

105TH CONGRESS
1ST SESSION

H. R. 1971

To amend chapter 89 of title 5, United States Code, to improve administration of sanctions against unfit health care providers under the Federal Employees Health Benefits Program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 19, 1997

Mr. CUMMINGS (for himself, Mr. TOWNS, Ms. CHRISTIAN-GREEN, Ms. SLAUGHTER, and Mr. BARRETT of Wisconsin) introduced the following bill; which was referred to the Committee on Government Reform and Oversight

A BILL

To amend chapter 89 of title 5, United States Code, to improve administration of sanctions against unfit health care providers under the Federal Employees Health Benefits Program, 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 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Employees
5 Health Benefits Provider Integrity Amendments of 1997”.

1 **SEC. 2. DEBARMENT AND OTHER SANCTIONS.**

2 (a) AMENDMENTS.—Section 8902a of title 5, United
3 States Code, is amended—

4 (1) in subsection (a)—

5 (A) in paragraph (1)—

6 (i) by striking “and” at the end of
7 subparagraph (B);

8 (ii) by striking the period at the end
9 and inserting “; and”; and

10 (iii) by adding at the end the follow-
11 ing:

12 “(D) the term ‘should know’ means that a per-
13 son, with respect to information, acts in deliberate
14 ignorance of, or in reckless disregard of, the truth
15 or falsity of the information, and no proof of specific
16 intent to defraud is required.”; and

17 (B) in paragraph (2)(A), by striking “sub-
18 section (b) or (c)” and inserting “subsection
19 (b), (c), or (d)”;

20 (2) in subsection (b)—

21 (A) by striking “The Office of Personnel
22 Management may bar” and inserting “The Of-
23 fice of Personnel Management shall bar”; and

24 (B) by amending paragraph (5) to read as
25 follows:

1 “(5) Any provider that is currently suspended
2 or excluded from participation under any program of
3 the Federal Government involving procurement or
4 nonprocurement activities.”;

5 (3) by redesignating subsections (c) through (i)
6 as subsections (d) through (j), respectively, and by
7 inserting after subsection (b) the following:

8 “(c) The Office may bar the following providers of
9 health care services from participating in the program
10 under this chapter:

11 “(1) Any provider—

12 “(A) whose license to provide health care
13 services or supplies has been revoked, sus-
14 pended, restricted, or not renewed, by a State
15 licensing authority for reasons relating to the
16 provider’s professional competence, professional
17 performance, or financial integrity; or

18 “(B) that surrendered such a license while
19 a formal disciplinary proceeding was pending
20 before such an authority, if the proceeding con-
21 cerned the provider’s professional competence,
22 professional performance, or financial integrity.

23 “(2) Any provider that is an entity directly or
24 indirectly owned, or with a 5 percent or more con-
25 trolling interest, by an individual who is convicted of

1 any offense described in subsection (b), against
2 whom a civil monetary penalty has been assessed
3 under subsection (d), or who has been debarred from
4 participation under this chapter.

5 “(3) Any individual who directly or indirectly
6 owns or has a controlling interest in an entity and
7 who knows or should know of the action constituting
8 the basis for the entity’s conviction of any offense
9 described in subsection (b), assessment with a civil
10 monetary penalty under subsection (d), or debar-
11 ment from participation under this chapter.

12 “(4) Any provider that the Office determines, in
13 connection with claims presented under this chapter,
14 has charged for health care services or supplies in
15 an amount substantially in excess of such provider’s
16 customary charge for such services or supplies (un-
17 less the Office finds there is good cause for such
18 charge), or charged for health care services or sup-
19 plies which are substantially in excess of the needs
20 of the covered individual or which are of a quality
21 that fails to meet professionally recognized stand-
22 ards for such services or supplies.

23 “(5) Any provider that the Office determines
24 has committed acts described in subsection (d).”;

1 (4) in subsection (d) (as so redesignated by
2 paragraph (3)) by amending paragraph (1) to read
3 as follows:

4 “(1) in connection with claims presented under
5 this chapter, that a provider has charged for a
6 health care service or supply which the provider
7 knows or should have known involves—

8 “(A) an item or service not provided as
9 claimed,

10 “(B) charges in violation of applicable
11 charge limitations under section 8904(b), or

12 “(C) an item or service furnished during a
13 period in which the provider was debarred from
14 participation under this chapter pursuant to a
15 determination by the Office under this section,
16 other than as permitted under subsection
17 (g)(2)(B);”;

18 (5) in subsection (f) (as so redesignated by
19 paragraph (3)) by inserting after “under this sec-
20 tion” the first place it appears the following:
21 “(where such debarment is not mandatory)”;

22 (6) in subsection (g) (as so redesignated by
23 paragraph (3))—

1 (A) by striking “(g)(1)” and all that fol-
2 lows through the end of paragraph (1) and in-
3 serting the following:

4 “(g)(1)(A) Except as provided in subparagraph (B),
5 debarment of a provider under subsection (b) or (c) shall
6 be effective at such time and upon such reasonable notice
7 to such provider, and to carriers and covered individuals,
8 as shall be specified in regulations prescribed by the Of-
9 fice. Any such provider that is debarred from participation
10 may request a hearing in accordance with subsection
11 (h)(1).

12 “(B) Unless the Office determines that the health or
13 safety of individuals receiving health care services war-
14 rants an earlier effective date, the Office shall not make
15 a determination adverse to a provider under subsection
16 (c)(5) or (d) until such provider has been given reasonable
17 notice and an opportunity for the determination to be
18 made after a hearing as provided in accordance with sub-
19 section (h)(1).”;

20 (B) in paragraph (3)—

21 (i) by inserting “of debarment” after
22 “notice”; and

23 (ii) by adding at the end the follow-
24 ing: “In the case of a debarment under
25 paragraph (1), (2), (3), or (4) of sub-

1 section (b), the minimum period of debar-
2 ment shall not be less than 3 years, except
3 as provided in paragraph (4)(B)(ii).”;

4 (C) in paragraph (4)(B)(i)(I) by striking
5 “subsection (b) or (c)” and inserting “sub-
6 section (b), (c), or (d)”;

7 (D) by striking paragraph (6);

8 (7) in subsection (h) (as so redesignated by
9 paragraph (3)) by striking “(h)(1)” and all that fol-
10 lows through the end of paragraph (2) and inserting
11 the following:

12 “(h)(1) Any provider of health care services or sup-
13 plies that is the subject of an adverse determination by
14 the Office under this section shall be entitled to reasonable
15 notice and an opportunity to request a hearing of record,
16 and to judicial review as provided in this subsection after
17 the Office renders a final decision. The Office shall grant
18 a request for a hearing upon a showing that due process
19 rights have not previously been afforded with respect to
20 any finding of fact which is relied upon as a cause for
21 an adverse determination under this section. Such hearing
22 shall be conducted without regard to subchapter II of
23 chapter 5 and chapter 7 of this title by a hearing officer
24 who shall be designated by the Director of the Office and
25 who shall not otherwise have been involved in the adverse

1 determination being appealed. A request for a hearing
2 under this subsection shall be filed within such period and
3 in accordance with such procedures as the Office shall pre-
4 scribe by regulation.

5 “(2) Any provider adversely affected by a final deci-
6 sion under paragraph (1) made after a hearing to which
7 such provider was a party may seek review of such deci-
8 sion in the United States District Court for the District
9 of Columbia or for the district in which the plaintiff re-
10 sides or has his or her principal place of business by filing
11 a notice of appeal in such court within 60 days after the
12 date the decision is issued, and by simultaneously sending
13 copies of such notice by certified mail to the Director of
14 the Office and to the Attorney General. In answer to the
15 appeal, the Director of the Office shall promptly file in
16 such court a certified copy of the transcript of the record,
17 if the Office conducted a hearing, and other evidence upon
18 which the findings and decision complained of are based.
19 The court shall have power to enter, upon the pleadings
20 and evidence of record, a judgment affirming, modifying,
21 or setting aside, in whole or in part, the decision of the
22 Office, with or without remanding the case for a rehear-
23 ing. The district court shall not set aside or remand the
24 decision of the Office unless there is not substantial evi-
25 dence on the record, taken as whole, to support the find-

ings by the Office of a cause for action under this section
 or unless action taken by the Office constitutes an abuse
 of discretion.”; and

(8) in subsection (i) (as so redesignated by
 paragraph (3))—

(A) by striking “subsection (c)” and in-
 serting “subsection (d)”; and

(B) by adding at the end the following:
 “The amount of a penalty or assessment as fi-
 nally determined by the Office, or other amount
 the Office may agree to in compromise, may be
 deducted from any sum then or later owing by
 the United States to the party against whom
 the penalty or assessment has been levied.”.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in para-
 graph (2), the amendments made by this section
 shall take effect on the date of the enactment of this
 Act.

(2) EXCEPTIONS.—(A) Paragraphs (2), (3),
 and (5) of section 8902a(c) of title 5, United States
 Code, as amended by subsection (a)(3), shall apply
 only to the extent that the misconduct which is the
 basis for debarment under such paragraph (2), (3),

1 or (5), as applicable, occurs after the date of the en-
2 actment of this Act.

3 (B) Paragraph (1)(B) of section 8902a(d) of title 5,
4 United States Code, as amended by subsection (a)(4),
5 shall apply only with respect to charges which violate sec-
6 tion 8904(b) of such title for items or services furnished
7 after the date of the enactment of this Act.

8 (C) Paragraph (3) of section 8902a(g) of title 5,
9 United States Code, as amended by subsection (a)(6)(B),
10 shall apply only with respect to debarments based on con-
11 victions occurring after the date of the enactment of this
12 Act.

13 **SEC. 3. AMENDMENT TO THE SOCIAL SECURITY ACT.**

14 Section 1128B(f)(1) of the Social Security Act (42
15 U.S.C. 1320a–7b(f)(1)), as amended by section 204(a)(7)
16 of the Health Insurance Portability and Accountability
17 Act of 1996 (Public Law 104–191; 110 Stat. 2000), is
18 amended by striking “(other than the health insurance
19 program under chapter 89 of title 5, United States
20 Code)”.

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