

Supreme Court clarifies basis for liability under the False Claims Act

June 16, 2016

On June 16, 2016, the U.S. Supreme Court issued its ruling in *Universal Health Services, Inc. v. United States ex rel. Escobar*.

The case involves Universal Health Services' Medicaid reimbursement claims for mental health care services. The relators, Julio Escobar and Carmen Correa, alleged that their daughter was treated by unlicensed and unsupervised staff at a clinic owned and operated by Universal Health Services. They contended that Universal Health Services violated the False Claims Act (FCA) by submitting bills for staff members who were not properly licensed or supervised, as was required by Massachusetts regulations.

The District Court dismissed the complaint, finding that the relators failed to plead falsity, because the applicable Massachusetts regulations did not state that they were conditions of payment. Rather, they were conditions of participation. The First Circuit reversed, holding that compliance with the licensure and supervision regulations was a condition of payment. Universal Health Services had impliedly certified compliance with these regulations when it submitted claims for payment.

The Supreme Court held that this "implied certification theory" can be a basis for liability under the FCA but limited its application to situations in which the entity submitting a claim makes specific representations about its services but does not disclose its noncompliance with relevant laws or regulations.

In the 8-0 ruling, the Court [indicated](#) that it does not agree with the First Circuit's "...expansive view that any statutory, regulatory, or contractual violation is material so long as the defendant knows that the [g]overnment would be entitled to refuse payment were it aware of the violation." As such, the Court vacated the First Circuit's judgement and remanded the case for further proceedings consistent with the Court's decision.

Notably, the Court also held that FCA liability for non-disclosure of violations does not depend on whether or not compliance with laws or regulations was an express condition of payment.

"A defendant can have 'actual knowledge' that a condition is material even if the [g]overnment does not expressly call it a condition of payment. What matters is not the label that the [g]overnment attaches to a requirement, but whether the defendant knowingly violated a requirement that the defendant knows is material to the [g]overnment's payment decision," Justice Clarence Thomas wrote.

This holding effectively blurs the line between conditions of payment and conditions of participation in relation to the FCA.

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