

105TH CONGRESS  
1ST SESSION

# H. R. 2584

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

SEPTEMBER 30, 1997

Ms. DELAURO (for herself, Mr. FROST, Mr. MCGOVERN, Mr. HINOJOSA, Mr. SCHUMER, Mr. BALDACCI, Mr. FRANK of Massachusetts, Mrs. THURMAN, Mr. MANTON, Mr. OLVER, and Mr. DELLUMS) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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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**

5 **SEC. 101. SHORT TITLE.**

6 This title may be cited as the “Health Care Fraud  
7 Prosecution Act of 1997”.

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) OFFENSE.—A health care provider that engages  
 9 in conduct constituting an offense under section 1341 or  
 10 1343 of this title for the purpose of or in connection with  
 11 the provision of health care services or supplies or the pay-  
 12 ment therefor or reimbursement of the costs thereof,  
 13 when—

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

16 “(2) the offender had previously been convicted  
 17 of fraud in Federal or State court,  
 18 shall be fined under this title, imprisoned in accordance  
 19 with section 1102 of this title, or both.

20 “(b) DEFINITION.—In this section, the term ‘health  
 21 care provider’ means—

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

4           “(2) a hospital, health maintenance organiza-  
5           tion, pharmacy, laboratory, clinic, or other health  
6           care facility or a provider of medical services, medi-  
7           cal devices, medical equipment, or other medical sup-  
8           plies.

9   **“§ 1102. Penalties**

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

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

17               “(1) caused serious physical injury to a patient;  
18          or

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

22          “(c) DEATH OF PATIENT.—In the case of an offense  
23          under section 1101 of this title that caused the death of  
24          a patient, the offender shall be sentenced to a term of im-  
25          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 “(8) 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(c)(1) of title 18, United States Code,  
4 is amended by inserting “1101 or” before “2326”.

5 **SEC. 105. AUTHORIZATION OF APPROPRIATIONS.**

6 There are authorized to be appropriated for the pur-  
7 poses of carrying out the amendments made by this title—

8 (1) for fiscal year 1998—

9 (A) \$25,000,000 for the Federal Bureau of  
10 Investigation to hire, equip, and train no fewer  
11 than 250 special agents and support staff to in-  
12 vestigate health-care fraud cases;

13 (B) \$5,000,000 to hire, equip, and train  
14 no fewer than 50 assistant United States Attor-  
15 neys and support staff to prosecute health-care  
16 fraud cases; and

17 (C) \$5,000,000 to hire, equip, and train no  
18 fewer than 50 investigators in the Office of In-  
19 spector General, Department of Health and  
20 Human Services, to be devoted exclusively to  
21 health-care fraud cases; and

22 (2) for each fiscal year thereafter, such sums as  
23 may be necessary.

1 **TITLE II—HEALTH CARE FRAUD**  
2 **AND ABUSE COMMISSION**

3 **SEC. 201. SHORT TITLE.**

4 This title may be cited as the “Health Care Fraud  
5 and Abuse Commission Act of 1997”.

6 **SEC. 202. ESTABLISHMENT OF HEALTH CARE FRAUD AND**  
7 **ABUSE COMMISSION.**

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

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

13 (1) OFFICIALS.—

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

16 (B) The Inspector General of the Depart-  
17 ment of Health and Human Services (or the In-  
18 spector General’s designee).

19 (C) The Attorney General (or the Attorney  
20 General’s designee).

21 (D) The Director of the Federal Bureau of  
22 Investigation (or the Director’s designee).

23 (E) The Administrator of the Health Care  
24 Financing Administration (or the Administra-  
25 tor’s designee).

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

3                   (A) one shall be an Attorney General of a  
4           State;

5                   (B) one shall be a representative of State  
6           medicaid fraud control programs;

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

9                   (D) one shall be a representative of physi-  
10          cians;

11                  (E) one shall be a representative of hos-  
12          pital administrators;

13                  (F) one shall be a representative of health  
14          insurance companies;

15                  (G) one shall be a representative of em-  
16          ployers who self-fund employee health benefit  
17          plans;

18                  (H) one shall be a representative of em-  
19          ployers who purchase a health benefit plan from  
20          a health insurance company;

21                  (I) one shall be a representative of medi-  
22          care carriers;

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

1           (K) one shall be a representative of health  
2           care consumers;

3           (L) one shall be a representative of medi-  
4           care beneficiaries; and

5           (M) one shall be a representative of labor  
6           unions.

7           In making appointments under this paragraph of an  
8           individual who is a representative of persons or or-  
9           ganizations, the President shall consider the rec-  
10          ommendations of national organizations that rep-  
11          resent such persons or organizations. The President  
12          shall report to Congress, within 90 days after the  
13          date of the enactment of this Act, the names of the  
14          members appointed under this paragraph.

15          (c) TERMS.—Each member shall be appointed for the  
16          life of the Commission. A vacancy in the Commission shall  
17          be filled in the manner in which the original appointment  
18          was made.

19          **SEC. 203. FUNCTIONS OF COMMISSION.**

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

21                  (1) investigate the nature, magnitude, and cost  
22                  of health care fraud and abuse in the United States,  
23                  and

24                  (2) identify and develop the most effective  
25                  methods of preventing, detecting, and prosecuting or

1 litigating such fraud and abuse, with particular em-  
2 phasis on coordinating public and private prevention,  
3 detection, and enforcement efforts.

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

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

9 (2) Mechanisms to allow more freedom of  
10 health benefit plans to exchange information for co-  
11 ordinating case development and prosecution or liti-  
12 gation efforts, without undermining patient and pro-  
13 vider privacy protections or violating anti-trust laws.

14 (3) The extension to private health insurers of  
15 administrative remedies currently available to public  
16 insurers.

17 (4) Mechanisms for private insurers to organize  
18 and finance investigation and litigation efforts when  
19 more than one insurer may have received fraudulent  
20 claims from a provider.

21 (5) Creating a model State statute for estab-  
22 lishing State insurance fraud units and State laws to  
23 strengthen insurers' ability to pursue and recover  
24 from fraudulent providers.

1           (6) The need for regulation of new types of  
2 health care providers.

3           (7) Criteria for physician referrals to facilities  
4 in which they (or family members) have a financial  
5 interest.

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

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

17 **SEC. 204. ORGANIZATION AND COMPENSATION.**

18           (a) ORGANIZATION.—

19           (1) QUORUM.—A majority of the members of  
20 the Commission shall constitute a quorum but a  
21 lesser number may hold hearings.

22           (2) CHAIRMAN.—The Commission shall elect  
23 one of its members to serve as chairman of the Com-  
24 mission.

1           (3) MEETINGS.—The Commission shall meet at  
2           the call of the chairman or a majority of its mem-  
3           bers. Meetings of the Commission are open to the  
4           public under section 10(a)(10) of the Federal Advi-  
5           sory Committee Act, except that the Commission  
6           may conduct meetings in executive session but only  
7           if a majority of the members of the Commission (a  
8           quorum being present) approve going into executive  
9           session.

10          (b) COMPENSATION OF MEMBERS.—Members of the  
11          Commission shall serve without compensation, but shall  
12          be reimbursed for travel, subsistence, and other necessary  
13          expenses incurred in the performance of their duties as  
14          members of the Commission.

15          **SEC. 205. STAFF OF COMMISSION.**

16          (a) IN GENERAL.—The Commission may appoint and  
17          fix the compensation of a staff director and such other  
18          additional personnel as may be necessary to enable the  
19          Commission to carry out its functions, without regard to  
20          the laws, rules, and regulations governing appointment  
21          and compensation and other conditions of service in the  
22          competitive service.

23          (b) DETAIL OF FEDERAL EMPLOYEES.—Upon re-  
24          quest of the chairman, any Federal employee who is sub-  
25          ject to such laws, rules, and regulations, may be detailed

1 to the Commission to assist it in carrying out its functions  
2 under this title, and such detail shall be without interrup-  
3 tion or loss of civil service status or privilege.

4 (c) EXPERTS AND CONSULTANTS.—The Commission  
5 may procure temporary and intermittent services under  
6 section 3109(b) of title 5, United States Code, but at rates  
7 for individuals not to exceed the daily equivalent of 120  
8 percent of the maximum annual rate of basic pay payable  
9 for GS–15 of the General Schedule.

10 **SEC. 206. AUTHORITY OF COMMISSION.**

11 (a) HEARINGS AND SESSIONS.—The Commission  
12 may, for the purpose of carrying out this title, hold hear-  
13 ings, sit and act at times and places, take testimony, and  
14 receive evidence as the Commission considers appropriate.  
15 The Commission may administer oaths or affirmations to  
16 witnesses appearing before it.

17 (b) OBTAINING OFFICIAL DATA.—

18 (1) IN GENERAL.—The Commission may secure  
19 directly from any department or agency of the  
20 United States information necessary to enable it to  
21 carry out this title. Upon request of the chairman of  
22 the Commission, the head of that department or  
23 agency shall furnish that information to the Com-  
24 mission.

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

6           (c) GIFTS, BEQUESTS, AND DEVICES.—The Commis-  
7           sion may accept, use, and dispose of gifts, bequests, or  
8           devises of services or property for the purpose of aiding  
9           or facilitating the work of the Commission.

10          (d) MAILS.—The Commission may use the United  
11          States mails in the same manner and under the same con-  
12          ditions as other departments and agencies of the United  
13          States.

14          (e) ADMINISTRATIVE SUPPORT SERVICES.—Upon  
15          the request of the Commission, the Administrator of Gen-  
16          eral Services shall provide to the Commission, on a reim-  
17          bursable basis, the administrative support services nec-  
18          essary for the Commission to carry out its responsibilities  
19          under this title.

20          (f) SUBPOENA POWER.—

21                (1) IN GENERAL.—The Commission may issue  
22                subpoenas requiring the attendance and testimony of  
23                witnesses and the production of any evidence relat-  
24                ing to any matter which the Commission is author-  
25                ized to investigate under this title. The attendance

1 of witnesses and the production of evidence may be  
2 required from any place within the United States at  
3 any designated place of hearing within the United  
4 States.

5 (2) FAILURE TO OBEY A SUBPOENA.—If a per-  
6 son refuses to obey a subpoena issued under para-  
7 graph (1), the Commission may apply to a United  
8 States district court for an order requiring that per-  
9 son to appear before the Commission to give testi-  
10 mony, produce evidence, or both, relating to the  
11 matter under investigation. The application may be  
12 made within the judicial district where the hearing  
13 is conducted or where that person is found, resides,  
14 or transacts business. Any failure to obey the order  
15 of the court may be punished by the court as civil  
16 contempt.

17 (3) SERVICE OF SUBPOENAS.—The subpoenas  
18 of the Commission shall be served in the manner  
19 provided for subpoenas issued by a United States  
20 district court under the Federal Rules of Civil Pro-  
21 cedure for the United States district courts.

22 (4) SERVICE OF PROCESS.—All process of any  
23 court to which application is to be made under para-  
24 graph (2) may be served in the judicial district in

1       which the person required to be served resides or  
2       may be found.

3 **SEC. 207. TERMINATION.**

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

6 **SEC. 208. AUTHORIZATION OF APPROPRIATIONS.**

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

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