

105TH CONGRESS
1ST SESSION

S. 1122

To establish a national registry of abusive and criminal patient care workers
and to require criminal background checks of patient care workers.

IN THE SENATE OF THE UNITED STATES

JULY 31, 1997

Mr. KOHL (for himself, Mr. GRASSLEY, and Mr. REID) introduced the
following bill; which was read twice and referred to the Committee on Finance

A BILL

To establish a national registry of abusive and criminal patient care workers and to require criminal background checks of patient care workers.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Patient Abuse Preven-

5 tion Act”.

6 **SEC. 2. ESTABLISHMENT OF NATIONAL REGISTRY OF ABU-** 7 **SIVE WORKERS.**

8 (a) IN GENERAL.—The Secretary shall establish,
9 under the health care fraud and abuse data collection pro-
10 gram established under section 1128E of the Social Secu-

1 rity Act (42 U.S.C. 1320a–7e), a registry to be known
 2 as the “National Registry of Abusive Workers” (hereafter
 3 referred to in this section as the “Registry”) to collect and
 4 maintain data on covered health care workers (as defined
 5 in subsection (e)) who have been the subject of reports
 6 of patient abuse.

7 (b) SUBMISSION OF INFORMATION BY STATE REG-
 8 ISTRIES.—Each State registry under sections 1819(e)(2)
 9 and 1919(e)(2) of the Social Security Act (42 U.S.C.
 10 1395i–3(e)(2) and 1396r(e)(2)) shall submit to the Reg-
 11 istry any existing or newly acquired information contained
 12 in the State registry concerning covered health care work-
 13 ers who have been the subject of confirmed findings of
 14 patient abuse.

15 (c) SUBMISSION OF INFORMATION BY STATE.—Each
 16 State shall report to the Registry any existing or newly
 17 acquired information concerning the identity of any cov-
 18 ered health care worker who has been found to have com-
 19 mitted an abusive act involving a patient, including the
 20 identity of any such worker who has been convicted of a
 21 Federal or State crime as described in section
 22 1128(a)(2)(A) of the Social Security Act (42 U.S.C.
 23 1320a–7(a)(2)(A)). The State shall provide such workers
 24 with a right to issue a statement concerning the submis-
 25 sion of information to the Registry under this subsection.

1 Any information disclosed concerning a finding of an abu-
 2 sive act shall also include disclosure of any statement sub-
 3 mitted by a worker in the registry relating to the finding
 4 or a clear and accurate summary of such a statement.

5 (d) SUBMISSION OF INFORMATION BY FACILITIES.—
 6 Each covered health care facility shall report to the State
 7 concerning a covered health care worker who has been
 8 found to have engaged in an act of patient abuse. The
 9 State shall, in accordance with the procedures described
 10 in part 483 of title 42, Code of Federal Regulations (as
 11 in effect on July 1, 1995), conduct an investigation with
 12 respect to a report under this subsection to determine the
 13 validity of such a report.

14 (e) BACKGROUND CHECK.—

15 (1) REQUIREMENTS.—

16 (A) IN GENERAL.—Each covered health
 17 care facility (as defined in subsection (f)), prior
 18 to employing a covered health care worker,
 19 shall—

20 (i) in the case of a covered health care
 21 worker who has not otherwise undergone a
 22 criminal background check as part of the
 23 licensing requirements of a State, as deter-
 24 mined under regulations promulgated by
 25 the Secretary, provide for the conduct by

1 the State of a criminal background check
2 (through an existing State database (if
3 any) and through the Integrated Auto-
4 mated Fingerprint Identification System)
5 concerning such worker, and provide the
6 worker with prior written notice of the re-
7 quirement for such a background check;

8 (ii) obtain from a covered health care
9 worker prior to employment a written cer-
10 tification that such worker does not have a
11 criminal record, and that a finding of
12 abuse has not been made relating to such
13 worker, that would preclude such worker
14 from carrying out duties that require di-
15 rect patient care; and

16 (iii) in the case of all such workers,
17 contact the State health care worker reg-
18 istries established under sections
19 1819(e)(2) and 1919(e)(2) which shall also
20 contact the Registry for information con-
21 cerning the worker.

22 (B) IMPOSITION OF FEES.—A State may
23 assess a covered health care facility a fee for
24 the conduct of a criminal background check
25 under subparagraph (A)(i) in an amount that

1 does not exceed the actual cost of the conduct
2 of the background check. Such a facility may
3 recover from the covered health care worker in-
4 volved a fee in an amount equal to not more
5 than 50 percent of the amount of the fee as-
6 sessed by the State for the criminal background
7 check.

8 (C) EFFECTIVE DATE.—The requirement
9 in subparagraph (A)(i) shall become applicable
10 on January 1, 1999, or on such earlier date as
11 the Director of the Federal Bureau of Inves-
12 tigation determines that the Integrated Auto-
13 mated Fingerprint Identification System has
14 become operational.

15 (2) PROBATIONARY EMPLOYMENT.—Each cov-
16 ered health care facility shall provide a probationary
17 period of employment for a covered health care
18 worker pending the completion of the background
19 checks required under paragraph (1)(A). Such facil-
20 ity shall maintain direct supervision of the covered
21 health care worker during the worker's probationary
22 period of employment.

23 (3) PENALTY.—

24 (A) IN GENERAL.—A covered health care
25 facility that violates paragraph (1) or (2) shall

be subject to a civil penalty in an amount not to exceed—

(i) for the first such violation, \$2,000;

and

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

(B) KNOWING RETENTION OF WORKER.—

In addition to any civil penalty under subparagraph (A), a covered health care facility that—

(i) knowingly continues to employ a covered health care worker in violation of paragraph (1) or (2) in a position involving direct patient care; or

(ii) knowingly fails to report a covered health care worker who has been determined to have committed patient abuse;

shall be subject to a civil penalty in an amount not to exceed \$5,000 for the first such violation, and \$10,000 for the second and each subsequent violation within any 5-year period.

(f) DEFINITIONS.—In this section:

(1) COVERED HEALTH CARE FACILITY.—The term “covered health care facility” means—

1 (A) with respect to application under the
2 medicare program under title XVIII of the So-
3 cial Security Act (42 U.S.C. 1395 et seq.), a
4 provider of services, as defined in section
5 1861(u) of such Act (other than a fund for pur-
6 poses of sections 1814(g) and 1835(e));

7 (B) with respect to application under the
8 medicaid program under title XIX of the Social
9 Security Act (42 U.S.C. 1396 et seq.), any
10 nursing facility, home health agency, commu-
11 nity-based residential facility, adult day care
12 center, adult family home, assisted living facil-
13 ity, hospice program, hospital, treatment facil-
14 ity, personal care worker agency, supportive
15 home care worker agency, board and care facil-
16 ity, or any other entity that receives assistance
17 or benefits under the medicaid program under
18 that title;

19 (C) a facility of the National Institutes of
20 Health;

21 (D) a facility of the Indian Health Service;

22 (E) a health center under section 330 of
23 the Public Health Service Act (42 U.S.C.
24 254b); and

1 (F) a hospital or other patient care facility
2 owned or operated under the authority of the
3 Department of Veterans Affairs or the Depart-
4 ment of Defense.

5 (2) COVERED HEALTH CARE WORKER.—The
6 term “covered health care worker” means any indi-
7 vidual that has direct contact with a patient of a
8 covered health care facility under an employment or
9 other contract, or under a volunteer agreement, with
10 such facility. Such term includes individuals who are
11 licensed or certified by the State to provide such
12 services, and non-licensed individuals providing such
13 services as defined by the Secretary including nurse
14 assistants, nurses aides, home health aides, and per-
15 sonal care workers and attendants.

16 (3) PATIENT ABUSE.—The term “patient
17 abuse” means any incidence of abuse, neglect, mis-
18 treatment, or misappropriation of property of a pa-
19 tient of a covered health care facility. The terms
20 “abuse”, “neglect”, “mistreatment”, and “misappro-
21 priation of property” shall have the meanings given
22 such terms in part 483 of title 42, Code of Federal
23 Regulations.

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

1 (g) CONSULTATION.—In carrying out this section the
 2 Secretary shall consult with the Director of the Federal
 3 Bureau of Investigation.

4 (h) REGULATIONS.—Not later than 6 months after
 5 the date of enactment of this Act, the Secretary shall pro-
 6 mulgate regulations to carry out this section. With respect
 7 to subsections (b) and (c), the regulations shall call for
 8 the submission of information to the Registry not later
 9 than 30 days after the date of a conviction or on which
 10 a finding is made.

11 **SEC. 3. EXCLUSION OF CERTAIN INDIVIDUALS FROM PAR-**
 12 **TICIPATION IN PROGRAMS.**

13 (a) MANDATORY LIFETIME EXCLUSION.—Section
 14 1128(a) of the Social Security Act (42 U.S.C. 1320a-
 15 7(a)) is amended by adding at the end the following:

16 “(5) CRIMINAL CONVICTION.—Any individual or
 17 entity that has been—

18 “(A) convicted, under Federal or State
 19 law, of a criminal offense involving a crime
 20 against bodily security, including homicide, bat-
 21 tery, endangerment of safety, sexual assault,
 22 child or elder abuse, and spousal abuse; or

23 “(B) found to have—

24 “(i) knowingly continued to employ an
 25 individual described in subparagraph (A)

1 in a position involving direct patient care;

2 or

3 “(ii) knowingly failed to report an in-
4 dividual who has been determined to have
5 committed a crime described in subpara-
6 graph (A).”.

7 (b) PERMISSIVE EXCLUSION.—

8 (1) IN GENERAL.—Section 1128(b) of the So-
9 cial Security Act (42 U.S.C. 1320a–7(b)) is amend-
10 ed—

11 (A) in subsection (b), by adding at the end
12 the following:

13 “(16) FINDING RELATING TO PATIENT
14 ABUSE.—Any individual or entity that—

15 “(A) is or has been the subject of a spe-
16 cific documented finding of patient abuse by a
17 State (as determined under procedures utilized
18 by a State under section 1819(e)(2) or
19 1919(e)(2)); or

20 “(B) has been found to have—

21 “(i) knowingly continued to employ an
22 individual described in subparagraph (A)
23 in a position involving direct patient care;
24 or

1 “(ii) knowingly failed to report an in-
2 dividual who has been determined to have
3 committed patient abuse as described in
4 subparagraph (A).”; and
5 (B) in subsection (c)(3), by adding at the
6 end the following:

7 “(G) In the case of an exclusion of an individ-
8 ual or entity under subsection (b)(16), the period of
9 exclusion shall be determined in accordance with
10 regulations promulgated by the Secretary based on
11 the severity of the conduct that is the subject of the
12 exclusion.”.

13 (2) REGULATIONS.—Not later than 6 months
14 after the date of enactment of this Act, the Sec-
15 retary of Health and Human Services shall promul-
16 gate regulations to establish periods of exclusion for
17 purposes of section 1128(c)(3)(G) of the Social Se-
18 curity Act.

19 (c) EXCLUSIONS APPLY TO ANY ENTITY ELIGIBLE
20 FOR FEDERAL REIMBURSEMENT.—Section 1128 of the
21 Social Security Act (42 U.S.C. 1320a–7) is amended by
22 adding at the end the following:

23 “(j) APPLICABILITY OF CERTAIN EXCLUSIONS.—The
24 exclusion (or direction to exclude) an individual or entity
25 under subsections (a)(2) and (b)(16) shall provide that

1 such individual or entity is excluded from working for or
 2 on behalf of any entity that is eligible for reimbursement
 3 under a Federal health care program, as defined in section
 4 1128B(f).”.

5 **SEC. 4. PREVENTION AND TRAINING DEMONSTRATION**
 6 **PROJECT.**

7 (a) ESTABLISHMENT.—The Secretary of Health and
 8 Human Services shall establish a demonstration program
 9 to provide grants to develop information on best practices
 10 in patient abuse prevention training (including behavior
 11 training and interventions) for managers and staff of hos-
 12 pital and health care facilities.

13 (b) ELIGIBILITY.—To be eligible to receive a grant
 14 under subsection (a), an entity shall be a public or private
 15 nonprofit entity and prepare and submit to the Secretary
 16 of Health and Human Services an application at such
 17 time, in such manner, and containing such information as
 18 the Secretary may require.

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

21 (1) examine ways to improve collaboration be-
 22 tween State health care survey and provider certifi-
 23 cation agencies, long-term care ombudsman pro-
 24 grams, the long-term care industry, and local com-
 25 munity members;

1 (2) examine patient care issues relating to regu-
2 latory oversight, community involvement, and facility
3 staffing and management with a focus on staff
4 training, staff stress management and staff super-
5 vision;

6 (3) examine the use of patient abuse prevention
7 training programs by long-term care entities, includ-
8 ing the training program developed by the National
9 Association of Attorneys General, and the extent to
10 which such programs are used; and

11 (4) identify and disseminate best practices for
12 preventing and reducing patient abuse.

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

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