February 20, 2008

Senator Herb Kohl
United States Senate
330 Hart Senate Office Building
Washington, DC 20510

Senator Pete V. Domenici
United States Senate
328 Hart Senate Office Building
Washington, DC 20510

Representative Rahm Emanuel
The House of Representatives
1319 Longworth House Office Building
Washington, DC 20515

Representative Tim Mahoney
The House of Representatives
1541 Longworth House Office Building
Washington, DC 20515

Via Fax

Dear Members of Congress:

We, the undersigned Attorneys General write to express our strong support of the bipartisan Patient Safety and Abuse Prevention Act of 2007 (S. 1577, H.R. 3078), a bill to establish a nationwide system of background checks for long-term care workers.

The 50-state Medicaid Fraud Control Units (MFCUs) have been in the vanguard of law enforcement efforts to combat abuse, neglect, and exploitation that tragically occur everyday in our nursing homes, residential care facilities, home health programs, and hospitals. Indeed, these Units, forty-three of which are housed in state Attorneys General offices, are the only law enforcement agencies charged with investigating and criminally prosecuting resident abuse and neglect in nursing homes, and other Medicaid-funded and residential care facilities.

Several factors have recently converged to make a national system of criminal background checks a key priority for policymakers and law enforcement officials. These include the rising number of vulnerable elders in our society, the increased mobility of workers, turnover in the long-term care workforce, and the fact that individuals may work in more than one state. Unfortunately, the procedures that are now being used by many states to protect frail elders and persons with disabilities from being harmed by a minority of workers who have a history of abuse, or a serious criminal history, have not kept pace with these changes in demographics and the workforce.
Today, long-term care providers are generally not required to conduct interstate criminal background checks on long-term care workers. Those background checks that are conducted are usually limited to nursing assistants.

This patchwork system makes it relatively easy for serial offenders to escape detection. A decade ago, the National Institute of Justice estimated the costs of personal crime were in excess of $100 billion annually, taking into account only medical costs, lost earnings, and the costs of public programs that assist crime victims. We urge Congress to take a proactive approach to preventing and reducing crime by excluding predators from nursing homes and other long-term care settings where they can harm or exploit frail elders and individuals with disabilities.

A 2005 study by the Michigan MFCU, revealed that over 10% of the nursing home employees reviewed, who care for Michigan’s vulnerable adults, had criminal backgrounds. Some of the criminal backgrounds included homicide, criminal sexual conduct, weapon charges, and drug offenses. As a result, the Attorney General issued a formal report and submitted a legislative proposal to the Michigan Senate, which was enacted into law.

By establishing a system of screening and national criminal history background checks, including an FBI fingerprint check, S. 1577/H.R. 3078 would improve the protection of individuals in institutional, and home and community-based settings. Requirements for background checks would apply to individuals applying for jobs with long-term care providers that receive Medicare or Medicaid funding. Providers that knowingly hire or continue to employ a worker with a conviction for a relevant crime would be subject to state and federal civil monetary penalties.

We also support provisions of the bill that require states to designate a single agency to oversee the background check process and to notify long-term care providers of background check results in a timely way. The legislation is modeled on a seven-state pilot project funded by the Medicare Modernization Act of 2003, which has proven its success by excluding more than 5,000 individuals with disqualifying histories.

In closing, enactment of the Patient Safety and Abuse Prevention Act of 2007 would keep licensed and unlicensed workers with histories of criminal abuse from escaping detection by simply moving from job to job and state to state. A comprehensive, reliable system of criminal record background checks for employees and applicants for employment at care-giving facilities would provide the information needed to help prevent many cases of abuse, neglect and exploitation. Long-term care workers should be carefully checked to make sure they do not have a history of substantiated abuse or serious criminal history before being hired and entrusted with the care of our defenseless citizens. The bill would create a safer workforce, provide greater assurance for employers, and most importantly, enhance the nationwide protection of vulnerable citizens receiving services from long-term care providers.

Thank you for consideration of our views.

Mike Cox
Attorney General of Michigan

William H. Sorrell
Attorney General of Vermont
Martha Coakley  
Attorney General of Massachusetts

Jeremiah W. Nixon 
Attorney General of Missouri

Jon Bruning 
Attorney General of Nebraska

Kelly A. Ayotte 
Attorney General of New Hampshire

Roy Cooper 
Attorney General of North Carolina

Hardy Myers 
Attorney General of Oregon

Patrick Lynch 
Attorney General of Rhode Island

Robert E. Cooper, Jr 
Attorney General of Tennessee

Mark Shurtleff 
Attorney General of Utah

Jim Hood 
Attorney General of Mississippi

Mike McGrath 
Attorney General of Montana

Catherine Cortez Masto 
Attorney General of Nevada

Anne Milgram 
Attorney General of New Jersey

W.A. Drew Edmondson 
Attorney General of Oklahoma

Tom Corbett 
Attorney General of Pennsylvania

Larry Long 
Attorney General of South Dakota

Greg Abbott 
Attorney General of Texas

Robert McDonnell 
Attorney General of Virginia
The following state authorities that also house Medicaid Fraud Control Units join in this National Association of Attorneys General letter:

Kevin T. Kane
Chief State’s Attorney of Connecticut

Charles J. Willoughby
Inspector General
District of Columbia

Dean Lerner
Director, Iowa Department of Inspections and Appeals