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**Public Act 111 - 148**  
**Patient Protection and Affordable Care Act**

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**TITLE VI**

**Subtitle H—ELDER JUSTICE ACT**

**SEC. 6701. SHORT TITLE OF SUBTITLE.**

This subtitle may be cited as the `Elder Justice Act of 2009'.

**SEC. 6702. DEFINITIONS.**

Except as otherwise specifically provided, any term that is defined in section 2011 of the Social Security Act (as added by section 6703(a)) and is used in this subtitle has the meaning given such term by such section.

**SEC. 6703. ELDER JUSTICE.**

(a) Elder Justice-

(1) IN GENERAL- Title XX of the Social Security Act (42 U.S.C. 1397 et seq.) is amended--

(A) in the heading, by inserting `AND ELDER JUSTICE' after  
`SOCIAL SERVICES';

(B) by inserting before section 2001 the following:

**`Subtitle A--Block Grants to States for Social Services';**

and

(C) by adding at the end the following:

**`Subtitle B--Elder Justice**

**`SEC. 2011. DEFINITIONS.**

`In this subtitle:

(1) ABUSE- The term `abuse' means 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.

`(2) ADULT PROTECTIVE SERVICES- The term `adult protective services' means such services provided to adults as the Secretary may specify and includes services such as--

- `(A) receiving reports of adult abuse, neglect, or exploitation;
- `(B) investigating the reports described in subparagraph (A);
- `(C) case planning, monitoring, evaluation, and other case work and services; and
- `(D) providing, arranging for, or facilitating the provision of medical, social service, economic, legal, housing, law enforcement, or other protective, emergency, or support services.

`(3) CAREGIVER- The term `caregiver' means 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.

`(4) DIRECT CARE- The term `direct care' means care by an employee or contractor who provides assistance or long-term care services to a recipient.

`(5) ELDER- The term `elder' means an individual age 60 or older.

`(6) ELDER JUSTICE- The term `elder justice' means--

- `(A) from a societal perspective, efforts to--
  - `(i) prevent, detect, treat, intervene in, and prosecute elder abuse, neglect, and exploitation; and
  - `(ii) protect elders with diminished capacity while maximizing their autonomy; and
- `(B) from an individual perspective, the recognition of an elder's rights, including the right to be free of abuse, neglect, and exploitation.

`(7) ELIGIBLE ENTITY- The term `eligible entity' means 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.

`(8) EXPLOITATION- The term `exploitation' means 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.

`(9) FIDUCIARY- The term `fiduciary'--

- `(A) means a person or entity with the legal responsibility--
  - `(i) to make decisions on behalf of and for the benefit of another person; and
  - `(ii) to act in good faith and with fairness; and
- `(B) 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.

- `(10) GRANT- The term `grant' includes a contract, cooperative agreement, or other mechanism for providing financial assistance.
- `(11) GUARDIANSHIP- The term `guardianship' means--
- `(A) the process by which a State court determines that an adult individual lacks capacity to make decisions about self-care or property, and appoints another individual or entity known as a guardian, as a conservator, or by a similar term, as a surrogate decisionmaker;
  - `(B) the manner in which the court-appointed surrogate decisionmaker carries out duties to the individual and the court; or
  - `(C) the manner in which the court exercises oversight of the surrogate decisionmaker.
- `(12) INDIAN TRIBE-
- `(A) IN GENERAL- The term `Indian tribe' has the meaning given such term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).
  - `(B) INCLUSION OF PUEBLO AND RANCHERIA- The term `Indian tribe' includes any Pueblo or Rancheria.
- `(13) LAW ENFORCEMENT- The term `law enforcement' means the full range of potential responders to elder abuse, neglect, and exploitation including--
- `(A) police, sheriffs, detectives, public safety officers, and corrections personnel;
  - `(B) prosecutors;
  - `(C) medical examiners;
  - `(D) investigators; and
  - `(E) coroners.
- `(14) LONG-TERM CARE-
- `(A) IN GENERAL- The term `long-term care' means supportive and health services specified by the Secretary for individuals who need assistance because the individuals have a loss of capacity for self-care due to illness, disability, or vulnerability.
  - `(B) LOSS OF CAPACITY FOR SELF-CARE- For purposes of subparagraph (A), 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, management of one's financial affairs, and other activities the Secretary determines appropriate.
- `(15) LONG-TERM CARE FACILITY- The term `long-term care facility' means a residential care provider that arranges for, or directly provides, long-term care.
- `(16) NEGLECT- The term `neglect' means--
- `(A) the failure of a caregiver or fiduciary to provide the goods or services that are necessary to maintain the health or safety of an elder; or
  - `(B) self-neglect.
- `(17) NURSING FACILITY-
- `(A) IN GENERAL- The term `nursing facility' has the meaning given such term under section 1919(a).

`(B) INCLUSION OF SKILLED NURSING FACILITY- The term `nursing facility' includes a skilled nursing facility (as defined in section 1819(a)).

`(18) SELF-NEGLECT- The term `self-neglect' means an adult's inability, due to physical or mental impairment or diminished capacity, to perform essential self-care tasks including--

`(A) obtaining essential food, clothing, shelter, and medical care;

`(B) obtaining goods and services necessary to maintain physical health, mental health, or general safety; or

`(C) managing one's own financial affairs.

`(19) SERIOUS BODILY INJURY-

`(A) IN GENERAL- The term `serious bodily injury' means an injury--

`(i) involving extreme physical pain;

`(ii) involving substantial risk of death;

`(iii) involving protracted loss or impairment of the function of a bodily member, organ, or mental faculty; or

`(iv) requiring medical intervention such as surgery, hospitalization, or physical rehabilitation.

`(B) CRIMINAL SEXUAL ABUSE- Serious bodily injury 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 offense under State law.

`(20) SOCIAL- The term `social', when used with respect to a service, includes adult protective services.

`(21) STATE LEGAL ASSISTANCE DEVELOPER- The term `State legal assistance developer' means an individual described in section 731 of the Older Americans Act of 1965.

`(22) STATE LONG-TERM CARE OMBUDSMAN- The term `State Long-Term Care Ombudsman' means the State Long-Term Care Ombudsman described in section 712(a)(2) of the Older Americans Act of 1965.

## **`SEC. 2012. GENERAL PROVISIONS.**

`(a) Protection of Privacy- In pursuing activities under this subtitle, the Secretary shall ensure the protection of individual health privacy consistent with the regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 and applicable State and local privacy regulations.

`(b) Rule of Construction- Nothing in this subtitle shall be 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--

`(1) is contemporaneously expressed, either orally or in writing, with respect to a specific illness or injury which the elder has at the time of the decision by an elder who is competent at the time of the decision;

- `(2) is previously set forth in a living will, health care proxy, or other advance directive document that is validly executed and applied under State law; or
- `(3) may be unambiguously deduced from the elder's life history.

## ***`PART I--NATIONAL COORDINATION OF ELDER JUSTICE ACTIVITIES AND RESEARCH***

### ***`Subpart A--Elder Justice Coordinating Council and Advisory Board on Elder Abuse, Neglect, and Exploitation***

#### **`SEC. 2021. ELDER JUSTICE COORDINATING COUNCIL.**

- `(a) Establishment- There is established within the Office of the Secretary an Elder Justice Coordinating Council (in this section referred to as the `Council').
- `(b) Membership-
  - `(1) IN GENERAL- The Council shall be composed of the following members:
    - `(A) The Secretary (or the Secretary's designee).
    - `(B) The Attorney General (or the Attorney General's designee).
    - `(C) The head of each Federal department or agency or other governmental entity identified by the Chair referred to in subsection (d) as having responsibilities, or administering programs, relating to elder abuse, neglect, and exploitation.
  - `(2) REQUIREMENT- Each member of the Council shall be an officer or employee of the Federal Government.
- `(c) Vacancies- Any vacancy in the Council shall not affect its powers, but shall be filled in the same manner as the original appointment was made.
- `(d) Chair- The member described in subsection (b)(1)(A) shall be Chair of the Council.
- `(e) Meetings- The Council shall meet at least 2 times per year, as determined by the Chair.
- `(f) Duties-
  - `(1) IN GENERAL- The Council shall make recommendations to the Secretary for the coordination of activities of the Department of Health and Human Services, the Department of Justice, and other relevant Federal, State, local, and private agencies and entities, relating to elder abuse, neglect, and exploitation and other crimes against elders.
  - `(2) REPORT- Not later than the date that is 2 years after the date of enactment of the Elder Justice Act of 2009 and every 2 years thereafter, the Council shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives a report that--
    - `(A) describes the activities and accomplishments of, and challenges faced by--
      - `(i) the Council; and

“(g) Powers of the Council-

(2) POSTAL SERVICES- The Council may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(i) Detail of Government Employees- Any Federal Government employee may be detailed to the Council without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(k) Authorization of Appropriations- There are authorized to be appropriated such sums as are necessary to carry out this section.

(a) Establishment- There is established a board to be known as the `Advisory Board on Elder Abuse, Neglect, and Exploitation' (in this section referred to as the `Advisory Board') to create short- and long-term multidisciplinary strategic plans for the development of the field of elder justice and to make recommendations to the Elder Justice Coordinating Council established under section 2021.

(b) Composition- The Advisory Board shall be composed of 27 members appointed by the Secretary from among members of the general public who are individuals with experience and expertise in elder abuse, neglect, and exploitation prevention, detection, treatment, intervention, or prosecution.

(c) Solicitation of Nominations- The Secretary shall publish a notice in the Federal Register soliciting nominations for the appointment of members of the Advisory Board under subsection (b).

“(d) Terms-

- `(A) 9 shall be appointed for a term of 3 years;
  - `(B) 9 shall be appointed for a term of 2 years; and
  - `(C) 9 shall be appointed for a term of 1 year.
- `(2) VACANCIES-
  - `(A) IN GENERAL- Any vacancy on the Advisory Board shall not affect its powers, but shall be filled in the same manner as the original appointment was made.
  - `(B) FILLING UNEXPIRED TERM- An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.
- `(3) EXPIRATION OF TERMS- The term of any member shall not expire before the date on which the member's successor takes office.
- `(e) Election of Officers- The Advisory Board shall elect a Chair and Vice Chair from among its members. The Advisory Board shall elect its initial Chair and Vice Chair at its initial meeting.
- `(f) Duties-
  - `(1) ENHANCE COMMUNICATION ON PROMOTING QUALITY OF, AND PREVENTING ABUSE, NEGLECT, AND EXPLOITATION IN, LONG-TERM CARE- The Advisory Board shall develop collaborative and innovative approaches to improve the quality of, including preventing abuse, neglect, and exploitation in, long-term care.
  - `(2) COLLABORATIVE EFFORTS TO DEVELOP CONSENSUS AROUND THE MANAGEMENT OF CERTAIN QUALITY-RELATED FACTORS-
    - `(A) IN GENERAL- The Advisory Board shall establish multidisciplinary panels to address, and develop consensus on, subjects relating to improving the quality of long-term care. At least 1 such panel shall address, and develop consensus on, methods for managing resident-to-resident abuse in long-term care.
    - `(B) ACTIVITIES CONDUCTED- The multidisciplinary panels established under subparagraph (A) shall examine relevant research and data, identify best practices with respect to the subject of the panel, determine the best way to carry out those best practices in a practical and feasible manner, and determine an effective manner of distributing information on such subject.
  - `(3) REPORT- Not later than the date that is 18 months after the date of enactment of the Elder Justice Act of 2009, and annually thereafter, the Advisory Board shall prepare and submit to the Elder Justice Coordinating Council, the Committee on Finance of the Senate, and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives a report containing--
    - `(A) information on the status of Federal, State, and local public and private elder justice activities;
    - `(B) recommendations (including recommended priorities) regarding--
      - `(i) elder justice programs, research, training, services, practice, enforcement, and coordination;

- (ii) coordination between entities pursuing elder justice efforts and those involved in related areas that may inform or overlap with elder justice efforts, such as activities to combat violence against women and child abuse and neglect; and
- (iii) activities relating to adult fiduciary systems, including guardianship and other fiduciary arrangements;
- (C) recommendations for specific modifications needed in Federal and State laws (including regulations) or for programs, research, and training to enhance prevention, detection, and treatment (including diagnosis) of, intervention in (including investigation of), and prosecution of elder abuse, neglect, and exploitation;
- (D) recommendations on methods for the most effective coordinated national data collection with respect to elder justice, and elder abuse, neglect, and exploitation; and
- (E) recommendations for a multidisciplinary strategic plan to guide the effective and efficient development of the field of elder justice.
- (g) Powers of the Advisory Board-
- (1) INFORMATION FROM FEDERAL AGENCIES- Subject to the requirements of section 2012(a), the Advisory Board may secure directly from any Federal department or agency such information as the Advisory Board considers necessary to carry out this section. Upon request of the Chair of the Advisory Board, the head of such department or agency shall furnish such information to the Advisory Board.
- (2) SHARING OF DATA AND REPORTS- The Advisory Board may request from any entity pursuing elder justice activities under the Elder Justice Act of 2009 or an amendment made by that Act, any data, reports, or recommendations generated in connection with such activities.
- (3) POSTAL SERVICES- The Advisory Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.
- (h) Travel Expenses- The members of the Advisory Board shall not receive compensation for the performance of services for the Advisory Board. The members shall be allowed travel expenses for up to 4 meetings per year, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Advisory Board. Notwithstanding section 1342 of title 31, United States Code, the Secretary may accept the voluntary and uncompensated services of the members of the Advisory Board.
- (i) Detail of Government Employees- Any Federal Government employee may be detailed to the Advisory Board without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.
- (j) Status as Permanent Advisory Committee- Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the advisory board.
- (k) Authorization of Appropriations- There are authorized to be appropriated such sums as are necessary to carry out this section.

## **`SEC. 2023. RESEARCH PROTECTIONS.**

`(a) Guidelines- The Secretary shall promulgate guidelines to assist researchers working in the area of elder abuse, neglect, and exploitation, with issues relating to human subject protections.

`(b) Definition of Legally Authorized Representative for Application of Regulations- For purposes of the application of subpart A of part 46 of title 45, Code of Federal Regulations, to research conducted under this subpart, the term 'legally authorized representative' means, 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.

## **`SEC. 2024. AUTHORIZATION OF APPROPRIATIONS.**

`There are authorized to be appropriated to carry out this subpart--

`(1) for fiscal year 2011, \$6,500,000; and

`(2) for each of fiscal years 2012 through 2014, \$7,000,000.

## ***`Subpart B--Elder Abuse, Neglect, and Exploitation Forensic Centers***

## **`SEC. 2031. ESTABLISHMENT AND SUPPORT OF ELDER ABUSE, NEGLECT, AND EXPLOITATION FORENSIC CENTERS.**

`(a) In General- The Secretary, in consultation with the Attorney General, shall make grants to eligible entities to establish and operate stationary and mobile forensic centers, to develop forensic expertise regarding, and provide services relating to, elder abuse, neglect, and exploitation.

`(b) Stationary Forensic Centers- The Secretary shall make 4 of the grants described in subsection (a) to institutions of higher education with demonstrated expertise in forensics or commitment to preventing or treating elder abuse, neglect, or exploitation, to establish and operate stationary forensic centers.

`(c) Mobile Centers- The Secretary shall make 6 of the grants described in subsection (a) to appropriate entities to establish and operate mobile forensic centers.

`(d) Authorized Activities-

`(1) DEVELOPMENT OF FORENSIC MARKERS AND METHODOLOGIES-

An eligible entity that receives a grant under this section shall use funds made available through the grant to assist in determining whether abuse, neglect, or exploitation occurred and whether a crime was committed and to conduct research to describe and disseminate information on--

`(A) forensic markers that indicate a case in which elder abuse, neglect, or exploitation may have occurred; and

`(B) methodologies for determining, in such a case, when and how health care, emergency service, social and protective services, and legal service

providers should intervene and when the providers should report the case to law enforcement authorities.

`(2) DEVELOPMENT OF FORENSIC EXPERTISE- An eligible entity that receives a grant under this section shall use funds made available through the grant to develop forensic expertise regarding elder abuse, neglect, and exploitation in order to provide medical and forensic evaluation, therapeutic intervention, victim support and advocacy, case review, and case tracking.

`(3) COLLECTION OF EVIDENCE- The Secretary, in coordination with the Attorney General, shall 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 collecting forensic evidence relating to a potential determination of elder abuse, neglect, or exploitation.

`(e) Application- To be eligible to receive a grant under this section, an entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

`(f) Authorization of Appropriations- There are authorized to be appropriated to carry out this section--

    `(1) for fiscal year 2011, \$4,000,000;

    `(2) for fiscal year 2012, \$6,000,000; and

    `(3) for each of fiscal years 2013 and 2014, \$8,000,000.

## ***`PART II--PROGRAMS TO PROMOTE ELDER JUSTICE***

### **`SEC. 2041. ENHANCEMENT OF LONG-TERM CARE.**

`(a) Grants and Incentives for Long-Term Care Staffing-

    `(1) IN GENERAL- The Secretary shall carry out activities, including activities described in paragraphs (2) and (3), to provide incentives for individuals to train for, seek, and maintain employment providing direct care in long-term care.

    `(2) SPECIFIC PROGRAMS TO ENHANCE TRAINING, RECRUITMENT, AND RETENTION OF STAFF-

        ` (A) COORDINATION WITH SECRETARY OF LABOR TO RECRUIT AND TRAIN LONG-TERM CARE STAFF- The Secretary shall coordinate activities under this subsection with the Secretary of Labor in order to provide incentives for individuals to train for and seek employment providing direct care in long-term care.

        ` (B) CAREER LADDERS AND WAGE OR BENEFIT INCREASES TO INCREASE STAFFING IN LONG-TERM CARE-

            ` (i) IN GENERAL- The Secretary shall make grants to eligible entities to carry out programs through which the entities--

                ` (I) offer, to employees who provide direct care to residents of an eligible entity or individuals receiving community-based long-term care from an eligible entity, continuing training and varying levels of certification, based on

observed clinical care practices and the amount of time the employees spend providing direct care; and

`(II) provide, or make arrangements to provide, bonuses or other increased compensation or benefits to employees who achieve certification under such a program.

`(ii) APPLICATION- To be eligible to receive a grant under this subparagraph, an eligible entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require (which may include evidence of consultation with the State in which the eligible entity is located with respect to carrying out activities funded under the grant).

`(iii) AUTHORITY TO LIMIT NUMBER OF APPLICANTS- Nothing in this subparagraph shall be construed as prohibiting the Secretary from limiting the number of applicants for a grant under this subparagraph.

`(3) SPECIFIC PROGRAMS TO IMPROVE MANAGEMENT PRACTICES-

`(A) IN GENERAL- The Secretary shall make grants to eligible entities to enable the entities to provide training and technical assistance.

`(B) AUTHORIZED ACTIVITIES- An eligible entity that receives a grant under subparagraph (A) shall use funds made available through the grant to provide training and technical assistance regarding management practices using methods that are demonstrated to promote retention of individuals who provide direct care, such as--

`(i) the establishment of standard human resource policies that reward high performance, including policies that provide for improved wages and benefits on the basis of job reviews;

`(ii) the establishment of motivational and thoughtful work organization practices;

`(iii) the creation of a workplace culture that respects and values caregivers and their needs;

`(iv) the promotion of a workplace culture that respects the rights of residents of an eligible entity or individuals receiving community-based long-term care from an eligible entity and results in improved care for the residents or the individuals; and

`(v) the establishment of other programs that promote the provision of high quality care, such as a continuing education program that provides additional hours of training, including on-the-job training, for employees who are certified nurse aides.

`(C) APPLICATION- To be eligible to receive a grant under this paragraph, an eligible entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require (which may include evidence of consultation with the State in which the eligible entity is located with respect to carrying out activities funded under the grant).



(as defined in section 3013(f) of the Public Health Service Act) under a grant under section 3013 of the Public Health Service Act to coordinate care and for other purposes determined appropriate by the Secretary.

`(5) ACCOUNTABILITY MEASURES- The Secretary shall develop accountability measures to ensure that the activities conducted using funds made available under this subsection help improve patient safety and reduce adverse events and health care complications resulting from medication errors.

`(c) Adoption of Standards for Transactions Involving Clinical Data by Long-Term Care Facilities-

`(1) STANDARDS AND COMPATIBILITY- The Secretary shall adopt electronic standards for the exchange of clinical data by long-term care facilities, including, where available, standards for messaging and nomenclature. Standards adopted by the Secretary under the preceding sentence shall 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, standards adopted under section 3004 of the Public Health Service Act, and general health information technology standards.

`(2) ELECTRONIC SUBMISSION OF DATA TO THE SECRETARY-

`(A) IN GENERAL- Not later than 10 years after the date of enactment of the Elder Justice Act of 2009, the Secretary shall have procedures in place to accept the optional electronic submission of clinical data by long-term care facilities pursuant to the standards adopted under paragraph (1).

`(B) RULE OF CONSTRUCTION- Nothing in this subsection shall be construed to require a long-term care facility to submit clinical data electronically to the Secretary.

`(3) REGULATIONS- The Secretary shall promulgate regulations to carry out this subsection. Such regulations shall require a State, as a condition of the receipt of funds under this part, to conduct such data collection and reporting as the Secretary determines are necessary to satisfy the requirements of this subsection.

`(d) Authorization of Appropriations- There are authorized to be appropriated to carry out this section--

`(1) for fiscal year 2011, \$20,000,000;

`(2) for fiscal year 2012, \$17,500,000; and

`(3) for each of fiscal years 2013 and 2014, \$15,000,000.

## **`SEC. 2042. ADULT PROTECTIVE SERVICES FUNCTIONS AND GRANT PROGRAMS.**

`(a) Secretarial Responsibilities-

`(1) IN GENERAL- The Secretary shall ensure that the Department of Health and Human Services--

`(A) provides funding authorized by this part to State and local adult protective services offices that investigate reports of the abuse, neglect, and exploitation of elders;

`(B) collects and disseminates data annually relating to the abuse, exploitation, and neglect of elders in coordination with the Department of Justice;

`(C) develops and disseminates information on best practices regarding, and provides training on, carrying out adult protective services;

`(D) conducts research related to the provision of adult protective services; and

`(E) provides technical assistance to States and other entities that provide or fund the provision of adult protective services, including through grants made under subsections (b) and (c).

`(2) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated to carry out this subsection, \$3,000,000 for fiscal year 2011 and \$4,000,000 for each of fiscal years 2012 through 2014.

`(b) Grants To Enhance the Provision of Adult Protective Services-

`(1) ESTABLISHMENT- There is established an adult protective services grant program under which the Secretary shall annually award grants to States in the amounts calculated under paragraph (2) for the purposes of enhancing adult protective services provided by States and local units of government.

`(2) AMOUNT OF PAYMENT-

`(A) IN GENERAL- Subject to the availability of appropriations and subparagraphs (B) and (C), the amount paid to a State for a fiscal year under the program under this subsection shall equal the amount appropriated for that year to carry out this subsection multiplied by the percentage of the total number of elders who reside in the United States who reside in that State.

`(B) GUARANTEED MINIMUM PAYMENT AMOUNT-

`(i) 50 STATES- Subject to clause (ii), if the amount determined under subparagraph (A) for a State for a fiscal year is less than 0.75 percent of the amount appropriated for such year, the Secretary shall increase such determined amount so that the total amount paid under this subsection to the State for the year is equal to 0.75 percent of the amount so appropriated.

`(ii) TERRITORIES- In the case of a State other than 1 of the 50 States, clause (i) shall be applied as if each reference to `0.75' were a reference to `0.1'.

`(C) PRO RATA REDUCTIONS- The Secretary shall make such pro rata reductions to the amounts described in subparagraph (A) as are necessary to comply with the requirements of subparagraph (B).

`(3) AUTHORIZED ACTIVITIES-

`(A) ADULT PROTECTIVE SERVICES- Funds made available pursuant to this subsection may only be used by States and local units of government to provide adult protective services and may not be used for any other purpose.

`(B) USE BY AGENCY- Each State receiving funds pursuant to this subsection shall provide such funds to the agency or unit of State

government having legal responsibility for providing adult protective services within the State.

`(C) SUPPLEMENT NOT SUPPLANT- Each State or local unit of government shall use funds made available pursuant to this subsection to supplement and not supplant other Federal, State, and local public funds expended to provide adult protective services in the State.

`(4) STATE REPORTS- Each State receiving funds under this subsection shall submit to the Secretary, at such time and in such manner as the Secretary may require, a report on the number of elders served by the grants awarded under this subsection.

`(5) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated to carry out this subsection, \$100,000,000 for each of fiscal years 2011 through 2014.

`(c) State Demonstration Programs-

`(1) ESTABLISHMENT- The Secretary shall award grants to States for the purposes of conducting demonstration programs in accordance with paragraph (2).

`(2) DEMONSTRATION PROGRAMS- Funds made available pursuant to this subsection may be used by States and local units of government to conduct demonstration programs that test--

`(A) training modules developed for the purpose of detecting or preventing elder abuse;

`(B) methods to detect or prevent financial exploitation of elders;

`(C) methods to detect elder abuse;

`(D) whether training on elder abuse forensics enhances the detection of elder abuse by employees of the State or local unit of government; or

`(E) other matters relating to the detection or prevention of elder abuse.

`(3) APPLICATION- To be eligible to receive a grant under this subsection, a State shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

`(4) STATE REPORTS- Each State that receives funds under this subsection shall submit to the Secretary a report at such time, in such manner, and containing such information as the Secretary may require on the results of the demonstration program conducted by the State using funds made available under this subsection.

`(5) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated to carry out this subsection, \$25,000,000 for each of fiscal years 2011 through 2014.

## **`SEC. 2043. LONG-TERM CARE OMBUDSMAN PROGRAM GRANTS AND TRAINING.**

`(a) Grants To Support the Long-Term Care Ombudsman Program-

`(1) IN GENERAL- The Secretary shall make grants to eligible entities with relevant expertise and experience in abuse and neglect in long-term care facilities or long-term care ombudsman programs and responsibilities, for the purpose of--

- `(A) improving the capacity of State long-term care ombudsman programs to respond to and resolve complaints about abuse and neglect;
  - `(B) conducting pilot programs with State long-term care ombudsman offices or local ombudsman entities; and
  - `(C) providing support for such State long-term care ombudsman programs and such pilot programs (such as through the establishment of a national long-term care ombudsman resource center).
- `(2) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated to carry out this subsection--
  - `(A) for fiscal year 2011, \$5,000,000;
  - `(B) for fiscal year 2012, \$7,500,000; and
  - `(C) for each of fiscal years 2013 and 2014, \$10,000,000.
- `(b) Ombudsman Training Programs-
  - `(1) IN GENERAL- The Secretary shall 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.
  - `(2) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated to carry out this subsection, for each of fiscal years 2011 through 2014, \$10,000,000.

## **`SEC. 2044. PROVISION OF INFORMATION REGARDING, AND EVALUATIONS OF, ELDER JUSTICE PROGRAMS.**

- `(a) Provision of Information- To be eligible to receive a grant under this part, an applicant shall agree--
  - `(1) except as provided in paragraph (2), to provide the eligible entity conducting an evaluation under subsection (b) of the activities funded through the grant with such information as the eligible entity may require in order to conduct such evaluation; or
  - `(2) in the case of an applicant for a grant under section 2041(b), to provide the Secretary with such information as the Secretary may require to conduct an evaluation or audit under subsection (c).
- `(b) Use of Eligible Entities To Conduct Evaluations-
  - `(1) EVALUATIONS REQUIRED- Except as provided in paragraph (2), the Secretary shall--
    - `(A) reserve a portion (not less than 2 percent) of the funds appropriated with respect to each program carried out under this part; and
    - `(B) use the funds reserved under subparagraph (A) to provide assistance to eligible entities to conduct evaluations of the activities funded under each program carried out under this part.
  - `(2) CERTIFIED EHR TECHNOLOGY GRANT PROGRAM NOT INCLUDED- The provisions of this subsection shall not apply to the certified EHR technology grant program under section 2041(b).

`(3) AUTHORIZED ACTIVITIES- A recipient of assistance described in paragraph (1)(B) shall use the funds made available through the assistance to conduct a validated evaluation of the effectiveness of the activities funded under a program carried out under this part.

`(4) APPLICATIONS- To be eligible to receive assistance under paragraph (1)(B), an entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require, including a proposal for the evaluation.

`(5) REPORTS- Not later than a date specified by the Secretary, an eligible entity receiving assistance under paragraph (1)(B) shall submit to the Secretary, the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives, and the Committee on Finance of the Senate a report containing the results of the evaluation conducted using such assistance together with such recommendations as the entity determines to be appropriate.

`(c) Evaluations and Audits of Certified EHR Technology Grant Program by the Secretary-

`(1) EVALUATIONS- The Secretary shall conduct an evaluation of the activities funded under the certified EHR technology grant program under section 2041(b). Such evaluation shall include an evaluation of whether the funding provided under the grant is expended only for the purposes for which it is made.

`(2) AUDITS- The Secretary shall conduct appropriate audits of grants made under section 2041(b).

## **`SEC. 2045. REPORT.**

`Not later than October 1, 2014, the Secretary shall submit to the Elder Justice Coordinating Council established under section 2021, the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives, and the Committee on Finance of the Senate a report--

`(1) compiling, summarizing, and analyzing the information contained in the State reports submitted under subsections (b)(4) and (c)(4) of section 2042; and

`(2) containing such recommendations for legislative or administrative action as the Secretary determines to be appropriate.

## **`SEC. 2046. RULE OF CONSTRUCTION.**

`Nothing in this subtitle shall be construed as--

`(1) limiting any cause of action or other relief related to obligations under this subtitle that is available under the law of any State, or political subdivision thereof; or

`(2) creating a private cause of action for a violation of this subtitle.'

(2) OPTION FOR STATE PLAN UNDER PROGRAM FOR TEMPORARY ASSISTANCE FOR NEEDY FAMILIES-

(A) IN GENERAL- Section 402(a)(1)(B) of the Social Security Act (42 U.S.C. 602(a)(1)(B)) is amended by adding at the end the following new clause:

`(v) The document shall indicate whether the State intends to assist individuals to train for, seek, and maintain employment--

`(I) providing direct care in a long-term care facility (as such terms are defined under section 2011); or

`(II) in other occupations related to elder care determined appropriate by the State for which the State identifies an unmet need for service personnel,

and, if so, shall include an overview of such assistance.'

(B) EFFECTIVE DATE- The amendment made by subparagraph (A) shall take effect on January 1, 2011.

(b) Protecting Residents of Long-Term Care Facilities-

(1) NATIONAL TRAINING INSTITUTE FOR SURVEYORS-

(A) IN GENERAL- The Secretary of Health and Human Services shall enter into a contract with an entity for the purpose of establishing and operating a National Training Institute for Federal and State surveyors. Such Institute shall provide and improve the training of surveyors with respect to investigating allegations of abuse, neglect, and misappropriation of property in programs and long-term care facilities that receive payments under title XVIII or XIX of the Social Security Act.

(B) ACTIVITIES CARRIED OUT BY THE INSTITUTE- The contract entered into under subparagraph (A) shall require the Institute established and operated under such contract to carry out the following activities:

(i) Assess the extent to which State agencies use specialized surveyors for the investigation of reported allegations of abuse, neglect, and misappropriation of property in such programs and long-term care facilities.

(ii) Evaluate how the competencies of surveyors may be improved to more effectively investigate reported allegations of such abuse, neglect, and misappropriation of property, and provide feedback to Federal and State agencies on the evaluations conducted.

(iii) Provide a national program of training, tools, and technical assistance to Federal and State surveyors on investigating reports of such abuse, neglect, and misappropriation of property.

(iv) Develop and disseminate information on best practices for the investigation of such abuse, neglect, and misappropriation of property.

(v) Assess the performance of State complaint intake systems, in order to ensure that the intake of complaints occurs 24 hours per day, 7 days a week (including holidays).

(vi) To the extent approved by the Secretary of Health and Human Services, provide a national 24 hours per day, 7 days a week (including holidays), back-up system to State complaint intake

systems in order to ensure optimum national responsiveness to complaints of such abuse, neglect, and misappropriation of property.

(vii) Analyze and report annually on the following:

(I) The total number and sources of complaints of such abuse, neglect, and misappropriation of property.

(II) The extent to which such complaints are referred to law enforcement agencies.

(III) General results of Federal and State investigations of such complaints.

(viii) Conduct a national study of the cost to State agencies of conducting complaint investigations of skilled nursing facilities and nursing facilities under sections 1819 and 1919, respectively, of the Social Security Act (42 U.S.C. 1395i-3; 1396r), and making recommendations to the Secretary of Health and Human Services with respect to options to increase the efficiency and cost-effectiveness of such investigations.

(C) AUTHORIZATION- There are authorized to be appropriated to carry out this paragraph, for the period of fiscal years 2011 through 2014, \$12,000,000.

**(2) GRANTS TO STATE SURVEY AGENCIES-**

(A) IN GENERAL- The Secretary of Health and Human Services shall make grants to State agencies that perform surveys of skilled nursing facilities or nursing facilities under sections 1819 or 1919, respectively, of the Social Security Act (42 U.S.C. 1395i-3; 1395r).

(B) USE OF FUNDS- A grant awarded under subparagraph (A) shall be used for the purpose of designing and implementing complaint investigations systems that--

(i) promptly prioritize complaints in order to ensure a rapid response to the most serious and urgent complaints;

(ii) respond to complaints with optimum effectiveness and timeliness; and

(iii) optimize the collaboration between local authorities, consumers, and providers, including--

(I) such State agency;

(II) the State Long-Term Care Ombudsman;

(III) local law enforcement agencies;

(IV) advocacy and consumer organizations;

(V) State aging units;

(VI) Area Agencies on Aging; and

(VII) other appropriate entities.

(C) AUTHORIZATION- There are authorized to be appropriated to carry out this paragraph, for each of fiscal years 2011 through 2014, \$5,000,000.

**(3) REPORTING OF CRIMES IN FEDERALLY FUNDED LONG-TERM**

**CARE FACILITIES-** Part A of title XI of the Social Security Act (42 U.S.C. 1301

et seq.), as amended by section 6005, is amended by inserting after section 1150A the following new section:

## **`REPORTING TO LAW ENFORCEMENT OF CRIMES OCCURRING IN FEDERALLY FUNDED LONG-TERM CARE FACILITIES**

### **`Sec. 1150B. (a) Determination and Notification-**

`(1) DETERMINATION- The owner or operator of each long-term care facility that receives Federal funds under this Act shall annually determine whether the facility received at least \$10,000 in such Federal funds during the preceding year.

`(2) NOTIFICATION- If the owner or operator determines under paragraph (1) that the facility received at least \$10,000 in such Federal funds during the preceding year, such owner or operator shall annually notify each covered individual (as defined in paragraph (3)) of that individual's obligation to comply with the reporting requirements described in subsection (b).

`(3) COVERED INDIVIDUAL DEFINED- In this section, the term 'covered individual' means each individual who is an owner, operator, employee, manager, agent, or contractor of a long-term care facility that is the subject of a determination described in paragraph (1).

### **`(b) Reporting Requirements-**

`(1) IN GENERAL- Each covered individual shall report to the Secretary and 1 or more law enforcement entities for the political subdivision in which the facility is located any reasonable suspicion of a crime (as defined by the law of the applicable political subdivision) against any individual who is a resident of, or is receiving care from, the facility.

`(2) TIMING- If the events that cause the suspicion--

`(A) result in serious bodily injury, the individual shall report the suspicion immediately, but not later than 2 hours after forming the suspicion; and

`(B) do not result in serious bodily injury, the individual shall report the suspicion not later than 24 hours after forming the suspicion.

### **`(c) Penalties-**

`(1) IN GENERAL- If a covered individual violates subsection (b)--

`(A) the covered individual shall be subject to a civil money penalty of not more than \$200,000; and

`(B) the Secretary may make a determination in the same proceeding to exclude the covered individual from participation in any Federal health care program (as defined in section 1128B(f)).

`(2) INCREASED HARM- If a covered individual violates subsection (b) and the violation exacerbates the harm to the victim of the crime or results in harm to another individual--

`(A) the covered individual shall be subject to a civil money penalty of not more than \$300,000; and

`(B) the Secretary may make a determination in the same proceeding to exclude the covered individual from participation in any Federal health care program (as defined in section 1128B(f)).

`(3) EXCLUDED INDIVIDUAL- During any period for which a covered individual is classified as an excluded individual under paragraph (1)(B) or (2)(B), a long-term care facility that employs such individual shall be ineligible to receive Federal funds under this Act.

`(4) EXTENUATING CIRCUMSTANCES-

`(A) IN GENERAL- The Secretary may take into account the financial burden on providers with underserved populations in determining any penalty to be imposed under this subsection.

`(B) UNDERSERVED POPULATION DEFINED- In this paragraph, the term `underserved population' means the population of an area designated by the Secretary as an area with a shortage of elder justice programs or a population group designated by the Secretary as having a shortage of such programs. Such areas or groups designated by the Secretary may include--

`(i) areas or groups that are geographically isolated (such as isolated in a rural area);

`(ii) racial and ethnic minority populations; and

`(iii) populations underserved because of special needs (such as language barriers, disabilities, alien status, or age).

`(d) Additional Penalties for Retaliation-

`(1) IN GENERAL- A long-term care facility may not--

`(A) discharge, demote, suspend, threaten, harass, or deny a promotion or other employment-related benefit to an employee, or in any other manner discriminate against an employee in the terms and conditions of employment because of lawful acts done by the employee; or

`(B) file a complaint or a report against a nurse or other employee with the appropriate State professional disciplinary agency because of lawful acts done by the nurse or employee,

for making a report, causing a report to be made, or for taking steps in furtherance of making a report pursuant to subsection (b)(1).

`(2) PENALTIES FOR RETALIATION- If a long-term care facility violates subparagraph (A) or (B) of paragraph (1) the facility shall be subject to a civil money penalty of not more than \$200,000 or the Secretary may classify the entity as an excluded entity for a period of 2 years pursuant to section 1128(b), or both.

`(3) REQUIREMENT TO POST NOTICE- Each long-term care facility shall post conspicuously in an appropriate location a sign (in a form specified by the Secretary) specifying the rights of employees under this section. Such sign shall include a statement that an employee may file a complaint with the Secretary against a long-term care facility that violates the provisions of this subsection and information with respect to the manner of filing such a complaint.

`(e) Procedure- The provisions of section 1128A (other than subsections (a) and (b) and the second sentence of subsection (f)) shall apply to a civil money penalty or exclusion

under this section in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

`(f) Definitions- In this section, the terms `elder justice', `long-term care facility', and `law enforcement' have the meanings given those terms in section 2011.'

(c) National Nurse Aide Registry-

(1) DEFINITION OF NURSE AIDE- In this subsection, the term `nurse aide' has the meaning given that term in sections 1819(b)(5)(F) and 1919(b)(5)(F) of the Social Security Act (42 U.S.C. 1395i-3(b)(5)(F); 1396r(b)(5)(F)).

(2) STUDY AND REPORT-

(A) IN GENERAL- The Secretary, in consultation with appropriate government agencies and private sector organizations, shall conduct a study on establishing a national nurse aide registry.

(B) AREAS EVALUATED- The study conducted under this subsection shall include an evaluation of--

- (i) who should be included in the registry;
- (ii) how such a registry would comply with Federal and State privacy laws and regulations;
- (iii) how data would be collected for the registry;
- (iv) what entities and individuals would have access to the data collected;
- (v) how the registry would provide appropriate information regarding violations of Federal and State law by individuals included in the registry;
- (vi) how the functions of a national nurse aide registry would be coordinated with the nationwide program for national and State background checks on direct patient access employees of long-term care facilities and providers under section 4301; and
- (vii) how the information included in State nurse aide registries developed and maintained under sections 1819(e)(2) and 1919(e)(2) of the Social Security Act (42 U.S.C. 1395i-3(e)(2); 1396r(e)(2)(2)) would be provided as part of a national nurse aide registry.

(C) CONSIDERATIONS- In conducting the study and preparing the report required under this subsection, the Secretary shall take into consideration the findings and conclusions of relevant reports and other relevant resources, including the following:

- (i) The Department of Health and Human Services Office of Inspector General Report, Nurse Aide Registries: State Compliance and Practices (February 2005).
- (ii) The General Accounting Office (now known as the Government Accountability Office) Report, Nursing Homes: More Can Be Done to Protect Residents from Abuse (March 2002).
- (iii) The Department of Health and Human Services Office of the Inspector General Report, Nurse Aide Registries: Long-Term Care Facility Compliance and Practices (July 2005).

(iv) The Department of Health and Human Services Health Resources and Services Administration Report, Nursing Aides, Home Health Aides, and Related Health Care Occupations-- National and Local Workforce Shortages and Associated Data Needs (2004) (in particular with respect to chapter 7 and appendix F).

(v) The 2001 Report to CMS from the School of Rural Public Health, Texas A&M University, Preventing Abuse and Neglect in Nursing Homes: The Role of Nurse Aide Registries.

(vi) Information included in State nurse aide registries developed and maintained under sections 1819(e)(2) and 1919(e)(2) of the Social Security Act (42 U.S.C. 1395i-3(e)(2); 1396r(e)(2)(2)).

(D) REPORT- Not later than 18 months after the date of enactment of this Act, the Secretary shall submit to the Elder Justice Coordinating Council established under section 2021 of the Social Security Act, as added by section 1805(a), the Committee on Finance of the Senate, and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives a report containing the findings and recommendations of the study conducted under this paragraph.

(E) FUNDING LIMITATION- Funding for the study conducted under this subsection shall not exceed \$500,000.

(3) CONGRESSIONAL ACTION- After receiving the report submitted by the Secretary under paragraph (2)(D), the Committee on Finance of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives shall, as they deem appropriate, take action based on the recommendations contained in the report.

(4) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated such sums as are necessary for the purpose of carrying out this subsection.

(d) Conforming Amendments-

(1) TITLE XX- Title XX of the Social Security Act (42 U.S.C. 1397 et seq.), as amended by section 6703(a), is amended--

(A) in the heading of section 2001, by striking 'TITLE' and inserting 'SUBTITLE'; and

(B) in subtitle 1, by striking 'this title' each place it appears and inserting 'this subtitle'.

(2) TITLE IV- Title IV of the Social Security Act (42 U.S.C. 601 et seq.) is amended--

(A) in section 404(d)--

(i) in paragraphs (1)(A), (2)(A), and (3)(B), by inserting 'subtitle 1 of' before 'title XX' each place it appears;

(ii) in the heading of paragraph (2), by inserting 'SUBTITLE 1 OF' before 'TITLE XX'; and

- (iii) in the heading of paragraph (3)(B), by inserting `SUBTITLE 1 OF' before `TITLE XX'; and
  - (B) in sections 422(b), 471(a)(4), 472(h)(1), and 473(b)(2), by inserting `subtitle 1 of' before `title XX' each place it appears.
- (3) TITLE XI- Title XI of the Social Security Act (42 U.S.C. 1301 et seq.) is amended--
  - (A) in section 1128(h)(3)--
    - (i) by inserting `subtitle 1 of' before `title XX'; and
    - (ii) by striking `such title' and inserting `such subtitle'; and
  - (B) in section 1128A(i)(1), by inserting `subtitle 1 of' before `title XX'.