

Supreme Court Clarifies Key Principles Under The Federal False Claims Act

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Yesterday, the Supreme Court handed down *Universal Health Services, Inc. v. United States ex rel. Escobar*, clarifying key principles under the federal False Claims Act (FCA). The Court validated the implied false certification theory of liability and rejected the “express condition of payment approach,” but put teeth into the materiality element of an FCA claim.

The defendants in *Escobar* are healthcare providers. They provided mental health services to a minor beneficiary of the Massachusetts Medicaid program and submitted claims for reimbursement for the services to the program. The minor suffered an adverse drug reaction and ultimately died. The minor’s parents subsequently learned that several of the individual caregivers had misrepresented their qualifications and licensing status, such that only one of the caregivers had been properly licensed, and the provider who prescribed the medication had not been authorized to do so without supervision. The providers also misrepresented their qualifications and licensing status to the government to obtain National Provider Identification numbers, which are submitted in conjunction with the Medicaid reimbursement claims, and correspond to specific job titles.

The parents brought claims under the FCA, alleging that the claims for reimbursement for the services provided to their daughter were false claims because the defendants, in seeking reimbursement, had impliedly represented compliance with various healthcare regulations. The claims were dismissed by the district court but reinstated on appeal. The Supreme Court granted defendants’ petition for *certiorari*.

The Supreme Court held that when a party, in submitting a claim, makes specific representations concerning the goods or services for which payment is sought, but fails to disclose noncompliance with material statutory, regulatory, or contractual requirements that make the representations misleading, there may be liability under the implied certification theory. The Court made clear that omissions are actionable only to the extent they render the defendant’s affirmative representations misleading, and it emphasized that a misrepresentation by omission is actionable only if it is material to the Government’s payment decision. The Court went on to reject the argument that liability exists only where the noncompliance is as to a statutory, regulatory, or contractual requirement that the Government has made an express condition to payment. False claims are not limited, the Court wrote, “to misrepresentations about express conditions of payment.”

In a part of the decision that may provide some comfort to government contractors, the Court explained that the materiality standard in this context is demanding, and does not include minor or insubstantial noncompliance. The Government’s decision to identify a provision as an express condition of payment is relevant, but not dispositive, on materiality. “A misrepresentation cannot be deemed material merely because the Government designates compliance with a particular statutory, regulatory, or contractual requirement as a condition of payment.” The Court rejected the view that materiality is established “so long as the defendant knows the Government would be entitled to refuse payment were it aware of the violation.” Proof of materiality may include, for example, evidence that the defendant knew that the Government consistently refused to pay claims based on noncompliance with the particular statutory, regulatory, or contractual requirement. Alternatively, if the Government regularly paid a particular type of claim despite actual knowledge of noncompliance, and had not signaled a change in position, this would be strong evidence that the unfulfilled requirement was not material to the Government’s payment decision.

A link to the decision is provided here.

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