

# MEDEFENSE™ Plus

## False Claims Act: Managing increased risk

Health care organizations are facing unprecedented scrutiny by federal and state agencies under the False Claims Act (FCA). According to a 2021 press release issued by the Justice Department, settlements and judgments from civil cases involving fraud or false claims totaled more than \$5.6 billion in 2021 alone, which is the second-largest amount in history, and the highest reported since 2014. Additionally, over \$5 billion of the total FCA cases were incidences of health care fraud, making health care the highest contributing source in the report. The health care industry has seen a steady increase in the percentage of FCA cases, from around 50% in 2015 to 89% today.<sup>1</sup>

## MEDEFENSE™ Plus

MEDEFENSE™ Plus provides an effective reimbursement insurance solution for billing error proceedings by governmental and commercial payers as well as HIPAA (Health Insurance Portability and Accountability Act), EMTALA (Emergency Medical Treatment and Labor Act) and Stark regulatory proceedings. Constellation provides customers with a MEDEFENSE™ Plus coverage limit of \$50,000 at no additional cost.

Questions or curious about purchasing additional coverage? Please contact your insurance agent or company representative.

Basic MEDEFENSE™ Plus coverage is available for physicians, hospitals, senior living and health care organizations. Aggregate limit will vary based on the number of physicians on the policy.

MEDEFENSE™ Plus coverage is provided to independently-owned and operated physician and dental practices as part of our Cyber Solutions offering. The aggregate limit is combined with Cyber Solutions and based on the number of physicians on the policy.

Physicians who do not qualify for Cyber Solutions may be eligible for MEDEFENSE™ Plus.



## Coverage is included for the following:

### Billing error proceedings

Defense costs, fines and penalties<sup>2</sup>, and shadow audit expenses incurred in billing error proceedings brought by:

- Federal or state governmental agencies
- Qui tam plaintiffs (whistleblowers)
- Contractors working on behalf of the government such as ZPIC and RAC
- Commercial payers

### Other regulatory proceedings

Defense costs and fines and penalties<sup>2</sup> incurred in the following regulatory proceedings:

- HIPAA—Protects the privacy of patients and senior living residents
- EMTALA—Ensures public access to emergency services regardless of ability to pay
- Stark—Prohibits physician self-referral

## Claim scenarios

### Billing errors

An insured received a Civil Investigative Demand (CID) from the Department of Justice. The CID was issued pursuant to the Department of Justice's authority under the FCA in connection with allegations that the insured submitted or caused to be submitted false claims related to physician visits, annual wellness visits, or other patient services. The CID requested documents and materials from 1/1/2016 to the present to be produced. The claim is expected to erode the entire MEDEFENSE™ Plus limit on the insured's policy.

### Qui tam

A qui tam action was filed against an urgent care facility alleging that the facility inflated its billings for urgent care medical services (also known as "up-coding"). The facility was reimbursed for defense costs under MEDEFENSE™ Plus in alignment with their policy limit.

<sup>1</sup> Justice Department's False Claims Act Settlements and Judgments Exceed \$5.6 Billion in Fiscal Year 2021, published by Department of Justice in February 2022.

<sup>2</sup> Fines and penalties are covered by MEDEFENSE™ Plus to the extent insurable by law.

Tokio Marine HCC is the marketing name used to describe the affiliated companies under the common ownership of HCC Insurance Holdings, Inc., a Delaware-incorporated insurance holding company. Headquartered in Houston, Texas, Tokio Marine HCC is a leading specialty insurance group with offices in the United States, the United Kingdom and Continental Europe.

The scenarios used are examples of the types of claims and associated costs commonly seen and do not represent a comprehensive explanation of any one particular claim. While the subject coverage is designed to address certain risks and associated costs, coverage may not be available in all circumstances. Each reported claim will be evaluated on a case-by-case basis. The actual policy or endorsement language should be referenced to determine coverage applicability and availability.

© 2023 Constellation, Inc. All rights reserved. Constellation® is a trademark of Constellation, Inc. MEDEFENSE™ Plus is a product of Tokio Marine HCC – Cyber & Professional Lines Group. 4/23