



**American Hospital
Association**

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July 16, 2008

The Honorable John Conyers, Jr.
Chairman
House Judiciary Committee
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable Lamar S. Smith
Ranking Member
House Judiciary Committee
B351A Rayburn House Office Building
Washington, DC 20515

Dear Chairman Conyers:

Dear Representative Smith:

On behalf of our nearly 5,000 member hospitals, health systems and other health care organizations, and our 37,000 individual members, the American Hospital Association (AHA) opposes H.R. 4854, the *False Claims Correction Act of 2007*.

The bill as written will hurt patients and hospitals alike by forcing funds that are needed for patient care to instead be diverted to defend the hospital against frivolous lawsuits. H.R. 4854 abandons the twin goals the *False Claims Act* (FCA) has sought to balance since the 1986 amendments: encouraging prompt notification of wrongdoing, while discouraging claims that do not help the government protect public funds.

Our specific concerns center on the provision that addresses alleged overpayments. Section 2 of H.R. 4854 would expand the FCA to include a new penalty for retaining an overpayment that the defendant did not ask for, and for legitimate reasons had yet to return to the government payor. This new penalty raises two concerns: it would impose FCA penalties on a person or entity that engaged in no culpable act, and it both frustrates and fails to account for existing means in federal law, regulation and practice by which health care providers reconcile overpayments and underpayments on a regular basis.

This legislation contains several other provisions of concern to hospitals. Sections 3(d) and 4(c) would abolish and/or eviscerate defenses that currently allow defendants, including hospitals and other health care providers, to protect themselves from the costs of unfounded and burdensome lawsuits. H.R. 4854 would force hospitals to defend the 80 percent of cases that the Department of Justice decides do not actually merit false claims prosecution, thus providing a generous bounty for contingent fee attorneys and their clients who are not true whistleblowers and who have no knowledge of actual fraud.

While the AHA continues to support the goals of the FCA, this legislation goes far beyond the original scope of the law and is not in the best interests of hospitals and patients.

Sincerely,

Rick Pollack
Executive Vice President

