

H.R. 3590 (health care): Senate Amendment 2787 (Specter)

Mandatory Minimums For Health Care Fraud Offenses: An Ineffective and Costly Perpetuation of Unjust Sentencing

Health care fraud must be prevented and punished, particularly if the government's role as a healthcare provider substantially increases. While this may be the intended goal of the new mandatory minimum sentence in the Strengthening Enforcement for Health Care Fraud Crimes Act of 2009, it does little or nothing to strengthen enforcement or deter health care fraud. The mandatory minimum applies to a wide array of conduct falling within the existing law's vague, overbroad definition of healthcare fraud as long as the conduct "involves a loss" of \$100,000 or more. Yet studies indicate that punishment certainty, not merely its severity, plays a significant role in deterring white-collar crime. Experience demonstrates that increased collaboration between law enforcement, public agencies, and the private sector strengthens enforcement and effectively puts potential criminals on notice that they will be prosecuted for health care fraud.



- **Mandatory Minimum Sentences Are *Not* Appropriate For Health Care Fraud Offenses –**

- Mandatory minimum penalties, particularly for non-violent offenses committed by those unlikely to recidivate, generally are inconsistent with a guidelines system such as the Federal Sentencing Guidelines. Although the bill's mandatory minimum sentence is six months, it would encourage the proliferation of costly and inflexible mandatory sentences throughout the federal criminal code.
- In some cases, accounting errors and even innocent mistakes could add substantially to the "loss" necessary to trigger the mandatory minimum, thereby eliminating judicial discretion and imposing unjust punishment.
- By eliminating judicial discretion, this mandatory minimum is likely to remove productive citizens, capable of rehabilitation and restitution, from society and unnecessarily imprison them at taxpayer expense.

- **Mandatory Minimum Sentences Will *Not* Deter Health Care Fraud –**

- Under existing law, health care fraud does not go unpunished. In fact, the Sentencing Guidelines (U.S.S.G. § 2B1.1) already provide for sentences starting at 18 months in the case of health care fraud involving more than \$70,000 and starting at 24 months if the fraud involves \$120,000 or more – *far longer than* the bill's proposed mandatory minimum. In fact, the average sentence under this Guideline actually exceeds that for burglary.
- There simply is no evidence that existing sentences under the Sentencing Guidelines are not an effective response to health care fraud or that judges fail to impose stiff sentences in this area. For fraud cases, the percentage of sentences imposed that fall within the Guideline range exceed the overall average. According to recent Sentencing Commission statistics, eighty-two percent of defendants in this category received sentences at or above the recommended sentencing range or a government-requested reduced sentence.
- Mandatory minimums for vague, overbroad fraud offenses will result in many sentences that are longer than necessary to impose just punishment.
- Mandatory minimums, particularly for non-violent offenses committed by those unlikely to recidivate, are generally inconsistent with a guidelines sentencing system. They eliminate judicial discretion in favor of a "one-size-fits-all" approach; ignore the multi-factor guidance provided by the Federal Sentencing Guidelines; and prevent consideration of factors such as the individual's role in the offense, actual blameworthiness, motive, and level of cooperation.