**Key Supreme Court Decision Addresses Liability under the False Claims Act**

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On June 16, 2016, the U.S. Supreme Court issued a long-awaited decision addressing the scope of liability under the False Claims Act ("FCA"). In *Universal Health Services, Inc. v. U.S. ex rel. Escobar,* the Court unanimously held that the FCA may impose liability when a party falsely implies that specific services were provided in compliance with all material payment requirements.[1] The decision is important to any healthcare provider participating in federal healthcare programs.

The FCA, generally, imposes liability upon any party who knowingly presents, or causes to be presented, false or fraudulent claims for payment to the federal government.[2] The FCA may be enforced by the U.S. Department of Justice or by private parties (whistleblowers) who bring civil *qui tam* suits in "the name of the government."[3] Parties found liable under the FCA may be subject to treble damages and up to $10,000 per claim.[4]

*Escobar* arose after a teenage beneficiary of the Massachusetts Medicaid program suffered a fatal reaction to medication prescribed at a mental health facility. It was later discovered that the practitioner who prescribed the medication, and various other professionals who treated the teenager, lacked requisite credentials. The girl's parents brought a *qui tam* lawsuit alleging that the facility violated the FCA under the theory of "implied false certification." According to this theory, a reimbursement request constitutes a claimant's implied certification of compliance with all statutes, regulations, and contractual requirements that are material conditions of payment. If a claimant fails to comply with material statutes, regulations, and contractual requirements, a subsequent claim for payment may be viewed as false or fraudulent. In *Escobar*, the parents argued that the mental health facility defrauded the government by submitting claims that implied – falsely – that mental health services were provided in accordance with Medicaid regulations pertaining to staff qualifications and licensing requirements. The Court agreed that the mental health facility's claims constituted misrepresentations.

*Escobar* resolves a dispute among the lower courts as to the validity and scope of the implied false certification theory. While some lower courts previously rejected the theory in its entirety, the decision has affirmed that it is indeed a viable basis for FCA lawsuits. Specifically, the Court held that a party may be found liable under the FCA if 1) it makes specific

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[1] *Universal Health Services, Inc. v. U.S. ex rel. Escobar*, 136 S.Ct. 1989 (2016)
[2] 31 U.S.C. § 3729(a)(1)(A)
[3] 31 U.S.C. § 3730
[4] 31 U.S.C. § 3729(a)

representations about the goods or services provided (including payment codes specified on claim forms); and 2) its failure to disclose noncompliance with material statutory, regulatory, or contractual requirements amounts to a misrepresentation or “misleading half-truth.” Applying that holding to the facts in *Escobar*, the Court concluded that the mental health facility’s claims constituted misrepresentations in that they specified certain payment codes for mental health services without disclosing the fact that those services were provided in violation of basic staff and licensing requirements.

While the implied false certification theory broadens the scope of liability under the FCA, the Court emphasized that the FCA is not an “all-purpose antifraud statute” designed to impose penalties for insignificant misrepresentations. The Court stressed that a party’s 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 FCA. Though the Court did not provide much guidance on the definition of “material,” it specifically noted that requirements do not need to be expressly designated a condition of payment in order to be deemed material. Conversely, simply because a requirement has been designated as an express payment condition does not necessarily mean it is material.

Although the full implications of *Escobar* are difficult to predict, the decision has the potential of leading to increased FCA litigation. For healthcare providers who participate in federal healthcare programs, the decision should underscore the importance of maintaining rigorous compliance programs in all aspects of operation.