



Association of
American Medical Colleges
2450 N Street, N.W., Washington, D.C. 20037-1127
T 202 828 0400 F 202 828 1125
www.aamc.org

January 14, 2010

The Honorable Nancy Pelosi
Speaker, House of Representatives
H-232 Capitol Building
Washington, DC 20515-6501

The Honorable Harry Reid
Senate Majority Leader
S-221 Capitol Building
Washington, DC 20510-7020

The Honorable John Boehner
House Minority Leader
H-204 Capitol Building
Washington, DC 20515-6537

The Honorable Mitch McConnell
Senate Minority Leader
S-230 Capitol Building
Washington, DC 20510-7010

Dear Speaker Pelosi, Majority Leader Reid, Minority Leader Boehner, and Minority Leader McConnell:

On behalf of the Association of American Medical Colleges (AAMC), I write to express our concerns with several provisions of the Senate-passed “Patient Protection and Affordable Care Act” (HR 3590) that apply to the Federal Civil False Claims Act (FCA) and have potential serious and unintended consequences for medical schools and teaching hospitals. The AAMC represents the nation’s 131 medical schools, nearly 400 major teaching hospitals and health systems (including 68 VA medical centers), and nearly 90 academic and scientific societies. Through these institutions and organizations, the AAMC also represents 125,000 faculty members and 180,000 student and resident physicians.

“Public Disclosure/Original Source” Amendment

The AAMC urges the conferees to reject the Senate bill’s FCA amendment that would enable individuals with no personal knowledge of the transactions to claim to be whistleblowers exposing a fraud – even if those transactions were already publicly exposed to a government entity. Section 10104(j)(2), which was added to the Senate bill as part of the “manager’s amendment” would substantially impair the ability of any defendant to raise an early challenge to FCA cases brought by individuals trying to act as qui tam plaintiffs who have no personal knowledge of allegedly false claims. This provision would significantly revise and undermine the existing “public disclosure/original source” rule, which gives defendants the ability to challenge early on cases that are based on publicly available information. The provision will significantly increase the number of sham lawsuits brought and maintained by opportunistic plaintiffs. For instance, under the Senate language, an enterprising plaintiff could scour state court records or inspector general reports and file an FCA claim, thus putting him/her in a position to collect a sizeable sum if the case is settled, even though he/she had nothing to do with uncovering the alleged misuse of public money.

These proposed changes amend the entire FCA and cover more than just health care cases. They come with little notice and no opportunity for Judiciary Committee hearings, public input, official Administration views, or proper discussion. They also come on top of several FCA amendments enacted in May 2009 in the *Fraud Enforcement and Recovery Act of 2009* (FERA) [P.L. 111-21] that already expand the ability of private individuals to file suit under the FCA. A change of this magnitude should be made only after due consideration, including legislative hearings and votes in the committees of jurisdiction.

Antikickback Amendment

The AAMC urges the conferees to reject a provision in the Senate bill that explicitly allows antikickback violations also to be subject to potential penalties under FCA. Section 6402(f) of the Senate bill amends the Social Security Act to subject virtually all violations of the antikickback provisions to penalties under FCA. We believe the change will involve teaching hospitals in unnecessary and unintended litigation. The stated purpose of the provision is to address a problem experienced by the Department of Justice (DOJ) in kickback prosecutions against device companies and physicians. While the Senate bill identifies hospitals as innocent third parties in such schemes, hospitals could be swept into litigation as an unintended consequence. Congress recently addressed this problem by amending the FCA statute in the *Fraud Enforcement and Recovery Act of 2009* (FERA) enacted in May 2009.

The AAMC fully supports the efforts of the Federal government to eliminate fraud from the health care system. We believe, however, that these proposed changes are not necessary and have the potential for serious, unintended consequences to teaching hospitals, medical schools, and faculty physicians by subjecting them to unwarranted, opportunistic lawsuits that will require significant resources to defend against. We respectfully urge the conferees to delete these provisions from the final health care bill.

Sincerely,

A handwritten signature in black ink, appearing to read 'Atul Grover', with a stylized flourish extending from the bottom right.

Atul Grover, MD, PhD, FACP, FCCP