

113TH CONGRESS  
1ST SESSION

# H. R. 2931

To amend the false claims provisions of title 31, United States Code, with respect to health care programs, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 1, 2013

Mr. COBLE introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend the false claims provisions of title 31, United States Code, with respect to health care programs, 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 “Fairness in Health  
5 Care Claims, Guidance, and Investigations Act”.

1 **SEC. 2. RULES FOR ACTIONS UNDER FALSE CLAIMS PROVI-**  
2 **SIONS BASED ON CLAIMS SUBMITTED UNDER**  
3 **CERTAIN HEALTH CARE PROGRAMS.**

4 (a) IN GENERAL.—Subchapter III of chapter 37 of  
5 title 31, United States Code, is amended by adding at the  
6 end the following:

7 **“§ 3734. Rules for certain actions based on health**  
8 **care claims**

9 “(a) IN GENERAL.—In the case of any action that  
10 is brought under section 3730 and is based on a claim  
11 submitted with respect to a Federal health care program,  
12 sections 3729 through 3733 shall apply only to the extent  
13 that such sections are consistent with the provisions of  
14 this section.

15 “(b) INVESTIGATIONS OF FALSE CLAIMS TO FED-  
16 ERAL HEALTH CARE PROGRAMS.—

17 “(1) IN GENERAL.—Before requesting any in-  
18 formation from a physician, hospital, or other pro-  
19 vider or supplier of health care services, by any for-  
20 mal or informal means, directly or in cooperation  
21 with an investigating law enforcement agency, in  
22 connection with an investigation reasonably expected  
23 to concern 10 or more claims submitted to a Federal  
24 health care program by or on behalf of a single enti-  
25 ty, the Attorney General shall certify, in writing,  
26 that—

1           “(A) each agency responsible for promul-  
2           gating relevant regulations, guidelines, and bill-  
3           ing instructions, directly or through inter-  
4           mediaries, has examined all regulations, guide-  
5           lines, and billing instructions relevant to the al-  
6           legations, all communications between the al-  
7           leged perpetrator and the agency and its inter-  
8           mediaries, and each of the allegedly false  
9           claims;

10           “(B) in the view of the responsible agency  
11           officials and the Attorney General, the allega-  
12           tions under investigation are viable, and the rel-  
13           evant regulations, guidelines and billing instruc-  
14           tions were unambiguous during the relevant  
15           time period; and

16           “(C) if proven to be true, the allegations  
17           are appropriately pursued under section 3729.

18           “(2) IF CERTIFICATION NOT MADE.—If the At-  
19           torney General (or his or her designee) is unable to  
20           make the certifications required under paragraph  
21           (1), and the allegations were included in an action  
22           brought by a person under section 3730(b), the At-  
23           torney General shall notify the court and the court  
24           shall dismiss these allegations.

1           “(c) ACTIONS IF AMOUNT OF DAMAGES ARE MATE-  
2 RIAL AMOUNT.—Notwithstanding sections 3729 through  
3 3733, no action may be brought under section 3730 that  
4 is based on a claim submitted or an overpayment retained  
5 with respect to a Federal health care program unless the  
6 amount of damages alleged to have been sustained by the  
7 United States Government with respect to such claim or  
8 overpayment is a material amount.

9           “(d) ACTIONS FOR CLAIMS SUBMITTED IN RELIANCE  
10 ON OFFICIAL GUIDANCE.—Notwithstanding sections 3729  
11 through 3733, no action may be brought under section  
12 3730 based on a claim submitted or an overpayment re-  
13 tained with respect to a Federal health care program—

14                 “(1) in good faith reliance on erroneous infor-  
15 mation supplied by an agency (or an agent thereof)  
16 about matters of fact at issue;

17                 “(2) in good faith reliance on written state-  
18 ments of Federal policy that affects the claim or  
19 overpayment that were provided by a Federal agency  
20 (or an agent thereof); or

21                 “(3) in good faith reliance on an audit or re-  
22 view by an agency of the person submitting the  
23 claim or on whose behalf the claim was submitted,  
24 or of the person retaining the overpayment, in which  
25 no findings were made that the claim or overpay-

1       ment violated the regulations, guidelines, or instruc-  
2       tions applicable to the Federal health care program  
3       at issue in the claim or overpayment.

4       “(e) ACTION FOR CLAIMS SUBMITTED BY PERSONS  
5       IN SUBSTANTIAL COMPLIANCE WITH MODEL COMPLI-  
6       ANCE PLAN.—Notwithstanding sections 3729 through  
7       3733, no action may be brought under section 3730 based  
8       on a claim submitted by or on behalf of a person, or an  
9       overpayment retained, with respect to a Federal health  
10      care program if the claim is submitted, or the overpay-  
11      ment retained, in substantial compliance with a model  
12      compliance plan issued by the Secretary of Health and  
13      Human Services with respect to that Federal health care  
14      program.

15      “(f) STANDARD OF PROOF.—In any action brought  
16      under section 3730 with respect to a claim submitted, or  
17      an overpayment retained, with respect to a Federal health  
18      care program, section 3731(e) shall be applied by sub-  
19      stituting ‘clear and convincing evidence’ for ‘a preponder-  
20      ance of the evidence’.

21      “(g) RULE OF CONSTRUCTION.—Nothing in this sec-  
22      tion shall be construed to limit the authority of the Gov-  
23      ernment of the United States to recover damages with re-  
24      spect to a claim submitted, or an overpayment retained,

1 with respect to a Federal health care program under provi-  
2 sions of law other than section 3729.

3 “(h) DEFINITIONS; SPECIAL RULES.—For purposes  
4 of this section—

5 “(1) the term ‘claim’ means a claim as defined  
6 in section 3729(c);

7 “(2) the term ‘Federal health care program’  
8 means—

9 “(A) any plan or program that provides  
10 health care benefits, whether directly, through  
11 insurance, or otherwise, and that is funded di-  
12 rectly, in whole or in part, by the United States  
13 Government;

14 “(B) any State health care program, as de-  
15 fined in section 1128(h) of the Social Security  
16 Act; or

17 “(C) any qualifying health plan offered  
18 through an Exchange established under, or any  
19 other health plan established under, the Patient  
20 Protection and Affordable Care Act (Public  
21 Law 111–148);

22 “(3) the amount of damages alleged to have  
23 been sustained by the United States Government  
24 with respect to a claim submitted by (or on behalf  
25 of) a person shall be treated as a ‘material amount’

1       only if such amount exceeds a proportion (specified  
2       in regulations promulgated by the Secretary of  
3       Health and Human Services in consultation with the  
4       Secretary of Defense) of the total of the amounts for  
5       which claims were submitted by (or on behalf of)  
6       such person—

7               “(A) to the same Federal health care pro-  
8               gram, and

9               “(B) for the same calendar year,  
10       as the claim upon which an action under section  
11       3730 is based;

12              “(4) in determining whether an amount of dam-  
13       ages is a ‘material amount’ under paragraph (3),  
14       with respect to a person—

15              “(A) the amount of damages for more than  
16       1 claim may be aggregated only if the acts or  
17       omissions resulting in such damages were part  
18       of a pattern of related acts or omissions by  
19       such person; and

20              “(B) if damages for more than 1 claim are  
21       aggregated in accordance with subparagraph  
22       (A), the proportion referred to in paragraph (3)  
23       shall be determined by comparing the amount  
24       of such aggregate damages to the total of the  
25       amounts for which claims were submitted by (or

1           on behalf of) such person to the same Federal  
2           health care program for each of the calendar  
3           years for which any claim upon which such ag-  
4           gregate damages were based was submitted;

5           “(5) the term ‘intermediary’ means, with re-  
6           spect to a Federal health care program, a contractor  
7           with an agency, a State, or other entity that is en-  
8           gaged in the implementation of that Federal health  
9           care program; and

10           “(6) the term ‘State’ means each of the several  
11           States, the District of Columbia, and any territory  
12           or possession of the United States.”.

13           (b) CONFORMING AMENDMENT.—The table of sec-  
14           tions for chapter 37 of title 31, United States Code, is  
15           amended by adding at the end the following new item:

          “3734. Rules for certain actions based on health care claims.”.

16           (c) EFFECTIVE DATE.—The amendments made by  
17           this section shall apply to any action or investigation  
18           under sections 3729 through 3733 of title 31, United  
19           States Code, that is pending on, or commenced on or after,  
20           the date of the enactment of this Act.

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