, including compliance with the require-
22 ments of section 2(a) of the Elder Care
23 Safety Act of 1997 with respect to any
24 nurse or home health aide it employs”.

1 (B) MEDICAID PROGRAM.—Section
2 1902(a)(57) of such Act (42 U.S.C.
3 1396a(a)(57)) is amended—

4 (i) by inserting “(A)” after “(57)”,

5 and

6 (ii) by adding at the end the follow-
7 ing:

8 “(B) provide that each provider of home health
9 care or personal care services and each hospice pro-
10 gram receiving funds under the plan shall comply
11 with the requirements of section 2(a) of the Elder
12 Care Safety Act of 1997 with respect to any nurse
13 or home health aide it employs;”.

14 (d) EFFECTIVE DATES.—The requirements of sub-
15 section (a) shall apply with respect to a covered facility—

16 (1) beginning as of such date (specified by the
17 Secretary and not later than 60 days after the date
18 the Secretary has established the national registry
19 coordination system under section 3(b)), with re-
20 spect to the hiring of individuals as a nurse or home
21 health aide by the facility on and after such date;
22 and

23 (2) as of 1 year after the date described in
24 paragraph (1), with respect to individuals first em-

1 employed as such an aide before the date described in
2 such paragraph.

3 **SEC. 3. EXPANDED ROLE OF STATE NURSING REGISTRIES;**
4 **NATIONAL REGISTRY COORDINATION SYS-**
5 **TEM; PROCEDURES FOR BACKGROUND**
6 **CHECKS.**

7 (a) EXPANDED ROLE OF REGISTRY.—

8 (1) IN GENERAL.—Each State shall expand its
9 nurse aide registry established under sections
10 1819(e)(2) and 1919(e)(2) of the Social Security
11 Act to carry out the following functions:

12 (A) RECEIPT OF REQUESTS.—The registry
13 shall provide for the receipt of requests for
14 background checks described in section 2(a)(1).

15 (B) CONDUCT OF BACKGROUND
16 CHECKS.—Upon receipt of such a request with
17 respect to an individual, the registry, in coordi-
18 nation with the national registry coordination
19 system established by the Secretary under sub-
20 section (b) and in accordance with this section,
21 shall provide for the performance of (or the col-
22 lection of information concerning) a background
23 check (including a criminal background check
24 and an abusive work history background check)
25 requested under section 2(a) and for the sub-

1 mittal of a background check report (as defined
2 in paragraph (2)) on such check to the request-
3 ing facility.

4 (C) PROVISION OF INFORMATION TO NA-
5 TIONAL REGISTRY COORDINATION SYSTEM.—
6 The registry shall provide for the reporting to
7 the national registry coordination system of—

8 (i) a criminal background check sum-
9 mary (as defined in paragraph (3)) on any
10 individual on whom it obtains a criminal
11 background check under subsection (c)(3);
12 and

13 (ii) the identity of any individual for
14 whom the registry has documented find-
15 ings of patient abuse and such additional
16 information as the State registry involved
17 may disclose concerning such findings.

18 (2) BACKGROUND CHECK REPORT DEFINED.—
19 For purposes of this section, the term “background
20 check report” means, with respect to a background
21 check concerning an individual, a statement contain-
22 ing the following:

23 (A) Whether the individual has been con-
24 victed of a disqualifying crime.

1 (B) Whether there are documented find-
2 ings of patient abuse by the individual in a
3 State nurse and home health aide registry and,
4 if so, such additional information as the State
5 registry involved may disclose concerning such
6 findings.

7 Such report shall not include information from the
8 criminal background check other than the informa-
9 tion described in subparagraph (A).

10 (3) CRIMINAL BACKGROUND CHECK SUMMARY
11 DEFINED.—For purposes of this section, the term
12 “criminal background check summary” means, with
13 respect to a criminal background check concerning
14 an individual, the following information:

15 (A) The identity of the individual.

16 (B) The date of the criminal background
17 check.

18 (C) Whether the check revealed that—

19 (i) the individual had not been con-
20 victed of any crime,

21 (ii) the individual has been convicted
22 of a national disqualifying crime, or

23 (iii) the individual has been convicted
24 of a crime that is not a national disqualify-
25 ing crime.

1 (4) CONFORMING MEDICARE AND MEDICAID
2 AMENDMENTS.—Sections 1819(e)(2) and 1919(e)(2)
3 of the Social Security Act (42 U.S.C. 1395i–3(e)(2),
4 1396r(e)(2)) are each amended—

5 (A) in subparagraph (C), by striking “A
6 State” and inserting “Subject to section 3(e) of
7 the Elder Care Safety Act of 1997, a State”,
8 and

9 (B) by adding at the end the following new
10 subparagraph:

11 “(D) EXPANDED FUNCTIONS.—Effective
12 not later than 90 days after the date of the es-
13 tablishment of the national registry coordina-
14 tion system under section 3(b) of the Elder
15 Care Safety Act of 1997, the State shall—

16 “(i) modify the operations of its reg-
17 istry so it performs the functions required
18 under section 3(a) of such Act, and

19 “(ii) provide for the specification of a
20 State agency that is separate from the reg-
21 istry and that will be responsible for the
22 performance of criminal background checks
23 under such section.”.

24 (b) NATIONAL REGISTRY COORDINATION SYSTEM.—

1 (1) ESTABLISHMENT.—The Secretary shall es-
2 tablish methods by which State nurse and home
3 health aide registries can pool and share information
4 regarding individuals concerning criminal back-
5 ground check summaries and the existence of docu-
6 mented findings of patient abuse.

7 (2) DEADLINE FOR ESTABLISHING SYSTEM.—
8 The Secretary shall provide for the establishment of
9 the national registry coordination system by not
10 later than 1 year after the date of the enactment of
11 this Act.

12 (3) CONSULTATION WITH FBI ON CRIMINAL
13 BACKGROUND CHECKS.—In carrying out this Act
14 with respect to criminal background checks the Sec-
15 retary shall consult with the Director of the Federal
16 Bureau of Investigation.

17 (c) PROCEDURES FOR CRIMINAL BACKGROUND
18 CHECKS.—A registry shall carry out its responsibilities
19 under subsection (a)(1)(B), in relation to a criminal back-
20 ground check with respect to an individual, in a manner
21 consistent with the following:

22 (1) DETERMINATION OF WHETHER RECENT
23 CRIMINAL BACKGROUND CHECK DONE.—The reg-
24 istry shall determine whether the registry (or,
25 through the national registry coordination system,

1 the nurse and home health aide registry of another
2 State) has obtained a criminal background check on
3 the individual within the previous year.

4 (2) USE OF PREVIOUS BACKGROUND CHECK.—

5 If there has been such a check done within such pe-
6 riod, if the check revealed that—

7 (A) the individual had not been convicted
8 of any crime, the registry need not request a
9 new criminal background check and may as-
10 sume that the individual has not been convicted
11 of any disqualifying crime;

12 (B) the individual has been convicted of a
13 national disqualifying crime, the registry need
14 not request a new criminal background check
15 and shall treat the individual as having been
16 convicted of a disqualifying crime; or

17 (C) the individual has been convicted of a
18 crime that is not a national disqualifying crime
19 and the State has disqualifying crimes that are
20 other than national disqualifying crimes, the
21 registry shall request a criminal background
22 check as provided under paragraph (3).

23 (3) REQUESTING STATE CRIMINAL BACK-
24 GROUND CHECK AGENCY TO OBTAIN CRIMINAL
25 BACKGROUND CHECK.—If there has not been such a

1 check done within such period or in the case de-
2 scribed in paragraph (2)(C), the registry shall re-
3 quest the State criminal background check agency of
4 the State—

5 (A) to perform a criminal background
6 check on the individual;

7 (B) to determine, on the basis of such
8 check, whether the individual—

9 (i) has not been convicted of any
10 crime, or

11 (ii) has been convicted of a national
12 disqualifying crime, or

13 (iii) has been convicted of a crime
14 that is a State disqualifying crime; and

15 (C) to submit to the registry a criminal
16 background check summary on the individual.

17 (4) APPLICATION OF CERTAIN PROCEDURES
18 FOR CRIMINAL BACKGROUND CHECKS.—Under regu-
19 lations of the Secretary, the following provisions in
20 section 3 of the National Child Protection Act of
21 1993 (Public Law 103–209) shall apply to criminal
22 background checks required of a nurse or home
23 health aide with respect to a covered facility to be
24 performed under this Act in the same manner as

1 they apply to providers with respect to qualified enti-
2 ties:

3 (A) Subsection (a)(2) (relating to access to
4 records and timeliness of response).

5 (B) Subsection (b) (relating to guidelines
6 on background checks), other than paragraph
7 (1)(B), except that denial of unsupervised ac-
8 cess under paragraph (1)(E) shall be treated
9 for purposes of this section as a denial of unsu-
10 pervised access to patients in covered facilities
11 and determinations under paragraph (4) shall
12 be made only with respect to crimes relating to
13 patient abuse.

14 (C) Subsection (c) (relating to authority of
15 Attorney General).

16 (D) Subsection (d) (relating to limitation
17 on liability).

18 (d) PROCEDURES FOR ABUSIVE WORK HISTORY
19 BACKGROUND CHECKS.—A registry shall carry out its re-
20 sponsibilities under subsection (a)(1)(B), in relation to
21 abusive work history background check with respect to an
22 individual, in a manner consistent with the following:

23 (1) INCLUSION OF INFORMATION ON DOCU-
24 MENTED FINDINGS OF PATIENT ABUSE.—The reg-
25 istry shall maintain a list of all individuals in the

1 State who are (or were) nurse or home health aides
2 and with respect to whom there are specific docu-
3 mented findings of patient abuse, as well as any
4 brief statement of the individual disputing the find-
5 ings. Such findings shall be made available in the
6 same manner as findings described in sections
7 1819(c)(2)(B) and 1919(c)(2)(B) of the Social Secu-
8 rity Act.

9 (2) FORWARDING INFORMATION ON INDIVID-
10 UALS WITH DOCUMENTED FINDINGS OF PATIENT
11 ABUSE.—If the registry has a documented finding
12 described in paragraph (1) with respect to an indi-
13 vidual, the registry—

14 (A) shall provide the national registry co-
15 ordination system with—

16 (i) information on the identity of the
17 individual and the State,

18 (ii) information on the fact that such
19 a finding was made, and

20 (iii) such additional information re-
21 specting the finding as the Secretary may
22 require; and

23 (B) shall provide, to another State nurse
24 and home health aide registry that requests in-
25 formation on an individual for whom such a

1 documented finding has been made through the
2 system, information respecting the finding.

3 (e) FEES.—A State may assess a covered facility a
4 fee for the conduct of a background check under section
5 2(a) in an amount that does not exceed the actual cost
6 to the State of obtaining the criminal background check
7 and the abusive work history background check on an indi-
8 vidual. Such a facility may recover from the individual in-
9 volved all or such portion of the fee as the State may au-
10 thorize.

11 **SEC. 4. PREVENTION AND TRAINING DEMONSTRATION**
12 **PROJECT.**

13 (a) ESTABLISHMENT.—The Secretary of Health and
14 Human Services shall establish a demonstration program
15 to provide grants to develop information on—

16 (1) best practices in patient abuse prevention
17 training (including behavior training and interven-
18 tions) for managers and staff of hospital and health
19 care facilities,

20 (2) other methods of patient abuse prevention.

21 (b) ELIGIBILITY.—To be eligible to receive a grant
22 under subsection (a), an entity shall be a public or private
23 nonprofit entity and prepare and submit to the Secretary
24 of Health and Human Services an application at such

1 time, in such manner, and containing such information as
2 the Secretary may require.

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

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

10 (2) examine patient care issues relating to regu-
11 latory oversight, community involvement, and facility
12 staffing and management (including appropriate
13 nursing personnel-to-patient levels) with a focus on
14 staff training, staff stress management, and staff
15 supervision;

16 (3) examine the use of patient abuse prevention
17 training programs by long-term care entities; and

18 (4) identify and disseminate best practices for
19 preventing and reducing patient abuse.

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

23 (e) REPORTS.—The Secretary shall submit to Con-
24 gress periodic reports on grants provided under this sec-
25 tion.

1 **SEC. 5. RECOMMENDATIONS ON PERSONNEL-TO-PATIENT**
2 **LEVELS.**

3 Not later than 1 year after the date of the enactment
4 of this Act, the Secretary shall submit to Congress a re-
5 port that includes—

6 (1) recommendations on the appropriateness of
7 requiring minimum nurse and home health aide per-
8 sonnel-to-patient levels in order to avoid patient
9 abuse, and

10 (2) if such a requirement is appropriate, rec-
11 ommendations on the levels that should be required
12 for different types of covered facilities.

13 **SEC. 6. DEFINITIONS.**

14 For purposes of this Act:

15 (1) **BACKGROUND CHECK; CRIMINAL BACK-**
16 **GROUND CHECK; ABUSIVE WORK HISTORY BACK-**
17 **GROUND CHECK.**—

18 (A) **BACKGROUND CHECK.**—The term
19 “background check” includes a criminal back-
20 ground check and an abusive work history back-
21 ground check.

22 (B) **CRIMINAL BACKGROUND CHECK.**—The
23 term “criminal background check” means a
24 check of the criminal history record system
25 maintained by the Federal Bureau of Investiga-
26 tion based on fingerprint identification or any

1 other method of positive identification for the
2 purpose of determining whether an individual
3 has been convicted of a disqualifying crime.

4 (C) ABUSIVE WORK HISTORY BACKGROUND
5 CHECK.—The term “abusive work history back-
6 ground check” means, with respect to an indi-
7 vidual, a check of State nurse and home health
8 aide registries for the purpose of determining
9 whether there is a documented finding that the
10 individual was involved in patient abuse.

11 (2) COVERED FACILITY.—The term “covered
12 facility” means a nursing facility (including a skilled
13 nursing facility), home health agency, or hospice
14 program which receives payment under any Federal
15 funded program.

16 (3) DISQUALIFYING CRIME; NATIONAL DIS-
17 QUALIFYING CRIME; STATE DISQUALIFYING
18 CRIME.—

19 (A) DISQUALIFYING CRIME.—The term
20 “disqualifying crime” means, with respect to an
21 individual for employment in a State, a criminal
22 offense that is a national disqualifying crime or
23 a State disqualifying crime in that State.

1 (B) NATIONAL DISQUALIFYING CRIME.—

2 The term “national disqualifying crime”
3 means—

4 (i) a criminal offense described in sec-
5 tion 1128(a) of the Social Security Act, or

6 (ii) felony homicide, battery, or as-
7 sault (including sexual assault),

8 regardless of the date of conviction for the
9 crime.

10 (C) STATE DISQUALIFYING CRIME.—The

11 term “State disqualifying crime” means, with

12 respect to a State, such criminal offenses (other

13 than national disqualifying crimes) as the State

14 may under law treat as a State disqualifying

15 crime for purposes of this Act and for such pe-

16 riod of time as the State may provide.

17 (4) NATIONAL REGISTRY COORDINATION SYS-

18 TEM.—The term “national registry coordination sys-

19 tem” means such system established under section

20 3(b).

21 (5) NURSE AND HOME HEALTH AIDE.—

22 (A) IN GENERAL.—The term “nurse and

23 home health aide” means a nurse aide, nurse

24 assistant, home health aide, personal care work-

25 er, attendant, or similar worker who performs

1 nursing or related tasks involving direct patient
2 contact in a covered facility.

3 (B) EXCLUSIONS.—Such term does not in-
4 clude an individual—

5 (i) who is a physician, physician as-
6 sistant, nurse practitioner, physical,
7 speech, or occupational therapist, physical
8 or occupational therapy assistant, reg-
9 istered professional nurse, licensed prac-
10 tical nurse, or licensed or certified social
11 worker, or registered dietician;

12 (ii) who volunteers to provide such
13 services without monetary compensation;
14 or

15 (iii) who meets such other require-
16 ments as the Secretary may specify.

17 (C) LICENSED HEALTH PROFESSIONAL.—

18 The term “licensed health professional” means

19 (6) PATIENT ABUSE.—The term “patient
20 abuse” means such incidence of abuse, neglect, mis-
21 treatment, or misappropriation of property of an in-
22 dividual receiving services in a covered facility as the
23 Secretary shall specify in regulations.

24 (7) SECRETARY.—The term “Secretary” means
25 the Secretary of Health and Human Services.

1 (8) STATE CRIMINAL BACKGROUND CHECK
2 AGENCY.—The term “State criminal background
3 check agency” means, with respect to a State, the
4 State agency specified by the State to provide for
5 the conduct of criminal background checks under
6 this Act.

7 (9) STATE NURSE AND HOME HEALTH AIDE
8 REGISTRY.—The term “State nurse and home health
9 aide registry” means a nurse aide registry that is es-
10 tablished under sections 1819(e)(2)(A) and
11 1919(e)(2)(A) of the Social Security Act and that
12 provides for functions required of such a registry
13 under section 3 of this Act.

○