

# Health Care Enforcement Defense Group Alert: Senate Hearing and Proposed Legislation Focus on Health Care Fraud

10/29/2009

After yesterday's Senate Judiciary Committee [hearing](#), "Effective Strategies for Preventing Health Care Fraud," Senator Ted Kaufman (D-DE) introduced the [Health Care Fraud Enforcement Act of 2009 \(S. 1959\)](#) ("Fraud Enforcement Act").

At the hearing, officials from the Department of Health and Human Services and the Department of Justice (DOJ) [testified](#) to the Departments' views on the success of recent fraud recovery efforts, and Assistant Attorney General Tony West stated that the DOJ has made fighting health care fraud a top priority.

The proposed legislation would strengthen existing fraud prosecution tools and authorize additional funds for the DOJ to ramp up civil and criminal enforcement of health care fraud. Intended to build on the fraud provisions of the Senate Finance and Health, Education, Labor, and Pension Committees' health reform bills, the Fraud Enforcement Act would, among other things:

- clarify that, for sentencing purposes, the "intended loss" is the aggregate dollar amount of fraudulent bills submitted, and increase the Sentencing Guidelines' offense levels for health care fraud offenses
- expand the definition of "health care fraud offense" to increase available enforcement tools
- amend the federal health care program anti-kickback statute (42 U.S.C. § 1320a-7b) to ensure that all claims, including those ultimately submitted for payment by innocent parties, are false for purposes of the False Claims Act if they resulted from illegal kickbacks
- specify that the intent standard for the federal health care program anti-kickback statute and the criminal health care fraud statute (18 U.S.C. § 1347) does not require proof that the defendant had actual knowledge of the law in question or the specific intent to violate that law
- authorize the DOJ to issue subpoenas for access to the facilities, documents, and other material from entities subject to investigations relating to a violation of the Civil Rights for Institutionalized Persons Act.

If enacted, the Fraud Enforcement Act would also appropriate \$20 million per year from 2011 through 2016 for health care fraud investigations, prosecutions and other proceedings.

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*For assistance in this area, please contact one of the attorneys listed below or any member of your Mintz Levin client service team.*

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