

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1884

To provide a Federal response to fraud in connection with the provision of or receipt of payment for health care services, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

APRIL 28, 1993

Ms. DELAURO (for herself, Mr. DURBIN, Mr. SHAYS, and Mr. BACCHUS of Florida) introduced the following bill; which was referred jointly to the Committees on the Judiciary and Energy and Commerce

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## A BILL

To provide a Federal response to fraud in connection with the provision of or receipt of payment for health care services, and for other purposes.

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

3       **TITLE I—HEALTH CARE FRAUD**  
4       **PROSECUTION ACT OF 1993**

5       **SEC. 101. SHORT TITLE.**

6       This title may be cited as the “Health Care Fraud  
7       Prosecution Act of 1993”.

1 **SEC. 102. INCREASED PENALTIES FOR HEALTH CARE**  
2 **FRAUD.**

3 (a) OFFENSE.—Part I of title 18, United States  
4 Code, is amended by inserting after chapter 50A the fol-  
5 lowing new chapter:

6 **“CHAPTER 50B—HEALTH CARE FRAUD**

“Sec.

“1101. Health care fraud.

“1102. Penalties.

“1103. Restitution.

7 **“§ 1101. Health care fraud**

8 “(a) DEFINITION.—In this section, the term ‘health  
9 care provider’ means—

10 “(1) a physician, nurse, dentist, therapist, phar-  
11 macist, or other professional provider of health care;  
12 and

13 “(2) a hospital, health maintenance organiza-  
14 tion, pharmacy, laboratory, clinic, or other health  
15 care facility or a provider of medical services, medi-  
16 cal devices, medical equipment, or other medical sup-  
17 plies.

18 “(b) OFFENSE.—A health care provider that engages  
19 in conduct constituting an offense under section 1341 or  
20 1343 of this title for the purpose of or in connection with  
21 the provision of health care services or supplies or the pay-  
22 ment therefor or reimbursement of the costs thereof,  
23 when—

1           “(1) the amount of loss caused by the fraudu-  
2           lent conduct exceeds \$10,000; or

3           “(2) the offender had previously been convicted  
4           of fraud in Federal or State court,  
5 shall be fined under this title, imprisoned in accordance  
6 with section 1102 of this title, or both.

7 **“§ 1102. Penalties**

8           “(a) IN GENERAL.—In the case of an offense under  
9 section 1101 of this title not described in subsection (b)  
10 or (c) of this section, the offender shall be sentenced to  
11 a term of imprisonment of not more than 10 years.

12           “(b) SERIOUS PHYSICAL INJURY OR  
13 ENDANGERMENT OF LIFE OF PATIENT.—In the case of  
14 an offense under section 1101 of this title that—

15           “(1) caused serious physical injury to a patient;  
16           or

17           “(2) endangered the life of a patient,  
18 the offender shall be sentenced to a term of imprisonment  
19 of not more than 20 years.

20           “(c) DEATH OF PATIENT.—In the case of an offense  
21 under section 1101 of this title that caused the death of  
22 a patient, the offender shall be sentenced to a term of im-  
23 prisonment of not more than life.

1 **“§ 1103. Restitution**

2       “(a) IN GENERAL.—In sentencing a person convicted  
3 of an offense under section 1101 of this title, the court  
4 shall order the offender to pay restitution to the patient  
5 and any payor, such as an insurer, employer health benefit  
6 plan, or government program, for economic loss sustained  
7 as a result of the offense.

8       “(b) RESTITUTION PROCEDURE.—Except to the ex-  
9 tent inconsistent with this section, sections 3363 and 3364  
10 of this title apply to restitution made under this section.”.

11       (b) CLERICAL AMENDMENT.—The table of chapters  
12 at the beginning of part I of title 18, United States Code,  
13 is amended by inserting after the item relating to chapter  
14 50A the following new item:

“50B. Health care fraud.”.

15 **SEC. 103. CRIMINAL FORFEITURE OF HEALTH CARE FRAUD**  
16 **PROCEEDS.**

17       Section 982(a) of title 18, United States Code, is  
18 amended by adding at the end the following new para-  
19 graph:

20       “(5) The court, in imposing sentence on a person con-  
21 victed of an offense under section 1101 of this title, shall  
22 order that the offender forfeit to the United States any  
23 real or personal property constituting or derived from pro-  
24 ceeds that the offender obtained directly or indirectly as  
25 the result of the offense.”.

1 **SEC. 104. REWARDS FOR INFORMATION LEADING TO PROS-**  
2 **ECUTION AND CONVICTION.**

3 Section 3059 of title 18, United States Code, is  
4 amended by adding at the end the following new sub-  
5 section:

6 “(c)(1) In special circumstances and in the Attorney  
7 General’s sole discretion, the Attorney General may make  
8 a payment of up to \$10,000 to a person who furnishes  
9 information unknown to the Government relating to a pos-  
10 sible prosecution under section 1101 of this title.

11 “(2) A person is not eligible for a payment under  
12 paragraph (1) if—

13 “(A) the person is a current or former officer  
14 or employee of a Federal or State government agen-  
15 cy or instrumentality who furnishes information dis-  
16 covered or gathered in the course of government em-  
17 ployment;

18 “(B) the person knowingly participated in the  
19 offense;

20 “(C) the information furnished by the person  
21 consists of allegations or transactions that have been  
22 disclosed to the public—

23 “(i) in a criminal, civil, or administrative  
24 proceeding;

1           “(ii) in a congressional, administrative or  
2           General Accounting Office report, hearing,  
3           audit, or investigation; or

4           “(iii) by the news media, unless the person  
5           is the original source of the information; or

6           “(D) when, in the judgment of the Attorney  
7           General, it appears that a person whose illegal ac-  
8           tivities are being prosecuted or investigated could  
9           benefit from the award.

10          “(3) For the purposes of paragraph (2)(C)(iii), the  
11          term ‘original source’ means a person who has direct and  
12          independent knowledge of the information that is fur-  
13          nished and has voluntarily provided the information to the  
14          Government prior to disclosure by the news media.

15          “(4) Neither the failure of the Attorney General to  
16          authorize a payment under paragraph (1) nor the amount  
17          authorized shall be subject to judicial review.”.

18          **SEC. 105. AUTHORIZATION OF APPROPRIATIONS.**

19          There are authorized to be appropriated in fiscal year  
20          1993 for the purposes of carrying out the purposes of this  
21          title and the amendments made by this title—

22                  (1) \$25,000,000 for the Federal Bureau of In-  
23                  vestigation to hire, equip, and train no fewer than  
24                  250 special agents and support staff to investigate  
25                  health-care fraud cases;

1           (2) \$5,000,000 to hire, equip, and train no  
2 fewer than 50 assistant United States Attorneys and  
3 support staff to prosecute health-care fraud cases;  
4 and

5           (3) \$5,000,000 to hire, equip, and train no  
6 fewer than 50 investigators in the Office of Inspec-  
7 tor General, Department of Health and Human  
8 Services, to be devoted exclusively to health-care  
9 fraud cases.

10 **SEC. 106. BROADENING APPLICATION OF MAIL FRAUD**  
11 **STATUTE.**

12 Section 1341 of title 18, United States Code, is  
13 amended—

14           (1) by inserting “or deposits or causes to be de-  
15 posited any matter or thing whatever to be sent or  
16 delivered by any private or commercial interstate  
17 carrier,” after “Postal Service,”; and

18           (2) by inserting “or such carrier” after “causes  
19 to be delivered by mail”.

20 **TITLE II—HEALTH CARE FRAUD**  
21 **AND ABUSE COMMISSION ACT**  
22 **OF 1993**

23 **SEC. 201. SHORT TITLE.**

24 This title may be cited as the “Health Care Fraud  
25 and Abuse Commission Act of 1993”.

1 **SEC. 202. ESTABLISHMENT OF HEALTH CARE FRAUD AND**  
2 **ABUSE COMMISSION.**

3 (a) IN GENERAL.—There is established a commission  
4 to be known as the “Health Care Fraud and Abuse Com-  
5 mission” (in this title referred to as the “Commission”).

6 (b) COMPOSITION.—The Commission shall be com-  
7 posed of 18 members as follows:

8 (1) OFFICIALS.—

9 (A) The Secretary of Health and Human  
10 Services (or the Secretary’s designee).

11 (B) The Inspector General of the Depart-  
12 ment of Health and Human Services (or the In-  
13 spector General’s designee).

14 (C) The Attorney General (or the Attorney  
15 General’s designee).

16 (D) The Director of the Federal Bureau of  
17 Investigation (or the Director’s designee).

18 (E) The Administrator of the Health Care  
19 Financing Administration (or the Administra-  
20 tor’s designee).

21 (2) PUBLIC MEMBERS.—Thirteen members, ap-  
22 pointed by the President, of which—

23 (A) one shall be an Attorney General of a  
24 State;

25 (B) one shall be a representative of State  
26 medicaid fraud control programs;

1 (C) one shall be a State official directly re-  
2 sponsible for regulation of health insurance;

3 (D) one shall be a representative of physi-  
4 cians;

5 (E) one shall be a representative of hos-  
6 pital administrators;

7 (F) one shall be a representative of health  
8 insurance companies;

9 (G) one shall be a representative of em-  
10 ployers who self-fund employee health benefit  
11 plans;

12 (H) one shall be a representative of em-  
13 ployers who purchase a health benefit plan from  
14 a health insurance company;

15 (I) one shall be a representative of medi-  
16 care carriers;

17 (J) one shall be a representative of medi-  
18 care peer review organizations;

19 (K) one shall be a representative of health  
20 care consumers;

21 (L) one shall be a representative of medi-  
22 care beneficiaries; and

23 (M) one shall be a representative of labor  
24 unions.

1 In making appointments under this paragraph of an  
2 individual who is a representative of persons or or-  
3 ganizations, the President shall consider the rec-  
4 ommendations of national organizations that rep-  
5 resent such persons or organizations. The President  
6 shall report to Congress, within 90 days after the  
7 date of the enactment of this Act, the names of the  
8 members appointed under this paragraph.

9 (c) TERMS.—Each member shall be appointed for the  
10 life of the Commission. A vacancy in the Commission shall  
11 be filled in the manner in which the original appointment  
12 was made.

13 **SEC. 203. FUNCTIONS OF COMMISSION.**

14 (a) IN GENERAL.—The Commission shall—

15 (1) investigate the nature, magnitude, and cost  
16 of health care fraud and abuse in the United States,  
17 and

18 (2) identify and develop the most effective  
19 methods of preventing, detecting, and prosecuting or  
20 litigating such fraud and abuse, with particular em-  
21 phasis on coordinating public and private prevention,  
22 detection, and enforcement efforts.

23 (b) PARTICULARS.—Among other items, the Commis-  
24 sion shall examine at least the following:

1           (1) Mechanisms to provide greater standardiza-  
2           tion of claims administration in order to accommo-  
3           date fraud prevention and detection.

4           (2) Mechanisms to allow more freedom of  
5           health benefit plans to exchange information for co-  
6           ordinating case development and prosecution or liti-  
7           gation efforts, without undermining patient and pro-  
8           vider privacy protections or violating anti-trust laws.

9           (3) The extension to private health insurers of  
10          administrative remedies currently available to public  
11          insurers.

12          (4) Mechanisms for private insurers to organize  
13          and finance investigation and litigation efforts when  
14          more than one insurer may have received fraudulent  
15          claims from a provider.

16          (5) Creating a model State statute for estab-  
17          lishing State insurance fraud units and State laws to  
18          strengthen insurers' ability to pursue and recover  
19          from fraudulent providers.

20          (6) The need for regulation of new types of  
21          health care providers.

22          (7) Criteria for physician referrals to facilities  
23          in which they (or family members) have a financial  
24          interest.

1           (8) The availability of resources to law enforce-  
2           ment authorities to combat health care fraud and  
3           abuse.

4           (c) REPORT.—After approval by a majority vote, a  
5           quorum being present, the Commission shall transmit to  
6           Congress a report on its activities. The report shall be  
7           transmitted not later than 18 months after the date that  
8           a majority of the public members of the Commission have  
9           been appointed. The report shall contain a detailed state-  
10          ment of the Commission’s findings, together with such rec-  
11          ommendations as the Commission considers appropriate.

12   **SEC. 204. ORGANIZATION AND COMPENSATION.**

13          (a) ORGANIZATION.—

14           (1) QUORUM.—A majority of the members of  
15           the Commission shall constitute a quorum but a  
16           lesser number may hold hearings.

17           (2) CHAIRMAN.—The Commission shall elect  
18           one of its members to serve as chairman of the Com-  
19           mission.

20           (3) MEETINGS.—The Commission shall meet at  
21           the call of the chairman or a majority of its mem-  
22           bers. Meetings of the Commission are open to the  
23           public under section 10(a)(10) of the Federal Advi-  
24           sory Committee Act, except that the Commission  
25           may conduct meetings in executive session but only

1 if a majority of the members of the Commission (a  
2 quorum being present) approve going into executive  
3 session.

4 (b) COMPENSATION OF MEMBERS.—Members of the  
5 Commission shall serve without compensation, but shall  
6 be reimbursed for travel, subsistence, and other necessary  
7 expenses incurred in the performance of their duties as  
8 members of the Commission.

9 **SEC. 205. STAFF OF COMMISSION.**

10 (a) IN GENERAL.—The Commission may appoint and  
11 fix the compensation of a staff director and such other  
12 additional personnel as may be necessary to enable the  
13 Commission to carry out its functions, without regard to  
14 the laws, rules, and regulations governing appointment  
15 and compensation and other conditions of service in the  
16 competitive service.

17 (b) DETAIL OF FEDERAL EMPLOYEES.—Upon re-  
18 quest of the chairman, any Federal employee who is sub-  
19 ject to such laws, rules, and regulations, may be detailed  
20 to the Commission to assist it in carrying out its functions  
21 under this title, and such detail shall be without interrup-  
22 tion or loss of civil service status or privilege.

23 (c) EXPERTS AND CONSULTANTS.—The Commission  
24 may procure temporary and intermittent services under  
25 section 3109(b) of title 5, United States Code, but at rates

1 for individuals not to exceed the daily equivalent of 120  
2 percent of the maximum annual rate of basic pay payable  
3 for GS-15 of the General Schedule.

4 **SEC. 206. AUTHORITY OF COMMISSION.**

5 (a) HEARINGS AND SESSIONS.—The Commission  
6 may, for the purpose of carrying out this title, hold hear-  
7 ings, sit and act at times and places, take testimony, and  
8 receive evidence as the Commission considers appropriate.  
9 The Commission may administer oaths or affirmations to  
10 witnesses appearing before it.

11 (b) OBTAINING OFFICIAL DATA.—

12 (1) IN GENERAL.—The Commission may secure  
13 directly from any department or agency of the  
14 United States information necessary to enable it to  
15 carry out this title. Upon request of the chairman of  
16 the Commission, the head of that department or  
17 agency shall furnish that information to the Com-  
18 mission.

19 (2) ACCESS TO INFORMATION.—Information ob-  
20 tained by the Commission is available to the public  
21 in the same manner in which information may be  
22 made available under sections 552 and 552a of title  
23 5, United States Code.

24 (c) GIFTS, BEQUESTS, AND DEVICES.—The Commis-  
25 sion may accept, use, and dispose of gifts, bequests, or

1 devises of services or property for the purpose of aiding  
2 or facilitating the work of the Commission.

3 (d) **MAILS.**—The Commission may use the United  
4 States mails in the same manner and under the same con-  
5 ditions as other departments and agencies of the United  
6 States.

7 (e) **ADMINISTRATIVE SUPPORT SERVICES.**—Upon  
8 the request of the Commission, the Administrator of Gen-  
9 eral Services shall provide to the Commission, on a reim-  
10 bursable basis, the administrative support services nec-  
11 essary for the Commission to carry out its responsibilities  
12 under this title.

13 (f) **SUBPOENA POWER.**—

14 (1) **IN GENERAL.**—The Commission may issue  
15 subpoenas requiring the attendance and testimony of  
16 witnesses and the production of any evidence relat-  
17 ing to any matter which the Commission is author-  
18 ized to investigate under this title. The attendance  
19 of witnesses and the production of evidence may be  
20 required from any place within the United States at  
21 any designated place of hearing within the United  
22 States.

23 (2) **FAILURE TO OBEY A SUBPOENA.**—If a per-  
24 son refuses to obey a subpoena issued under para-  
25 graph (1), the Commission may apply to a United

1 States district court for an order requiring that per-  
2 son to appear before the Commission to give testi-  
3 mony, produce evidence, or both, relating to the  
4 matter under investigation. The application may be  
5 made within the judicial district where the hearing  
6 is conducted or where that person is found, resides,  
7 or transacts business. Any failure to obey the order  
8 of the court may be punished by the court as civil  
9 contempt.

10 (3) SERVICE OF SUBPOENAS.—The subpoenas  
11 of the Commission shall be served in the manner  
12 provided for subpoenas issued by a United States  
13 district court under the Federal Rules of Civil Pro-  
14 cedure for the United States district courts.

15 (4) SERVICE OF PROCESS.—All process of any  
16 court to which application is to be made under para-  
17 graph (2) may be served in the judicial district in  
18 which the person required to be served resides or  
19 may be found.

20 **SEC. 207. TERMINATION.**

21 The Commission shall terminate 90 days after the  
22 date the report is submitted under section 203(c).

1 **SEC. 208. AUTHORIZATION OF APPROPRIATIONS.**

2       There are authorized to be appropriated to the Com-  
3 mission such sums as are necessary to carry out its func-  
4 tions, to remain available until expended.

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