

# Elder Justice Act

## Short Title; Table of Contents (Section 1 of the Mark)

### *Current Law*

No provision.

### *Chairman's Mark*

The Mark sets forth the title of the Act as the Elder Justice Act of 2008, and outlines the table of contents.

## Findings (Section 2 of the Mark)

### *Current Law*

No provision.

### *Chairman's Mark*

The Mark describes the following findings of Congress:

1. The proportion of the United States population age 60 or older will drastically increase in the next 30 years as more than 76,000,000 baby boomers approach retirement and old age.
  2. Each year, anywhere between 500,000 and 5,000,000 elders in the United States are abused, neglected, or exploited.
  3. Elder abuse, neglect, and exploitation have no boundaries, and cross all racial, social class, gender, and geographic lines.
  4. Victims of elder abuse, neglect, and exploitation are not only subject to injury from mistreatment and neglect, they are also 3.1 times more likely than elders who were not victims of elder abuse, neglect, and exploitation to die at an earlier age than expected.
  5. There is a general dearth of data as to the nature and scope of elder abuse, neglect and exploitation. In recognition of the need to improve data collection efforts with respect to elder abuse, neglect, and exploitation, Congress required the Secretary of Health and Human Services to conduct a study by the end of 2008 on establishing a uniform national database on elder abuse under section 405 of title IV of Division C of the Tax Relief and Health Care Act of 2006 (Public Law 109-432).
  6. Despite the dearth of data in the field, experts agree that most cases of elder abuse, neglect, and exploitation are never reported and that abuse, neglect, and exploitation shorten a victim's life, often triggering a downward spiral of an otherwise productive,
-

self-sufficient elder's life. Programs addressing other difficult issues such as domestic violence and child abuse and neglect have demonstrated the need for a multifaceted law, combining public health, social service and law enforcement approaches.

7. For over 20 years, Congress has been presented with facts and testimony calling for a coordinated federal effort to combat elder abuse, neglect, and exploitation.
8. The federal government has been slow to respond to the needs of victims of elder abuse, neglect, and exploitation or to undertake prevention efforts.
9. No federal law has been enacted that adequately and comprehensively addresses the issues of elder abuse, neglect, and exploitation and there are very limited resources available to those in the field that directly deal with the issues.
10. Differences in state laws and practices in the areas of elder abuse, neglect, and exploitation lead to significant disparities in prevention, protective, and social services, treatment systems, and law enforcement, and lead to other inequities.
11. The federal government has played an important role in promoting research, training, public safety, and data collection, and the identification, development, and dissemination of promising health care, social and protective services, and law enforcement practices, relating to child abuse and neglect, domestic violence, and violence against women. The federal government should promote similar efforts and protections relating to elder abuse, neglect, and exploitation.
12. The federal government should provide leadership and assist states and communities in efforts to protect elders in the United States by –
  - A. promoting coordinated planning among all levels of government;
  - B. generating and sharing knowledge relevant to protecting elders;
  - C. providing leadership to combat the abuse, neglect, and exploitation of the Nation's elders; and
  - D. providing resources to states and communities to promote elder justice.
13. The problem of elder abuse, neglect, and exploitation requires a comprehensive approach that –
  - A. integrates the work of health, legal, and social services agencies and organizations;
  - B. emphasizes the need for prevention, reporting, investigation, assessment, treatment, and prosecution of elder abuse, neglect, and exploitation at all levels of government;
  - C. ensures that sufficient numbers of properly trained personnel with specialized knowledge are in place to treat, assess, and provide services related to elder abuse, neglect, and exploitation and carry out the elder protection duties;
  - D. is sensitive to ethnic and cultural diversity;
  - E. recognizes the role of mental health, disability, dementia, substance abuse, medication mismanagement, and family dysfunction problems in increasing and exacerbating elder abuse, neglect, and exploitation; and
  - F. balances elders' right to self-determination with society's responsibility to protect elders.
14. The human, social, and economic cost of elder abuse, neglect, and exploitation is high and includes unnecessary expenditures of funds from many public programs.

15. The failure to coordinate activities relating to, and comprehensively prevent and treat, elder abuse, neglect, and exploitation threatens the future and well-being of millions of elders in the United States.
16. All elements of society in the United States have a shared responsibility in responding to a national problem of elder abuse, neglect, and exploitation.

## **Purposes (Section 3 of the Mark)**

### *Current law*

No provision.

### *Chairman's Mark*

The Mark defines the purposes of the Elder Justice Act, as follows:

To enhance the social security of the Nation by ensuring adequate public-private infrastructure and resolving to prevent, detect, treat, understand, intervene in, and where appropriate, aid in the prosecution of, elder abuse, neglect, and exploitation.

To bring a comprehensive approach to preventing and combating elder abuse, neglect, and exploitation, a long invisible problem that afflicts the most vulnerable among the aging population of the United States.

To raise the issue of elder abuse, neglect, and exploitation to national attention, and to create the infrastructure at the federal, state and local levels to ensure that individuals and organizations on the front lines, who are fighting elder abuse, neglect, and exploitation with scarce resource and fragmented systems, have the resources and information needed to carry out their fight.

To bring a comprehensive multidisciplinary approach to elder justice.

To set in motion research and data collection to fill gaps in knowledge about elder abuse, neglect, and exploitation.

To supplement the activities of service providers and programs, to enhance training, and to leverage scarce resources efficiently, in order to ensure that elder justice receives the attention it deserves as the Nation's population ages.

To recognize and address the role of mental health, disability, dementia, substance abuse, medication mismanagement, and family dysfunction problems in increasing and exacerbating elder abuse, neglect and exploitation.

To create short- and long-term strategic plans for the development and coordination of elder justice research, programs, studies, training, and other efforts nationwide.

To promote collaborative efforts and diminish overlap and gaps in efforts in developing the important field of elder justice.

To honor and respect the right of all individuals with diminished capacity to decisionmaking autonomy, self-determination, and dignity of choice.

To respect the wishes of individuals with diminished capacity and their family members in providing supportive services and care plans intended to protect elders from abuse, neglect (including self-neglect), and exploitation.

## **Definitions (Section 4 of the Mark)**

### *Current Law*

No provision.

### *Chairman's Mark*

Section 4 of the Mark would adopt the meaning of any term that is defined in Section 2011 of the Social Security Act, as the meaning set forth by such section.

## **Elder Justice (Section 5 of the Mark)**

### **Amendments to the Social Security Act Title XX – Elder Justice (Section 5(a) of the Mark)**

#### *Current law*

No provision.

#### *Chairman's Mark*

Section 5 of the Mark would amend the Social Security Act by adding “Elder Justice” to an amended Title XX, entitled “Block Grants to States for Social Services and Elder Justice”. The Mark would insert a new “Subtitle 1 – Block Grants to States for Social Services” before Section 2001 of the Act and add a new “Subtitle 2 – Elder Justice”.

### **Definitions (Section 2011 of the Social Security Act)**

#### *Current law*

Under current law “abuse,” “caregiver,” “elder justice,” “exploitation,” “fiduciary,” “long-term care,” “long-term care facility,” “neglect,” “nursing facility,” and “self-neglect” are defined in the Older Americans Act, and “sexually violent offense” is defined in the Violent Crime Control and Enforcement Act.

*Chairman's Mark*

The Mark defines many terms. Definitions related to some of the purposes of the new subtitle are defined in other related statutes. These definitions are as follows:

**Current Law and the Chairman's Mark: Definitions**

<b>Term</b>	<b>Current law</b>	<b>Chairman's Mark</b>
Abuse	Section 102(a)(1) of the Older Americans Act: "Abuse" of an older person is defined as the willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm, pain, or mental anguish; or deprivation by a person, including a caregiver, of goods or services that are necessary to avoid physical harm, mental anguish or mental illness.	"Abuse" is defined as the knowing infliction of physical or psychological harm or the knowing deprivation of goods or services that are necessary to meet essential needs or to avoid physical or psychological harm.
Adult protective services	No provision.	"Adult Protective Services" is defined as such services provided to adults as the Secretary may specify and includes services such as disseminating reports of adult abuse, neglect, and exploitation; investigating these reports; case planning, monitoring, evaluation, and other case work and services; and providing, arranging for, or facilitating the provision of medical social service, economic, legal, housing, law enforcement, or other protective, emergency, or supportive services.

Term	Current law	Chairman’s Mark
Caregiver	Section 102(a)(18)(B) of the Older Americans Act: “Caregiver” is defined as an individual who has the responsibility for the care of an older individual, either voluntarily, by contract, by receipt of payment for care, or as a result of the operation of law, and means a family member or other individual who provides (on behalf of such individual or of a public or private agency, organization, or institution) compensated or uncompensated care to an older individual.	“Caregiver” is defined as an individual who has the responsibility for the care of an elder, either voluntarily, by contract, by receipt of payment for care, or as a result of the operation of law, and means a family member or other individual who provides (on behalf of such individual or of a public or private agency, organization, or institution) compensated or uncompensated care to an elder who needs supportive services in any setting.
Direct Care	No provision.	“Direct care” is defined to mean care by an employee or contractor who provides assistance or long-term care services to a recipient.
Elder	No provision.	“Elder” is defined to mean an individual age 60 or older.
Elder Justice	Section 102(a)(17) of the Older Americans Act: “Elder Justice” used with respect to older individuals, collectively, means efforts to prevent, detect, treat, intervene in, and respond to elder abuse, neglect, and exploitation and to protect older individuals with diminished capacity while maximizing their autonomy; and used with respect to an individual who is an older individual, means the recognition of the individual’s rights, including the right to be free of abuse, neglect, and exploitation.	“Elder justice” is defined to mean from a societal perspective, efforts to prevent, detect, treat, intervene in, and prosecute elder abuse, neglect, and exploitation; and protect elders with diminished capacity while maximizing their autonomy; and from an individual perspective, the recognition of an elder’s rights, including the right to be free of abuse, neglect, and exploitation.
Eligible entity	No provision.	“Eligible entity” is defined to mean a state or local government agency, Indian tribe or tribal organization, or any other public or private entity that is engaged in and has expertise in issues relating to elder justice or in a field necessary to promote elder justice efforts.

Term	Current law	Chairman's Mark
Exploitation	Section 102(a)(18)(A) of the Older Americans Act: "Exploitation" of an older person is defined as the fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or fiduciary, that uses the resources of an older individual for monetary or personal benefit, profit, or gain or that results in depriving an older individual of rightful access to, or use of, benefits, resources, belongings, or assets.	"Exploitation" is defined as the fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or fiduciary, that uses the resources of an elder for monetary or personal benefit, profit, or gain, or that results in depriving an elder of rightful access to, or use of, benefits, resources, belongings, or assets.
Fiduciary	Section 102(a)(20) of the Older Americans Act: "Fiduciary" means a person or entity with the legal responsibility - to make decisions on behalf of and for the benefit of another person and to act in good faith and with fairness; and includes a trustee, a guardian, a conservator, an executor, an agent under a financial power of attorney or health care power of attorney, or a representative payee.	"Fiduciary" is defined as a person or entity with the legal responsibility - to make decisions on behalf of and for the benefit of another person; and to act in good faith and with fairness; and includes a trustee, a guardian, a conservator, an executor, an agent under a financial power of attorney or health care power of attorney, or a representative payee.
Grant	No provision.	"Grant" is defined to mean a contract, cooperative agreement, or other mechanism for providing financial assistance.
Guardianship	No provision.	"Guardianship" is defined to mean: the process by which a state court determines that an adult individual lacks capacity to make decisions about self-care and property, and appoints another individual or entity known as a guardian, as a conservator, or by, a similar term, as a surrogate decisionmaker; the manner in which the court-appointed surrogate decisionmaker carries out duties to the individual and the court; or the manner in which the court exercises oversight of the surrogate decisionmaker.

Term	Current law	Chairman's Mark
Indian tribe	Section 4 of the Indian Self-Determination and Education Assistance Act: "Indian tribe" is defined as any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.	"Indian tribe" is defined to have the same meaning as such term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).
Law enforcement	No provision.	"Law enforcement" is defined to mean the full range of potential responders to elder abuse, neglect, and exploitation including police, sheriffs, detectives, public safety officers, and corrections personnel; prosecutors; medical examiners; investigators; and coroners.
Long-term care	Section 102(a)(34) of the Older Americans Act: "Long-term care" is defined as any service, care, or item (including an assistive device), including a disease prevention and health promotion service, an in-home service, and a case management service - intended to assist individuals in coping with, and to the extent practicable compensate for, a functional impairment in carrying out activities of daily living; furnished at home, in a community care setting [including a small community care setting, as defined in subsection (g)(1), and a large community care setting as defined in subsection (h)(1) of section 1929 of the Social Security Act], or in a long-term care facility; and not furnished to prevent, diagnose, treat, or cure a medical disease or condition.	"Long-term care" is defined as supportive and health services specified by the Secretary of HHS for individuals who need assistance because the individuals have a loss of capacity for self-care due to illness, disability, or vulnerability. The term "loss of capacity for self-care" means an inability to engage in 1 or more activities of daily living, including eating, dressing, bathing, and management of one's financial affairs.

Term	Current law	Chairman's Mark
Loss of capacity for self-care	No provision.	"Loss of capacity for self-care" is defined to mean a residential care provider that arranges for, or directly provides, long-term care.
Long-term care facility	Section 102(a)(35) of the Older Americans Act: "Long term care facility" is defined as a skilled nursing facility as defined in Section 1819(a) of the Social Security Act; any nursing facility, as defined in Section 1919(a) of the Social Security Act; and for purposes of the Title III and Title VII provisions for elder abuse prevention, a board and care facility, and any other adult care home, including an assisted living facility, similar to a facility or institution described in 102(a)(35)(A) through (C).	"Long-term care facility" is defined as a residential care provider that arranges for, or directly provides, long-term care.
Neglect	Section 102(a)(38) of the Older Americans Act: "Neglect" is defined as the failure of a caregiver (as defined in Section 102(a)(18)(B) of the Older Americans Act or fiduciary to provide the goods or services that are necessary to maintain the health or safety of an older individual; or self-neglect.	"Neglect" is defined as the failure of a caregiver or fiduciary to provide the goods or services that are necessary to maintaining the health or safety of an elder, or self-neglect.

Term	Current law	Chairman’s Mark
Nursing facility	Section 1919(a) of the Social Security Act: “Nursing facility” is defined as an institution (or distinct part of an institution) which is (1) primarily engaged in providing to residents – skilled nursing care and related services for residents who require medical or nursing care, rehabilitation services for the rehabilitation of injured, disabled, or sick persons, or on a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities, and is not primarily for the care and treatment of mental diseases; (2) has in effect a transfer agreement (meeting the requirements of section 1861(l)) with one or more hospitals having agreement in effect under section 1866; and meets the requirements for a nursing facility described in Sections 1919(b), (c), and (d).	“Nursing facility” is defined as such term under section 1919(a) of the Social Security Act and includes a skilled nursing facility [as defined in section 1819(a) of the Social Security Act].
Self-neglect	Section 102(a)(47) of the Older Americans Act: “Self-neglect” is defined as an adult’s inability, due to physical or mental impairment or diminished capacity, to perform essential self-care tasks including – obtaining essential food, clothing, shelter, and medical care; obtaining goods and services necessary to maintain physical health, mental health, or general safety; or managing one’s own financial affairs.	“Self-neglect” is defined as an adult’s inability, due to physical or mental impairment or diminished capacity, to perform essential self-care tasks including – obtaining essential food, clothing, shelter, and medical care; obtaining goods and services necessary to maintain physical health, mental health, or general safety; or managing one’s own financial affairs.

<b>Term</b>	<b>Current law</b>	<b>Chairman’s Mark</b>
Serious bodily injury	No provision.	“Serious bodily injury” is defined to mean an injury: involving extreme physical pain; involving substantial risk of death; involving protracted loss or impairment of the function of a bodily member, organ, or mental faculty; or requiring medical intervention such as surgery, hospitalization, or physical rehabilitation.
Criminal sexual abuse	Title XVII of the Violent Crime Control and Enforcement Act: a “sexually violent offence” is defined as any criminal offense that consists of aggravated sexual abuse or sexual abuse (as defined by 18 U.S.C. Section 2241 and 2242 or as defined by state law) or an offense that has as its elements engaging in physical contact with another person with intent to commit aggravated sexual abuse or sexual abuse.	“Criminal sexual abuse” is defined to mean serious bodily injury that shall be considered to have occurred if the conduct causing the injury is conduct described in section 2241 (relating to aggravated sexual abuse) or 2242 (relating to sexual abuse) of Title 18, United States Code, or any similar offence under state law.
Social	No provision.	“Social” is defined to mean, when used with respect to a service, the inclusion of adult protective services.
State legal assistance developer	No provision.	“State legal assistance developer” is defined to mean an individual described in section 731 of the Older Americans Act of 1965.
State long-term care ombudsman	No provision.	“State long-term care ombudsman” is defined to mean the state long-term care ombudsman described in section 712(a)(2) of the Older Americans Act of 1965.

## **General Provisions (Section 2012 of the Social Security Act)**

### **Protection of Privacy**

#### *Current Law*

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Section 264 governs the protection of individual health privacy.

*Chairman's Mark*

The Mark would require the Secretary of HHS to ensure the protection of individual health privacy consistent with the regulations promulgated under section 264(c) of HIPAA and applicable state and local privacy regulations.

**Rule of Construction**

*Current Law*

No provision.

*Chairman's Mark*

Section 2012 would prohibit the proposed subtitle from being construed to interfere with or abridge an elder's right to practice his or her religion through reliance on prayer alone for healing when this choice is: (1) expressed, either orally or in writing, (2) set forth in a living will, health care proxy, or other advance directive documents, or (3) may be deduced from an elder's life history.

**Part A – National Coordination of Elder Justice  
Activities and Research**

**Subpart 1 – Elder Justice Coordinating Council and Advisory Board on  
Elder Abuse, Neglect, and Exploitation**

**Elder Justice Coordinating Council (Section 2021 of the Social Security  
Act)**

*Current law*

No provision.

*Chairman's Mark*

Section 2021 would establish an Elder Justice Coordinating Council in the Office of the Secretary of Health and Human Services.

Membership. The Council would be composed of the following members: the Secretary of HHS (or designee) who will chair the Council and the Attorney General (or designee). Membership would also include the head of each federal department or agency having

administrative responsibility or administering programs related to elder abuse, neglect or exploitation. Members must be officers or employees of the federal government.

*Meetings.* The Council is to meet at least twice a year.

*Duties and Reports.* The Council would be required to make recommendations to the Secretary of HHS regarding coordination of activities of the Department of Health and Human Services, Department of Justice, and other relevant federal, state, local, and private agencies and entities, relating to prevention of elder abuse, neglect, and exploitation and other crimes against elders. The Council would be required to submit a report to Congress that describes its activities and challenges; and make recommendations for legislation, model laws and other actions deemed appropriate. The report is to be submitted to Congress within two years of enactment of the Elder Justice Act and every two years thereafter.

*Other Requirements.* The Mark also sets forth requirements for powers of the Council, vacancies in membership, travel expenses, and detail of federal government employees to the Council.

## **Advisory Board on Elder Abuse, Neglect and Exploitation (Section 2022 of the Social Security Act)**

*Current law*

No provision.

*Chairman's Mark*

Section 2022 would establish the Advisory Board on Elder Abuse, Neglect and Exploitation.

*Solicitation of Nominations, Membership, and Terms.* The Secretary of HHS would be required to publish a notice in the Federal Register soliciting nominations for Advisory Board membership. The Board would be composed of 27 members appointed by the Secretary, and must have experience and expertise in prevention of elder abuse, neglect, and exploitation. Each member would be appointed for a three-year term, except for the first members of the Board whose terms would be staggered.

*Duties and Reports.* The Board would be required to create a short- and long-term multidisciplinary plan for development of the field of elder justice.

Within 18 months of enactment and annually thereafter, the Advisory Board would be required to prepare and submit to the Elder Justice Coordinating Council and the appropriate committees of Congress, a report containing information on federal, state, and local public and private elder justice activities. The report is also to contain recommendations on programs, research, services, practice, enforcement and coordination among entities that carry out elder justice and other related activities; modifications needed in federal and state laws, research,

training, and national data collection; and on a multidisciplinary strategic plan to guide the field of elder justice.

**Other Requirements.** The Mark sets forth requirements relating to powers of the Board, vacancies, expired terms, election of officers, travel expenses, and detail of government employees to the Board.

## **Research Protections (Section 2023 of the Social Security Act)**

### *Current law*

**Definition of Legally Authorized Representative.** Subpart A of Part 46 of Title 45, Code of Federal Regulations, known as the Common Rule, that governs most federally-funded human subjects research, currently defines the term “legally authorized representative” as “an individual or judicial or other body authorized under applicable law to consent on behalf of a prospective subject to the subject’s participation in the procedure(s) involved in the research.”

**Researcher Guidelines.** No guidelines are currently in place to assist researchers who work in the areas of elder abuse, neglect, and exploitation, with issues relating to human subjects research.

### *Chairman’s Mark*

Section 2023 would define “legally authorized representative,” for purposes of research under the proposed Subpart 1, to mean, unless otherwise provided by law, the individual, or judicial or other body authorized under the applicable law to consent to medical treatment on behalf of another person.

It would also require the Secretary of HHS, acting through the Director of the National Institute on Aging (NIA), to promulgate guidelines to assist researchers working in the areas of elder abuse, neglect, and exploitation, with issues relating to human subjects research.

## **Authorization of Appropriations (Section 2024 of the Social Security Act)**

### *Current Law*

No provision.

### *Chairman’s Mark*

To carry out the functions under the proposed Subpart 1 (Elder Justice Coordinating Council and Advisory Board on Elder Abuse, Neglect, and Exploitation), the Mark would authorize \$6.5 million for FY2009, and \$7.0 million for each of FYs 2010-2012.

## **Subpart 2 - Elder Abuse, Neglect, Exploitation Forensic Centers**

### **Establishment and Support of Elder Abuse, Neglect, and Exploitation Forensic Centers (Section 2031 of the Social Security Act)**

#### *Current law*

No provision.

#### *Chairman's Mark*

The Mark would require the Secretary of HHS, in consultation with the Attorney General, to award grants to eligible entities to establish and operate both stationary and mobile forensic centers and to develop forensic expertise pertaining to elder abuse, neglect, and exploitation. With respect to the stationary forensic centers, the Mark would require the Secretary to make four grants to higher education institutions with demonstrated expertise in forensics or commitment to preventing or treating elder abuse, neglect, or exploitation; and, with respect to mobile forensic centers, the Mark would require the Secretary to make six grants to appropriate entities.

Funding would be authorized for the centers to: (1) develop forensic markers that would determine whether abuse or neglect occurred and whether a crime was committed, and determine methodologies for how and when intervention should occur; (2) develop forensic expertise with respect to elder abuse, neglect, and exploitation in order to provide relevant evaluation, intervention, support and advocacy, case review and tracking; and (3) in coordination with the Attorney General, use data made available by grant recipients under this section to develop the capacity of geriatric health care professionals and law enforcement to collect forensic evidence, including forensic evidence relating to a potential determination of elder abuse, neglect, or exploitation.

The Mark would authorize \$4 million in FY2009, \$6 million in FY2010, and \$8 million for each of FYs 2011 and 2012 to carry out these activities.

## **Part B - Programs to Promote Elder Justice**

### **Enhancement of Long-Term Care (Section 2041 of the Social Security Act)**

#### *Current law*

Nursing homes that participate in Medicare and Medicaid are required to meet certain federal laws and standards to receive funding. These laws require nursing aides, who work on a full-time basis for more than four months, to complete a training and/or competency evaluation program and be competent to provide care. Nursing homes must also provide regular

performance reviews and in-service education (including training for individuals providing nursing and nursing-related services to residents with cognitive impairments) to assure that nurse aides are competent to perform services. Medicaid and Medicare law and regulations also require nurse aides to complete a training program lasting no less than 75 clock hours of training, at least 16 hours of which must be supervised practical training. Many states also have additional training requirements, including additional hours for practical and clinical training, that nursing homes must meet to operate in the state.

A number of states have also used enhanced Medicaid funding to improve recruitment and retention of nurse aides working in nursing homes. For these states, some portion of an increase in state Medicaid payments (and other public funding sources) to long-term care providers must be (or are intended to be) used to increase wages and or benefits for nursing aides. Typically, this “wage pass-through” legislation has either designated some specified dollar amount (e.g., \$0.50 or \$1.00) or a certain percentage of increased state payments to be used for wages and or benefits.

The Nurse Reinvestment Act (P.L. 107-205) includes provisions that are intended to attract and retain persons in the nursing profession in general, but are not specifically directed to long-term care facilities. Provisions include assistance to individuals to attract more persons to the nursing profession, and career ladder development programs to assist individuals in obtaining education required to enter the nursing profession and advance within the profession; student loan assistance for certain persons pursuing degrees in nursing; and direction to use public service announcements and grants to support state and local advertising campaigns to recruit new persons to the nursing profession.

Nursing Home Compare is a website hosted by the Department of Health and Human Services that allows consumers to search for data on certain quality indicators for nursing homes certified to participate in Medicare and/or Medicaid across the United States. The information reported on this site includes selected findings of the Survey and Certifications surveys conducted by state Survey agencies during the three most recent inspections and complaint investigations. Specifically, the website contains data on the federal regulatory requirements that the nursing home failed to meet as reported on the form HCFA-2567. There is currently no requirement that information about the adjudication of criminal violations be reported on this website.

#### *Chairman’s Mark*

Section 2041 would require the Secretary of HHS to carry out activities that provide incentives for individuals to train for, seek, and maintain employment providing direct care in long-term care facilities.

Coordination of Federal Agencies to Train Long-Term Care Staff. The Secretary of HHS would be required to coordinate activities with the Secretary of Labor to provide incentives for individuals to train for and seek employment as direct care providers in long-term care facilities.

Career Ladders, Wage and Benefit Grants. The Secretary of HHS would be required to award grants to long-term care facilities to conduct programs that offer direct care employees continuing training and varying levels of certification. Grants would also be used to provide for or make arrangements with employers to pay bonuses, or other increased compensation or benefits, to employees who obtain certification. To receive grant funds, long-term care facilities would submit applications directly to the Secretary.

Management Improvement. The Secretary of HHS would be required to award grants to long-term care facilities for training and technical assistance. Eligible recipients could include administrators, directors of nursing, staff developers, charge nurses, and others who establish or implement management practices for direct care employees. Training and technical assistance would be intended to promote retention and could include: (1) the establishment of human resource policies rewarding high performance, including policies that provide for improved wages and benefits on the basis of job reviews; (2) the establishment of motivational organizational practices; (3) the creation of a workplace culture that respects and values caregivers and their needs; (4) the promotion of a workplace culture that respects the rights of residents and results in improvements in their care; and (5) the establishment of other programs that promote high-quality care, such as continuing education for certified nurse aide employees. Long-term care facilities would submit applications to the Secretary to qualify for grant funds. The Secretary would be required to develop accountability measures to ensure that funded activities under this subsection benefit eligible employees and increase the stability of the long-term care workforce.

Informatics Systems Grant Program. The Secretary of HHS would be authorized to make grants to long-term care facilities for the purpose of assisting such entities in offsetting the costs related to purchasing, leasing, developing, and implementing standardized clinical health care informatics systems designed to improve patient safety and reduce adverse events and health care complications resulting from medication errors.

Funds may be used for the following activities: (1) purchasing, leasing, and installing computer software and hardware, including handheld computer technologies; (2) making improvements and upgrades to existing computer software and hardware; (3) making upgrades and other improvements to existing computer software and hardware to enable e-prescribing; (4) providing education and training to eligible long-term care facility staff on the use of technology to implement the electronic transmission of prescription and patient information.

Long-term care facilities would submit applications to the Secretary of HHS to qualify for grant funds. The Secretary would be required to develop accountability measures to ensure that funded activities under this subsection help improve patient safety and reduce adverse events and health care complications resulting from medication errors.

Inclusion of Certain Crimes on Nursing Home Compare Website. Within one year of enactment, the Secretary of HHS would be required to ensure that the Department includes, as part of the information provided for comparison of nursing facilities on the federal government's Nursing Home Compare website for Medicare beneficiaries, information related to the number of adjudicated instances of criminal violations by a nursing facility or crimes committed by an

employee of a nursing facility. Information on these criminal violations or crimes shall be with respect to: (1) those crimes that were committed inside the facility; and (2) such instances of violations or crimes committed outside of the facility, that were the violations or crimes of elder abuse, neglect, and exploitation, criminal sexual abuse of an elder, or other violations or crimes that resulted in the serious bodily injury of an elder.

Consumer Rights Information Page on Nursing Home Compare Website. Within one year of enactment, the Secretary of HHS would be required to ensure that the Department, as part of the information provided for comparison of nursing facilities on the federal government's Nursing Home Compare website, develops and includes a consumer rights information page that contains links to descriptions of, and information with respect to: documentation on nursing facilities available to the public; tips on choosing a nursing facility that meets the needs of the individual; consumer rights; the nursing facility survey process; and services available through the state long-term care ombudsman.

Standards Involving Clinical Data by Long-Term Care Facilities. The Secretary of HHS would be required to develop and adopt uniform and open electronic standards for the submission of clinical data by long-term care facilities to the Secretary. Such standards shall include messaging and nomenclature standards. The standards developed and adopted must be compatible with standards established under part C of Title XI, standards established under subsections (b)(2)(B)(i) and (e)(4) of section 1860D-4, and with general health information technology standards. Within 10 years after the date of enactment, the Secretary would be required to have procedures in place to accept the optional electronic submission of clinical data by long-term care facilities.

Regulations. The Secretary of HHS would be required to promulgate regulations to carry out subsections related to: (1) the inclusion of certain crimes on the Nursing Home Compare website; (2) consumer rights information page on Nursing Home Compare website; and (3) standards involving clinical data by long-term care facilities [i.e., subsections (c), (d), and (e) of this section]. Such regulations would require a state, as a condition of the receipt of funds under Part B, to conduct such data collection and reporting as the Secretary determines necessary.

The Mark would authorize \$20 million for FY2009, \$17.5 million for FY2010, and \$15 million for each of FYs 2011 and 2012 to carry out these activities.

## **Adult Protective Service Functions and Grant Program (Section 2042 of the Social Security Act)**

### **Adult Protective Services – Functions**

#### *Current law*

Provisions related to some functions of adult protective services are found in Title XX of the Social Security Act [Social Services Block Grant, administered by the Administration on

Children and Families (ACF)] and in the Older Americans Act (administered by AoA), both in HHS, as follows.

Title XX of the Social Security Act. Title XX permanently authorizes the Social Services Block Grant (SSBG) as a “capped” entitlement to states to carry out a wide range of social services on behalf of various groups. The statute sets out a number of goals for the use of these funds, including the goal of “preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests ....” Funds are generally administered by state social services or human services agencies (for this purpose, sometimes referred to as adult protective services offices), and/or state agencies on aging.

No match is required for Title XX funds, and federal law does not specify a sub-state allocation formula. In other words, states have complete discretion for the distribution of funds within their borders. Based on the 2006 Annual Report for the Social Services Block Grant (the most recent year for which data are available), states reported spending \$204 million on adult protective services [of which \$5.5 million was from funds transferred by states from their Temporary Assistance for Needy Families (TANF) block grants to the SSBG]. Data reported by states indicate that in FY2006 37 states used some portion of Title XX funds for adult protective services and approximately 531,000 adults received adult protective services funded (at least in part) by SSBG funds. Of those, approximately 188,000 were age 60 or older. Of all state expenditures under Title XX for FY2006, 7.4% were for protective services for adults.<sup>1</sup>

Older Americans Act. Title II of the Older Americans Act authorizes the HHS Assistant Secretary on Aging to designate within AoA a person with responsibility for elder abuse prevention and services to develop objectives, priorities, policy, and a long-term plan for facilitating the development, implementation, and improvement of a coordinated, multidisciplinary elder justice system; providing federal leadership to support state efforts in carrying out elder justice programs; establishing federal guidelines and disseminating best practices for data collection and reporting by states; working with states, the Department of Justice, and other federal entities to disseminate data relating to elder abuse, neglect, and exploitation; conducting research related to elder abuse, neglect, and exploitation; and promoting collaborative efforts and reducing duplicative efforts in the development and carrying out of elder justice programs at the federal, state and local levels, among other things. It is also the Assistant Secretary’s duty, acting through the person with responsibility for elder abuse prevention and services, to assist states and other eligible entities under Title VII to develop strategic plans to better coordinate elder justice activities, research, and training (see below).

Title II of the Older Americans Act also requires the Assistant Secretary on Aging to establish a National Center on Elder Abuse, administered by the AoA. The Center is required to, among other things, compile, publish and disseminate research and training materials on prevention of elder abuse, neglect, and exploitation; maintain a clearinghouse on programs showing promise in preventing elder abuse, neglect, and exploitation; conduct research and demonstration projects that identify causes and prevention, and treatment; and provide technical

---

<sup>1</sup> A percentage of *expenditures* differs from a percentage of the Title XX *appropriation*. Title XX expenditures include spending from funds transferred from the Temporary Assistance for Needy Families (TANF) program to Title XX.

assistance to state agencies and other organizations in planning and improving prevention programs. The funding available in FY2008 for the National Center on Elder Abuse is approximately \$797,000.

Title III of the Older Americans Act authorizes, but does not require, state agencies on aging to conduct various activities related to prevention of elder abuse, neglect and exploitation. No federal funds are separately appropriated for this purpose under Title III, and states decide how much of their Title III allotments are to be used for prevention activities. In many states, state agencies on aging administer funds for adult protective services funded under Title XX of the Social Security Act (described above).

Title VII of the Older Americans Act authorizes a program of grants to states to carry out activities related to prevention of elder abuse, neglect, and exploitation. Funds are administered by state agencies on aging. In FY2008, the appropriation level for this program under Title VII is \$5.1 million.

Title VII, Subtitle B, Native American Organization and Elder Justice Provisions of the Older Americans Act, also authorizes a state grant program to promote comprehensive elder justice systems. The Assistant Secretary on Aging is authorized to award competitive grants to states for elder justice systems which are to provide for convenient public access to the range of available elder justice information, programs and services; coordinate the efforts of public health, social service and law enforcement authorities to identify and diminish duplication and gaps in the system; and provide a uniform method for standardization, collection, management, analysis and reporting data on elder justice issues. States that receive grants are to develop and implement a comprehensive elder justice system by taking the following steps: establishing a formal working relationship among public and private elder justice providers and stakeholders in order to create a unified system across the state; facilitating and supporting the development of a management information system and standard data elements; and providing for appropriate education, training and technical assistance. Congress did not appropriate funds for elder justice systems grants in FY2008.

Section 1128E of the Social Security Act requires the Secretary of HHS to maintain a national health care fraud and abuse data collection program for the reporting of final adverse actions (not including settlements in which no findings of liability have been made), including health care related civil judgments and criminal convictions of health care practitioners, providers and suppliers. The database is directed by HHS, acting through the office of Attorney General, and is named the Healthcare Integrity and Protection Data Bank (HIPDB).

For the purpose of this database, Medicaid regulation 42 CFR §455.12 requires that state agencies report the number of complaints of fraud and abuse made to the agency that warrant preliminary investigation. For each case, reports should include the provider's name and number; the source of the complaint; the type of provider; the nature of the complaint; the approximate range of dollars involved; and the legal and administrative disposition of the case, including actions taken by law enforcement officials to whom the case has been referred. Section 1128E requires the Secretary of HHS to include procedures assuring that the privacy of individuals receiving health care services is appropriately protected.

The Secretary of HHS makes available the information in the database to government agencies and health plans and, upon request, to health care providers, suppliers and practitioners who wish to self-query. The Secretary may establish or approve fees sufficient to recover the full costs of the databases' operation. According to Section 1128E(g)(1)(A) of the Social Security Act, a final adverse action includes: (1) civil judgments related to the delivery of a health care item or service that are against a health care provider or practitioner in federal or state court; (2) federal or state criminal convictions related to the delivery of health care; (3) certain actions by federal or state agencies responsible for the licensing and certification of providers and licensed practitioners; (4) prohibition against participating in federal or state health care programs; or (5) any other adjudicated actions or decisions established by the Secretary under regulation.

Medicare regulation 42 CFR §483.374 also requires facilities to report each serious occurrence to both the state Medicaid agency and, unless prohibited by state law, the state-designated protection and advocacy system.

#### *Chairman's Mark*

Section 2042 would establish certain functions with respect to Adult Protective Services (APS) to be administered by the Secretary of HHS

Adult Protective Services – Functions. The Secretary of HHS would be required to ensure that the Department: (1) provide funding to state and local adult protective services offices that investigate reports of elder abuse, neglect, and exploitation; (2) collect and disseminate related data in coordination with the Department of Justice; (3) conduct research related to the provision of adult protective services; and (4) provide technical assistance to states and other entities that provide or fund the provision of adult protective services.

The Mark would authorize \$3 million for FY2009, and \$4 million for each of FYs 2010-2012 to carry out these functions.

#### **Adult Protective Services Grant Program (State Formula Grants)**

##### *Current law*

No provision exists in current law for state formula grants that are *solely* and *specifically* targeted at providing adult protective services and carrying out projects to employ workers having caseloads of elders alone.

Some other legislation is related to adult protective services, as follows.

Title XX of the Social Security Act. Title XX of the Social Security Act permanently authorizes the Social Services Block Grant (SSBG) as a “capped” entitlement to states to carry out a wide range of social services on behalf of various groups. The statute sets out a number of goals for the use of these funds, including the goal of “preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests ....” Funds are

generally administered by state social services or human services agencies (for this purpose, sometimes referred to as adult protective services offices), and/or state agencies on aging.

Title III of the Older Americans Act authorizes, but does not require, state agencies on aging to conduct various activities related to prevention of elder abuse, neglect and exploitation, which may include adult protective services. No federal funds are separately appropriated for this purpose under Title III, and states decide how much of their Title III allotments are to be used for these activities. In many states, state agencies on aging administer funds for adult protective services funded under Title XX of the Social Security Act (described above).

Title VII of the Older Americans Act authorizes a program of grants to states to carry out activities related to prevention of elder abuse, neglect, and exploitation. Funds are administered by state agencies on aging. In FY2008, the appropriation level for this program under Title VII is \$5.1 million.

#### *Chairman's Mark*

Section 2042 would provide for grants to improve Adult Protective Services.

Grants to Improve Worker Caseloads for Adult Protection Services. The Secretary of HHS would be required to award annual grants to enhance adult protective service programs provided by states and local governments.

Formula for Distribution of Funds. Distribution of funds to states would be based on a formula that takes into account the number of elders (people age 60 or older) residing in a state relative to the total U.S. population of elders. States would receive no less than 0.75% of the grant program's annual appropriation. The District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa would receive no less than 0.1% of the annual appropriation. In order to comply with these minimum amount requirements, the Director is required to make pro rata reductions in amounts to be allotted.

Use of Funds. Funds may be used only by states and local governments to provide adult protective services. States receiving funds would be required to provide these funds to the agency or unit of state government having legal responsibility for providing adult protective services in the state. Each state would be required to use these funds to supplement and not supplant other federal, state, and local public funds expended to provide adult protective services.

Reports. Each state would be required to submit a report to the Secretary of HHS on the number of elders served by the grants.

The Mark would authorize \$100 million for each of FYs 2009-2012.

#### **Adult Protective Services (Demonstration Program)**

#### *Current law*

No provision in current law specifically authorizes a dedicated amount of funds for state adult protective service demonstration programs. However, the Older American Act authorizes a related demonstration program (as follows), but no specific authorization is specified by law.

Section 413 of the Older Americans Act, Older Individuals' Protection from Violence Projects, requires the Assistant Secretary on Aging to award funds to states, area agencies on aging, nonprofit organizations, or tribal organizations to carry out a wide range of projects related to protection of older persons from violence. Funds are to be used to: support local communities to coordinate activities regarding intervention in and prevention of abuse, neglect, and exploitation; develop outreach to assist victims; expand access to family violence and sexual assault programs (including shelters, rape crisis centers, and support groups) as well as mental health services, safety planning and other services; and promote research on legal organization and training impediments to providing services through shelters and other programs.

#### *Chairman's Mark*

Section 2042 would require the Secretary of HHS to establish grants to states for adult protective service demonstration programs. Funds may be used by state and local units of government to conduct demonstration programs that test: training modules developed for the purpose of detecting or preventing elder abuse; methods to detect or prevent financial exploitation and elder abuse; whether training on elder abuse forensics enhances the detection of abuse by employees of state or local government; and other related matters. States would be required to submit applications to the Secretary of HHS. Each state receiving funds would be required to submit a report on the demonstration to the Secretary.

The Mark would authorize \$25 million for each of FYs 2009-2012 to carry out these activities.

### **Long-Term Care Ombudsman Program Grants and Training (Section 2043 of the Social Security Act).**

#### *Current Law*

Title II of the Older Americans Act requires the Assistant Secretary on Aging to establish the National Long-Term Care Ombudsman Resource Center under the Director of the Long-Term Care Ombudsman program. The Center is required to, through grants and contracts, conduct research, provide training, technical assistance and information to support the activities of state and local long-term care ombudsmen. The Center also assists state long-term care ombudsmen in the implementation of the state long-term care ombudsman program.

Funds awarded to the Center are not separately authorized and are awarded through Title IV of the Older Americans Act (Research, Training and Demonstration Projects and Programs). The state long-term care ombudsman program is authorized by Title VII of the Act (Allotments

for Vulnerable Elder Rights Protection Activities). Funding available in FY 2008 for the National Long Term Care Ombudsman Resource Center is approximately \$537,000.

#### *Chairman's Mark*

Section 2043 would require the Secretary of HHS to provide grants to support the long-term care ombudsman program and to establish a program for ombudsman training.

**Grants to Support the Long-Term Care Ombudsman Program.** The Secretary of HHS would be required to award grants to eligible entities with relevant expertise and experience in abuse and neglect in long-term care facilities or long-term care ombudsman programs to: (1) improve the capacity of state long-term care ombudsman programs to respond to and resolve abuse and neglect complaints; (2) conduct pilot programs with state or local long-term care ombudsman offices; and (3) provide support for such state long-term care ombudsman programs and such pilot programs.

The Mark would authorize \$5 million for FY 2009, \$7.5 million for FY2010, and \$10 million for FYs 2011 and 2012.

**Ombudsman Training Programs.** The Secretary of HHS would be required to establish programs to provide and improve ombudsman training with respect to elder abuse, neglect, and exploitation for national organizations and state long-term care ombudsman programs.

The Mark would authorize \$10 million for each of FYs 2009-2012.

## **Provision of Information Regarding, and Evaluation of, Elder Justice Programs (Section 2044 of the Social Security Act)**

### **Provision of Information**

#### *Current law*

No provision.

#### *Chairman's Mark*

To be eligible to receive a grant under Part B of the Act, Section 2044 would require grantees to provide the required information to eligible entities conducting an evaluation of the activities funded through the grant. The Mark would require the Secretary of HHS to reserve a portion of the funds appropriated in each program under Part B to be used to provide assistance to eligible entities to conduct validated evaluations of the effectiveness of the activities funded under that program. To be eligible to receive these funds, an eligible entity must submit an application to the Secretary following the timing requirement prescribed by the Secretary including a proposal for the evaluation.

Entities would be required to submit to the Secretary of HHS and appropriate congressional committees a report containing the results of the evaluation together with any recommendations deemed appropriate. The report would be due by the date specified by the Secretary.

These evaluation activities would not apply to the Informatics Systems Grant Program, instead the Secretary of HHS would be required to conduct an evaluation of the activities funded under these grants.

## **Report (Section 2045 of the Social Security Act)**

### **Report**

#### *Current law*

Currently, no provision exists concerning federal agency coordination to encourage the employment of welfare recipients or recipients of Temporary Assistance to Needy Families (TANF) in long-term care facilities.

#### *Chairman's Mark*

Section 2045 would set forth reporting requirements and add an option for a state's TANF state plan to assist individuals seeking employment in long-term care facilities.

**Report.** Not later than October 1, 2012, the Secretary of HHS would be required to submit a report to the Elder Justice Coordinating Council and appropriate congressional committees, compiling, summarizing, and analyzing state reports submitted under the Adult Protective Services grant programs [Section 2042(b)(4) and (c)(4)] and recommendations for legislative or administrative action.

**Option for State Plan Under Program for Temporary Assistance for Needy Families.** Section 2045 would amend Section 402(a)(1)(B) of the SSA to add an option for a state's TANF state plan to indicate whether the state intends to assist individuals who train for, seek, and maintain employment providing direct care in a long-term care facility or in other occupations related to elder care. States that add this option would be required to provide an overview of such assistance.

## **Protecting Residents of Long-Term Care Facilities**

#### *Current law*

No present law exists concerning a national training institute for surveyors or grants to state survey agencies.

State reporting requirements. Based on a 2000 survey of state Adult Protective Services systems, all states had elder/adult abuse reporting laws. Most states mandate a variety of professionals to report known or suspected cases of elder abuse; however, state laws vary as to who is a mandated reporter and who is encouraged to report incidents of elder/adult abuse. Many states and territories name health care and social services professionals, such as nurses, physicians, social workers, and nurse aides, as mandated reporters of elder/adult abuse. Other professionals statutorily bound in state law to report incidents of elder abuse include law enforcement officers, clergy, and attorneys. Some states mandate anyone with knowledge or reasonable cause to believe that abuse has occurred to report the incident. In addition to mandatory reporting provisions, state statutes often encourage voluntary reporting by other individuals.

State law varies as to whether there are statutory consequences for failure of mandated reporters to report abuse. Based on the 2000 survey, the most common consequence for failing to report was a misdemeanor with a possible fine and/or jail sentence. State law also varied with regard to specifying a time frame within which reporters were required to report suspicion of abuse. At the time of the report, 19 states had no time frame. Of those that specified a time frame, the requirements varied from immediately to more than four days.

Federal reporting requirements. Section 1128E of the Social Security Act requires that all government agencies and health plans report certain final adverse actions (not including settlements in which no findings of liability have been made), including health care related civil judgments and criminal convictions of health care practitioners, providers and suppliers. The Secretary is required to maintain a national health care fraud and abuse data collection program for the reporting of these actions. The database is directed by HHS, acting through the office of Attorney General, and is named the Healthcare Integrity and Protection Data Bank (HIPDB).

According to Section 1128E(g)(1)(A) of the Social Security Act, a final adverse action includes: (1) civil judgments related to the delivery of a health care item or service that are against a health care provider or practitioner in federal or state court; (2) federal or state criminal convictions related to the delivery of health care; (3) certain actions by federal or state agencies responsible for the licensing and certification of providers and licensed practitioners; (4) prohibition against participating in federal or state health care programs; or (5) any other adjudicated actions or decisions established by the Secretary of HHS under regulation.

For the purpose of this database, Medicaid regulation 42 CFR §455.12 requires that state agencies report the number of complaints of fraud and abuse made to the agency that warrant preliminary investigation. For each case, reports should include the provider's name and number; the source of the complaint; the type of provider; the nature of the complaint; the approximate range of dollars involved; and the legal and administrative disposition of the case, including actions taken by law enforcement officials to whom the case has been referred. Section 1128E requires the Secretary of HHS to include procedures assuring that the privacy of individuals receiving health care services is appropriately protected.

The Secretary of HHS makes available the information in the database to government agencies and health plans and, upon request, to health care providers, suppliers and practitioners

who wish to self-query. The Secretary may establish or approve fees sufficient to recover the full costs of the databases' operation. Health plans that fail to report this information are subject to a civil monetary penalty of not more than \$25,000 for each unreported action. Government agencies that fail to report adverse actions are identified in a report to the public.

Medicare regulation 42 CFR §483.374 also requires facilities to report each serious occurrence to both the state Medicaid agency and, unless prohibited by state law, the state-designated protection and advocacy system.

**Notification of Facility Closure.** If a long-term care facility that receives federal funds through participation in Medicare or Medicaid closes, current federal laws and regulations provide some guidance on the parties that need to be notified and the process for relocating residents. If a facility wants to terminate its status as a Medicare provider (for example, due to facility closure), the facility must notify both the Centers for Medicare and Medicaid Services (CMS) and the public no later than 15 days in advance of the proposed termination date. If a facility wants to terminate its status as a Medicaid provider, federal regulations do not specify a timeframe for notifying federal or state agencies; however, the facility is required to notify Medicaid residents at least 30 days before transferring or discharging them. Facility closure is one circumstance in which a resident would need to be transferred.

The state Medicaid agency has the primary responsibility for relocating Medicaid patients and for ensuring their safe and orderly transfer from a facility that no longer participates in Medicaid to a participating facility that meets acceptable standards. CMS has provided guidance to states concerning relocating patients. Each state is expected to have a plan that describes the relocation of patients. Additionally, the notice to residents is to include information as to how to contact the ombudsman established by the Older Americans Act.

Section 307 of the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003 (P.L. 108-173) established the framework for a pilot program to demonstrate a comprehensive system of criminal and other background checks for prospective new hires in long-term care facilities. In 2005, CMS, in consultation with the Department of Justice, began implementation of a three-year pilot program. Programs were established in seven states: Alaska, Idaho, Illinois, Michigan, Nevada, New Mexico, and Wisconsin. Under the terms of the pilot, states had the flexibility to create background check programs that worked best for them while meeting certain basic requirements. The primary requirement was for long-term care facilities and providers to conduct background checks for job applicants who would have direct contact with patients. As part of the background check process, applicants would be screened for criminal records through name-based registries (e.g., state nurse aide registries, sex offender databases), as well as state and federal fingerprint databases. The pilot program ended in September 2007. Total funding for the CMS background check pilot was \$16.4 million over three years, FY2005-2007.

#### *Chairman's Mark*

Section 2045 would direct the Secretary of HHS to conduct the following activities:

National Training Institute for Surveyors. The Secretary of HHS would be required to enter into a contract to establish and operate the National Training Institute for federal and state surveyors to provide and improve the training of surveyors investigating allegations of abuse, neglect, and misappropriation of property in programs and long-term care facilities that receive payments under Medicare and/or Medicaid.

The National Training Institute would be required to carry out the following activities: (1) assess the extent to which state agencies use specialized surveyors for the investigation of reported allegations of abuse, neglect, and misappropriation of property; (2) evaluate how the competencies of surveyors may be improved to more effectively investigate such reported allegations; (3) provide a national program of training, tools, and technical assistance to federal and state surveyors; (4) develop and disseminate information on best practices for such investigations; (5) assess the performance of state complaint intake systems; (6) provide a national 24 hours per day, 7 days a week, back-up system to state complaint intake systems; (7) analyze and report annually on the total number and sources of such complaints, the extent to which such complaints are referred to law enforcement agencies, and general results of federal and state investigations of such complaints; and (8) conduct a national study of the cost to state agencies of conducting such complaint investigations of Medicare and/or Medicaid participating facilities.

The Mark would authorize \$12 million for each of FYs 2009-2012 to carry out these activities.

Grants to State Survey Agencies. The Secretary of HHS would be required to award grants to state survey agencies that perform surveys of Medicaid and/or Medicare participating facilities to design and implement complaint investigation systems. Funds may be used for the purpose of designing and implementing complaint investigation systems that promptly prioritize complaints; respond to complaints with optimum effectiveness and timeliness; and optimize collaboration between local authorities, consumers, and providers, including the state agency, the state long-term care ombudsman, local law enforcement agencies, advocacy and consumer organizations, state aging units, area agencies on aging, and other appropriate entities.

The Mark would authorize \$5 million for each of FYs 2009-2012 to carry out these activities.

Reporting of Crimes in Federally-funded Facilities. The Mark would require reporting to law enforcement of crimes occurring in federally funded long-term care facilities that receive at least \$10,000 in federal funds during the preceding year. The owner or operator of these facilities would be required to annually notify each individual who is an owner, operator, employee, manager, agent, or contractor of a long-term care facility that they are required to report any reasonable suspicion of a crime against any person who is a resident of or receiving care from the facility. These individuals are referred to in this section as “covered individuals.” Suspected crimes must be reported to the Secretary of HHS and one or more law enforcement entities for the political subdivision in which the facility is located.

**Timing of Reporting.** If the events that cause the suspicion of a crime result in serious bodily injury, the covered individual must report the suspicion immediately, but not later than two hours after forming the suspicion. If the events that cause the suspicion do not result in serious bodily injury, the individual must report the suspicion not later than 24 hours after forming the suspicion.

**Penalties for Non-Reporting.** If a covered individual does not report suspicion of a crime within the timeframe described above, the individual will be subject to a civil money penalty of up to \$200,000, or the Secretary of HHS shall classify the individual as an ‘excluded individual’ (i.e., any employer of the individual is unable to receive federal funds) for a period of not more than three years. If a covered individual does not report suspicion of a crime within the timeframe described above and this violation exacerbates the harm to the victim, or results in harm to another person, the individual will be subject to a civil money penalty of up to \$300,000, and the Secretary shall classify the individual as an ‘excluded individual’ (i.e., any employer of the individual is unable to receive federal funds) for a period of not more than three years.

If an individual is classified as an “excluded individual,” any entity that employs that individual will not be eligible to receive federal funds. The Secretary of HHS may take into account the financial burden on providers with underserved populations in determining any penalty to be imposed under this section. Underserved populations are defined as the population of an area designated by the Secretary as an area or population group with a shortage of elder justice programs. These may include those that are geographically isolated, racial and ethnic minority populations, and populations underserved because of special needs (such as language barriers, disabilities, alien status, or age).

**Additional Penalties for Retaliation.** A long-term care facility may not retaliate against an employee for making a report, causing a report to be made, or for taking steps to make a report. Retaliation includes discharge, demotion, suspension, threats, harassment, denial of a promotion or other employment-related benefit, or any other manner of discrimination against an employee in the terms and conditions of employment because of lawful acts done by the employee. Long-term care facilities may also not retaliate against a nurse by filing a complaint or report with the appropriate state professional disciplinary agency because of lawful acts done by the nurse.

If a long-term care facility does retaliate, it shall be subject to a civil money penalty of up to \$200,000, or the Secretary of HHS may exclude it from participation in any federal health care program for a period of two years.

**Notice to Employees.** Each long-term care facility must post conspicuously, in an appropriate location, a sign specifying the rights of employees under this section. The sign shall include a statement that an employee may file a complaint against a long-term care facility that violates the provisions of this section with the Secretary of HHS. The notice must also contain information as to how to file a complaint.

**Notification of Public Agencies and Safety of Residents in the Event of Facility Closure.** In addition, if a long-term care facility (that receives at least \$10,000 in federal funds during the previous year) is going to close, the owner or operator of the facility must submit to the Secretary

of HHS and the appropriate state regulatory agency written notification of an impending closure within 60 days prior to the closure date. In the notice, the owner or operator must include a plan for transfer and adequate relocation of residents, including assurances that residents will be transferred to the most appropriate facility in terms of quality, services, and location. Within 10 days after the facility closes, the owner or operator of the facility must submit to the Secretary, and the appropriate state agency, information on where the residents were transferred to and when.

Anyone who owns a skilled nursing facility that fails to comply with the notification of closure and reporting requirements shall be subject to a civil monetary penalty of up to \$1,000,000, exclusion from participation in the programs under the Social Security Act, and any other applicable civil monetary penalties and assessments.

A civil monetary penalty or assessment will be imposed in the same manner as a civil monetary penalty, assessment or exclusion under Section 1128A of the Social Security Act.

## **Nurse Aide Registry**

### *Current law*

Section 1819(b)(5)(F) (Medicare law) and 1919(b)(5)(F) (Medicaid law) of the Social Security Act define nurse aides as individuals providing nursing or nursing-related services to residents in nursing facilities, as well as registered dietitians or persons who volunteer to provide such services without monetary compensation. Nurse aides does not include physicians; physician assistants; nurse practitioners; physical, speech, or occupational therapists; physical or occupational therapy assistants; registered professional nurses; licensed practical nurses; or licensed certified social workers. For Medicare-certified facilities, nurse aides also exclude registered respiratory therapists or certified respiratory therapy technicians.

No present law exists concerning a nurse aide registry study.

### *Chairman's Mark*

The Secretary of HHS, in consultation with appropriate government agencies and private sector organizations, would be required to conduct a study on establishing a national nurse aide registry that includes an evaluation of who should be included in the registry; how the registry would comply with federal and state privacy laws and regulations; how data would be collected for the registry; what entities and individuals would have access to the data collected; how the registry would provide appropriate information regarding violations of federal and state law by individuals included in the registry; how the functions of the registry would be coordinated with the pilot program for national and state background checks on direct care patient access employees of long-term care facilities; and how the information in state nurse aide registries would be maintained in a national registry.

Not later than 18 months after the date of enactment, the Secretary of HHS would be required to submit a report to the Elder Justice Coordinating Council and appropriate

congressional committees containing the findings and recommendations of the study. The Mark would require funding not to exceed \$500,000 for this study. The Mark requires the appropriate congressional committees to take appropriate action based on the recommendations contained in the report.

The Mark would authorize such sums as may be necessary to carry out this subsection.