

105TH CONGRESS
1ST SESSION

H. R. 362

To improve Federal enforcement against health care fraud and abuse.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 1997

Mr. TOWNS introduced the following bill; which was referred to the Committee on Government Reform and Oversight

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 1997”.

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.—The Inspector General of each
11 of the Department of Health and Human Services,

1 the Department of Defense, the Department of
2 Labor, the Office of Personnel Management, and the
3 Department of Veterans Affairs shall conduct au-
4 dits, civil and criminal investigations, inspections,
5 and evaluations relating to the prevention, detection,
6 and control of health care fraud and abuse in viola-
7 tion of any Federal law.

8 (2) POWERS.—For purposes of carrying out du-
9 ties and responsibilities under paragraph (1), each
10 Inspector General referred to in paragraph (1) may
11 exercise powers that are available to the Inspector
12 General for purposes of audits, investigations, and
13 other activities under the Inspector General Act of
14 1978 (5 U.S.C. App.).

15 (3) COORDINATION AND REVIEW OF ACTIVITIES
16 OF OTHER FEDERAL, STATE, AND LOCAL AGEN-
17 CIES.—

18 (A) PROGRAM.—The Inspector General
19 shall—

20 (i) jointly establish, on the effective
21 date specified in subsection (j)(1), a pro-
22 gram to prevent, detect, and control health
23 care fraud and abuse in violation of any
24 Federal law, which considers the activities

1 of Federal, State, and local law enforce-
2 ment agencies, Federal and State agencies
3 responsible for the licensing and certifi-
4 cation of health care providers, and State
5 agencies designated under subsection
6 (b)(1)(A); and

7 (ii) publish a description of the pro-
8 gram in the Federal Register, by not later
9 than January 7, 1998.

10 (B) ANNUAL INVESTIGATIVE PLAN.—Each
11 Inspector General referred to in paragraph (1)
12 shall develop an annual investigative plan for
13 the prevention, detection, and control of health
14 care fraud and abuse in accordance with the
15 program established under subparagraph (A).

16 (4) CONSULTATIONS.—Each of the Inspectors
17 General referred to in paragraph (1) shall regularly
18 consult with each other, with Federal, State, and
19 local law enforcement agencies, with Federal and
20 State agencies responsible for the licensing and cer-
21 tification of health care providers, and with Health
22 Care Fraud and Abuse Control Units, in order to
23 assist in coordinating the prevention, detection, and
24 control of health care fraud and abuse in violation
25 of any Federal law.

1 (b) STATE ENFORCEMENT.—

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

5 (A) shall, consistent with State law, des-
6 ignate agencies of the State which conduct, su-
7 pervise, and coordinate audits, civil and crimi-
8 nal investigations, inspections, and evaluations
9 relating to the prevention, detection, and con-
10 trol of health care fraud and abuse in violation
11 of any Federal law in the State; and

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

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

24 (A) The entity—

1 (i) is a unit of the office of the State
2 Attorney General or of another department
3 of State government that possesses state-
4 wide authority to prosecute individuals for
5 criminal violations;

6 (ii) is in a State the constitution of
7 which does not provide for the criminal
8 prosecution of individuals by a statewide
9 authority, and has formal procedures, ap-
10 proved by the Secretary, that assure it will
11 refer suspected criminal violations relating
12 to health care fraud or abuse in violation
13 of any Federal law to the appropriate au-
14 thority or authorities of the State for pros-
15 ecution and assure it will assist such au-
16 thority or authorities in such prosecutions;
17 or

18 (iii) has a formal working relationship
19 with the office of the State Attorney Gen-
20 eral or the appropriate authority or au-
21 thorities for prosecution and has formal
22 procedures (including procedures under
23 which it will refer suspected criminal viola-
24 tions to such office), that provide effective
25 coordination of activities between the

1 Health Care Fraud and Abuse Control
2 Unit and such office with respect to the
3 detection, investigation, and prosecution of
4 suspected health care fraud or abuse in
5 violation of any Federal law.

6 (B) The entity conducts a statewide pro-
7 gram for the investigation and prosecution of
8 violations of all applicable State laws regarding
9 any and all aspects of health care fraud and
10 abuse in violation of any Federal law.

11 (C) The entity has procedures for—

12 (i) reviewing complaints of the abuse
13 or neglect of patients of health care facili-
14 ties in the State; and

15 (ii) where appropriate, investigating
16 and prosecuting such complaints under the
17 criminal laws of the State or for referring
18 the complaints to other State or Federal
19 agencies for action.

20 (D) The entity provides for the collection,
21 or referral for collection to the appropriate
22 agency, of overpayments that—

23 (i) are made under any federally fund-
24 ed or mandated health care program re-
25 quired by this Act; and

1 (ii) it discovers in carrying out its ac-
2 tivities.

3 (E) The entity employs attorneys, auditors,
4 investigators, and other necessary personnel, is
5 organized in such a manner, and provides suffi-
6 cient resources, as is necessary to promote the
7 effective and efficient conduct of its activities.

8 (3) SUBMISSION OF ANNUAL PLAN.—Each
9 Health Care Fraud and Abuse Control Unit may
10 submit each year to the Inspector General a plan for
11 preventing, detecting, and controlling, consistent
12 with the program established under subsection
13 (a)(3)(A), health care fraud and abuse in violation
14 of any Federal law.

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

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

22 (B) will not enable the agencies of the
23 State designated under paragraph (1)(A) to
24 prevent, detect, and control health care fraud
25 and abuse in violation of any Federal law.

1 (5) REPORTS.—Each Health Care Fraud and
2 Abuse Control Unit shall submit to the Inspector
3 General an annual report containing such informa-
4 tion as the Inspector General determines to be nec-
5 essary.

6 (6) SEMIANNUAL REPORTS OF INSPECTOR GEN-
7 ERAL OF HEALTH AND HUMAN SERVICES.—The In-
8 spector General shall include in each semiannual re-
9 port of the Inspector General to the Congress under
10 section 5(a) of the Inspector General Act of 1978 (5
11 U.S.C. App.) an assessment of the Inspector General
12 of how well States are preventing, detecting, and
13 controlling health care fraud and abuse.

14 (c) PAYMENTS TO STATES.—

15 (1) IN GENERAL.—For each year for which a
16 State has a plan approved under subsection (b)(4),
17 and subject to the availability of appropriations, the
18 Inspector General shall pay to the State for each
19 quarter an amount equal to 75 percent of the sums
20 expended during the quarter by agencies designated
21 by the Governor of the State under subsection
22 (b)(1)(A) in conducting activities described in that
23 subsection.

24 (2) TIME OF PAYMENT.—The Inspector General
25 shall make a payment under paragraph (1) for a

1 quarter by not later than 30 days after the end of
2 the quarter.

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

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

12 (e) HEALTH CARE FRAUD AND ABUSE CONTROL AC-
13 COUNT.—

14 (1) ESTABLISHMENT.—There is established on
15 the books of the Treasury of the United States a
16 separate account, which shall be known as the
17 Health Care Fraud and Abuse Control Account. The
18 Account shall consist of—

19 (A) the Health Care Fraud and Abuse Ex-
20 penses Subaccount; and

21 (B) the Health Care Fraud and Abuse Re-
22 serve Subaccount.

23 (2) EXPENSES SUBACCOUNT.—

24 (A) CONTENTS.—The Expenses Sub-
25 account consists of—

1 (i) amounts deposited under subpara-
2 graph (B); and

3 (ii) amounts transferred from the Re-
4 serve Subaccount and deposited under
5 paragraph (3)(B).

6 (B) DEPOSITS.—Except as provided in
7 paragraph (3)(A), there shall be deposited in
8 the Expenses Subaccount all amounts received
9 by the United States as—

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

12 (ii) civil penalties or damages (other
13 than restitution) in actions under section
14 3729 or 3730 of title 31, United States
15 Code (commonly referred to as the “False
16 Claims Act”), that are based on health
17 care fraud and abuse in violation of any
18 Federal law;

19 (iii) administrative penalties under the
20 Social Security Act;

21 (iv) proceeds of seizures and forfeit-
22 ures of property for acts or omissions that
23 constitute health care fraud or abuse in
24 violation of any Federal law; and

1 (v) money and proceeds of property
2 that are accepted under subsection (f).

3 (C) USE.—Amounts in the Expenses Sub-
4 account shall be available to the Inspector Gen-
5 eral, under such terms and conditions as the
6 Inspector General determines to be appropriate,
7 for—

8 (i) paying expenses incurred by their
9 respective agencies in carrying out activi-
10 ties under subsection (a); and

11 (ii) making reimbursements to other
12 Inspectors General and Federal, State, and
13 local agencies in accordance with sub-
14 section (g).

15 (3) RESERVE SUBACCOUNT.—

16 (A) DEPOSITS.—An amount otherwise re-
17 quired under paragraph (2)(A) to be deposited
18 in the Expenses Subaccount in a fiscal year
19 shall be deposited in the Reserve Subaccount,
20 if—

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

23 (ii) the deposit of that amount in the
24 Expenses Subaccount would result in the

1 amount in the Expenses Subaccount ex-
2 ceeding 110 percent of the total amount
3 deposited in the Expenses Subaccount in
4 the preceding fiscal year.

5 (B) TRANSFERS TO EXPENSES SUB-
6 ACCOUNT.—

7 (i) ESTIMATION OF SHORTFALL.—Not
8 later than the first day of the last quarter
9 of each fiscal year, the Inspector General
10 shall estimate whether sufficient amounts
11 will be available during such quarter in the
12 Expenses Subaccount for the uses de-
13 scribed in paragraph (2)(C).

14 (ii) TRANSFER TO COVER SHORT-
15 FALL.—If the Inspector General estimates
16 under clause (i) that there will not be
17 available sufficient amounts in the Ex-
18 penses Subaccount during the last quarter
19 of a fiscal year, there shall be transferred
20 from the Reserve Subaccount and depos-
21 ited in the Expenses Subaccount such
22 amount as the Inspector General estimates
23 is required to ensure that sufficient
24 amounts are available in the Expenses
25 Subaccount during such quarter.

1 (C) LIMITATION ON AMOUNT CARRIED
2 OVER TO SUCCEEDING FISCAL YEAR.—There
3 shall be transferred to the general fund of the
4 Treasury any amount remaining in the Reserve
5 Subaccount at the end of a fiscal year (after
6 any transfer made under subparagraph (B)) in
7 excess of 10 percent of the total amount au-
8 thorized to be deposited in the Expenses Sub-
9 account (consistent with subparagraph (A))
10 during the fiscal year.

11 (f) ACCEPTANCE OF GIFTS, BEQUESTS, AND DE-
12 VICES.—Any Inspector General referred to in subsection
13 (a)(1) may accept, use, and dispose of gifts, bequests, or
14 devises of services or property (real or personal), for the
15 purpose of aiding or facilitating activities under this sec-
16 tion regarding health care fraud and abuse. Gifts, be-
17 quests, or devises of money and proceeds from sales of
18 other property received as gifts, bequests, or devises shall
19 be deposited in the Account and shall be available for use
20 in accordance with subsection (e)(2)(C).

21 (g) REIMBURSEMENTS OF EXPENSES AND OTHER
22 PAYMENTS TO PARTICIPATING AGENCIES.—

23 (1) REIMBURSEMENT OF EXPENSES OF FED-
24 ERAL AGENCIES.—The Inspector General, subject to
25 the availability of amounts in the Account, shall

1 promptly reimburse Federal agencies for expenses
2 incurred in carrying out subsection (a).

3 (2) PAYMENTS TO STATE AND LOCAL LAW EN-
4 FORCEMENT AGENCIES.—The Inspector General,
5 subject to the availability of amounts in the Account,
6 shall promptly pay to any State or local law enforce-
7 ment agency that participated directly in any activ-
8 ity which led to deposits in the Account, or property
9 the proceeds of which are deposited in the Account,
10 an amount that reflects generally and equitably the
11 participation of the agency in the activity.

12 (3) FUNDS USED TO SUPPLEMENT AGENCY AP-
13 PROPRIATIONS.—It is intended that disbursements
14 made from the Account to any Federal agency be
15 used to increase and not supplant the recipient
16 agency's appropriated operating budget.

17 (h) ACCOUNT PAYMENTS ADVISORY BOARD.—

18 (1) ESTABLISHMENT.—There is established the
19 Account Payments Advisory Board, which shall
20 make recommendations to the Inspector General re-
21 garding the equitable allocation of payments from
22 the Account.

23 (2) MEMBERSHIP.—The Board shall consist
24 of—

1 (A) each of the Inspectors General referred
2 to in subsection (a)(1), other than the Inspector
3 General of the Department of Health and
4 Human Services; and

5 (B) 10 members appointed by the Inspec-
6 tor General of the Department of Health and
7 Human Services to represent Health Care
8 Fraud and Abuse Control Units, of whom one
9 shall be appointed—

10 (i) for each of the 10 regions estab-
11 lished by the Director of the Office of
12 Management and Budget under Office of
13 Management and Budget Circular A-105,
14 to represent Units in that region; and

15 (ii) from among individuals rec-
16 ommended by the heads of those agencies
17 in that region.

18 (3) TERMS.—The term of a member of the
19 Board appointed under paragraph (2)(B) shall be 3
20 years, except that of such members first appointed
21 3 members shall serve an initial term of one year
22 and 3 members shall serve an initial term of 2 years,
23 as specified by the Inspector General at the time of
24 appointment.

1 (4) VACANCIES.—A vacancy on the Board shall
2 be filled in the same manner in which the original
3 appointment was made, except that an individual ap-
4 pointed to fill a vacancy occurring before the expira-
5 tion of the term for which the individual is ap-
6 pointed shall be appointed only for the remainder of
7 that term.

8 (5) CHAIRPERSON AND BYLAWS.—The Board
9 shall elect one of its members as chairperson and
10 shall adopt bylaws.

11 (6) COMPENSATION AND EXPENSES.—Members
12 of the Board shall serve without compensation, ex-
13 cept that the Inspector General may pay the ex-
14 penses reasonably incurred by the Board in carrying
15 out its functions under this section.

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

19 (i) DEFINITIONS.—In this section:

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

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

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

5 (4) INSPECTOR GENERAL.—Except as otherwise
6 provided, the term “Inspector General” means the
7 Inspector General of the Department of Health and
8 Human Services.

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

12 (j) EFFECTIVE DATE.—

13 (1) IN GENERAL.—Except as provided in para-
14 graph (2), this section shall take effect on January
15 1, 1997.

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

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