

106TH CONGRESS  
1ST SESSION

# H. R. 308

To improve Federal enforcement against health care fraud and abuse.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 1999

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

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## 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 1999”.

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,

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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  
25 of Federal, State, and local law enforce-

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

6           (ii) publish a description of the pro-  
7           gram in the Federal Register, by not later  
8           than January 7, 2000.

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

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

25          (b) STATE ENFORCEMENT.—

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

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

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

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

23 (A) The entity—

24 (i) is a unit of the office of the State  
25 Attorney General or of another department

1 of State government that possesses state-  
2 wide authority to prosecute individuals for  
3 criminal violations;

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

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

1 detection, investigation, and prosecution of  
2 suspected health care fraud or abuse in  
3 violation of any Federal law.

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

9 (C) The entity has procedures for—

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

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

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

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

24 (ii) it discovers in carrying out its ac-  
25 tivities.

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

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

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

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

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

24          (5) REPORTS.—Each Health Care Fraud and  
25          Abuse Control Unit shall submit to the Inspector

1 General an annual report containing such informa-  
2 tion as the Inspector General determines to be nec-  
3 essary.

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

12 (c) PAYMENTS TO STATES.—

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

22 (2) TIME OF PAYMENT.—The Inspector General  
23 shall make a payment under paragraph (1) for a  
24 quarter by not later than 30 days after the end of  
25 the quarter.



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

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

10          (e) HEALTH CARE FRAUD AND ABUSE CONTROL AC-  
 11          COUNT.—

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

17                       (A) the Health Care Fraud and Abuse Ex-  
 18                       penses Subaccount; and

19                       (B) the Health Care Fraud and Abuse Re-  
 20                       serve Subaccount.

21               (2) EXPENSES SUBACCOUNT.—

22                       (A) CONTENTS.—The Expenses Sub-  
 23                       account consists of—

24                               (i) amounts deposited under subpara-  
 25                               graph (B); and

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

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

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

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

17 (iii) administrative penalties under the  
18 Social Security Act;

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

23 (v) money and proceeds of property  
24 that are accepted under subsection (f).

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

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

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

13 (3) RESERVE SUBACCOUNT.—

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

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

21 (ii) the deposit of that amount in the  
22 Expenses Subaccount would result in the  
23 amount in the Expenses Subaccount ex-  
24 ceeding 110 percent of the total amount

deposited in the Expenses Subaccount in the preceding fiscal year.

(B) TRANSFERS TO EXPENSES SUBACCOUNT.—

(i) ESTIMATION OF SHORTFALL.—Not later than the first day of the last quarter of each fiscal year, the Inspector General shall estimate whether sufficient amounts will be available during such quarter in the Expenses Subaccount for the uses described in paragraph (2)(C).

(ii) TRANSFER TO COVER SHORTFALL.—If the Inspector General estimates under clause (i) that there will not be available sufficient amounts in the Expenses Subaccount during the last quarter of a fiscal year, there shall be transferred from the Reserve Subaccount and deposited in the Expenses Subaccount such amount as the Inspector General estimates is required to ensure that sufficient amounts are available in the Expenses Subaccount during such quarter.

(C) LIMITATION ON AMOUNT CARRIED OVER TO SUCCEEDING FISCAL YEAR.—There

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

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

19          (g) REIMBURSEMENTS OF EXPENSES AND OTHER  
20          PAYMENTS TO PARTICIPATING AGENCIES.—

21                 (1) REIMBURSEMENT OF EXPENSES OF FED-  
22          ERAL AGENCIES.—The Inspector General, subject to  
23          the availability of amounts in the Account, shall  
24          promptly reimburse Federal agencies for expenses  
25          incurred in carrying out subsection (a).

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

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

15       (h) ACCOUNT PAYMENTS ADVISORY BOARD.—

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

21           (2) MEMBERSHIP.—The Board shall consist  
22       of—

23                (A) each of the Inspectors General referred  
24       to in subsection (a)(1), other than the Inspector

1 General of the Department of Health and  
2 Human Services; and

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

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

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

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

23 (4) VACANCIES.—A vacancy on the Board shall  
24 be filled in the same manner in which the original  
25 appointment was made, except that an individual ap-

1 pointed to fill a vacancy occurring before the expira-  
2 tion of the term for which the individual is ap-  
3 pointed shall be appointed only for the remainder of  
4 that term.

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

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

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

16 (i) DEFINITIONS.—In this section:

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

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

23 (3) HEALTH CARE FRAUD AND ABUSE CONTROL  
24 UNIT.—The term “Health Care Fraud and Abuse



1 Control Unit” means such a unit established by a  
2 State in accordance with subsection (b)(2).

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

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

10 (j) EFFECTIVE DATE.—

11 (1) IN GENERAL.—Except as provided in para-  
12 graph (2), this section shall take effect on January  
13 1, 1999.

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

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