

109TH CONGRESS
2^D SESSION

H. R. 6161

To amend titles XVIII and XIX of the Social Security Act to expand the nursing home patients' bill of rights to include the right to receive care from a credible caregiver by requiring background checks on direct access employees and the right to a safe environment during an emergency or natural disaster by requiring nursing long-term care facilities to establish disaster emergency and evacuation plans.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 25, 2006

Ms. GINNY BROWN-WAITE of Florida (for herself, Mr. KIRK, and Mr. FITZPATRICK of Pennsylvania) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and 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

A BILL

To amend titles XVIII and XIX of the Social Security Act to expand the nursing home patients' bill of rights to include the right to receive care from a credible caregiver by requiring background checks on direct access employees and the right to a safe environment during an emergency or natural disaster by requiring nursing long-term care facilities to establish disaster emergency and evacuation plans.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Senior Safety and Dig-
3 nity Act of 2006”.

4 **SEC. 2. SECURING RIGHT TO RECEIVE CARE FROM A CRED-
5 IBLE CAREGIVER BY REQUIRING PERFORM-
6 ANCE OF BACKGROUND CHECKS ON DIRECT
7 ACCESS EMPLOYEES OF LONG-TERM CARE
8 FACILITIES OR PROVIDERS.**

9 (a) ADDITION TO NURSING HOME PATIENTS’ BILL
10 OF RIGHTS OF RIGHT TO RECEIVE CARE FROM A CRED-
11 IBLE CAREGIVER.—Sections 1819(c)(1)(A) and
12 1919(c)(1)(A) of the Social Security Act (42 U.S.C.
13 1395i–3(c)(1)(A), 1396r(c)(1)(A)) are each amended—

14 (1) by redesignating clause (xi) as clause (xiii);
15 and

16 (2) by inserting after clause (x) the following
17 new clause:

18 “(xi) RECEIPT OF CARE FROM CRED-
19 IBLE CAREGIVER.—The right to receive
20 care from a credible caregiver.”.

21 (b) SCREENING OF SKILLED NURSING FACILITY AND
22 NURSING FACILITY EMPLOYEE APPLICANTS.—

23 (1) MEDICARE PROGRAM.—Section 1819(b) of
24 the Social Security Act (42 U.S.C. 1395i–3(b)) is
25 amended by adding at the end the following:

1 “(9) SCREENING OF SKILLED NURSING FACIL-
2 ITY WORKERS.—

3 “(A) BACKGROUND CHECKS ON APPLI-
4 CANTS.—Before hiring a skilled nursing facility
5 worker, a skilled nursing facility shall conduct
6 a background check on the employee in accord-
7 ance with such procedures as the Secretary
8 shall establish.

9 “(B) PROHIBITION ON HIRING OF ABUSIVE
10 WORKERS.—

11 “(i) IN GENERAL.—Subject to clause
12 (ii), a skilled nursing facility may not
13 knowingly employ any skilled nursing facil-
14 ity worker who has any disqualifying infor-
15 mation (as defined in subparagraph
16 (F)(ii)).

17 “(ii) PROVISIONAL EMPLOYMENT.—A
18 skilled nursing facility may provide for a
19 provisional period of employment for a
20 skilled nursing facility worker pending
21 completion of the background check re-
22 quired under subparagraph (A). Such facil-
23 ity shall maintain direct supervision of the
24 covered individual during the worker’s pro-
25 visional period of employment.

1 “(C) PROCEDURES.—The procedures es-
2 tablished by the Secretary under subparagraph
3 (A) shall—

4 “(i) provide a process by which a
5 skilled nursing facility worker may appeal
6 or dispute the accuracy of the information
7 obtained in a background check conducted
8 under this paragraph;

9 “(ii) take into account the needs of
10 skilled nursing facilities that serve a low
11 volume of patients (as determined by the
12 Secretary) with respect to providing super-
13 vision for provisional employees who are
14 awaiting the results of a background check
15 conducted under this paragraph; and

16 “(iii) provide for the reimbursement
17 of nursing facilities for 100 percent of the
18 costs incurred by such facilities in com-
19 plying with the requirements of this sec-
20 tion.

21 “(D) IMMUNITY FROM LIABILITY.—A
22 skilled nursing facility that, in denying employ-
23 ment for an applicant, reasonably relies upon
24 information about such applicant provided by
25 the criminal background check shall not be lia-

1 ble in any action brought by such applicant
2 based on the employment determination result-
3 ing from the information.

4 “(E) CIVIL PENALTY.—

5 “(i) IN GENERAL.—A skilled nursing
6 facility that violates the provisions of this
7 paragraph shall be subject to a civil pen-
8 alty in an amount not to exceed—

9 “(I) for the first such violation,
10 \$2,000; and

11 “(II) for the second and each
12 subsequent violation within any 5-year
13 period, \$5,000.

14 “(ii) KNOWING RETENTION OF WORK-
15 ER.—In addition to any civil penalty under
16 clause (i), a skilled nursing facility that
17 knowingly continues to employ a skilled
18 nursing facility worker in violation of sub-
19 paragraph (A) or (B) shall be subject to a
20 civil penalty in an amount not to exceed
21 \$5,000 for the first such violation, and
22 \$10,000 for the second and each subse-
23 quent violation within any 5-year period.

24 “(F) DEFINITIONS.—In this paragraph:

1 “(i) CONVICTION FOR A RELEVANT
2 CRIME.—The term ‘conviction for a rel-
3 evant crime’ means any Federal or State
4 criminal conviction for—

5 “(I) any offense described in sec-
6 tion 1128(a); and

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

10 “(ii) DISQUALIFYING INFORMATION.—
11 The term ‘disqualifying information’ means
12 information about a conviction for a rel-
13 evant crime or a finding of patient or resi-
14 dent abuse.

15 “(iii) SKILLED NURSING FACILITY
16 WORKER.—The term ‘skilled nursing facil-
17 ity worker’ means any individual that has
18 direct access to a patient of a skilled nurs-
19 ing facility under an employment or other
20 contract, or both, with such facility. Such
21 term includes individuals who are licensed
22 or certified by the State to provide long-
23 term care services, and nonlicensed individ-
24 uals providing such services, as defined by
25 the Secretary, including nurse assistants,

1 nurse aides, home health aides, and per-
2 sonal care workers and attendants.”.

3 (2) MEDICAID PROGRAM.—Section 1919(b) of
4 the Social Security Act (42 U.S.C. 1396r(b)) is
5 amended by adding at the end the following new
6 paragraph:

7 “(9) SCREENING OF NURSING FACILITY WORK-
8 ERS.—

9 “(A) BACKGROUND CHECKS ON APPLI-
10 CANTS.—Before hiring a nursing facility work-
11 er, a nursing facility shall conduct a back-
12 ground check on the employee in accordance
13 with such procedures as the Secretary shall es-
14 tablish.

15 “(B) PROHIBITION ON HIRING OF ABUSIVE
16 WORKERS.—

17 “(i) IN GENERAL.—Subject to clause
18 (ii), a nursing facility may not knowingly
19 employ any nursing facility worker who
20 has any disqualifying information (as de-
21 fined in subparagraph (F)(ii)).

22 “(ii) PROVISIONAL EMPLOYMENT.—A
23 nursing facility may provide for a provi-
24 sional period of employment for a nursing
25 facility worker pending completion of the

1 background check required under subpara-
2 graph (A). Such facility shall maintain di-
3 rect supervision of the covered individual
4 during the worker’s provisional period of
5 employment.

6 “(C) PROCEDURES.—The procedures es-
7 tablished by the Secretary under subparagraph
8 (A) shall—

9 “(i) provide a process by which a
10 nursing facility worker may appeal or dis-
11 pute the accuracy of the information ob-
12 tained in a background check conducted
13 under this paragraph;

14 “(ii) take into account the needs of
15 nursing facilities that serve a low volume
16 of patients (as determined by the Sec-
17 retary) with respect to providing super-
18 vision for provisional employees who are
19 awaiting the results of a background check
20 conducted under this paragraph; and

21 “(iii) provide for the reimbursement
22 of nursing facilities for 100 percent of the
23 costs incurred by such facilities in com-
24 plying with the requirements of this sec-
25 tion.

1 “(D) IMMUNITY FROM LIABILITY.—A
2 nursing facility that, in denying employment for
3 an applicant, reasonably relies upon information
4 about such applicant provided by the criminal
5 background check shall not be liable in any ac-
6 tion brought by such applicant based on the
7 employment determination resulting from the
8 information.

9 “(E) CIVIL PENALTY.—

10 “(i) IN GENERAL.—A nursing facility
11 that violates the provisions of this para-
12 graph shall be subject to a civil penalty in
13 an amount not to exceed—

14 “(I) for the first such violation,
15 \$2,000; and

16 “(II) for the second and each
17 subsequent violation within any 5-year
18 period, \$5,000.

19 “(ii) KNOWING RETENTION OF WORK-
20 ER.—In addition to any civil penalty under
21 clause (i), a nursing facility that knowingly
22 continues to employ a nursing facility
23 worker in violation of subparagraph (A) or
24 (B) shall be subject to a civil penalty in an
25 amount not to exceed \$5,000 for the first

1 such violation, and \$10,000 for the second
2 and each subsequent violation within any
3 5-year period.

4 “(F) DEFINITIONS.—In this paragraph:

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

9 “(I) any offense described in sec-
10 tion 1128(a); and

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

14 “(ii) DISQUALIFYING INFORMATION.—
15 The term ‘disqualifying information’ means
16 information about a conviction for a rel-
17 evant crime or a finding of patient or resi-
18 dent abuse.

19 “(iii) NURSING FACILITY WORKER.—
20 The term ‘nursing facility worker’ means
21 any individual that has direct access to a
22 patient of a nursing facility under an em-
23 ployment or other contract, or both, with
24 such facility. Such term includes individ-
25 uals who are licensed or certified by the

1 State to provide long-term care services,
 2 and nonlicensed individuals providing such
 3 services, as defined by the Secretary, in-
 4 cluding nurse assistants, nurse aides, home
 5 health aides, and personal care workers
 6 and attendants.”.

7 (3) EFFECTIVE DATE.—The amendments made
 8 by this subsection and subsection (a) shall take ef-
 9 fect on the date that is 1 year after the date on
 10 which the evaluation is completed under subsection
 11 (d)(1).

12 (c) APPLICATION TO OTHER LONG-TERM CARE FA-
 13 CILITIES OR PROVIDERS.—

14 (1) MEDICARE.—Part E of title XVIII of the
 15 Social Security Act (42 U.S.C. 1395x et seq.) is
 16 amended by adding at the end the following:

17 “APPLICATION OF SKILLED NURSING FACILITY PREVEN-
 18 TIVE ABUSE PROVISIONS TO LONG-TERM CARE FA-
 19 CILITIES AND PROVIDERS

20 “SEC. 1898.

21 “(a) IN GENERAL.—The provisions of section
 22 1819(b)(9) shall apply to a long-term care facility or pro-
 23 vider (as defined in subsection (b)) in the same manner
 24 as such provisions apply to a skilled nursing facility.

25 “(b) LONG-TERM CARE FACILITY OR PROVIDER.—
 26 In this section, the term ‘long-term care facility or pro-

1 vider' means the following facilities or providers which re-
 2 ceive payment for services under this title or title XIX:

3 “(1) A home health agency.

4 “(2) A provider of hospice care.

5 “(3) A long-term care hospital.

6 “(4) A provider of personal care services.

7 “(5) A residential care provider that arranges
 8 for, or directly provides, long-term care services.

9 “(6) An intermediate care facility for the men-
 10 tally retarded (as defined in section 1905(d)).”.

11 (2) MEDICAID.—Section 1902(a) of the Social
 12 Security Act (42 U.S.C. 1396a) is amended—

13 (A) in paragraph (69), by striking “and”
 14 at the end;

15 (B) in paragraph (70), by striking the pe-
 16 riod and inserting “; and”; and

17 (C) by inserting after paragraph (70) the
 18 following:

19 “(71) provide that the provisions of section
 20 1919(b)(9) apply to a long-term care facility or pro-
 21 vider (as defined in section 1898(b)) in the same
 22 manner as such provisions apply to a nursing facil-
 23 ity.”.

24 (3) EFFECTIVE DATE.—The amendments made
 25 by this subsection shall take effect on the date that

1 is 1 year after the date on which the evaluation is
2 completed under subsection (c)(1).

3 (d) NATIONAL CRIMINAL BACKGROUND CHECK PRO-
4 GRAM.—

5 (1) COMPLETION OF PILOT PROGRAM EVALUA-
6 TION.—Not later than the date that is 6 months
7 after the completion of the pilot program for na-
8 tional and State background checks on direct patient
9 access employees of long-term care facilities or pro-
10 viders established under section 307 of the Medicare
11 Prescription Drug, Improvement, and Modernization
12 Act of 2003 (Public Law 108–173), the Secretary
13 shall complete the evaluation required under sub-
14 section (e) of such section of such Act.

15 (2) ESTABLISHMENT.—

16 (A) IN GENERAL.—Not later than the date
17 that is 1 year after the completion of the eval-
18 uation of the program described in paragraph
19 (1), the Secretary, in consultation with the At-
20 torney General, shall establish a national crimi-
21 nal background check program in order to pre-
22 vent abuse of nursing facility and skilled nurs-
23 ing facility residents and individuals receiving
24 home health care services and other long-term
25 care services under the medicare or medicaid

1 programs, taking into account the findings and
2 recommendations contained in the evaluation.

3 (B) USE IN CONDUCTING REQUIRED BACK-
4 GROUND CHECKS.—The national criminal back-
5 ground check program shall be made available
6 to a long-term care facility or provider for the
7 purpose of conducting criminal background
8 checks, including the criminal background
9 checks required under sections 1819(b)(9) and
10 1919(b)(9) of the Social Security Act (42
11 U.S.C. 1395i–3(b), 1396r(b)) (as added by sub-
12 section (a)).

13 (C) CONDUCT OF BACKGROUND CHECKS
14 BY THE FEDERAL BUREAU OF INVESTIGA-
15 TION.—The Secretary, in consultation with the
16 Attorney General, shall establish procedures for
17 the background checks to be conducted by the
18 Federal Bureau of Investigation, in cooperation
19 with appropriate State and Federal agencies.

20 (D) CONSULTATION.—In establishing the
21 national criminal background check program,
22 the Secretary shall consult with appropriate in-
23 terested parties, including—

24 (i) representatives of long-term care
25 facilities or providers;

- 1 (ii) representatives of employees of
2 long-term care facilities or providers;
3 (iii) consumers of long-term care serv-
4 ices;
5 (iv) consumer advocates; and
6 (v) appropriate Federal and State of-
7 ficials.

8 (3) DEFINITIONS.—In this subsection:

9 (A) LONG-TERM CARE FACILITY OR PRO-
10 VIDER.—The term “long-term care facility or
11 provider” means the following facilities or pro-
12 viders which receive payment for services under
13 title XVIII or XIX of the Social Security Act:

14 (i) A nursing facility (as defined in
15 subparagraph (B)).

16 (ii) A skilled nursing facility (as de-
17 fined in subparagraph (C)).

18 (iii) A home health agency.

19 (iv) A provider of hospice care (as de-
20 fined in section 1861(dd)(1) of the Social
21 Security Act) (42 U.S.C. 1395x(dd)(1)).

22 (v) A long-term care hospital (as de-
23 scribed in section 1886(d)(1)(B)(iv) of
24 such Act) (42 U.S.C.
25 1395ww(d)(1)(B)(iv)).

1 (vi) A provider of personal care serv-
2 ices.

3 (vii) A residential care provider that
4 arranges for, or directly provides, long-
5 term care services.

6 (viii) An intermediate care facility for
7 the mentally retarded (as defined in sec-
8 tion 1905(d) of such Act) (42 U.S.C.
9 1396d(d)).

10 (B) NURSING FACILITY.—The term “nurs-
11 ing facility” has the meaning given such term
12 in section 1919(a) of the Social Security Act
13 (42 U.S.C. 1396r(a)).

14 (C) SKILLED NURSING FACILITY.—The
15 term “skilled nursing facility” has the meaning
16 given such term in 1819(a) of the Social Secu-
17 rity Act (42 U.S.C. 1395i–3(a)).

18 **SEC. 3. SECURING THE RIGHT TO A SAFE ENVIRONMENT IN**
19 **LONG-TERM CARE FACILITIES DURING AN**
20 **EMERGENCY OR NATURAL DISASTER BY RE-**
21 **QUIRING THESE FACILITIES TO ESTABLISH**
22 **DISASTER EMERGENCY AND EVACUATION**
23 **PLANS.**

24 (a) ADDITION TO NURSING HOME PATIENTS’ BILL
25 OF RIGHTS OF RIGHT TO A SAFE ENVIRONMENT DURING

1 AN EMERGENCY OR NATURAL DISASTER.—Sections
2 1819(c)(1)(A) and 1919(c)(1)(A) of the Social Security
3 Act (42 U.S.C. 1395i–3(c)(1)(A), 1396r(c)(1)(A)), as
4 amended by section 2(a), are each amended by inserting
5 after clause (xi) the following new clause:

6 “(xii) SAFE ENVIRONMENT DURING
7 EMERGENCY OR NATURAL DISASTER.—The
8 right to a safe environment during an
9 emergency or natural disaster.”.

10 (b) APPLICATION UNDER MEDICARE.—Section
11 1819(d)(4) of such Act (42 U.S.C. 1395i–3(d)(4)) is
12 amended—

13 (1) by redesignating subparagraph (B) as sub-
14 paragraph (C); and

15 (2) by inserting after subparagraph (A) the fol-
16 lowing new subparagraph:

17 “(B) DISASTER EMERGENCY AND EVACU-
18 ATION PLANS.—A skilled nursing facility
19 must—

20 “(i) have a clear and pre-established
21 disaster plan to ensure the safety of all its
22 patients during an emergency or natural
23 disaster and possible evacuation; and

24 “(ii) inform residents and next-of-kin
25 regarding such plan and the location of

1 possible evacuation in case of an emer-
2 gency or disaster.”.

3 (c) MEDICAID.—Section 1919(d)(4) of such Act (42
4 U.S.C. 1396r(d)(4)) is amended—

5 (1) by redesignating subparagraph (B) as sub-
6 paragraph (C); and

7 (2) by inserting after subparagraph (A) the fol-
8 lowing new subparagraph:

9 “(B) DISASTER EMERGENCY AND EVACU-
10 ATION PLANS.—A nursing facility must—

11 “(i) have a clear and pre-established
12 disaster plan to ensure the safety of all its
13 patients during an emergency or natural
14 disaster and possible evacuation; and

15 “(ii) inform residents and next-of-kin
16 regarding such plan and the location of
17 possible evacuation in case of an emer-
18 gency or disaster.”.

19 (d) APPLICATION TO OTHER LONG-TERM CARE FA-
20 CILITIES.—Section 1898(a) of such Act, as added by sec-
21 tion 2(c)(1), is amended by inserting “and section
22 1819(d)(4)(B)” after “section 1819(b)(1)”.

1 (e) EFFECTIVE DATE.—The amendments made by
2 this section shall apply as of the date that is one year
3 after the date of the enactment of this Act.

○