

103^D CONGRESS
2^D SESSION

H. R. 5258

To improve Federal enforcement against health care fraud and abuse.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 1994

Mr. CONYERS introduced the following bill; which was referred to the
Committee on Government Operations

A BILL

To improve Federal enforcement against health care fraud
and abuse.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Health Fraud and
5 Abuse Act of 1994”.

6 **SEC. 2. HEALTH CARE FRAUD AND ABUSE.**

7 (a) FEDERAL ENFORCEMENT BY INSPECTORS GEN-
8 ERAL.—

9 (1) AUDITS, INVESTIGATIONS, INSPECTIONS,
10 AND EVALUATIONS.—

1 (A) IN GENERAL.—Except as provided in
2 subparagraph (B), the Inspector General of
3 each of the Department of Health and Human
4 Services, the Department of Defense, the De-
5 partment of Labor, the Office of Personnel
6 Management, and the Department of Veterans
7 Affairs shall conduct audits, civil and criminal
8 investigations, inspections, and evaluations re-
9 lating to the prevention, detection, and control
10 of health care fraud and abuse in violation of
11 any Federal law.

12 (B) LIMITATION.—An Inspector General,
13 other than the Inspector General of the Depart-
14 ment of Health and Human Services, may not
15 conduct any audit, investigation, inspection, or
16 evaluation under subparagraph (A) with respect
17 to health care fraud or abuse under title V, XI,
18 XVIII, XIX, or XX of the Social Security Act.

19 (2) POWERS.—For purposes of carrying out du-
20 ties and responsibilities under paragraph (1), each
21 Inspector General referred to in paragraph (1) may
22 exercise powers that are available to the Inspector
23 General for purposes of audits, investigations, and
24 other activities under the Inspector General Act of
25 1978 (5 U.S.C. App.).

1 (3) COORDINATION AND REVIEW OF ACTIVITIES
2 OF OTHER FEDERAL, STATE, AND LOCAL AGEN-
3 CIES.—

4 (A) PROGRAM.—The Inspector General
5 shall—

6 (i) jointly establish, on the effective
7 date specified in subsection (j)(1), a pro-
8 gram to prevent, detect, and control health
9 care fraud and abuse in violation of any
10 Federal law, which considers the activities
11 of Federal, State, and local law enforce-
12 ment agencies, Federal and State agencies
13 responsible for the licensing and certifi-
14 cation of health care providers, and State
15 agencies designated under subsection
16 (b)(1)(A); and

17 (ii) publish a description of the pro-
18 gram in the Federal Register, by not later
19 than June 30, 1995.

20 (B) ANNUAL INVESTIGATIVE PLAN.—Each
21 Inspector General referred to in paragraph (1)
22 shall develop an annual investigative plan for
23 the prevention, detection, and control of health
24 care fraud and abuse in accordance with the
25 program established under subparagraph (A).

1 (4) CONSULTATIONS.—Each of the Inspectors
2 General referred to in paragraph (1) shall regularly
3 consult with each other, with Federal, State, and
4 local law enforcement agencies, with Federal and
5 State agencies responsible for the licensing and cer-
6 tification of health care providers, and with Health
7 Care Fraud and Abuse Control Units, in order to
8 assist in coordinating the prevention, detection, and
9 control of health care fraud and abuse in violation
10 of any Federal law.

11 (b) STATE ENFORCEMENT.—

12 (1) DESIGNATION OF STATE AGENCIES AND ES-
13 TABLISHMENT OF HEALTH CARE FRAUD AND ABUSE
14 CONTROL UNIT.—The Governor of each State—

15 (A) shall, consistent with State law, des-
16 ignate agencies of the State which conduct, su-
17 pervise, and coordinate audits, civil and crimi-
18 nal investigations, inspections, and evaluations
19 relating to the prevention, detection, and con-
20 trol of health care fraud and abuse in violation
21 of any Federal law in the State; and

22 (B) may establish and maintain in accord-
23 ance with paragraph (2) a State agency to act
24 as a Health Care Fraud and Abuse Control
25 Unit for purposes of this section.

1 (2) HEALTH CARE FRAUD AND ABUSE CONTROL
2 UNIT REQUIREMENTS.—A Health Care Fraud and
3 Abuse Control Unit established by a State under
4 paragraph (1)(B) shall be a single identifiable entity
5 of State government which is separate and distinct
6 from any State agency with principal responsibility
7 for the administration of health care programs, and
8 which meets the following requirements:

9 (A) The entity—

10 (i) is a unit of the office of the State
11 Attorney General or of another department
12 of State government that possesses state-
13 wide authority to prosecute individuals for
14 criminal violations;

15 (ii) is in a State the constitution of
16 which does not provide for the criminal
17 prosecution of individuals by a statewide
18 authority, and has formal procedures, ap-
19 proved by the Secretary, that assure it will
20 refer suspected criminal violations relating
21 to health care fraud or abuse in violation
22 of any Federal law to the appropriate au-
23 thority or authorities of the State for pros-
24 ecution and assure it will assist such au-

1 thority or authorities in such prosecutions;
2 or

3 (iii) has a formal working relationship
4 with the office of the State Attorney Gen-
5 eral or the appropriate authority or au-
6 thorities for prosecution and has formal
7 procedures (including procedures under
8 which it will refer suspected criminal viola-
9 tions to such office), that provide effective
10 coordination of activities between the
11 Health Care Fraud and Abuse Control
12 Unit and such office with respect to the
13 detection, investigation, and prosecution of
14 suspected health care fraud or abuse in
15 violation of any Federal law.

16 (B) The entity conducts a statewide pro-
17 gram for the investigation and prosecution of
18 violations of all applicable State laws regarding
19 any and all aspects of health care fraud and
20 abuse in violation of any Federal law.

21 (C) The entity has procedures for—

22 (i) reviewing complaints of the abuse
23 or neglect of patients of health care facili-
24 ties in the State, and

1 (ii) where appropriate, investigating
2 and prosecuting such complaints under the
3 criminal laws of the State or for referring
4 the complaints to other State or Federal
5 agencies for action.

6 (D) The entity provides for the collection,
7 or referral for collection to the appropriate
8 agency, of overpayments that—

9 (i) are made under any federally fund-
10 ed or mandated health care program re-
11 quired by this Act, and

12 (ii) it discovers in carrying out its ac-
13 tivities.

14 (E) The entity employs attorneys, auditors,
15 investigators, and other necessary personnel, is
16 organized in such a manner, and provides suffi-
17 cient resources, as is necessary to promote the
18 effective and efficient conduct of its activities.

19 (3) SUBMISSION OF ANNUAL PLAN.—Each
20 Health Care Fraud and Abuse Control Unit may
21 submit each year to the Inspector General a plan for
22 preventing, detecting, and controlling, consistent
23 with the program established under subsection
24 (a)(3)(A), health care fraud and abuse in violation
25 of any Federal law.

1 (4) APPROVAL OF ANNUAL PLAN.—The Inspec-
2 tor General shall approve a plan submitted under
3 paragraph (3) by the Health Care Fraud and Abuse
4 Control Unit of a State, unless the Inspector Gen-
5 eral establishes that the plan—

6 (A) is inconsistent with the program estab-
7 lished under subsection (a)(3)(A); or

8 (B) will not enable the agencies of the
9 State designated under paragraph (1)(A) to
10 prevent, detect, and control health care fraud
11 and abuse in violation of any Federal law.

12 (5) REPORTS.—Each Health Care Fraud and
13 Abuse Control Unit shall submit to the Inspector
14 General an annual report containing such informa-
15 tion as the Inspector General determines to be nec-
16 essary.

17 (6) SEMIANNUAL REPORTS OF INSPECTOR GEN-
18 ERAL OF HEALTH AND HUMAN SERVICES.—The In-
19 spector General shall include in each semiannual re-
20 port of the Inspector General to the Congress under
21 section 5(a) of the Inspector General Act of 1978 (5
22 U.S.C. App.) an assessment of the Inspector General
23 of how well States are preventing, detecting, and
24 controlling health care fraud and abuse.

25 (c) PAYMENTS TO STATES.—

1 (1) IN GENERAL.—For each year for which a
2 State has a plan approved under subsection (b)(4),
3 and subject to the availability of appropriations, the
4 Inspector General shall pay to the State for each
5 quarter an amount equal to 75 percent of the sums
6 expended during the quarter by agencies designated
7 by the Governor of the State under subsection
8 (b)(1)(A) in conducting activities described in that
9 subsection.

10 (2) TIME OF PAYMENT.—The Inspector General
11 shall make a payment under paragraph (1) for a
12 quarter by not later than 30 days after the end of
13 the quarter.

14 (3) PAYMENTS ARE ADDITIONAL.—Payments to
15 a State under this subsection shall be in addition to
16 any amounts paid under subsection (g).

17 (d) DATA SHARING.—The Inspector General shall es-
18 tablish a program for the sharing among Federal agencies,
19 State and local law enforcement agencies, and health care
20 providers and insurers, consistent with data sharing provi-
21 sions of subtitle B, of data related to possible health care
22 fraud and abuse in violation of any Federal law.

23 (e) HEALTH CARE FRAUD AND ABUSE CONTROL AC-
24 COUNT.—

1 (1) ESTABLISHMENT.—There is established on
2 the books of the Treasury of the United States a
3 separate account, which shall be known as the
4 Health Care Fraud and Abuse Control Account. The
5 Account shall consist of—

6 (A) the Health Care Fraud and Abuse Ex-
7 penses Subaccount; and

8 (B) the Health Care Fraud and Abuse Re-
9 serve Subaccount.

10 (2) EXPENSES SUBACCOUNT.—

11 (A) CONTENTS.—The Expenses Sub-
12 account consists of—

13 (i) amounts deposited under subpara-
14 graph (B); and

15 (ii) amounts transferred from the Re-
16 serve Subaccount and deposited under
17 paragraph (3)(B).

18 (B) DEPOSITS.—Except as provided in
19 paragraph (3)(A), there shall be deposited in
20 the Expenses Subaccount all amounts received
21 by the United States as—

22 (i) fines for health care fraud and
23 abuse in violation of any Federal law;

24 (ii) civil penalties or damages (other
25 than restitution) in actions under section

1 3729 or 3730 of title 31, United States
2 Code (commonly referred to as the “False
3 Claims Act”), that are based on health
4 care fraud and abuse in violation of any
5 Federal law;

6 (iii) administrative penalties under the
7 Social Security Act;

8 (iv) proceeds of seizures and forfeit-
9 ures of property for acts or omissions that
10 constitute health care fraud or abuse in
11 violation of any Federal law; and

12 (v) money and proceeds of property
13 that are accepted under subsection (f).

14 (C) USE.—Amounts in the Expenses Sub-
15 account shall be available to the Inspector Gen-
16 eral, under such terms and conditions as the
17 Inspector General determines to be appropriate,
18 for—

19 (i) paying expenses incurred by their
20 respective agencies in carrying out activi-
21 ties under subsection (a); and

22 (ii) making reimbursements to other
23 Inspectors General and Federal, State, and
24 local agencies in accordance with sub-
25 section (g).

1 (3) RESERVE SUBACCOUNT.—

2 (A) DEPOSITS.—An amount otherwise re-
3 quired under paragraph (2)(A) to be deposited
4 in the Expenses Subaccount in a fiscal year
5 shall be deposited in the Reserve Subaccount,
6 if—

7 (i) the amount in the Expenses Sub-
8 account is greater than \$500,000,000; and

9 (ii) the deposit of that amount in the
10 Expenses Subaccount would result in the
11 amount in the Expenses Subaccount ex-
12 ceeding 110 percent of the total amount
13 deposited in the Expenses Subaccount in
14 the preceding fiscal year.

15 (B) TRANSFERS TO EXPENSES SUB-
16 ACCOUNT.—

17 (i) ESTIMATION OF SHORTFALL.—Not
18 later than the first day of the last quarter
19 of each fiscal year, the Inspector General
20 shall estimate whether sufficient amounts
21 will be available during such quarter in the
22 Expenses Subaccount for the uses de-
23 scribed in paragraph (2)(C).

24 (ii) TRANSFER TO COVER SHORT-
25 FALL.—If the Inspector General estimates

1 under clause (i) that there will not be
2 available sufficient amounts in the Ex-
3 penses Subaccount during the last quarter
4 of a fiscal year, there shall be transferred
5 from the Reserve Subaccount and depos-
6 ited in the Expenses Subaccount such
7 amount as the Inspector General estimates
8 is required to ensure that sufficient
9 amounts are available in the Expenses
10 Subaccount during such quarter.

11 (C) LIMITATION ON AMOUNT CARRIED
12 OVER TO SUCCEEDING FISCAL YEAR.—There
13 shall be transferred to the general fund of the
14 Treasury any amount remaining in the Reserve
15 Subaccount at the end of a fiscal year (after
16 any transfer made under subparagraph (B)) in
17 excess of 10 percent of the total amount au-
18 thorized to be deposited in the Expenses Sub-
19 account (consistent with subparagraph (A))
20 during the fiscal year.

21 (f) ACCEPTANCE OF GIFTS, BEQUESTS, AND DE-
22 VICES.—Any Inspector General referred to in subsection
23 (a)(1) may accept, use, and dispose of gifts, bequests, or
24 devises of services or property (real or personal), for the
25 purpose of aiding or facilitating activities under this sec-

1 tion regarding health care fraud and abuse. Gifts, be-
2 quests, or devises of money and proceeds from sales of
3 other property received as gifts, bequests, or devises shall
4 be deposited in the Account and shall be available for use
5 in accordance with subsection (e)(2)(C).

6 (g) REIMBURSEMENTS OF EXPENSES AND OTHER
7 PAYMENTS TO PARTICIPATING AGENCIES.—

8 (1) REIMBURSEMENT OF EXPENSES OF FED-
9 ERAL AGENCIES.—The Inspector General, subject to
10 the availability of amounts in the Account, shall
11 promptly reimburse Federal agencies for expenses
12 incurred in carrying out subsection (a).

13 (2) PAYMENTS TO STATE AND LOCAL LAW EN-
14 FORCEMENT AGENCIES.—The Inspector General,
15 subject to the availability of amounts in the Account,
16 shall promptly pay to any State or local law enforce-
17 ment agency that participated directly in any activ-
18 ity which led to deposits in the Account, or property
19 the proceeds of which are deposited in the Account,
20 an amount that reflects generally and equitably the
21 participation of the agency in the activity.

22 (3) FUNDS USED TO SUPPLEMENT AGENCY AP-
23 PROPRIATIONS.—It is intended that disbursements
24 made from the Account to any Federal agency be

1 used to increase and not supplant the recipient
2 agency's appropriated operating budget.

3 (h) ACCOUNT PAYMENTS ADVISORY BOARD.—

4 (1) ESTABLISHMENT.—There is established the
5 Account Payments Advisory Board, which shall
6 make recommendations to the Inspector General re-
7 garding the equitable allocation of payments from
8 the Account.

9 (2) MEMBERSHIP.—The Board shall consist
10 of—

11 (A) each of the Inspectors General referred
12 to in subsection (a)(1), other than the Inspector
13 General of the Department of Health and
14 Human Services; and

15 (B) 10 members appointed by the Inspec-
16 tor General of the Department of Health and
17 Human Services to represent Health Care
18 Fraud and Abuse Control Units, of whom one
19 shall be appointed—

20 (i) for each of the 10 regions estab-
21 lished by the Director of the Office of
22 Management and Budget under Office of
23 Management and Budget Circular A-105,
24 to represent Units in that region; and

1 (ii) from among individuals rec-
2 ommended by the heads of those agencies
3 in that region.

4 (3) TERMS.—The term of a member of the
5 Board appointed under paragraph (2)(B) shall be 3
6 years, except that of such members first appointed
7 3 members shall serve an initial term of one year
8 and 3 members shall serve an initial term of 2 years,
9 as specified by the Inspector General at the time of
10 appointment.

11 (4) VACANCIES.—A vacancy on the Board shall
12 be filled in the same manner in which the original
13 appointment was made, except that an individual ap-
14 pointed to fill a vacancy occurring before the expira-
15 tion of the term for which the individual is ap-
16 pointed shall be appointed only for the remainder of
17 that term.

18 (5) CHAIRPERSON AND BYLAWS.—The Board
19 shall elect one of its members as chairperson and
20 shall adopt bylaws.

21 (6) COMPENSATION AND EXPENSES.—Members
22 of the Board shall serve without compensation, ex-
23 cept that the Inspector General may pay the ex-
24 penses reasonably incurred by the Board in carrying
25 out its functions under this section.

1 (7) NO TERMINATION.—Section 14(a)(2) of the
2 Federal Advisory Committee Act (5 U.S.C. App.)
3 does not apply to the Board.

4 (i) DEFINITIONS.—In this section:

5 (1) ACCOUNT.—The term “Account” means the
6 Health Care Fraud and Abuse Control Account es-
7 tablished by subsection (e)(1).

8 (2) EXPENSES SUBACCOUNT.—The term “Ex-
9 penses Subaccount” means the Health Care Fraud
10 and Abuse Expenses Subaccount of the Account.

11 (3) HEALTH CARE FRAUD AND ABUSE CONTROL
12 UNIT.—The term “Health Care Fraud and Abuse
13 Control Unit” means such a unit established by a
14 State in accordance with subsection (b)(2).

15 (4) INSPECTOR GENERAL.—Except as otherwise
16 provided, the term “Inspector General” means the
17 Inspector General of the Department of Health and
18 Human Services.

19 (5) RESERVE SUBACCOUNT.—The term “Re-
20 serve Subaccount” means the Health Care Fraud
21 and Abuse Reserve Subaccount of the Account.

22 (j) EFFECTIVE DATE.—

23 (1) IN GENERAL.—Except as provided in para-
24 graph (2), this section shall take effect on January
25 1, 1996.

1 (2) DEVELOPMENT AND PUBLICATION OF DE-
2 SCRIPTION OF PROGRAM.—Subsection (a)(3)(A)
3 shall take effect on the date of the enactment of this
4 Act.

○

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