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Universal Health Services v. Escobar: Avoiding Implied Certification Liability Under FCA

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1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

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*Universal Health
Services v.
United States ex rel.
Escobar*

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KING & SPALDING

- A UHS subsidiary operated a mental health facility in Lawrenceville, MA.
- Relators' daughter died after being treated there for bipolar disorder by individuals who allegedly were not properly licensed.

- A state investigation found “violations of “over a dozen Massachusetts Medicaid regulations governing the qualifications and supervision required for staff at mental health facilities.”

Qui Tam Complaint

- UHS allegedly submitted false claims to Medicaid under the “implied certification” theory by using payment codes corresponding to specific mental-health services but failing to disclose regulatory violations involving those services.

- United States declined to intervene.
- District court dismissed the complaint for failure to state a claim on the ground that the regulations were not “conditions of payment.”

The First Circuit Reversed

- UHS's claims "implicitly communicate[d]" that UHS had "conformed to the relevant program requirements, such that it was entitled to payment."
- UHS violated Medicaid regulations that were clear conditions of payment.

The Supreme Court Granted *Cert* to Decide Two Questions

- (1) Whether the implied-certification theory is viable.
- (2) If so, whether liability under that theory is limited to violations of statutes, regulations, and contractual provisions that are expressly designated as “conditions of payment.”

Holdings

The Court's Answers to the Questions Presented

- (1) The implied-certification theory is viable.
- (2) Liability under that theory is not limited to expressly designated conditions of payment.

Two Limitations on the Implied-Certification Theory

- (1) **Falsity** did the claim contain specific, misleading representations?
- (2) **Materiality** were those representations material to the government's payment decision?

Falsity

- “[T]he claim does not merely request payment, but also makes specific representations about the goods or services provided.”

Falsity (cont'd)

- “[H]alf-truths—representations that state the truth as far as it goes, while omitting critical qualifying information—can be actionable misrepresentations.”

Materiality

- Materiality is a “rigorous” and “demanding” standard that precludes liability for “garden-variety breaches of contract or regulatory violations.”

Materiality (cont'd)

- Regulatory noncompliance is not material just because the government “would have the option to decline to pay.”
- Instead, materiality looks to the effect on the government’s “likely or actual behavior.”

Materiality (cont'd)

- If the government pays the claim at issue or similar claims despite knowing about the noncompliance, that is strong evidence that the noncompliance is not material.

Open Questions

1. What is the status of the government's broader theory?

- “We need not resolve whether all claims for payment implicitly represent that the billing party is legally entitled to payment.”

2. How will lower courts decide whether a claim contains misleading half-truths?

- “Anyone [reading Universal Health’s claims] would probably—but wrongly—conclude that the clinic had complied with core Massachusetts Medicaid requirements....”

3. How will lower courts decide if noncompliance is material?

- Materiality “cannot be found where noncompliance is minor or insubstantial.”

4. How will the new materiality standard affect discovery?

- From the government?
- From third-party contractors?

5. When will courts decide materiality?

- “We reject Universal Health’s assertion that materiality is too fact intensive for courts to dismiss False Claims Act cases on a motion to dismiss or at summary judgment.”