

**STATEMENT OF ATTORNEY GENERAL RENO
ON HEALTH CARE FRAUD PROPOSAL
PENDING IN THE HOUSE OF REPRESENTATIVES**

OCTOBER 18, 1995

I am concerned about provisions in the House Medicare bill that would make it more difficult for us to prosecute medical providers for fraudulent conduct against patients and the Medicare System. These provisions are wholly inconsistent with the Senate bill, which would facilitate our law enforcement efforts against health care fraud that harms us all, and particularly those most vulnerable.

I understand that some Members of the House have indicated that law enforcement should not be criminally prosecuting health care providers. I believe health care fraud is so detrimental to the health and pocketbook of Americans, that I made health care fraud one of my major initiatives. I

believe perpetrators of health care fraud should not be immune from criminal prosecution because they commit their crimes in a doctor's office, in a board room, or in a laboratory, rather than in the street. White collar crooks who pay or take kickbacks in health care endanger the health of patients and steal money from all of us.

Experts estimate it may cost Americans as much as \$100 billion a year. That is why we need stronger, not weaker, provisions in the House bill. The Senate bill, under the leadership of Senator Cohen and with bi-partisan support, provides those strengthened provisions.

Particularly at this time, when we need to preserve every Medicare Trust Fund dollar, we cannot allow Medicare money to be spent on bribes paid to doctors and others as inducements for the referral of Medicare patients. Even more importantly, we cannot allow financial inducements to corrupt

the professional judgment of medical providers -- providers who Americans have been taught to trust. Decisions which physicians make day in and day out -- whether and where to hospitalize a patient, what laboratory tests to order, what surgical procedure to perform, what drug to prescribe, and how long to keep a patient in a psychiatric facility -- affect the health and well being of our elderly parents and of our children. Allowing those decisions to be made under the influence of kickbacks would be wrong.

The House bill would place a very high, additional burden on the government in its attempts to prosecute those who pay or receive kickbacks for the purpose of inducing the referral of Medicare business. Existing law requires the government to prove that "one purpose" of the kickback was to induce the referral of health care business. The language of the House bill would require that the government prove

that the payment was made for "the significant purpose of inducing" the referral--language that would immunize arrangements that are dressed up to disguise the payor's motive. This would seriously undermine our efforts and would place beyond the reach of prosecution many kickbacks which are calculated to induce referrals and which adversely affecting the judgment of medical providers. From the perspective of federal law enforcement, and, I believe, from the perspective of patients who seek their doctors' advice, this is not an acceptable result.

Ultimately, this isn't a choice between prosecuting violent crime and health care fraud: Both of them do real harm to real people and deserve vigorous enforcement action. I hope that the House legislation will support, not undermine, our efforts.

SAMPLE HEALTH CARE FRAUD KICKBACK CASES

United States v. National Medical Enterprises Psychiatric Hospitals, Inc., U.S. Dist. Ct. for the District of Columbia, Cr. 94-0268.

National Medical Enterprises Psychiatric Hospitals (NME) pled guilty to two separate felony Informations, which charged that NME subsidiaries bribed doctors and other referral sources to refer patients for admission to NME psychiatric hospitals and substance abuse facilities and, in one instance, to an acute care hospital. Paid \$379 million to settle government claims.

United States v. Caremark Inc., U.S. Dist. Ct., ED Ohio.

United States v. Caremark Inc., U.S. Dist. Ct., D. MN, Cr. 4-94-95.

Home health care chain paid doctors through consulting agreements and other arrangements to refer patients - pled guilty to kickback violations. Paid \$161 million to settle government claims.

United States v. Greber, 760 F.2d 68 (3rd Cir. 1085).

40% referral fee to doctors who ordered cardiac monitors - Defendant convicted of kickback violations.

United States v. Kats, 871 F.2d 105 (9th Cir., 1989).

Lab owner who kicked back 50% of Medicare payments for referrals from medical services convicted of kickback violations.

United States v. Bay State Ambulance, 874 F.2d 20 (1st Cir. 1989).

Hospital official who received payments from ambulance service convicted of kickback violations.

Robert Kuncel. In 1986, Robert Kuncel, a retired electrician from Chicago, had a "mystery pacemaker" implanted in his chest. One could not determine the brand, serial number, or expiration date of the device. Mr. Kuncel's cardiologist later admitted that he received the services of a prostitute, a trip to Hawaii, and other types of kickbacks from the pacemaker dealer. **The Results:** The doctor, the pacemaker dealer and nine others were convicted of misbranding pacemakers, changing their expiration dates, giving kickbacks, and/or overcharging.