

105TH CONGRESS
2D SESSION

S. 2007

To amend the false claims provisions of chapter 37 of title 31, United States Code.

IN THE SENATE OF THE UNITED STATES

APRIL 29, 1998

Mr. COCHRAN (for himself and Mr. HOLLINGS) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the false claims provisions of chapter 37 of title
31, United States Code.

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 “Health Care Claims
5 Guidance 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 this subchapter based on a claim submit-
11 ted with respect to a federally funded health care program,
12 the preceding provisions of this subchapter shall apply
13 only to the extent that such provisions are consistent with
14 the provisions of this section.

15 “(b) ACTIONS IF AMOUNT OF DAMAGES ARE MATE-
16 RIAL AMOUNT.—Notwithstanding the preceding sections
17 of this subchapter, no action may be brought under this
18 subchapter based on a claim that is submitted under a
19 federally funded health care program unless the amount
20 of damages alleged to have been sustained by the United
21 States Government with respect to such claim is a mate-
22 rial amount.

23 “(c) ACTIONS FOR CLAIMS SUBMITTED IN RELIANCE
24 ON OFFICIAL GUIDANCE.—Notwithstanding the preceding
25 sections of this subchapter, no action may be brought
26 under this subchapter based on a claim submitted—

1 “(1) in reliance on (and correctly using) erro-
2 neous information supplied by a Federal agency (or
3 an agent thereof) about matters of fact at issue; or

4 “(2) in reliance on (and correctly applying)
5 written statements of Federal policy which affects
6 such claim provided by a Federal agency (or an
7 agent thereof).

8 “(d) ACTION FOR CLAIMS SUBMITTED BY PERSONS
9 IN SUBSTANTIAL COMPLIANCE WITH MODEL COMPLI-
10 ANCE PLAN.—Notwithstanding the preceding sections of
11 this subchapter, no action may be brought under this sub-
12 chapter based on a claim submitted by a person that is
13 in substantial compliance with a model compliance plan
14 issued by the Secretary of Health and Human Services
15 (in consultation with the Secretary of Defense).

16 “(e) STANDARD OF PROOF.—In any action brought
17 under this subchapter with respect to a claim submitted
18 to a federally funded health care program, section 3731(c)
19 shall be applied by substituting ‘clear and convincing evi-
20 dence’ for ‘a preponderance of the evidence’.

21 “(f) RULE OF CONSTRUCTION.—Nothing in this sec-
22 tion shall be construed as limiting the authority of the
23 Government of the United States to recoup or otherwise
24 recover damages with respect to a claim submitted to a

1 federally funded health care program under provisions of
 2 law other than this subchapter.

3 “(g) DEFINITIONS; RELATED RULES.—For purposes
 4 of this section—

5 “(1) the term ‘claim’ means a claim (as defined
 6 in section 3729(c)) made with respect to a federally
 7 funded health care program;

8 “(2) the term ‘damages’ means the amount of
 9 any overpayment made by the United States Govern-
 10 ment with respect to a claim;

11 “(3) the term ‘federally funded health care pro-
 12 gram’ means a program that provides health bene-
 13 fits, whether directly, through the purchase of insur-
 14 ance, or otherwise, that is established under—

15 “(A) title XVIII, XIX, or XXI of the So-
 16 cial Security Act, or

17 “(B) title 10, United States Code;

18 “(4) the amount of damages alleged to have
 19 been sustained by the United States Government
 20 with respect to a claim submitted by (or on behalf
 21 of) a person shall be treated as a ‘material amount’
 22 only if such amount exceeds a proportion (specified
 23 in regulations promulgated by the Secretary of
 24 Health and Human Services in consultation with the
 25 Secretary of Defense) of the total of the amounts for

1 which claims were submitted by (or on behalf of)
2 such person—

3 “(A) to the same federally funded health
4 care program, and

5 “(B) for the same calendar year,
6 as the claim upon which an action under this sub-
7 chapter is based;

8 “(5) the regulations specifying the proportion
9 referred to in paragraph (4) shall be based on the
10 definition of the term ‘material’ used by the Amer-
11 ican Institute of Certified Public Accountants as of
12 the date of the enactment of this section; and

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

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

21 “(B) if damages for more than 1 claim are
22 aggregated in accordance with subparagraph
23 (A), the proportion referred to in such para-
24 graph shall be determined by comparing the
25 amount of such aggregate damages to the total

1 of the amounts for which claims were submitted
2 by (or on behalf of) such person to the same
3 federally funded health care program for each
4 of the calendar years for which any claim upon
5 which such aggregate damages were based was
6 submitted.”.

7 (b) TECHNICAL AND CONFORMING AMENDMENT.—
8 The table of sections for chapter 37 of title 31, United
9 States Code, is amended by adding after the item relating
10 to section 3733 the following:

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

11 (c) EFFECTIVE DATE.—The amendment made by
12 subsection (a) shall apply to actions brought under sub-
13 chapter III of chapter 37 of title 31, United States Code,
14 with respect to claims submitted before, on, and after the
15 date of the enactment of this Act.

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