

1 PRESS CONFERENCE  
2 OF  
3 ATTORNEY GENERAL JANET RENO  
4 ON HEALTH CARE FRAUD  
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10 Department of Justice  
11 10th & Constitution Avenue, N.W.  
12 Washington, D.C.  
13 Wednesday, October 18, 1995  
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## P R O C E E D I N G S

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2 ATTORNEY GENERAL RENO: Thank you,  
3 Secretary Shalala.

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

13 I understand that some members of the  
14 House have indicated that law enforcement should  
15 not be criminally prosecuting health care  
16 providers who engage in fraud. I just don't  
17 understand that, for I believe that health care  
18 fraud is so detrimental to the health and to the  
19 pocketbook of all Americans that I made health  
20 care fraud one of my priorities in the Department  
21 of Justice. I believe perpetrators of health  
22 care fraud should not be immune from criminal  
23 prosecution because they commit a crime in an  
24 office, in a boardroom, in a laboratory, rather  
25 than in the street. White collar crooks who pay

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1 or take kickbacks endanger the health of patients  
2 and steal money from us all.

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

9 Particularly at this time, we need to  
10 preserve every Medicare trust fund dollar; we  
11 cannot allow Medicare money to be spent on bribes  
12 paid to doctors and others as inducement for the  
13 referral of Medicare patients. Even more  
14 importantly, we cannot allow financial  
15 inducements to corrupt the professional judgment  
16 of medical providers -- providers who Americans  
17 have been taught to trust. Decisions which  
18 physicians make day in and day out -- whether and  
19 where to hospitalize a patient, what laboratory  
20 tests to order, what surgical procedure to  
21 perform, what drug to prescribe, and how long to  
22 keep a patient in a psychiatric facility --  
23 affect the health and well-being of our elderly  
24 patients and our children. Allowing these  
25 decisions to be made under the influence of

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1 kickbacks is just plain wrong.

2           The House bill would place a very high,  
3 additional burden on the Government in its  
4 attempts to prosecute those who pay or receive  
5 kickbacks for the purpose of inducing the  
6 referral of Medicare business. Existing law  
7 requires the Government to prove that one purpose  
8 of the kickback was to induce the referral of  
9 health care business. The language of the House  
10 bill would require that the Government prove that  
11 the payment was made for the significant purpose  
12 of inducing the referral. That's language that  
13 would immunize arrangements that are dressed up  
14 to disguise the payor's motive. This would  
15 seriously undermine our efforts and it would  
16 place beyond the reach of prosecution many  
17 kickbacks which are calculated to induce  
18 referrals and which adversely affect the judgment  
19 of medical providers. From the perspective of  
20 Federal law enforcement and, I believe, from the  
21 perspective of patients who seek their doctors'  
22 advice, this result is simply not acceptable.

23           Ultimately, this isn't a choice between  
24 prosecuting violent crime and prosecuting health  
25 care fraud. Both of them do real harm to real

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1 people and both deserve vigorous enforcement  
2 action. I hope that the House legislation will  
3 support, not undermine, our efforts.

4 QUESTION: Why are the Republicans  
5 gutting the statutes?

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

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

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

24 QUESTION: [inaudible] uniform deadly  
25 health policy that you approved yesterday. Tell

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1 us, do you think it will clear up some of the  
2 confusion left over from the Ruby Ridge damage?

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

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

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

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

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

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

25 ATTORNEY GENERAL RENO: I think it will

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1 enable those enforcement officers involved to  
2 understand when they can and can't use deadly  
3 force and I think the message will be clear.

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

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

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

22 ATTORNEY GENERAL RENO: No, it covers  
23 some Government programs. We would like to see  
24 it expanded to others: to the Federal health  
25 employees benefits program, to the Champus

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1 program on behalf of the Department of Justice.

2 QUESTION: But it doesn't cover  
3 kickbacks --

4 ATTORNEY GENERAL RENO: In the private  
5 sector.

6 QUESTION: -- not involving Medicare or  
7 Medicaid?

8 ATTORNEY GENERAL RENO: That's correct.

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

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

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

24 Any time you bribe someone to get  
25 business you are impairing or presenting a chance

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1 for the impairment of judgment. That should  
2 never -- the fact that you get money for  
3 referring business, particularly medical  
4 business, should never be a factor in the  
5 physicians' or the providers' judgment. It  
6 should be what is in the best interest of that  
7 patient, what is the most cost-effective medical  
8 treatment. And a significant purpose or one  
9 purpose, it is critically important that there  
10 not be bribery to secure Medicare business.

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

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

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

22 QUESTION: It sounds like it would make  
23 it pretty easy for those involved in the  
24 kickbacks to get around it, doing something  
25 illegal by masking and not making --

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1           ATTORNEY GENERAL RENO: All they would  
2 have to do is disguise it and say it's for this  
3 reason or for that reason or it has something to  
4 do with the patient's care and I might not be  
5 able to prove that it is significant purpose. It  
6 has that chance of disguising what is really a  
7 bribe.

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

14           ATTORNEY GENERAL RENO: We have said  
15 and made clear that prosecutors, police officers,  
16 and most of all, the residents of communities  
17 across this nation that have been impacted by  
18 crack cocaine, understand that the marketing and  
19 distribution systems and nature of the drug have  
20 had a terrible, terrible impact on many  
21 neighborhoods and that its impact reflects the  
22 need to have some distinction in the manner in  
23 which crack is treated. But the Justice  
24 Department has made clear that it favors a review  
25 of the 101 ratio, to adjust it, to make it

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1 fairer.

2 It is our hope that legislation that is  
3 pending now which rejects the one-to-one ratio  
4 because of the impact on communities across this  
5 nation also would provide -- ask the Sentencing  
6 Commission to study it again in this coming year  
7 to come up with a recommendation that reflects  
8 the impact of crack on the community but also  
9 achieves fairness.

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

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

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

20 SECRETARY SHALALA: We long ago have  
21 learned not to depend on one House versus another  
22 House. I think we are pointing the contrast out  
23 between this House bill, which is going to the  
24 floor tomorrow, and our ability to work in a  
25 bipartisan manner with the Senate. Obviously, we

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1 hope in conference we will be able to work it  
2 through, but we want to make it very clear that  
3 what the House is doing is unacceptable. And  
4 most members of Congress probably don't know  
5 what's in the bill, since it was moved so  
6 quickly.

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

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

21 QUESTION: So where exactly are they on  
22 this?

23 SECRETARY SHALALA: You will have to go  
24 ask them.

25 QUESTION: Are you talking about the

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1 American Medical Association or American medical  
2 associations of various types?

3 SECRETARY SHALALA: Well, of various  
4 types.

5 QUESTION: Not the American Medical  
6 Association?

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

9 QUESTION: [inaudible.]

10 SECRETARY SHALALA: Well, the  
11 self-referral changes that are being referenced  
12 is whether a doctor can own a laboratory and then  
13 refer his own patients to a laboratory in which  
14 he has a financial interest. That law was  
15 changed a number of years ago because of the  
16 abuse that was found in the system. There were  
17 45 percent more referrals if the doctor owned the  
18 lab. And that was barred by the law. And the  
19 American Medical Association has favored  
20 repealing the law which we are, of course,  
21 opposed to.

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

25 ATTORNEY GENERAL RENO: One of the

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1 cases -- where is Jerry Stern -- is NME case of  
2 last year. Our recovery in that case was  
3 \$379 million and that was based in significant  
4 part on this provision that we are trying to  
5 defend today in terms of kickbacks.

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

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

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