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\$350 million FCA verdict against nursing facility operator vacated

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On January 11, 2018, a federal judge [vacated](#) a nearly \$350 million verdict against a Florida nursing facility operator accused of submitting false claims based on the theory “that upcoding of RUG levels and failure to maintain care plans made [the defendants’] claims to Medicare and Medicaid false or fraudulent.” The judge relied on the [Escobar decision](#) in finding that the relator failed to offer evidence of materiality of the alleged defects in the nursing facilities’ claims to Medicare and Medicaid.

In *Escobar*, the Supreme Court held that the False Claims Act (FCA) requires the relator to prove the non-compliance was material and the defendant knew the noncompliance was material to the government’s payment decision. In the decision vacating the verdict against the nursing home operator, the judge stated:

Not only did the relator fail to prove that the governments regarded the disputed practices as material and would have refused to pay, but the relator failed to prove that the defendants submitted claims for payment despite the defendants’ knowing that the government would refuse to pay the claims if either or both governments had known about the disputed practices. In fact, both governments were — and are — aware of the defendants’ disputed

practices, aware of this action, aware of the allegations, aware of the evidence, and aware of the judgments for the relator — but neither government has ceased to pay or even threatened to stop paying the defendants for the services provided to patients throughout Florida continuously since long before this action began in 2011.

The potential impact of this decision is not yet known. But the judge's reliance on the fact that neither CMS nor Florida Medicaid took any steps to halt payments to these nursing facilities the decision could lead to more aggressive action by CMS and state Medicaid agencies to hold payments to defendants in false claims actions in order to avoid a finding that materiality cannot be proven.