

107TH CONGRESS
1ST SESSION

H. R. 2677

To amend title XIX of the Social Security Act to improve the quality of care furnished in nursing homes.

IN THE HOUSE OF REPRESENTATIVES

JULY 30, 2001

Mr. WAXMAN (for himself, Mr. GEPHARDT, Mr. DINGELL, Mr. STARK, Mr. BROWN of Ohio, Mr. GEORGE MILLER of California, Mr. CARSON of Oklahoma, Ms. SCHAKOWSKY, Mr. RODRIGUEZ, Mr. BLAGOJEVICH, Mr. HOEFFEL, Mr. HOLT, Mr. LANTOS, Ms. LEE, Mrs. MALONEY of New York, Mr. WEXLER, Mr. CLAY, Ms. DELAURO, Mr. EDWARDS, Mr. EVANS, Mr. HINCHEY, Ms. KAPTUR, Mr. LAMPSON, Mr. MCGOVERN, Mr. MURTHA, Ms. NORTON, Mr. TIERNEY, Mr. UDALL of New Mexico, and Mr. WYNN) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend title XIX of the Social Security Act to improve the quality of care furnished in nursing homes.

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 “Nursing Home Quality Protection Act of 2001”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Increased resources.
- Sec. 3. Increased nurse staffing.
- Sec. 4. Increased sanctions.
- Sec. 5. Increased public disclosure.
- Sec. 6. Background checks.
- Sec. 7. Clarification of applicability of protections.
- Sec. 8. Financial accountability.

1 **SEC. 2. INCREASED RESOURCES.**

2 (a) PURPOSE.—In 1997, Congress repealed the
 3 Boren amendment, which required that the States make
 4 reasonable and adequate payments to nursing homes and
 5 other health care facilities in order to provide quality care
 6 to residents. The purpose of this section is to restore the
 7 Boren amendment so that those facilities can provide bet-
 8 ter care to residents.

9 (b) REINSTITUTION OF BOREN AMENDMENT PAY-
 10 MENT METHODOLOGY.—

11 (1) IN GENERAL.—Section 1902(a)(13) of the
 12 Social Security Act (42 U.S.C. 1396a(a)(13)) is
 13 amended to read as follows:

14 “(13) provide for payment of services through
 15 the use of rates determined pursuant to the criteria
 16 under this paragraph as in effect on August 1,
 17 1997;”.

18 (2) ESTABLISHMENT OF SAFE HARBOR
 19 RATES.—Section 1902 of such Act (42 U.S.C.
 20 1396a) is amended by adding at the end the fol-
 21 lowing: “The Secretary may, by regulation, promul-

1 gate standards or methodologies for determining
2 rates that comply with paragraph (13), and a State
3 that pays rates that meet such standards or meth-
4 odologies is deemed to be in compliance with para-
5 graph (13).”.

6 (c) EFFECTIVE DATE.—The amendment made by
7 subsection (b) shall apply to services furnished on or after
8 the date that is one year after the date of the enactment
9 of this Act.

10 **SEC. 3. INCREASED NURSE STAFFING.**

11 Section 1919(b)(4) of the Social Security Act (42
12 U.S.C. 1396r(b)(4)) is amended by adding at the end the
13 following new subparagraph:

14 “(D) MINIMUM STAFFING LEVELS.—

15 “(i) DEADLINE FOR COMPLIANCE
16 WITH MINIMUM STANDARDS.—With respect
17 to nursing facility services provided after
18 the date that is the end of the 2-year pe-
19 riod beginning on the date of the enact-
20 ment of this subparagraph, a nursing facil-
21 ity shall comply with the minimum staffing
22 levels promulgated by the Secretary under
23 clause (ii).

24 “(ii) FINAL REGULATIONS.—

1 “(I) IN GENERAL.—Not later
2 than 1 year after the date of the en-
3 actment of this subparagraph, and
4 consistent with the provisions of this
5 clause, the Secretary shall promulgate
6 standards for minimum staffing levels
7 for nursing facilities. Such standards
8 shall be established to ensure that
9 residents of nursing facilities receive
10 the level of care necessary to meet the
11 objectives of subsection (b)(2), and
12 shall provide for appropriate adjust-
13 ments to account for resident case
14 mix.

15 “(II) MINIMUM STANDARDS.—
16 Subject to subclauses (III) and (IV),
17 standards promulgated under sub-
18 clause (I) shall be, at a minimum, the
19 Hartford staffing standards (as de-
20 fined in clause (v)(I)).

21 “(III) ALTERNATIVE MINIMUM
22 STANDARDS.—Standards promulgated
23 under subclause (I) may be lower than
24 the standards described in subclause
25 (II) if the Secretary determines that

1 use of the staffing levels under those
2 standards does not compromise the
3 ability of facilities to meet the objec-
4 tives of subsection (b)(2), but in no
5 case may standards under this sub-
6 clause be lower than the HHS staffing
7 standards (as defined in clause
8 (v)(II)).

9 “(IV) AUTHORITY TO PHASE IN
10 FACILITY COMPLIANCE WITH STAND-
11 ARDS.—If the Secretary determines
12 that compliance with the Hartford
13 staffing standards is not feasible for
14 nursing facilities by the end of the 2-
15 year period applicable under clause
16 (i), the Secretary may delay the im-
17 plementation of those Hartford staff-
18 ing standards until such time as the
19 Secretary determines such compliance
20 is feasible. In the interim, facilities
21 shall comply with standards promul-
22 gated by the Secretary, such stand-
23 ards in no case being lower than the
24 HHS staffing standards.

1 “(V) EXPLANATION OF EXERCISE
2 OF AUTHORITY.—If the Secretary de-
3 cides to exercise the authority under
4 subclauses (III) or (IV), the Secretary
5 shall submit to Congress a report de-
6 scribing the facts and circumstances
7 of the decision, and shall include the
8 data and assumptions used in making
9 that decision and an assessment of
10 the impact on resident care.

11 “(iii) FAILURE TO TIMELY PROMUL-
12 GATE FINAL REGULATIONS.—If the Sec-
13 retary does not publish the final regula-
14 tions under clause (ii) by the date required
15 under that clause, effective for services fur-
16 nished in nursing facilities on or after the
17 date under clause (ii), such facilities, at a
18 minimum, shall comply with the Hartford
19 staffing standards.

20 “(iv) INCREASE IN PAYMENT RATE.—
21 Rates applicable to facilities under section
22 1902(a)(13) shall reflect appropriate ad-
23 justments for compliance with minimum
24 standards under this subparagraph.

1 “(v) DEFINITIONS.—In this subpara-
2 graph:

3 “(I) HARTFORD STAFFING
4 STANDARDS.—The term ‘Hartford
5 staffing standards’ means the staffing
6 standards recommended in January
7 2000 by the Hartford Institute for
8 Geriatric Nursing and the National
9 Citizens Coalition for Nursing Home
10 Reform, appropriately adjusted by the
11 Secretary to account for resident case
12 mix.

13 “(II) HHS STAFFING STAND-
14 ARDS.—The term ‘HHS staffing
15 standards’ means the preferred min-
16 imum staffing levels identified in the
17 report to Congress entitled ‘Appro-
18 priateness of Minimum Nurse Staff-
19 ing Ratios in Nursing Homes’ sub-
20 mitted by the Secretary in the sum-
21 mer of 2000, appropriately adjusted
22 by the Secretary to account for resi-
23 dent case mix.”.

1 **SEC. 4. INCREASED SANCTIONS.**

2 (a) REFUND OF FEDERAL MONEYS FOR SUB-
3 STANDARD NURSING CARE.—

4 (1) IN GENERAL.—Section 1919 of the Social
5 Security Act (42 U.S.C. 1396r) is amended—

6 (A) by redesignating subsection (i) as sub-
7 section (j); and

8 (B) by inserting after subsection (h) the
9 following new subsection:

10 “(i) REFUND OF FEDERAL MONEYS FOR SUB-
11 STANDARD NURSING CARE.—

12 “(1) IN GENERAL.—From amounts paid under
13 a State plan to a nursing facility, the nursing facil-
14 ity shall refund to the Secretary for deficiencies
15 identified in a survey under subsection (g), the fol-
16 lowing amounts:

17 “(A) \$2,000 for each deficiency that had
18 the potential to cause more than minimal harm
19 to a resident of the nursing facility.

20 “(B) \$10,000 for each deficiency that
21 caused actual harm to a resident of the nursing
22 facility.

23 “(C) \$25,000 for each deficiency that
24 placed a resident of the nursing facility in im-
25 mediate jeopardy.

1 Amounts under this subparagraph shall be adjusted
2 annually to account for inflation in the manner pro-
3 vided for in section 1924(g).

4 “(2) DEADLINE FOR SUBSTANDARD CARE RE-
5 FUND.—Payment of the amounts payable by a nurs-
6 ing facility to the Secretary under paragraph (1)
7 shall be made not later than 30 days after the nurs-
8 ing facility receives notice of the deficiencies and the
9 amount of substandard care refund due.

10 “(3) WITHHOLDING OF PAYMENTS FOR FAIL-
11 URE TO PAY A SUBSTANDARD CARE REFUND TO THE
12 SECRETARY.—In the case of a nursing facility that
13 does not pay a substandard care refund required
14 under paragraph (1), in order to ensure that pay-
15 ments under the State plan to the facility are re-
16 duced by the amount of substandard care refund
17 due from the facility, the Secretary shall withhold
18 from payments attributable to this section the
19 amount of such substandard care refund, and the
20 State shall withhold such amount from payments to
21 that nursing facility.

22 “(4) APPEAL.—

23 “(A) IN GENERAL.—The Secretary shall
24 establish a procedure for a nursing facility to
25 appeal to the Secretary a substandard care re-

1 fund paid or an amount withheld under this
2 paragraph.

3 “(B) REPAYMENTS BY THE SECRETARY.—

4 If a nursing facility is successful on appeal, the
5 Secretary shall pay to the nursing facility an
6 amount equal to the amount of the substandard
7 care refund paid under paragraph (1), or the
8 amount withheld under paragraph (3), or both,
9 if applicable, plus interest accruing on such
10 amount at the rate applicable under section
11 1903(d)(5).

12 “(5) RELATION TO OTHER SANCTIONS.—

13 “(A) IN GENERAL.—A substandard care
14 refund paid by or an amount withheld from a
15 nursing facility for a deficiency under this
16 paragraph—

17 “(i) shall not affect the authority of a
18 State or the Secretary to take enforcement
19 actions or impose sanctions against the
20 nursing facility under any other provision
21 of law with respect to the deficiency;

22 “(ii)(I) shall be deducted from civil
23 money penalties otherwise assessed and
24 collected by the Secretary with respect to

1 the deficiency under other provisions of
2 this Act, and

3 “(II) with respect to the amounts so
4 deducted under subclause (I), those
5 amounts shall be used only in the same
6 manner and for the same purposes as such
7 civil money penalties otherwise assessed
8 and collected; and

9 “(iii) shall not affect any remedy
10 available to an individual at common law.

11 “(B) PRESERVING RIGHT TO APPEAL.—
12 The failure of a nursing facility to appeal a
13 substandard care refund paid by or amount
14 withheld from the facility for a deficiency under
15 this paragraph shall have no effect on the right
16 of the facility to appeal any enforcement action
17 taken or sanction imposed by the Secretary
18 with respect to the deficiency under provi-
19 sions of this Act.”.

20 (2) EFFECTIVE DATE.—The amendments made
21 by paragraph (1) shall apply with respect to surveys
22 conducted on or after the date that is one year after
23 the date of the enactment of this Act, without re-
24 gard to whether or not final regulations to carry out

1 such amendments have been promulgated by such
2 date.

3 (b) GRANT PROGRAM TO IMPROVE QUALITY OF
4 CARE FURNISHED IN NURSING HOMES.—Section 1919 of
5 the Social Security Act (42 U.S.C. 1396r), as amended
6 by subsection (a), is further amended—

7 (1) by redesignating subsection (j) as sub-
8 section (k); and

9 (2) by inserting after subsection (i) the fol-
10 lowing new subsection:

11 “(j) NURSING FACILITY QUALITY IMPROVEMENT AC-
12 COUNT.—

13 “(1) ESTABLISHMENT OF NURSING FACILITY
14 QUALITY IMPROVEMENT ACCOUNT.—

15 “(A) IN GENERAL.—There is hereby cre-
16 ated on the books of the Treasury an expendi-
17 ture account to be known as the ‘Nursing Facil-
18 ity Quality Improvement Account’ (in this sub-
19 section referred to as the ‘Account’).

20 “(B) DEPOSIT OF FUNDS IN THE AC-
21 COUNT.—The Secretary shall deposit in the
22 Account—

23 “(i) all substandard care refunds from
24 nursing facilities under subsection (i)(1),
25 other than amounts described in subsection

1 (i)(5)(A)(ii)(II) (relating to deductions
2 from civil money penalties); and

3 “(ii) amounts withheld under sub-
4 section (i)(3), other than amounts de-
5 scribed in subsection (i)(5)(A)(ii)(II) (re-
6 lating to deductions from civil money pen-
7 alties).

8 “(C) APPROPRIATED AMOUNTS FROM SUB-
9 STANDARD CARE REFUNDS.—There are hereby
10 appropriated to the Account such amounts as
11 the Secretary deposits to the Account under
12 this paragraph.

13 “(2) GRANTS FOR IMPROVEMENT OF QUALITY
14 OF CARE.—

15 “(A) IN GENERAL.—Subject to the suc-
16 ceeding provisions of this paragraph, from
17 amounts available in the Account, the Secretary
18 shall make grants to States for the purpose of
19 improving the quality of care furnished in nurs-
20 ing facilities operating in the State.

21 “(B) USE OF GRANT FUNDS.—Grants
22 made available to States under subparagraph
23 (A) may be used for any or all of the following
24 specified purposes:

1 “(i) To enable a nursing facility to re-
2 cruit additional nursing staff or to retain
3 existing nursing staff (including through
4 the use of financial incentives).

5 “(ii) To increase education and train-
6 ing of nursing staff, including through
7 educational programs offered by commu-
8 nity colleges and other institutions of high-
9 er education.

10 “(iii) To improve workplace safety for
11 nursing staff.

12 “(C) TERMS AND CONDITIONS.—The Sec-
13 retary shall establish such terms and conditions
14 as the Secretary determines to be appropriate
15 for the receipt of grant funds under this para-
16 graph. Such terms and conditions shall include
17 the following requirements:

18 “(i) A State shall develop a plan for
19 the use of grant funds.

20 “(ii)(I) In developing the plan re-
21 quired under clause (i), the State shall es-
22 tablish advisory councils comprised of rep-
23 resentatives of nursing facility residents, of
24 nursing facilities, of nursing staff, and of
25 other interested parties.

1 “(II) Such councils shall participate
2 in determining the manner in which grant
3 funds are used under the plan, and shall
4 give priority to proposals for the use of
5 grant funds that are mutually agreed to by
6 the representatives of facility residents, of
7 nursing facilities, and of nursing staff.

8 “(iii) The State shall submit to the
9 Secretary annual reports on the use of
10 grant funds under the plan.

11 “(D) AGGREGATE AMOUNT OF GRANT
12 FUNDS FOR STATES.—The amount of a grant
13 to a State under this subsection may not exceed
14 the aggregate amount of substandard care re-
15 funds (under subsection (i)) from nursing facili-
16 ties operating in the State.

17 “(E) NONPARTICIPATION BY STATES.—
18 Notwithstanding subparagraph (D), if a State
19 does not receive a grant under this subsection,
20 the Secretary may redistribute, in a manner
21 consistent with section 2104(f), the sub-
22 standard care refunds received from nursing fa-
23 cilities in that State to other States.

24 “(F) LIMITATIONS ON USE OF GRANT
25 AMOUNTS.—A State may not use amounts

1 made available under a grant under this
2 paragraph—

3 “(i) to satisfy any requirement for the
4 expenditure of non-Federal funds as a con-
5 dition for the receipt of Federal funds; or

6 “(ii) to make payments to a nursing
7 facility that is not in compliance with Fed-
8 eral labor and employment laws or that
9 has a pattern of violations of such laws.

10 Amounts made available under a grant under
11 this paragraph shall be in addition to, and may
12 not be used to supplant, any funds that are or
13 would otherwise be expended under any Fed-
14 eral, State, or local law by a State or local gov-
15 ernment.

16 “(G) DEFINITION.—In this subsection and
17 subsection (g)(5)(E), the term ‘nursing staff’
18 means a registered professional nurse, a li-
19 censed practical or licensed vocational nurse, or
20 a nurse aide.

21 “(3) ANNUAL AUDITS.—

22 “(A) IN GENERAL.—The Secretary shall
23 conduct annual audits of the use of grant funds
24 made available under paragraph (2). The Sec-
25 retary shall assess the extent to which such

1 funds have resulted in increased nursing staff,
2 reduced nursing staff turnover, increased train-
3 ing of nursing staff, and improvements in the
4 quality of care furnished in nursing facilities lo-
5 cated in States receiving such grant funds.

6 “(B) ADDITIONAL TERMS FOR RECEIPT OF
7 GRANT FUNDS.—As a part of a plan under
8 paragraph (2)(C), the State shall afford the
9 Secretary access to any records or information
10 relating to the plan for the purposes of an audit
11 of the State’s use of grant funds.

12 “(C) ANNUAL REPORT.—The Secretary
13 shall submit to Congress an annual report on
14 the audits conducted under this paragraph.”.

15 **SEC. 5. INCREASED PUBLIC DISCLOSURE.**

16 (a) INTERNET DISCLOSURE.—Section 1919(g)(5) of
17 the Social Security Act (42 U.S.C. 1396r(g)(5)) is amend-
18 ed by adding at the end the following new subparagraph:

19 “(E) PUBLICATION ON THE INTERNET OF
20 NURSING FACILITY INFORMATION.—

21 “(i) FACILITY-SPECIFIC INFORMA-
22 TION.—As soon as practicable, but in no
23 case later than 1 year after the date of the
24 enactment of this subparagraph, the Sec-
25 retary shall make available to the public on

1 the Internet site of the Department of
2 Health and Human Services, and by such
3 other means as the Secretary determines
4 appropriate, the following information with
5 respect to each nursing facility:

6 “(I) COMPLIANCE WITH FACILITY
7 STANDARDS.—A summary of the fa-
8 cility’s compliance or noncompliance
9 with Federal nursing facility stand-
10 ards.

11 “(II) COPIES OF RECENT SUR-
12 VEYS.—A copy of the three most re-
13 cent surveys conducted of the nursing
14 facility under subsection (g).

15 “(III) COMPLAINTS FILED
16 AGAINST THE FACILITY.—A summary
17 of each substantiated complaint filed
18 against the nursing facility during the
19 three most recent years and a sum-
20 mary of the outcome or current status
21 of the complaint.

22 “(IV) ENFORCEMENT ACTIONS
23 AGAINST THE FACILITY.—A summary
24 of each enforcement action under-
25 taken by the Secretary or a State dur-

1 ing the three most recent years with
2 respect to the facility and a summary
3 of the outcome or current status of
4 the action.

5 “(V) NURSE STAFFING RA-
6 TIOS.—Data on the nursing staff of
7 the facility for each of the four pre-
8 vious calendar quarters, including the
9 following ratios:

10 “(aa) The ratio of registered
11 professional nurses to residents
12 of the facility.

13 “(bb) The ratio of licensed
14 practical or licensed vocational
15 nurses to residents of the facility.

16 “(cc) The ratio of nurse
17 aides to residents of the facility.

18 “(dd) The ratio of aggregate
19 nursing staff to residents of the
20 facility.

21 Such data shall include information
22 on such ratios by shift. Such ratios
23 shall be calculated by comparing the
24 number of hours such staff expend
25 providing nursing care to residents of

1 the facility to the number of residents
2 in the facility.

3 “(VI) OWNERSHIP DISCLO-
4 SURE.—The identity of the owner and
5 operator of the nursing facility, in-
6 cluding an identification of whether
7 the facility is a part of a chain of
8 nursing facilities, and if so, the iden-
9 tity of the chain and the number of
10 facilities in such chain.

11 “(VII) LABOR VIOLATIONS.—Vio-
12 lations of Federal labor and employ-
13 ment laws, and costs incurred for ac-
14 tivities directly related to influencing
15 employees with respect to unioniza-
16 tion, during the three most recent
17 years.

18 “(VIII) OTHER PERTINENT IN-
19 FORMATION.—Any other information
20 that the Secretary determines appro-
21 priate to inform the public on condi-
22 tions and quality of care furnished at
23 the facility.

24 After the date of the enactment of this
25 clause, the Secretary shall continuously up-

1 date the information posted on such Inter-
2 net site and shall ensure that such infor-
3 mation is never more than 90 days out of
4 date.

5 “(ii) ESTABLISHMENT AND PUBLICA-
6 TION OF RATING SYSTEM.—The Secretary
7 shall establish and implement a rating sys-
8 tem to compare the quality of care fur-
9 nished to residents by nursing facilities.
10 Such system shall be based on the infor-
11 mation under clause (i), case mix of resi-
12 dents of the facility, and such other infor-
13 mation as the Secretary determines appro-
14 priate to provide for meaningful ratings of
15 quality of care furnished among facilities.”.

16 (b) POSTING OF STAFFING INFORMATION.—Section
17 1919(c)(8) of the Social Security Act (42 U.S.C.
18 1396r(c)(8)) is amended by inserting before the period the
19 following: “and the nurse staffing ratio information under
20 subsection (g)(5)(E)(v)”.

21 (c) RECORDKEEPING AND REPORTING REQUIRE-
22 MENTS.—Section 1919(d) of the Social Security Act (42
23 U.S.C. 1396r(d)) is amended by adding at the end the
24 following new paragraph:

1 “(5) RECORDKEEPING AND REPORTING RE-
2 QUIREMENTS.—

3 “(A) IN GENERAL.—A nursing facility
4 shall maintain such records and make such re-
5 ports to the Secretary as the Secretary may re-
6 quire for the administration and enforcement of
7 this section, including providing to the Sec-
8 retary such information as the Secretary may
9 require to implement subsection (g)(5)(E). The
10 Secretary may specify the form and manner of
11 any report required under this section, and
12 shall establish a procedure for the electronic
13 transmission of such records.

14 “(B) CERTIFICATION.—A report required
15 under this paragraph shall be certified by the
16 administrator of the nursing facility as being
17 true, accurate, and complete.”.

18 **SEC. 6. BACKGROUND CHECKS.**

19 (a) IN GENERAL.—Section 1919(d) of the Social Se-
20 curity Act (42 U.S.C. 1396r(d)) is amended by adding at
21 the end the following new paragraph:

22 “(5) PROHIBITION ON EMPLOYMENT OF CER-
23 TAIN INDIVIDUALS.—

24 “(A) BACKGROUND CHECK ON EMPLOY-
25 EES.—Beginning 1 year after the date of the

1 enactment of this paragraph, each nursing facil-
2 ity shall conduct a background check on each
3 covered employee hired by the facility. The
4 background check shall include a check of all
5 relevant Federal and State databases that con-
6 tain information on—

7 “(i) violations of Federal or State
8 criminal law,

9 “(ii) abuse of residents of nursing fa-
10 cilities, or misappropriation of resident
11 property,

12 “(iii) abuse of hospital patients, or
13 any other group of patients that the Sec-
14 retary may specify, or misappropriation of
15 patient property, and

16 “(iv) abuse of children.

17 “(B) PROHIBITION ON EMPLOYMENT.—

18 “(i) IN GENERAL.—A nursing facility
19 may not knowingly hire a covered
20 employee—

21 “(I) who has been convicted of a
22 felony under Federal or State law for
23 any offense described in paragraphs
24 (1) through (4) of section 1128(a);

1 “(II) with respect to whom a
2 Federal or State department or agen-
3 cy has made a specific documented
4 finding of resident or patient abuse,
5 misappropriation of resident or pa-
6 tient property, or child abuse; or

7 “(III) who has been found to
8 have committed any other offense that
9 the Secretary specifies in regulations.

10 “(ii) AUTHORITY FOR EXCEPTIONS
11 FOR SPECIFIC FACTORS.—The Secretary
12 may provide for limited exceptions to the
13 prohibition under clause (i) based on the
14 severity of the offense or finding or the pe-
15 riod of time that has elapsed since the of-
16 fense or finding occurred and the conduct
17 of the background check.

18 “(C) EMPLOYEE APPEAL.—A covered em-
19 ployee, or a candidate for employment, may ap-
20 peal (under a procedure similar to petitions
21 under subsection (g)(1)(D)) to the State in
22 which the facility is located a decision of a
23 nursing facility to terminate, or deny, employ-
24 ment of the covered employee or candidate in

1 the facility based on erroneous information re-
2 vealed in the background check.

3 “(D) PROHIBITION ON CHARGING EM-
4 PLOYEE FOR COST OF BACKGROUND CHECK.—
5 A nursing facility that conducts a background
6 check on a covered employee, or a candidate for
7 employment, may not directly or indirectly re-
8 coup the cost of performing such background
9 check from the employee or candidate.

10 “(E) DEFINITION.—In this paragraph, the
11 term ‘covered employee’ means any individual
12 who under an employment contract or arrange-
13 ment with a nursing facility furnishes health
14 care items and services, or furnishes other serv-
15 ices in the facility in areas of the facility where
16 residents are present, and who is hired on or
17 after the date that is one year before the date
18 of the enactment of this paragraph.”.

19 (b) PROCEDURE FOR BACKGROUND CHECKS.—The
20 Secretary of Health and Human Services shall, by regula-
21 tion, establish uniform procedures—

22 (1) for a nursing facility receiving payments
23 under a State plan under title XIX of the Social Se-
24 curity Act to conduct background checks under sub-

1 paragraph (A) of section 1919(d)(5) of such Act, as
 2 added by subsection (a); and

3 (2) for a covered employee, or a candidate for
 4 employment, to appeal under subparagraph (C) of
 5 that section an employment action of a nursing facil-
 6 ity to the State in which the facility is located.

7 **SEC. 7. CLARIFICATION OF APPLICABILITY OF PROTEC-**
 8 **TIONS.**

9 (a) SURVEY AND CERTIFICATION.—Section 1919(g)
 10 of the Social Security Act (42 U.S.C. 1396r(g)) is amend-
 11 ed by adding at the end the following new paragraph:

12 “(6) APPLICABILITY OF PROTECTIONS TO ALL
 13 RESIDENTS.—The provisions of this subsection shall
 14 apply to all residents of a nursing facility, without
 15 regard to whether—

16 “(A) the resident is entitled to have pay-
 17 ment made for nursing facility services under
 18 the State plan or under any other provision of
 19 this Act, or

20 “(B) the facility is a distinct part of an in-
 21 stitution under subsection (a).”.

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

1 “(10) APPLICABILITY OF PROTECTIONS TO ALL
2 RESIDENTS.—The provisions of this subsection shall
3 apply to all residents of a nursing facility, without
4 regard to whether—

5 “(A) the resident is entitled to have pay-
6 ment made for nursing facility services under
7 the State plan or under any other provision of
8 this Act, or

9 “(B) the facility is a distinct part of an in-
10 stitution under subsection (a).”.

11 **SEC. 8. FINANCIAL ACCOUNTABILITY.**

12 (a) IN GENERAL.—Section 1919(g)(2) of the Social
13 Security Act (42 U.S.C. 1396r(g)(2)) is amended—

14 (1) by redesignating subparagraphs (C), (D),
15 and (E) as subparagraphs (D), (E), and (F); and

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

18 “(C) FINANCIAL ACCOUNTABILITY.—A
19 standard or an extended survey may include an
20 examination of the financial records of a facility
21 to determine whether payments made to the fa-
22 cility under this section for services furnished to
23 residents are being used in a manner consistent
24 with this section.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall apply to surveys conducted on or after
3 the date of the enactment of this Act.

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