

111TH CONGRESS  
1ST SESSION

# S. 1959

To improve health care fraud enforcement.

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IN THE SENATE OF THE UNITED STATES

OCTOBER 28, 2009

Mr. KAUFMAN (for himself, Mr. LEAHY, Mr. SPECTER, Mr. KOHL, Mr. SCHUMER, and Ms. KLOBUCHAR) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To improve health care fraud enforcement.

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 Care Fraud  
5 Enforcement Act of 2009”.

6 **SEC. 2. ENHANCEMENTS TO CRIMINAL LAWS RELATING TO**  
7 **HEALTH CARE FRAUD.**

8 (a) FRAUD SENTENCING GUIDELINES.—

9 (1) DEFINITION.—In this subsection, the term  
10 “Federal health care offense” has the meaning given

1 that term in section 24 of title 18, United States  
2 Code, as amended by this Act.

3 (2) REVIEW AND AMENDMENTS.—Pursuant to  
4 the authority under section 994 of title 28, United  
5 States Code, and in accordance with this subsection,  
6 the United States Sentencing Commission shall—

7 (A) review the Federal Sentencing Guide-  
8 lines and policy statements applicable to per-  
9 sons convicted of Federal health care offenses;

10 (B) amend the Federal Sentencing Guide-  
11 lines and policy statements applicable to per-  
12 sons convicted of Federal health care offenses  
13 involving Government health care programs to  
14 provide that the aggregate dollar amount of  
15 fraudulent bills submitted to the Government  
16 health care program shall constitute prima facie  
17 evidence of the amount of the intended loss by  
18 the defendant; and

19 (C) amend the Federal Sentencing Guide-  
20 lines to provide—

21 (i) a 2-level increase in the offense  
22 level for any defendant convicted of a Fed-  
23 eral health care offense relating to a Gov-  
24 ernment health care program which in-

1 involves a loss of not less than \$1,000,000  
2 and less than \$7,000,000;

3 (ii) a 3-level increase in the offense  
4 level for any defendant convicted of a Fed-  
5 eral health care offense relating to a Gov-  
6 ernment health care program which in-  
7 volves a loss of not less than \$7,000,000  
8 and less than \$20,000,000;

9 (iii) a 4-level increase in the offense  
10 level for any defendant convicted of a Fed-  
11 eral health care offense relating to a Gov-  
12 ernment health care program which in-  
13 volves a loss of not less than \$20,000,000;  
14 and

15 (iv) if appropriate, otherwise amend  
16 the Federal Sentencing Guidelines and pol-  
17 icy statements applicable to persons con-  
18 victed of Federal health care offenses in-  
19 volving Government health care programs.

20 (3) REQUIREMENTS.—In carrying this sub-  
21 section, the United States Sentencing Commission  
22 shall—

23 (A) ensure that the Federal Sentencing  
24 Guidelines and policy statements—

1 (i) reflect the serious harms associ-  
2 ated with health care fraud and the need  
3 for aggressive and appropriate law enforce-  
4 ment action to prevent such fraud; and

5 (ii) provide increased penalties for  
6 persons convicted of health care fraud of-  
7 fenses in appropriate circumstances;

8 (B) consult with individuals or groups rep-  
9 resenting health care fraud victims, law enforce-  
10 ment officials, the health care industry, and the  
11 Federal judiciary as part of the review de-  
12 scribed in paragraph (2);

13 (C) ensure reasonable consistency with  
14 other relevant directives and with other guide-  
15 lines under the Federal Sentencing Guidelines;

16 (D) account for any aggravating or miti-  
17 gating circumstances that might justify excep-  
18 tions, including circumstances for which the  
19 Federal Sentencing Guidelines, as in effect on  
20 the date of enactment of this Act, provide sen-  
21 tencing enhancements;

22 (E) make any necessary conforming  
23 changes to the Federal Sentencing Guidelines;  
24 and

1 (F) ensure that the Federal Sentencing  
2 Guidelines adequately meet the purposes of sen-  
3 tencing.

4 (b) INTENT REQUIREMENT FOR HEALTH CARE  
5 FRAUD.—Section 1347 of title 18, United States Code,  
6 is amended—

7 (1) by inserting “(a)” before “Whoever know-  
8 ingly”; and

9 (2) by adding at the end the following:

10 “(b) With respect to violations of this section, a per-  
11 son need not have actual knowledge of this section or spe-  
12 cific intent to commit a violation of this section.”.

13 (c) KICKBACKS.—Section 1128B of the Social Secu-  
14 rity Act (42 U.S.C. 1320a–7b) is amended by adding at  
15 the end the following new subsection:

16 “(g) In addition to the penalties provided for in this  
17 section or section 1128A, a claim for items or services that  
18 are provided in violation of this section constitutes a false  
19 or fraudulent claim for purposes of subchapter III of chap-  
20 ter 37 of title 31, United States Code.”.

21 (d) HEALTH CARE FRAUD OFFENSE.—Section 24(a)  
22 of title 18, United States Code, is amended—

23 (1) in paragraph (1), by striking the semicolon  
24 and inserting “or section 1128B of the Social Secu-  
25 rity Act (42 U.S.C. 1320a–7b); or”; and

1 (2) in paragraph (2)—

2 (A) by inserting “1349,” after “1343,”;

3 and

4 (B) by inserting “section 301 of the Fed-  
5 eral Food, Drug, and Cosmetic Act (21 U.S.C.  
6 331), or section 411, 501, or 511 of the Em-  
7 ployee Retirement Income Security Act of 1974  
8 (29 U.S.C. 1111, 1131, and 1141),” after  
9 “title.”.

10 **SEC. 3. SUBPOENA AUTHORITY RELATING TO HEALTH**  
11 **CARE.**

12 (a) SUBPOENAS UNDER THE HEALTH INSURANCE  
13 PORTABILITY AND ACCOUNTABILITY ACT OF 1996.—Sec-  
14 tion 1510(b) of title 18, United States Code, is amended—

15 (1) in paragraph (1), by striking “to the grand  
16 jury”; and

17 (2) in paragraph (2)—

18 (A) in subparagraph (A), by striking  
19 “grand jury subpoena” and inserting “subpoena  
20 for records”; and

21 (B) in the matter following subparagraph  
22 (B), by striking “to the grand jury”.

23 (b) SUBPOENAS UNDER THE CIVIL RIGHTS OF IN-  
24 STITUTIONALIZED PERSONS ACT.—The Civil Rights of

1 Institutionalized Persons Act (42 U.S.C. 1997 et seq.) is  
2 amended by inserting after section 3 the following:

3 **“SEC. 3A. SUBPOENA AUTHORITY.**

4       “(a) **AUTHORITY.**—The Attorney General, or at the  
5 direction of the Attorney General, any officer or employee  
6 of the Department of Justice may require by subpoena  
7 access to any institution that is the subject of an investiga-  
8 tion under this Act and to any document, record, material,  
9 file, report, memorandum, policy, procedure, investigation,  
10 video or audio recording, or quality assurance report relat-  
11 ing to any institution that is the subject of an investiga-  
12 tion under this Act to determine whether there are condi-  
13 tions which deprive persons residing in or confined to the  
14 institution of any rights, privileges, or immunities secured  
15 or protected by the Constitution or laws of the United  
16 States.

17       “(b) **ISSUANCE AND ENFORCEMENT OF SUB-**  
18 **POENAS.**—

19               “(1) **ISSUANCE.**—Subpoenas issued under this  
20 section—

21                       “(A) shall bear the signature of the Attor-  
22                       ney General or any officer or employee of the  
23                       Department of Justice as designated by the At-  
24                       torney General; and

1           “(B) shall be served by any person or class  
2           of persons designated by the Attorney General  
3           or a designated officer or employee for that  
4           purpose.

5           “(2) ENFORCEMENT.—In the case of contu-  
6           macy or failure to obey a subpoena issued under this  
7           section, the United States district court for the judi-  
8           cial district in which the institution is located may  
9           issue an order requiring compliance. Any failure to  
10          obey the order of the court may be punished by the  
11          court as a contempt that court.

12          “(c) PROTECTION OF SUBPOENAED RECORDS AND  
13          INFORMATION.—Any document, record, material, file, re-  
14          port, memorandum, policy, procedure, investigation, video  
15          or audio recording, or quality assurance report or other  
16          information obtained under a subpoena issued under this  
17          section—

18                 “(1) may not be used for any purpose other  
19                 than to protect the rights, privileges, or immunities  
20                 secured or protected by the Constitution or laws of  
21                 the United States of persons who reside, have re-  
22                 sided, or will reside in an institution;

23                 “(2) may not be transmitted by or within the  
24                 Department of Justice for any purpose other than to  
25                 protect the rights, privileges, or immunities secured



1 or protected by the Constitution or laws of the  
2 United States of persons who reside, have resided,  
3 or will reside in an institution; and

4 “(3) shall be redacted, obscured, or otherwise  
5 altered if used in any publicly available manner so  
6 as to prevent the disclosure of any personally identi-  
7 fiable information.”.

8 **SEC. 4. ADDITIONAL AUTHORIZATION OF APPROPRIATIONS**  
9 **TO THE DEPARTMENT OF JUSTICE FOR**  
10 **CRIMINAL AND CIVIL ENFORCEMENT OF**  
11 **HEALTH CARE FRAUD.**

12 (a) **AUTHORIZATION.**—There is authorized to be ap-  
13 propriated to the Attorney General, to remain available  
14 until expended, \$20,000,000 for each of fiscal years 2011  
15 through 2016 for the purposes of investigations, prosecu-  
16 tions, and civil or other proceedings relating to fraud and  
17 abuse in connection with any health care benefit program,  
18 as defined in section 24(b) of title 18, United States Code.

19 (b) **ALLOCATIONS.**—With respect to each of fiscal  
20 years 2011 through 2016, the amount authorized to be  
21 appropriated under subsection (a) shall be allocated as fol-  
22 lows:

23 (1) For the offices of the United States attor-  
24 neys, \$10,000,000.

1           (2) For the Criminal Division of the Depart-  
2           ment of Justice, \$5,000,000.

3           (3) For the Civil Division of the Department of  
4           Justice, \$5,000,000.

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