



August 30, 2016

Supreme Court of the United States Expands False Claims Act Liability

By: Divya Srivastav-Seth, Esq.

On June 16, 2016, the United States Supreme Court unanimously decided in Universal Health Servs. v. United States ex rel. Escobar, 136 S.Ct. 1989 (U.S. 2016) (referred to hereinafter as “Escobar”), to expand liability under the False Claims Act (“FCA”), 31 U.S.C. §§ 3729-33, and include actions based on violations of implicit representations of compliance with relevant laws which are material to the federal government’s payment of benefits. The Escobar decision confirmed the application of the implied certification theory of liability under the FCA which had split the federal courts over its validity. See Escobar at 1999.

The FCA, in pertinent part, imposes significant penalties on any person who knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval or who knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim to federally funded programs for payment. See 31 U.S.C. §§ 3729(a)(1)(A)-(B). The FCA defines “material” as having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property. See 31 U.S.C. § 3729(b)(4). The FCA also contains a *qui tam* provision, which permits a private individual to enforce this provision through a lawsuit and share a percentage of the recovery amount. See 31 U.S.C. § 3730(b)(1). A *qui tam* litigant can realize between 15%-25% of the award if the government intervenes in the lawsuit and between 25%-30% of the award if the government does not intervene. See 31 U.S.C. §§ 3730(d)(1)-(2). Defendants are also subject to treble damages plus civil penalties. See 31 U.S.C. § 3729(a)(1)(G).

The Escobar decision originated from the death of a teenage patient at a mental health service facility owned and operated by a subsidiary of Universal Health Services, Inc. which allegedly permitted unauthorized and unlicensed employees to diagnose and prescribe medications. The relatives of the patient initiated the lawsuit under the *qui tam* provisions of the FCA. They claimed that the facility had misrepresented the goods and services provided because the health care provider failed to disclose violations of relevant statutes, regulations and contracts which were material to the eligibility of the provider to obtain Medicaid reimbursement. The United States District Court for the District of Massachusetts dismissed the action because it was not based on a violation of an express condition. See 2014 U.S. Dist. LEXIS 40098 (D. Mass., 2014). The United States Court of Appeals for the First Circuit reversed the dismissal and found that every claim contained an implicit representation of compliance. See 780 F.3d 504 (1st Cir. Mass. 2015).

The Supreme Court held that a basis for a FCA action does not depend on whether the alleged certification of compliance is an express or implied requirement, but rather if the defendant knowingly violated or misrepresented compliance with requirements which it knew were material to the government's payment decision. The Supreme Court stated that the FCA claim was valid under the implied certification theory of liability because the facility listed certain payment codes on its claims submissions which were misleading due to the facility's failure to disclose its many violations of basic staff and licensing requirements. See Escobar at 1996. The Supreme Court cautioned, however, that any claim based on the implied certification theory must satisfy the FCA's rigorous materiality and scienter requirements, stating that the FCA is not "a vehicle for punishing garden-variety breaches of contract or regulatory violations." Id. at 2003.

The healthcare regulatory environment is especially complex and ripe for violations. Healthcare providers are therefore encouraged to heighten and focus their compliance and oversight efforts to adjust to this most recent expansion of potential liability. For more information on the FCA, the impact of the Escobar decision and compliance issues or concerns, please feel free to contact any member of the firm's Health Care Law Practice Group for further discussion.

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FLORHAM PARK

220 Park Avenue
PO Box 991
Florham Park, NJ 07932
Tel: 973-539-1000
www.spsk.com

PARAMUS

Country Club Plaza
115 West Century Road Suite 100
Paramus, NJ 07652
Tel: 201-262-1600

SPARTA

351 Sparta Avenue
Sparta, NJ 07871
Tel: 973-295-3670

NEW YORK

116 West 23rd Street
Suite 500
New York, NY 10011
Tel: 212-386-7628