



The Materiality Standard In False Claims Actions

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The Supreme Court decided *Universal Health Services v. U.S. ex rel. Escobar* on June 16, 2016 in which it ruled the implied false certification theory, previously recognized in several circuits, can form the basis for False Claims Act ("FCA") liability. However, the Supreme Court put limits on the application of the theory.

The case arose out of care provided to a patient that allegedly led to her death. The Relators specifically alleged that Universal Health defrauded the Massachusetts Medicaid program by submitting claims for payment that by the nature of the claim made representations regarding the specific services provided by specific types of professionals, but that failed to disclose serious violations of Medicaid regulations pertaining the patient's treatment. The patient's parents filed qui tam lawsuits under the FCA alleging that, by submitting the type of claims for reimbursement, the healthcare provider had engaged in fraudulent billing by misrepresenting that it and its staff members were in compliance with the requisite legal health standards and were properly licensed and/or supervised as required by relevant law.

The Supreme Court held that the implied certification theory can be a basis for liability if at least two conditions are satisfied. First, the claim must make specific representations about the goods or services provided. Second, the healthcare provider's failure to disclose noncompliance with material statutory, regulatory, or contractual requirements makes those representations misleading half-truths. Compliance with the statutory, regulatory or contractual requirements does not have to be an expressly stated condition of payment for liability under the FCA to attach. Rather, liability depends on whether the healthcare provider knowingly violated and/or misrepresented compliance with a legal requirement that the healthcare provider knew was material to the Government's decision to pay the claim.

While the Supreme Court recognized the theory of implied certification, the theory does not turn upon whether the payment requirements are expressly designated as conditions of payment. "Statutory, regulatory and/or contractual requirements are not automatically material, even if they are labeled conditions of payment" and "[a] defendant can have 'actual knowledge' that a condition is material without the Government expressly calling it a condition of payment." The Court further stated that requiring the Government to expressly designate conditions of payment for every regulation would be too burdensome, and the "rigorous" materiality and scienter threshold requirements in the FCA should suffice to ease healthcare provider's concerns.

FCA analysis turns on whether the defendant knowingly violated a requirement that the healthcare provider knew was material to the Government's payment decision. A misrepresentation about compliance with a statutory, regulatory, or contractual requirement must be material to the Government's payment decision in order to be actionable under the False Claims Act. The Court provided clarification on how the "materiality requirements" should be enforced. The Court noted

that the term “material” is defined in the FCA as “having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.” The Court called the materiality standard “demanding” and largely dependent on the particular facts of the case rather than an objective bright-line standard. “[W]hen evaluating materiality under the False Claims Act, the Government’s decision to expressly identify a provision as a condition of payment is relevant, but not automatically dispositive...Conversely, if the Government pays a particular claim in full despite its actual knowledge that certain requirements were violated, that is very strong evidence that those requirements are not material. Or, if the Government regularly pays a particular type of claim in full despite actual knowledge that certain requirements were violated, and has signaled no change in position, that is strong evidence that the requirements are not material.”

The Supreme Court specifically disagreed with the First Circuit’s “extraordinarily expansive” interpretation of materiality under the FCA that “any statutory, regulatory, or contractual violation is material so long as the defendant knows that the Government would be entitled to refuse payment were it aware of the violation.” Accordingly, the Court vacated and remanded the case to the First Circuit “for reconsideration of whether the defendants have sufficiently pleaded a False Claims Act violation.”

Encouraging for healthcare providers, the Supreme Court also emphasized that the False Claims Act is not a means of imposing treble damages and other penalties for insignificant regulatory or contractual violations. It will be interesting to see how the Federal District Courts interpret the Supreme Court's ruling and apply it on a case-by-case basis.

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