

105TH CONGRESS  
1ST SESSION

# H. R. 1836

To amend chapter 89 of title 5, United States Code, to improve administration of sanctions against unfit health care providers under the Federal Employees Health Benefits Program, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 10, 1997

Mr. BURTON of Indiana (for himself and Mr. MICA) introduced the following bill; which was referred to the Committee on Government Reform and Oversight

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## A BILL

To amend chapter 89 of title 5, United States Code, to improve administration of sanctions against unfit health care providers under the Federal Employees Health Benefits Program, and for other purposes.

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 “Federal Employees  
5 Health Care Protection Act of 1997”.

6 **SEC. 2. DEBARMENT AND OTHER SANCTIONS.**

7 (a) AMENDMENTS.—Section 8902a of title 5, United  
8 States Code, is amended—

1 (1) in subsection (a)—

2 (A) in paragraph (1)—

3 (i) by striking “and” at the end of  
4 subparagraph (B);

5 (ii) by striking the period at the end  
6 and inserting “; and”; and

7 (iii) by adding at the end the follow-  
8 ing:

9 “(D) the term ‘should know’ means that a per-  
10 son, with respect to information, acts in deliberate  
11 ignorance of, or in reckless disregard of, the truth  
12 or falsity of the information, and no proof of specific  
13 intent to defraud is required.”; and

14 (B) in paragraph (2)(A), by striking “sub-  
15 section (b) or (c)” and inserting “subsection  
16 (b), (c), or (d)”;

17 (2) in subsection (b)—

18 (A) by striking “The Office of Personnel  
19 Management may bar” and inserting “The Of-  
20 fice of Personnel Management shall bar”; and

21 (B) by amending paragraph (5) to read as  
22 follows:

23 “(5) Any provider that is currently suspended  
24 or excluded from participation under any program of

1 the Federal Government involving procurement or  
2 nonprocurement activities.”;

3 (3) by redesignating subsections (c) through (i)  
4 as subsections (d) through (j), respectively, and by  
5 inserting after subsection (b) the following:

6 “(c) The Office may bar the following providers of  
7 health care services from participating in the program  
8 under this chapter:

9 “(1) Any provider—

10 “(A) whose license to provide health care  
11 services or supplies has been revoked, sus-  
12 pended, restricted, or not renewed, by a State  
13 licensing authority for reasons relating to the  
14 provider’s professional competence, professional  
15 performance, or financial integrity; or

16 “(B) that surrendered such a license while  
17 a formal disciplinary proceeding was pending  
18 before such an authority, if the proceeding con-  
19 cerned the provider’s professional competence,  
20 professional performance, or financial integrity.

21 “(2) Any provider that is an entity directly or  
22 indirectly owned, or with a 5 percent or more con-  
23 trolling interest, by an individual who is convicted of  
24 any offense described in subsection (b), against  
25 whom a civil monetary penalty has been assessed

1 under subsection (d), or who has been debarred from  
2 participation under this chapter.

3 “(3) Any individual who directly or indirectly  
4 owns or has a controlling interest in an entity and  
5 who knows or should know of the action constituting  
6 the basis for the entity’s conviction of any offense  
7 described in subsection (b), assessment with a civil  
8 monetary penalty under subsection (d), or debar-  
9 ment from participation under this chapter.

10 “(4) Any provider that the Office determines, in  
11 connection with claims presented under this chapter,  
12 has charged for health care services or supplies in  
13 an amount substantially in excess of such provider’s  
14 customary charge for such services or supplies (un-  
15 less the Office finds there is good cause for such  
16 charge), or charged for health care services or sup-  
17 plies which are substantially in excess of the needs  
18 of the covered individual or which are of a quality  
19 that fails to meet professionally recognized stand-  
20 ards for such services or supplies.

21 “(5) Any provider that the Office determines  
22 has committed acts described in subsection (d).”;

23 (4) in subsection (d) (as so redesignated by  
24 paragraph (3)) by amending paragraph (1) to read  
25 as follows:

1           “(1) in connection with claims presented under  
2 this chapter, that a provider has charged for a  
3 health care service or supply which the provider  
4 knows or should have known involves—

5                   “(A) an item or service not provided as  
6 claimed,

7                   “(B) charges in violation of applicable  
8 charge limitations under section 8904(b), or

9                   “(C) an item or service furnished during a  
10 period in which the provider was debarred from  
11 participation under this chapter pursuant to a  
12 determination by the Office under this section,  
13 other than as permitted under subsection  
14 (g)(2)(B);”;

15           (5) in subsection (f) (as so redesignated by  
16 paragraph (3)) by inserting after “under this sec-  
17 tion” the first place it appears the following:  
18 “(where such debarment is not mandatory);”;

19           (6) in subsection (g) (as so redesignated by  
20 paragraph (3))—

21                   (A) by striking “(g)(1)” and all that fol-  
22 lows through the end of paragraph (1) and in-  
23 serting the following:

24           “(g)(1)(A) Except as provided in subparagraph (B),  
25 debarment of a provider under subsection (b) or (c) shall

1 be effective at such time and upon such reasonable notice  
2 to such provider, and to carriers and covered individuals,  
3 as shall be specified in regulations prescribed by the Of-  
4 fice. Any such provider that is debarred from participation  
5 may request a hearing in accordance with subsection  
6 (h)(1).

7 “(B) Unless the Office determines that the health or  
8 safety of individuals receiving health care services war-  
9 rants an earlier effective date, the Office shall not make  
10 a determination adverse to a provider under subsection  
11 (c)(5) or (d) until such provider has been given reasonable  
12 notice and an opportunity for the determination to be  
13 made after a hearing as provided in accordance with sub-  
14 section (h)(1).”;

15 (B) in paragraph (3)—

16 (i) by inserting “of debarment” after  
17 “notice”; and

18 (ii) by adding at the end the follow-  
19 ing: “In the case of a debarment under  
20 paragraph (1), (2), (3), or (4) of sub-  
21 section (b), the minimum period of debar-  
22 ment shall not be less than 3 years, except  
23 as provided in paragraph (4)(B)(ii).”;

1 (C) in paragraph (4)(B)(i)(I) by striking  
2 “subsection (b) or (c)” and inserting “sub-  
3 section (b), (c), or (d)”;

4 (D) by striking paragraph (6);

5 (7) in subsection (h) (as so redesignated by  
6 paragraph (3)) by striking “(h)(1)” and all that fol-  
7 lows through the end of paragraph (2) and inserting  
8 the following:

9 “(h)(1) Any provider of health care services or sup-  
10 plies that is the subject of an adverse determination by  
11 the Office under this section shall be entitled to reasonable  
12 notice and an opportunity to request a hearing of record,  
13 and to judicial review as provided in this subsection after  
14 the Office renders a final decision. The Office shall grant  
15 a request for a hearing upon a showing that due process  
16 rights have not previously been afforded with respect to  
17 any finding of fact which is relied upon as a cause for  
18 an adverse determination under this section. Such hearing  
19 shall be conducted without regard to subchapter II of  
20 chapter 5 and chapter 7 of this title by a hearing officer  
21 who shall be designated by the Director of the Office and  
22 who shall not otherwise have been involved in the adverse  
23 determination being appealed. A request for a hearing  
24 under this subsection shall be filed within such period and

1 in accordance with such procedures as the Office shall pre-  
2 scribe by regulation.

3       “(2) Any provider adversely affected by a final deci-  
4 sion under paragraph (1) made after a hearing to which  
5 such provider was a party may seek review of such deci-  
6 sion in the United States District Court for the District  
7 of Columbia or for the district in which the plaintiff re-  
8 sides or has his or her principal place of business by filing  
9 a notice of appeal in such court within 60 days after the  
10 date the decision is issued, and by simultaneously sending  
11 copies of such notice by certified mail to the Director of  
12 the Office and to the Attorney General. In answer to the  
13 appeal, the Director of the Office shall promptly file in  
14 such court a certified copy of the transcript of the record,  
15 if the Office conducted a hearing, and other evidence upon  
16 which the findings and decision complained of are based.  
17 The court shall have power to enter, upon the pleadings  
18 and evidence of record, a judgment affirming, modifying,  
19 or setting aside, in whole or in part, the decision of the  
20 Office, with or without remanding the case for a rehear-  
21 ing. The district court shall not set aside or remand the  
22 decision of the Office unless there is not substantial evi-  
23 dence on the record, taken as whole, to support the find-  
24 ings by the Office of a cause for action under this section

1 or unless action taken by the Office constitutes an abuse  
2 of discretion.”; and

3 (8) in subsection (i) (as so redesignated by  
4 paragraph (3))—

5 (A) by striking “subsection (c)” and in-  
6 serting “subsection (d)”;

7 (B) by adding at the end the following:  
8 “The amount of a penalty or assessment as fi-  
9 nally determined by the Office, or other amount  
10 the Office may agree to in compromise, may be  
11 deducted from any sum then or later owing by  
12 the United States to the party against whom  
13 the penalty or assessment has been levied.”.

14 (b) EFFECTIVE DATE.—

15 (1) IN GENERAL.—Except as provided in para-  
16 graph (2), the amendments made by this section  
17 shall take effect on the date of the enactment of this  
18 Act.

19 (2) EXCEPTIONS.—(A) Paragraphs (2), (3),  
20 and (5) of section 8902a(c) of title 5, United States  
21 Code, as amended by subsection (a)(3), shall apply  
22 only to the extent that the misconduct which is the  
23 basis for debarment under such paragraph (2), (3),  
24 or (5), as applicable, occurs after the date of the en-  
25 actment of this Act.

1 (B) Paragraph (1)(B) of section 8902a(d) of  
2 title 5, United States Code, as amended by sub-  
3 section (a)(4), shall apply only with respect to  
4 charges which violate section 8904(b) of such title  
5 for items or services furnished after the date of the  
6 enactment of this Act.

7 (C) Paragraph (3) of section 8902a(g) of title  
8 5, United States Code, as amended by subsection  
9 (a)(6)(B), shall apply only with respect to  
10 debarments based on convictions occurring after the  
11 date of the enactment of this Act.

12 **SEC. 3. MISCELLANEOUS AMENDMENTS RELATING TO THE**  
13 **HEALTH BENEFITS PROGRAM FOR FEDERAL**  
14 **EMPLOYEES.**

15 (a) DEFINITION OF A CARRIER.—Paragraph (7) of  
16 section 8901 of title 5, United States Code, is amended  
17 by striking “organization;” and inserting “organization  
18 and an association of organizations described in this para-  
19 graph, sponsoring the Government-wide service benefit  
20 plan;”.

21 (b) SERVICE BENEFIT PLAN.—Paragraph (1) of sec-  
22 tion 8903 of title 5, United States Code, is amended by  
23 striking “plan,” and inserting “plan, underwritten by par-  
24 ticipating affiliates licensed in any number of States;”.

1 (c) PREEMPTION.—Section 8902(m) of title 5, Unit-  
 2 ed States Code, is amended by striking “(m)(1)” and all  
 3 that follows through the end of paragraph (1) and insert-  
 4 ing the following:

5 “(m)(1) The terms of any contract under this chapter  
 6 which relate to the nature, provision, or extent of coverage  
 7 or benefits (including payments with respect to benefits)  
 8 shall supersede and preempt any State or local law, or  
 9 any regulation issued thereunder, which relates to health  
 10 insurance or plans.”.

11 **SEC. 4. CONSISTENT COVERAGE FOR INDIVIDUALS EN-**  
 12 **ROLLED IN A HEALTH PLAN ADMINISTERED**  
 13 **BY THE FEDERAL BANKING AGENCIES.**

14 Section 5 of the FEGLI Living Benefits Act (Public  
 15 Law 103–409; 5 U.S.C. 8901 note) is amended—

16 (1) by inserting “and the Federal Deposit In-  
 17 surance Corporation and the Board of Governors of  
 18 the Federal Reserve System” after “Office of the  
 19 Comptroller of the Currency and the Office of Thrift  
 20 Supervision” each place it appears;

21 (2) in subsection (a), by inserting “under a  
 22 health benefits plan administered by the Federal De-  
 23 posit Insurance Corporation before the termination  
 24 of such plan on January 3, 1998, or under a health  
 25 benefits plan not governed by chapter 89 of such

1 title in which employees and retirees of the Board of  
2 Governors of the Federal Reserve System partici-  
3 pated before January 3, 1998,” after “January 7,  
4 1995,”;

5 (3) in subsection (b)—

6 (A) by inserting “(in the case of the Comp-  
7 troller of the Currency and the Office of Thrift  
8 Supervision), or on January 3, 1998 (in the  
9 case of the Federal Deposit Insurance Corpora-  
10 tion and the Board of Governors of the Federal  
11 Reserve System)” after “on January 7, 1995”  
12 each place it appears;

13 (B) by inserting “or the Federal Deposit  
14 Insurance Corporation, or in which employees  
15 and retirees of the Board of Governors of the  
16 Federal Reserve System participate” after “Of-  
17 fice of the Comptroller of the Currency or the  
18 Office of Thrift Supervision” each place it ap-  
19 pears; and

20 (C) by inserting “(in the case of the Comp-  
21 troller of the Currency and the Office of Thrift  
22 Supervision), or on and after January 4, 1998  
23 (in the case of the Federal Deposit Insurance  
24 Corporation and the Board of Governors of the

1 Federal Reserve System)” after “January 8,  
2 1995” each place it appears;

3 (4) in subsection (b)(1)(A), by striking “title;”  
4 and inserting “title, or a retiree (as defined in sub-  
5 section (e));”;

6 (5) by adding at the end the following:

7 “(e) DEFINITION.—For purposes of this section, the  
8 term ‘retiree’ shall mean an individual who is receiving  
9 benefits under the Retirement Plan for Employees of the  
10 Federal Reserve System.”; and

11 (6) in the heading, by striking “**OFFICE OF**  
12 **THE COMPTROLLER OF THE CURRENCY OR**  
13 **THE OFFICE OF THRIFT SUPERVISION**” and in-  
14 serting “**FEDERAL BANKING AGENCIES**”.

15 **SEC. 5. FULL DISCLOSURE IN HEALTH PLAN CONTRACTS.**

16 (a) IN GENERAL.—A contract for a plan described  
17 by paragraph (1), (2), or (3) of section 8903 of title 5,  
18 United States Code, or section 8903a of such title, shall  
19 require the carrier and its subcontractors to include in any  
20 discounted rate agreements entered into with health care  
21 providers advance written disclosure if such carrier or its  
22 subcontractors—

23 (1) do not require financial incentives which are  
24 made known to the employee, annuitant, family

1 member or other eligible persons prior to their use  
2 of such contracted health care providers, and

3 (2) do not use other forms of steerage to direct  
4 the employee, annuitant, family member, or other el-  
5 igible persons to use such contracted health care  
6 providers.

7 (b) PROHIBITION.—Any carrier (and its subcontrac-  
8 tors) described in subsection (a) shall be prohibited from  
9 accessing discounted rate agreements entered into with  
10 health care providers in violation of subsection (a) for  
11 health care services provided to an employee, family mem-  
12 ber, annuitant, or other eligible person.

13 (c) EFFECTIVE DATE.—This section shall apply with  
14 respect to contracts effective on or after January 1, 1998.

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