PRESS CONFERENCE
OF
ATTORNEY GENERAL JANET RENO
ON HEALTH CARE FRAUD

Department of Justice
10th & Constitution Avenue, N.W.
Washington, D.C.
Wednesday, October 18, 1995
ATTORNEY GENERAL RENO: Thank you, Secretary Shalala.

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

I understand that some members of the House have indicated that law enforcement should not be criminally prosecuting health care providers who engage in fraud. I just don't understand that, for I believe that health care fraud is so detrimental to the health and to the pocketbook of all Americans that I made health care fraud one of my priorities in the Department of Justice. I believe perpetrators of health care fraud should not be immune from criminal prosecution because they commit a crime in an office, in a boardroom, in a laboratory, rather than in the street. White collar crooks who pay
or take kickbacks endanger the health of patients and steal money from us all.

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 bipartisan support, provides those strengthened provisions.

Particularly at this time, 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 inducement 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 patients and our children. Allowing these decisions to be made under the influence of
kickbacks is just plain 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. That's language that would immunize arrangements that are dressed up to disguise the payor's motive. This would seriously undermine our efforts and it would place beyond the reach of prosecution many kickbacks which are calculated to induce referrals and which adversely affect 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 result is simply not acceptable.

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

QUESTION: Why are the Republicans gutting the statutes?

ATTORNEY GENERAL RENO: You would have to ask them, but I have heard it said that they said we shouldn't prosecute these cases while we have robbers and murderers on our streets. And my response is we need to do both with vigor.

QUESTION: Secretary Shalala, what's your theory about why this is happening up in the House?

SECRETARY SHALALA: Well, I have long ago learned not to anticipate the motivations, but they clearly are weakening our ability to get fraud out of the system, particularly -- it's particularly damaging during an era, as the Attorney General pointed out, where we need to squeeze every dollar we can out of Medicare to invest in the trust fund. And the last thing we should be doing is wasting money or letting people rip off the program.

QUESTION: [inaudible] uniform deadly health policy that you approved yesterday. Tell
us, do you think it will clear up some of the
confusion left over from the Ruby Ridge damage?

ATTORNEY GENERAL RENO: Again, I think
this is an important step forward because for the
first time, all of the major law enforcement
agencies in the Federal Government have joined
together in a uniform policy. And I think it
will help people to understand when deadly force
can be used. It will apply to each agency and I
am very delighted about that.

QUESTION: What is the real change that
this policy makes?

ATTORNEY GENERAL RENO: This policy
will -- the real change.

QUESTION: What's the difference from
the way it would be.

ATTORNEY GENERAL RENO: Different
departments had different provisions and this
consolidates in one, I think, a very firm
statement on the policy of both the Treasury
Agency and the Department of Justice.

QUESTION: What tangible impact do you
expect the changes to have on the deadly force
policy.

ATTORNEY GENERAL RENO: I think it will
enable those enforcement officers involved to understand when they can and can’t use deadly force and I think the message will be clear.

QUESTION: Secretary Shalala, will you ask the President to veto this bill unless this is modified?

SECRETARY SHALALA: There are so many provisions in the Republican bill that I have already sent a letter to the Hill, indicating that if they adopt the bill as it’s now written that I will recommend that the President veto it. I will join with the Attorney General after we review these provisions in an additional comment for the President, advising him on the bill. But these are simply unacceptable and I think that’s our point today.

QUESTION: Are all these are provisions for Medicare and Medicaid violations only or do some of them include kickback statutes that cover general medical operations, not Government programs?

ATTORNEY GENERAL RENO: No, it covers some Government programs. We would like to see it expanded to others: to the Federal health employees benefits program, to the Champus
program on behalf of the Department of Justice.

QUESTION: But it doesn't cover kickbacks --

ATTORNEY GENERAL RENO: In the private sector.

QUESTION: -- not involving Medicare or Medicaid?

ATTORNEY GENERAL RENO: That's correct.

QUESTION: Do you know, as a practical matter, how the change in the standard of proof would affect the prosecution?

SECRETARY SHALALA: I think the cases that we gave you as an example we would probably not be able to prosecute.

ATTORNEY GENERAL RENO: If I can prove one purpose is to induce the referral of Medicare business, that's one thing. But to have to prove that the significant purpose is to induce the referral of Medicare business significantly heightens the standard. I think it produces confusion as to what is meant by significant. And I think it undermines what the kickback statute is trying to prevent.

Any time you bribe someone to get business you are impairing or presenting a chance
for the impairment of judgment. That should
never -- the fact that you get money for
referring business, particularly medical
business, should never be a factor in the
physicians' or the providers' judgment. It
should be what is in the best interest of that
patient, what is the most cost-effective medical
treatment. And a significant purpose or one
purpose, it is critically important that there
not be bribery to secure Medicare business.

QUESTION: How does that, in turn, make
it harder to prosecute?

ATTORNEY GENERAL RENO: I might be able
to prove that it is one purpose, but having to
prove that it is the significant purpose
heightens the standards of proof.

SECRETARY SHALALA: In fact, the
Inspector Generals -- all of them have signed on
to a letter to the Hill that basically said it
would bring those kinds of cases to a standstill
because it raises the bar pretty high.

QUESTION: It sounds like it would make
it pretty easy for those involved in the
kickbacks to get around it, doing something
illegal by masking and not making --
ATTORNEY GENERAL RENO: All they would have to do is disguise it and say it's for this reason or for that reason or it has something to do with the patient's care and I might not be able to prove that it is significant purpose. It has that chance of disguising what is really a bribe.

QUESTION: Attorney General Reno, on another subject, what is the Justice Department's position on the U.S. Sentencing Commission's guidelines on crack cocaine versus powder cocaine and the pending legislation that deals with that?

ATTORNEY GENERAL RENO: We have said and made clear that prosecutors, police officers, and most of all, the residents of communities across this nation that have been impacted by crack cocaine, understand that the marketing and distribution systems and nature of the drug have had a terrible, terrible impact on many neighborhoods and that its impact reflects the need to have some distinction in the manner in which crack is treated. But the Justice Department has made clear that it favors a review of the 10:1 ratio, to adjust it, to make it
It is our hope that legislation that is pending now which rejects the one-to-one ratio because of the impact on communities across this nation also would provide -- ask the Sentencing Commission to study it again in this coming year to come up with a recommendation that reflects the impact of crack on the community but also achieves fairness.

QUESTION: What would you suggest would be a good ratio?

ATTORNEY GENERAL RENO: We are going to be reviewing with all concerned -- as part of -- I serve as part of the ex officio members of the Sentencing Commission -- that balance.

QUESTION: Secretary Shalala, given that the [inaudible] is taking a completely different approach, isn't there every reason to believe it will be worked out in Congress?

SECRETARY SHALALA: We long ago have learned not to depend on one House versus another House. I think we are pointing the contrast out between this House bill, which is going to the floor tomorrow, and our ability to work in a bipartisan manner with the Senate. Obviously, we
hope in conference we will be able to work it through, but we want to make it very clear that what the House is doing is unacceptable. And most members of Congress probably don’t know what’s in the bill, since it was moved so quickly.

QUESTION: Have you considered asking the American Medical Association to join you in urging the Republicans to change this?

SECRETARY SHALALALA: There are numerous organizations that have now spoken out on this issue. Most of them have been the State Attorney General, for example, and the Inspector Generals. The American Medical Association, with a handful of important exceptions, have joined us on all issues that are related to fraud and abuse because they are absolutely opposed to, number one, having to police themselves; and number two, I think they very much favor anything we can do to help them to clean up the profession.

QUESTION: So where exactly are they on this?

SECRETARY SHALALALA: You will have to go ask them.

QUESTION: Are you talking about the
American Medical Association or American medical associations of various types?

SECRETARY SHALALA: Well, of various types.

QUESTION: Not the American Medical Association?

SECRETARY SHALALA: I don't know the position of the AMA at this moment.

QUESTION: [inaudible.]

SECRETARY SHALALA: Well, the self-referral changes that are being referenced is whether a doctor can own a laboratory and then refer his own patients to a laboratory in which he has a financial interest. That law was changed a number of years ago because of the abuse that was found in the system. There were 45 percent more referrals if the doctor owned the lab. And that was barred by the law. And the American Medical Association has favored repealing the law which we are, of course, opposed to.

QUESTION: Are there any examples of fraud cases that stand out that would be good to pinpoint, related to this?

ATTORNEY GENERAL RENO: One of the...
cases -- where is Jerry Stern -- is NME case of last year. Our recovery in that case was $379 million and that was based in significant part on this provision that we are trying to defend today in terms of kickbacks.

QUESTION: Do you have any idea what would have happened had the law been [inaudible]?

ATTORNEY GENERAL RENO: I think, again, you can't quantify it. But any time you have to prove that some -- rather than just one purpose, that it was the significant purpose, you raise the bar real high. Thank you.

(Whereupon, at 1:55 p.m., the press conference adjourned.)