

105<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4592

To amend titles XI and XVIII of the Social Security Act to establish a program to ensure that home health agencies do not employ individuals who have a history of patient or resident abuse or have been convicted of certain crimes.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 17, 1998

Mr. STARK introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Commerce, 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

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## A BILL

To amend titles XI and XVIII of the Social Security Act to establish a program to ensure that home health agencies do not employ individuals who have a history of patient or resident abuse or have been convicted of certain crimes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Home Health Patient  
5 Protection Act of 1998”.

1 **SEC. 2. ESTABLISHMENT OF PROGRAM TO PREVENT ABUSE**  
2 **OF HOME HEALTH PATIENTS.**

3 (a) HOME HEALTH AGENCY REQUIREMENTS.—

4 (1) MEDICARE PROGRAM.—Section 1891(a) of  
5 the Social Security Act (42 U.S.C. 1395bbb(a)) is  
6 amended by adding at the end the following:

7 “(7) SCREENING OF HOME HEALTH AGENCY  
8 WORKERS.—

9 “(A) BACKGROUND CHECKS ON APPLI-  
10 CANTS.—Subject to subparagraph (B)(ii), be-  
11 fore hiring an individual, a home health agen-  
12 cy—

13 “(i) gives the individual written notice  
14 that the agency is required to perform  
15 background checks with respect to appli-  
16 cants;

17 “(ii) requires, as a condition of em-  
18 ployment, that such individual—

19 “(I) provide a written statement  
20 disclosing any conviction for a rel-  
21 evant crime or finding of patient or  
22 resident abuse;

23 “(II) provide a statement signed  
24 by the individual authorizing the  
25 agency to request the search and ex-  
26 change of criminal records;

1                   “(III) provide in person a copy of  
2                   the individual’s fingerprints; and

3                   “(IV) provide any other identi-  
4                   fication information the Secretary  
5                   may specify in regulation;

6                   “(iii) initiates a check of the registry  
7                   under section 1128F in accordance with  
8                   regulations promulgated by the Secretary  
9                   to determine whether such registry con-  
10                  tains any disqualifying information with  
11                  respect to such individual; and

12                  “(iv) if such registry does not contain  
13                  any such disqualifying information—

14                  “(I) requests that the State initi-  
15                  ate a State and national criminal  
16                  background check on such individual  
17                  in accordance with the provisions of  
18                  subsection (e)(7); and

19                  “(II) furnishes to the State the  
20                  information described in subclauses  
21                  (II) through (IV) of clause (ii) not  
22                  later than 7 days (excluding Satur-  
23                  days, Sundays, and legal public holi-  
24                  days under section 6103(a) of title 5,  
25                  United States Code) after completion

1 of the check against the registry initi-  
2 ated under clause (iii).

3 “(B) PROHIBITION ON HIRING OF ABUSIVE  
4 WORKERS.—

5 “(i) IN GENERAL.—The home health  
6 agency does not knowingly employ any in-  
7 dividual who has any conviction for a rel-  
8 evant crime or with respect to whom a  
9 finding of patient or resident abuse has  
10 been made.

11 “(ii) PROBATIONARY EMPLOYMENT.—  
12 After complying with the requirements of  
13 clauses (i), (ii), and (iii) of subparagraph  
14 (A), a home health agency may provide for  
15 a probationary period of employment (not  
16 to exceed 90 days) for an individual pend-  
17 ing completion of the check against the  
18 registry described under subparagraph  
19 (A)(iii) and the background check de-  
20 scribed under subparagraph (A)(iv). Such  
21 agency shall maintain supervision of the  
22 individual during the individual’s proba-  
23 tionary period of employment.

24 “(C) REPORTING REQUIREMENTS.—The  
25 home health agency reports to the State any in-

1           stance in which the agency determines that an  
2           individual has committed an act of patient ne-  
3           glect or abuse or misappropriation of patient  
4           property in the course of employment by the  
5           agency.

6                   “(D) USE OF INFORMATION.—

7                           “(i) IN GENERAL.—A home health  
8                           agency that obtains information about an  
9                           individual pursuant to clauses (iii) and (iv)  
10                          of subparagraph (A) may use such infor-  
11                          mation only for the purpose of determining  
12                          the suitability of the individual for employ-  
13                          ment.

14                          “(ii) IMMUNITY FROM LIABILITY.—A  
15                          home health agency that, in denying em-  
16                          ployment for an applicant, reasonably re-  
17                          lies upon information about an individual  
18                          provided by the State pursuant to sub-  
19                          section (e)(7) shall not be liable in any ac-  
20                          tion brought by the individual based on the  
21                          employment determination resulting from  
22                          the incompleteness or inaccuracy of the in-  
23                          formation.

24                          “(iii) CRIMINAL PENALTY.—Whoever  
25                          knowingly violates the provisions of clause

1 (i) shall be fined in accordance with title  
2 18, United States Code, imprisoned for not  
3 more than 2 years, or both.

4 “(E) DEFINITIONS.—For purposes of this  
5 paragraph:

6 “(i) CONVICTION FOR A RELEVANT  
7 CRIME.—The term ‘conviction for a rel-  
8 evant crime’ means any State or Federal  
9 criminal conviction for—

10 “(I) any offense described in  
11 paragraphs (1) through (4) of section  
12 1128(a); and

13 “(II) such other types of offenses  
14 as the Secretary may specify in regu-  
15 lations.

16 “(ii) FINDING OF PATIENT OR RESI-  
17 DENT ABUSE.—The term ‘finding of pa-  
18 tient or resident abuse’ means any sub-  
19 stantiated finding by a State agency under  
20 subsection (g)(1)(E)(i) or a Federal agency  
21 that an individual has committed—

22 “(I) an act of patient or resident  
23 abuse or neglect or a misappropriation  
24 of patient property; or

1                   “(II) such other types of acts as  
2                   the Secretary may specify in regula-  
3                   tions.

4                   “(iii)   DISQUALIFYING   INFORMA-  
5                   TION.—The term ‘disqualifying informa-  
6                   tion’ means information about a conviction  
7                   for a relevant crime or a finding of patient  
8                   or resident abuse.”.

9           (b) EXPANSION OF STATE NURSING REGISTRIES TO  
10   COLLECT INFORMATION ABOUT HOME HEALTH AGENCY  
11   WORKERS.—

12                   (1) MEDICARE PROGRAM.—Section 1819 of the  
13                   Social Security Act (42 U.S.C. 1395i–3) is amend-  
14                   ed—

15                           (A) in subsection (e)(2)—

16                                   (i) in the paragraph heading, by strik-  
17                                   ing “NURSE AIDE REGISTRY” and insert-  
18                                   ing “NURSE AIDE AND HOME HEALTH  
19                                   WORKER REGISTRY”;

20                                   (ii) in subparagraph (A)—

21   (I) by striking “By not later than  
22   January 1, 1989, the ” and inserting  
23   “The”;

1 (II) by striking “a registry of all  
2 individuals” and inserting “a registry  
3 of (I) all individuals”; and

4 (III) by inserting before the pe-  
5 riod “, and (II) all home health agen-  
6 cy workers with respect to whom the  
7 State has made a finding described in  
8 subparagraph (B)”;

9 (iii) in subparagraph (B)—

10 (I) by inserting “and for the in-  
11 clusion of findings by the State under  
12 subsection (g)(1)(E)(i) concerning any  
13 conviction for a relevant crime or  
14 finding of patient or resident abuse or  
15 misappropriation of resident or pa-  
16 tient funds by a home health agency  
17 worker” after “individual listed in the  
18 registry”; and

19 (II) by inserting “or patient”  
20 after “resident” each place it appears;  
21 and

22 (iv) in subparagraph (C), by inserting  
23 “or home health care worker” after “nurse  
24 aide”; and

25 (B) in subsection (g)(1)—



1 (i) by redesignating subparagraph (E)  
2 as subparagraph (F), and

3 (ii) by inserting after subparagraph  
4 (D) the following new subparagraph:

5 “(E) INVESTIGATIONS AND REMOVAL-OF-  
6 NAME AUTHORITIES FOR HOME HEALTH AGEN-  
7 CY WORKERS.—

8 “(i) INVESTIGATIONS.—The State  
9 shall provide, through an appropriate agen-  
10 cy with responsibility for licensing or ap-  
11 proval of home health agencies (as de-  
12 scribed in section 1861(o)(4)), for a proc-  
13 ess for the receipt and timely review and  
14 investigation of allegations of neglect and  
15 abuse and misappropriation of patient  
16 property by a home health agency worker  
17 used by a home health agency in providing  
18 services to such a patient. The State shall,  
19 after providing the individual involved with  
20 a written notice of the allegations (includ-  
21 ing a statement of the availability of a  
22 hearing for the individual to rebut the alle-  
23 gations) and the opportunity for a hearing  
24 on the record, make a written finding as to  
25 the accuracy of the allegations. If the State

1 finds that a home health agency worker  
2 has neglected or abused a patient or mis-  
3 appropriated patient property, the State  
4 shall notify the worker and the registry of  
5 such finding and, if applicable, the appro-  
6 priate licensure authority. A State shall  
7 not make a finding that an individual has  
8 neglected a patient if the individual dem-  
9 onstrates that such neglect was caused by  
10 factors beyond the control of the individ-  
11 ual.

12 “(ii) REMOVAL OF NAME FROM REG-  
13 ISTRY.—In the case of a finding of neglect  
14 under clause (i), the State shall establish a  
15 procedure to permit a worker to petition  
16 the State to have his or her name removed  
17 from the registry upon a determination by  
18 the State that—

19 “(I) the employment and per-  
20 sonal history of the worker does not  
21 reflect a pattern of abusive behavior  
22 or neglect; and

23 “(II) the neglect involved in the  
24 original finding was a singular occur-  
25 rence.

1 “(iii) TIMING OF DETERMINATION.—

2 In no case shall a determination on a peti-  
3 tion submitted under clause (ii) be made  
4 prior to the expiration of the 1-year period  
5 beginning on the date on which the name  
6 of the petitioner was added to the registry  
7 under clause (i).”.

8 (c) STATE AND FEDERAL REQUIREMENT TO CON-  
9 DUCT BACKGROUND CHECKS.—

10 (1) MEDICARE PROVISION.—Section 1819(e) of  
11 such Act is amended by adding at the end the fol-  
12 lowing new paragraph:

13 “(7) STATE AND FEDERAL REQUIREMENTS  
14 CONCERNING CRIMINAL BACKGROUND CHECKS ON  
15 HOME HEALTH AGENCY EMPLOYEES.—

16 “(A) IN GENERAL.—Upon receipt of a re-  
17 quest by a home health agency pursuant to sec-  
18 tion 1891(a)(7) that is accompanied by the in-  
19 formation described in subclauses (II) through  
20 (IV) of section 1891(a)(7)(A)(ii), a State, after  
21 checking appropriate State records and finding  
22 no disqualifying information (as defined in sec-  
23 tion 1891(a)(7)(E)), shall submit such request  
24 and information to the Attorney General and  
25 shall request the Attorney General to conduct a

1 search and exchange of records with respect to  
2 the individual as described in subparagraph  
3 (B).

4 “(B) SEARCH AND EXCHANGE OF  
5 RECORDS BY ATTORNEY GENERAL.—Upon re-  
6 ceipt of a submission pursuant to subparagraph  
7 (A), the Attorney General shall direct a search  
8 of the records of the Federal Bureau of Inves-  
9 tigation for any criminal history records cor-  
10 responding to the fingerprints or other positive  
11 identification information submitted. The Attor-  
12 ney General shall provide any corresponding in-  
13 formation resulting from the search to the  
14 State.

15 “(C) STATE REPORTING OF INFORMATION  
16 TO NURSING FACILITY.—Upon receipt of the in-  
17 formation provided by the Attorney General  
18 pursuant to subparagraph (B), the State  
19 shall—

20 “(i) review the information to deter-  
21 mine whether the individual has any con-  
22 viction for a relevant crime (as defined in  
23 section 1891(a)(7)(E)); and

24 “(ii) report to the home health agency  
25 the results of such review.

1                   “(D) FEES FOR PERFORMANCE OF CRIMI-  
2                   NAL BACKGROUND CHECKS.—

3                   “(i) AUTHORITY TO CHARGE FEES.—

4                   “(I) ATTORNEY GENERAL.—The  
5                   Attorney General may charge a rea-  
6                   sonable fee, not to exceed \$50 per re-  
7                   quest, to any State requesting a  
8                   search and exchange of records pursu-  
9                   ant to this paragraph and section  
10                  1891(a)(7) for conducting the search  
11                  and providing the records. Such fees  
12                  shall be available to the Attorney Gen-  
13                  eral, or, in the Attorney General’s dis-  
14                  cretion, to the Federal Bureau of In-  
15                  vestigation, until expended.

16                  “(II) STATE.—A State may  
17                  charge a home health agency a fee for  
18                  initiating the criminal background  
19                  check under this paragraph and sec-  
20                  tion 1891(a)(7), including fees  
21                  charged by the Attorney General, and  
22                  for performing the review and report  
23                  required by subparagraph (C). The  
24                  amount of such fee shall not exceed  
25                  the actual cost of such activities.

1           “(ii) TREATMENT OF FEES FOR PUR-  
2           POSES OF COST REPORTS.—An entity may  
3           not include a fee assessed pursuant to this  
4           subparagraph as an allowable item on a  
5           cost report under this title or title XIX.

6           “(E) REGULATIONS.—In addition to the  
7           Secretary’s authority to promulgate regulations  
8           under this title, the Attorney General, in con-  
9           sultation with the Secretary, may promulgate  
10          such regulations as are necessary to carry out  
11          the Attorney General’s responsibilities under  
12          this paragraph and section 1891(a)(7), includ-  
13          ing regulations regarding the security, confiden-  
14          tiality, accuracy, use, destruction, and dissemi-  
15          nation of information, audits and record-  
16          keeping, and the imposition of fees.

17          “(F) REPORT.—Not later than 2 years  
18          after the date of enactment of this paragraph,  
19          the Attorney General shall submit a report to  
20          Congress on the number of requests for  
21          searches and exchanges of records made under  
22          this paragraph and the disposition of such re-  
23          quests.”.

24          (d) ESTABLISHMENT OF NATIONAL REGISTRY OF  
25          ABUSIVE HOME HEALTH WORKERS.—Title XI of the So-

1 cial Security Act is amended by adding after section  
2 1128E (42 U.S.C. 1320a–7e) the following new section:

3 “NATIONAL REGISTRY OF ABUSIVE HOME HEALTH  
4 WORKERS

5 “SEC. 1128F. (a) IN GENERAL.—The Secretary shall  
6 establish a national data collection program for the report-  
7 ing of information described in subsection (b), with access  
8 as set forth in subsection (c), and shall maintain a data-  
9 base of the information collected under this section.

10 “(b) REPORTING OF INFORMATION.—Each State  
11 shall report the information collected pursuant to sections  
12 1819(e)(2)(B) with respect to home health workers in  
13 such form and manner as the Secretary may prescribe by  
14 regulation.

15 “(c) ACCESS TO REPORTED INFORMATION.—

16 “(1) AVAILABILITY.—The information in the  
17 database maintained under this section shall be  
18 available, pursuant to procedures maintained under  
19 this section, to—

20 “(A) Federal and State government agen-  
21 cies;

22 “(B) home health agencies participating in  
23 the program under title XVIII;

24 “(C) such other persons as the Secretary  
25 may specify by regulation,

1 but only for the purpose of determining the suit-  
2 ability for employment by a home health agency.

3 “(2) INFORMATION.—The information in the  
4 database shall be exempt from disclosure under sec-  
5 tion 552 of title 5, United States Code.

6 “(3) FEES FOR DISCLOSURE.—

7 “(A) IN GENERAL.—The Secretary may es-  
8 tablish or approve reasonable fees for the dis-  
9 closure of information in such database. The  
10 amount of such a fee shall be sufficient to re-  
11 cover the full costs of operating the database.  
12 Such fees shall be available to the Secretary or,  
13 in the Secretary’s discretion, to the agency des-  
14 ignated under this section to cover such costs.

15 “(B) AVAILABILITY OF FEES.—Fees col-  
16 lected pursuant to this subsection shall remain  
17 available until expended, in the amounts pro-  
18 vided in appropriation acts, for necessary ex-  
19 penses related to the purposes for which the  
20 fees were assessed.

21 “(C) TREATMENT OF FEES FOR PURPOSES  
22 OF COST REPORTS.—An entity may not include  
23 a fee assessed pursuant to this subsection as an  
24 allowable item on a cost report under this  
25 title.”.



1       (e) EFFECTIVE DATE.—The amendments made by  
2 this section take effect on the date of the enactment of  
3 this Act, without regard to whether implementing regula-  
4 tions are in effect as of such date.

○