



Alerts

Supreme Court Case Expands False Claims Act Liability

June 22, 2016

Health Law Alert

Summary of Decision

On June 16, 2016, the United States Supreme Court decided a case which could have significant impact on healthcare providers. In *Universal Health Services Inc. v Escobar*, the Court expanded liability under the False Claims Act to include situations where a provider makes a claim for payment from the federal government and the provider's representations in submitting that claim were misleading and would materially affect a payment decision.

Court Approves Limited Application of Implied False Certification Theory

The Court rejected the contention that, under the implied false certification theory, every claim assumes that payment is legally justified and is in compliance with all conditions of payment. However, the Court ruled that False Claims Act liability can arise if a provider submits a claim making specific representations about the goods or services provided but omits the violation of a material statutory, regulatory or contractual requirement. If those omissions would materially affect the government's payment decision, the claim is considered false or fraudulent.

Facts of the Case

The case involves a teenage beneficiary of Massachusetts Medicaid program who received counseling services at a mental health facility. The patient died after having an adverse reaction to medication that was prescribed to her at the facility after she was diagnosed with bipolar disorder. It was later discovered that the patient's practitioner was not a medical doctor and lacked authority to prescribe medication absent supervision. Her parents filed a *qui tam* suit, alleging Universal Health violated the False Claims Act by presenting fraudulent claims for payment because it failed to comply with applicable regulations, particularly with regard to credentialing providers of services.

Court Found Violation of False Claims Act

The Court held that a claim can be deemed impliedly false or fraudulent, even though there is no express statement that is false. Claims which on their face are truthful, but lack important information, can be actionable misrepresentations under the False Claims Act, which imposes significant penalties on anyone who knowingly misleads the government.

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Justice Thomas, writing on behalf of the unanimous court, ruled, "By submitting claims for payment using payment codes that correspond to specific counseling services, Universal Health represented that they provided individual therapy, family therapy, preventive medicine, counseling and other types of treatment [T]hese representations were clearly misleading in context."

Not all misrepresentations resulting from nondisclosure violate the False Claims Act -- only those that are material to the government's payment decision. The government's decision to expressly identify a provision as a condition of payment is relevant but does not automatically indicate the condition is material. Proof of materiality can include evidence that the defendant knows the government consistently refuses to pay claims based on non-compliance with a particular statutory, regulatory or contractual requirement.

Whether a misrepresentation is material depends on the particular facts of each case, so a court may be unwilling to dismiss a False Claims Act complaint by way of a motion. The Court concluded that a misrepresentation is not automatically material solely because it is a condition of payment, nor does noncompliance with an express condition of payment make a claimant automatically liable. Further, an omission could reasonably cause an individual to infer that the claimant is making additional claims that are untruthful.

Review and Update Your Compliance Program

Violations of the False Claim Act may include civil penalties up to \$10,000 per claim as well as treble damages. If you are a health care provider participating in government health care programs, you should review and, as necessary, revise your compliance programs to avoid violation of the False Claims Act under the implied false certification theory.

For further information, you may contact [Thomas L. O'Carroll](#), [Roy M. Bossen](#), [Stephen T. Moore](#) or a member of Hinshaw's [White Collar Defense](#) group.

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