

105TH CONGRESS
2D SESSION

S. 2570

“Long-Term Care Patient Protection Act of 1998”.

IN THE SENATE OF THE UNITED STATES

OCTOBER 7 (legislative day, OCTOBER 2), 1998

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

A BILL

“Long-Term Care Patient Protection Act of 1998”.

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. ESTABLISHMENT OF PROGRAM TO PREVENT**
4 **ABUSE OF NURSING FACILITY RESIDENTS.**

5 (a) NURSING FACILITY AND SKILLED NURSING FA-
6 CILITY REQUIREMENTS.—

7 (1) MEDICAID PROGRAM.—Section 1919(b), as
8 amended by section 2(a), is amended by adding after
9 paragraph (8) the following new paragraph:

10 “(9) SCREENING OF NURSING FACILITY WORK-
11 ERS.—

1 “(A) BACKGROUND CHECKS ON APPLI-
2 CANTS.—Subject to subparagraph (B)(ii), be-
3 fore hiring an individual, a nursing facility
4 shall—

5 “(i) give the individual written notice
6 that the facility is required to perform
7 background checks with respect to appli-
8 cants;

9 “(ii) require, as a condition of employ-
10 ment, that such individual—

11 “(I) provide a written statement
12 disclosing any conviction for a rel-
13 evant crime or finding of patient or
14 resident abuse;

15 “(II) provide a statement signed
16 by the individual authorizing the facil-
17 ity to request the search and exchange
18 of criminal records;

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

21 “(IV) provide any other identi-
22 fication information the Secretary
23 may specify in regulation;

24 “(iii) initiate a check of the registry
25 under section 1128F in accordance with

1 regulations promulgated by the Secretary
2 to determine whether such registry con-
3 tains any disqualifying information with
4 respect to such individual; and

5 “(iv) if such registry does not contain
6 any such disqualifying information—

7 “(I) request that the State initi-
8 ate a State and national criminal
9 background check on such individual
10 in accordance with the provisions of
11 subsection (e)(9); and

12 “(II) furnish to the State the in-
13 formation described in subclauses (II)
14 through (IV) of clause (ii) not more
15 than 7 days (excluding Saturdays,
16 Sundays, and legal public holidays
17 under section 6103(a) of title 5,
18 United States Code) after completion
19 of the check against the registry initi-
20 ated under clause (iii).

21 “(B) PROHIBITION ON HIRING OF ABUSIVE
22 WORKERS.—

23 “(i) IN GENERAL.—A nursing facility
24 may not knowingly employ any individual
25 who has any conviction for a relevant

1 crime or with respect to whom a finding of
2 patient or resident abuse has been made.

3 “(ii) PROBATIONARY EMPLOYMENT.—

4 After complying with the requirements of
5 clauses (i), (ii), and (iii) of subparagraph
6 (A), a nursing facility may provide for a
7 probationary period of employment (not to
8 exceed 90 days) for an individual pending
9 completion of the check against the reg-
10 istry described under subparagraph (A)(iii)
11 and the background check described under
12 subparagraph (A)(iv). Such facility shall
13 maintain supervision of the individual dur-
14 ing the individual’s probationary period of
15 employment.

16 “(C) REPORTING REQUIREMENTS.—A

17 nursing facility shall report to the State any in-
18 stance in which the facility determines that an
19 individual has committed an act of resident ne-
20 glect or abuse or misappropriation of resident
21 property in the course of employment by the fa-
22 cility.

23 “(D) USE OF INFORMATION.—

24 “(i) IN GENERAL.—A nursing facility
25 that obtains information about an individ-

1 ual pursuant to clauses (iii) and (iv) of
2 subparagraph (A) may use such informa-
3 tion only for the purpose of determining
4 the suitability of the individual for employ-
5 ment.

6 “(ii) IMMUNITY FROM LIABILITY.—A
7 nursing facility that, in denying employ-
8 ment for an applicant, reasonably relies
9 upon information about an individual pro-
10 vided by the State pursuant to subsection
11 (e)(9) shall not be liable in any action
12 brought by the individual based on the em-
13 ployment determination resulting from the
14 incompleteness or inaccuracy of the infor-
15 mation.

16 “(iii) CRIMINAL PENALTY.—Whoever
17 knowingly violates the provisions of sub-
18 paragraph (D)(i) shall be fined in accord-
19 ance with title 18, United States Code, im-
20 prisoned for not more than 2 years, or
21 both.

22 “(E) DEFINITIONS.—As used in this para-
23 graph—

1 “(i) the term ‘conviction for a relevant
2 crime’ means any State or Federal crimi-
3 nal conviction for—

4 “(I) any offense described in
5 paragraphs (1) through (4) of section
6 1128(a); and

7 “(II) such other types of offenses
8 as the Secretary may specify in regu-
9 lations;

10 “(ii) the term ‘finding of patient or
11 resident abuse’ means any substantiated
12 finding by a State agency under subsection
13 (g)(1)(C) or a Federal agency that an indi-
14 vidual has committed—

15 “(I) an act of patient or resident
16 abuse or neglect or a misappropriation
17 of patient or resident property; or

18 “(II) such other types of acts as
19 the Secretary may specify in regula-
20 tions; and

21 “(iii) the term ‘disqualifying informa-
22 tion’ means information about a conviction
23 for a relevant crime or a finding of patient
24 or resident abuse.”.

1 (2) MEDICARE PROGRAM.—Section 1819(b), as
2 amended by section 2(b), is amended by adding after
3 paragraph (8) the following new paragraph:

4 “(9) SCREENING OF NURSING FACILITY WORK-
5 ERS.—

6 “(A) BACKGROUND CHECKS ON APPLI-
7 CANTS.—Subject to subparagraph (B)(ii), be-
8 fore hiring an individual, a skilled nursing facil-
9 ity shall—

10 “(i) give the individual written notice
11 that the facility is required to perform
12 background checks with respect to appli-
13 cants;

14 “(ii) require, as a condition of employ-
15 ment, that such individual—

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

20 “(II) provide a statement signed
21 by the individual authorizing the facil-
22 ity to request the search and exchange
23 of criminal records;

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

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

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

10 “(iv) if such registry does not contain
11 any such disqualifying information—

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

17 “(II) furnish to the State the in-
18 formation described in subclauses (II)
19 through (IV) of clause (ii) not more
20 than 7 days (excluding Saturdays,
21 Sundays, and legal public holidays
22 under section 6103(a) of title 5,
23 United States Code) after completion
24 of the check against the registry initi-
25 ated under clause (iii).

1 “(B) PROHIBITION ON HIRING OF ABUSIVE
2 WORKERS.—

3 “(i) IN GENERAL.—A skilled nursing
4 facility may not knowingly employ any in-
5 dividual who has any conviction for a rel-
6 evant crime or with respect to whom a
7 finding of patient or resident abuse has
8 been made.

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

22 “(C) REPORTING REQUIREMENTS.—A
23 skilled nursing facility shall report to the State
24 any instance in which the facility determines
25 that an individual has committed an act of resi-

1 dent neglect or abuse or misappropriation of
2 resident property in the course of employment
3 by the facility.

4 “(D) USE OF INFORMATION.—

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

12 “(ii) IMMUNITY FROM LIABILITY.—A
13 skilled nursing facility that, in denying em-
14 ployment for an applicant, reasonably re-
15 lies upon information about an individual
16 provided by the State pursuant to sub-
17 section (e)(9) shall not be liable in any ac-
18 tion brought by the individual based on the
19 employment determination resulting from
20 the incompleteness or inaccuracy of the in-
21 formation.

22 “(iii) CRIMINAL PENALTY.—Whoever
23 knowingly violates the provisions of sub-
24 paragraph (D)(i) shall be fined in accord-
25 ance with title 18, United States Code, im-

1 prisoned for not more than 2 years, or
2 both.

3 “(E) DEFINITIONS.—As used in this para-
4 graph—

5 “(i) the term ‘conviction for a relevant
6 crime’ means any State or Federal crimi-
7 nal conviction for—

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

11 “(II) such other types of offenses
12 as the Secretary may specify in regu-
13 lations;

14 “(ii) the term ‘finding of patient or
15 resident abuse’ means any substantiated
16 finding by a State agency under subsection
17 (g)(1)(C) or a Federal agency that an indi-
18 vidual has committed—

19 “(I) an act of patient or resident
20 abuse or neglect or a misappropriation
21 of patient or resident property; or

22 “(II) such other types of acts as
23 the Secretary may specify in regula-
24 tions; and

1 “(iii) the term ‘disqualifying informa-
 2 tion’ means information about a conviction
 3 for a relevant crime or a finding of patient
 4 or resident abuse.”.

5 “(b) STATE REQUIREMENTS.—

6 “(1) MEDICAID PROGRAM.—

7 “(A) EXPANSION OF STATE REGISTRY TO
 8 COLLECT INFORMATION ABOUT NURSING FACIL-
 9 ITY EMPLOYEES OTHER THAN NURSE AIDES.—
 10 Section 1919, as amended by section 2(a), is
 11 amended—

12 “(i) in subsection (e)(2)—

13 “(I) in the paragraph heading, by
 14 striking “NURSE AIDE REGISTRY” and
 15 inserting “NURSING FACILITY EM-
 16 PLOYEE REGISTRY””

17 “(II) in subparagraph (A)—

18 “(aa) by striking “By not
 19 later than January 1, 1989, the”
 20 and inserting “The”;

21 “(bb) by striking “a registry
 22 of all individuals” and inserting
 23 “a registry of (I) all individuals”;
 24 and

1 “(cc) by inserting before the
2 period “, and (II) all other nurs-
3 ing facility employees with re-
4 spect to whom the State has
5 made a finding described in sub-
6 paragraph (B)”;

7 “(III) in subparagraph (B), by
8 striking “involving an individual listed
9 in the registry” and inserting “involv-
10 ing a nursing facility employee”; and

11 “(IV) in subparagraph (C), by
12 striking “nurse aide” and inserting
13 “nursing facility employee or appli-
14 cant for employment”; and

15 “(ii) in subsection (g)(1)—

16 “(I) in subparagraph (C)—

17 “(aa) in the first sentence,
18 by striking “nurse aide” and in-
19 serting “nursing facility em-
20 ployee”; and

21 “(bb) in the third sentence,
22 by striking “nurse aide” each
23 place it appears and inserting
24 “nursing facility employee”; and

1 “(II) in subparagraph (D), by
2 striking “nurse aide” each place it ap-
3 pears and inserting “nursing facility
4 employee”.

5 “(B) STATE AND FEDERAL REQUIREMENT
6 TO CONDUCT BACKGROUND CHECKS.—Section
7 1919(e), as amended by section 2(a), is amend-
8 ed by adding at the end the following new para-
9 graph:

10 “(9) STATE AND FEDERAL REQUIREMENTS
11 CONCERNING CRIMINAL BACKGROUND CHECKS ON
12 NURSING FACILITY EMPLOYEES.—

13 “(A) IN GENERAL.—Upon receipt of a re-
14 quest by a nursing facility pursuant to sub-
15 section (b)(9) that is accompanied by the infor-
16 mation described in subclauses (II) through
17 (IV) of subsection (b)(9)(A)(ii), a State, after
18 checking appropriate State records and finding
19 no disqualifying information (as defined in sub-
20 section (b)(9)(E)), shall submit such request
21 and information to the Attorney General and
22 shall request the Attorney General to conduct a
23 search and exchange of records with respect to
24 the individual as described in subparagraph
25 (B).

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

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

17 “(i) review the information to deter-
18 mine whether the individual has any con-
19 viction for a relevant crime (as defined in
20 subsection (b)(9)(E)); and

21 “(ii) report to the nursing facility the
22 results of such review.

23 “(D) FEES FOR PERFORMANCE OF CRIMI-
24 NAL BACKGROUND CHECKS.—

25 “(i) AUTHORITY TO CHARGE FEES.—

1 “(I) ATTORNEY GENERAL.—The
2 Attorney General may charge a fee to
3 any State requesting a search and ex-
4 change of records pursuant to this
5 paragraph and subsection (b)(9) for
6 conducting the search and providing
7 the records. The amount of such fee
8 shall not exceed the lesser of the ac-
9 tual cost of such activities or \$50.
10 Such fees shall be available to the At-
11 torney General, or, in the Attorney
12 General’s discretion, to the Federal
13 Bureau of Investigation, until ex-
14 pended.

15 “(II) STATE.—A State may
16 charge a nursing facility a fee for ini-
17 tiating the criminal background check
18 under this paragraph and subsection
19 (b)(9), including fees charged by the
20 Attorney General, and for performing
21 the review and report required by sub-
22 paragraph (C). The amount of such
23 fee shall not exceed the actual cost of
24 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 XVIII.

6 “(iii) PROHIBITION ON CHARGING AP-
7 PLICANTS OR EMPLOYEES.—An entity may
8 not impose on an applicant for employment
9 or an employee any charges relating to the
10 performance of a background check under
11 this paragraph.

12 “(E) REGULATIONS.—In addition to the
13 Secretary’s authority to promulgate regulations
14 under this title, the Attorney General, in con-
15 sultation with the Secretary, may promulgate
16 such regulations as are necessary to carry out
17 the Attorney General’s responsibilities under
18 this paragraph and subsection (b)(9), including
19 regulations regarding the security, confidential-
20 ity, accuracy, use, destruction, and dissemina-
21 tion of information, audits and recordkeeping
22 and the imposition of fees.

23 “(F) REPORT.—Not later than 2 years
24 after the date of enactment of the “Long-Term
25 Care Patient Protection Act of 1998”, the At-

1 torney General shall submit a report to Con-
2 gress on the number of requests for searches
3 and exchanges of records made under this sec-
4 tion and the disposition of such requests.”.

5 (2) MEDICARE PROGRAM.—

6 (A) EXPANSION OF STATE REGISTRY TO
7 COLLECT INFORMATION ABOUT SKILLED NURS-
8 ING FACILITY EMPLOYEES OTHER THAN NURSE
9 AIDES.—Section 1819, as amended by section
10 2(b), is amended—

11 (i) in subsection (e)(2)—

12 (I) in the paragraph heading, by
13 striking “NURSE AIDE REGISTRY” and
14 inserting “SKILLED NURSING CARE
15 EMPLOYEE REGISTRY”;

16 (II) in subparagraph (A)—

17 (aa) by striking “By not
18 later than January 1, 1989, the”
19 and inserting “The”;

20 (bb) by striking “a registry
21 of all individuals” and inserting
22 “a registry of (I) all individuals”;
23 and

24 (cc) by inserting before the
25 period “, and (II) all other

1 skilled nursing facility employees
2 with respect to whom the State
3 has made a finding described in
4 subparagraph (B)’’;

5 (III) in subparagraph (B), by
6 striking ‘‘involving an individual listed
7 in the registry’’ and inserting ‘‘involv-
8 ing a skilled nursing facility em-
9 ployee’’; and

10 (IV) in subparagraph (C), by
11 striking ‘‘nurse aide’’ and inserting
12 ‘‘skilled nursing facility employee or
13 applicant for employment’’; and

14 (ii) in subsection (g)(1)—

15 (I) in subparagraph (C)—

16 (aa) in the first sentence, by
17 striking ‘‘nurse aide’’ and insert-
18 ing ‘‘skilled nursing facility em-
19 ployee’’; and

20 (bb) in the third sentence,
21 by striking ‘‘nurse aide’’ each
22 place it appears and inserting
23 ‘‘skilled nursing facility em-
24 ployee’’; and

1 (II) in subparagraph (D), by
2 striking “nurse aide” each place it ap-
3 pears and inserting “skilled nursing
4 facility employee”.

5 (B) STATE AND FEDERAL REQUIREMENT
6 TO CONDUCT BACKGROUND CHECKS.—Section
7 1819(e), as amended by section 2(b), is amend-
8 ed by adding at the end the following new para-
9 graph:

10 “(7) STATE AND FEDERAL REQUIREMENTS
11 CONCERNING CRIMINAL BACKGROUND CHECKS ON
12 SKILLED NURSING FACILITY EMPLOYEES.—

13 “(A) IN GENERAL.—Upon receipt of a re-
14 quest by a skilled nursing facility pursuant to
15 subsection (b)(9) that is accompanied by the in-
16 formation described in subclauses (II) through
17 (IV) of subsection (b)(9)(A)(ii), a State, after
18 checking appropriate State records and finding
19 no disqualifying information (as defined in sub-
20 section (b)(9)(E)), shall submit such request
21 and information to the Attorney General and
22 shall request the Attorney General to conduct a
23 search and exchange of records with respect to
24 the individual as described in subparagraph
25 (B).

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

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

17 “(i) review the information to deter-
18 mine whether the individual has any con-
19 viction for a relevant crime (as defined in
20 subsection (b)(9)(E)); and

21 “(ii) report to the skilled nursing fa-
22 cility the results of such review.

23 “(D) FEES FOR PERFORMANCE OF CRIMI-
24 NAL BACKGROUND CHECKS.—

25 “(i) AUTHORITY TO CHARGE FEES.—

1 “(I) ATTORNEY GENERAL.—The
2 Attorney General may charge a fee to
3 any State requesting a search and ex-
4 change of records pursuant to this
5 paragraph and subsection (b)(9) for
6 conducting the search and providing
7 the records. The amount of such fee
8 shall not exceed the lesser of the ac-
9 tual cost of such activities or \$50.
10 Such fees shall be available to the At-
11 torney General, or, in the Attorney
12 General’s discretion, to the Federal
13 Bureau of Investigation until ex-
14 pended.

15 “(II) STATE.—A State may
16 charge a skilled nursing facility a fee
17 for initiating the criminal background
18 check under this paragraph and sub-
19 section (b)(9), including fees charged
20 by the Attorney General, and for per-
21 forming the review and report re-
22 quired by subparagraph (C). The
23 amount of such fee shall not exceed
24 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 “(iii) PROHIBITION ON CHARGING AP-
7 PLICANTS OR EMPLOYEES.—An entity may
8 not impose on an applicant for employment
9 or an employee any charges relating to the
10 performance of a background check under
11 this paragraph.

12 “(E) REGULATIONS.—In addition to the
13 Secretary’s authority to promulgate regulations
14 under this title, the Attorney General, consulta-
15 tion with the Secretary, may promulgate such
16 regulations as are necessary to carry out the
17 Attorney General’s responsibilities under this
18 paragraph and subsection (b)(9), including reg-
19 ulations regarding the Security confidentiality,
20 accuracy, use, destruction, and dissemination of
21 information, audits and recordkeeping, and the
22 imposition of fees.

23 “(F) REPORT.—Not later than 2 years
24 after the date of enactment of the “Long-Term
25 Care Patient Protection Act of 1998”, the At-

1 “(B) nursing facilities participating in the
2 program under title XIX and skilled nursing fa-
3 cilities participating in a program under title
4 XVIII; and

5 “(C) such other persons as the Secretary
6 may specify by regulations,

7 but only for the purpose of determining the suitability for
8 employment in a nursing facility or skilled nursing facility.

9 “(2) INFORMATION.—The information in the
10 database shall be exempt from disclosure under 5
11 U.S.C. 552.

12 “(3) FEES FOR DISCLOSURE.—

13 “(A) IN GENERAL.—The Secretary may es-
14 tablish or approve reasonable fees for the dis-
15 closure of information in such data base. The
16 amount of such a fee shall be sufficient to re-
17 cover the full costs of operating the database.
18 Such fees shall be available to the Secretary or,
19 in the Secretary’s discretion, to the agency des-
20 ignated under this section to cover such costs.

21 “(B) AVAILABILITY OF FEES.—Fees col-
22 lected pursuant to this subsection shall remain
23 available until expended, in the amounts pro-
24 vided in appropriation acts, for necessary ex-

1 penses related to the purposes for which the
2 fees were assessed.

3 “(C) TREATMENT OF FEES FOR PURPOSES
4 OF COST REPORTS.—An entity may not include
5 a fee assessed pursuant to this subsection as an
6 allowable item on a cost report under this title
7 or title XIX.

8 “(D) PROHIBITION ON CHARGING APPLI-
9 CANTS OR EMPLOYEES.—An entity may not im-
10 pose on an applicant for employment or an em-
11 ployee any charges relating to the registry es-
12 tablished and maintained under this section.”.

13 **SEC. 2. EFFECTIVE DATE.**

14 The provisions of and amendments made by the Act
15 shall be effective on and after the date of enactment, with-
16 out regard to whether implementing regulations are in ef-
17 fect.

○