

False Claims Act Liability Based on Implied Certification

April 26, 2016

When the U.S. Supreme Court granted certiorari in *Universal Health Services v. United States ex rel. Escobar* in late 2015, health care providers began optimistically awaiting a decision. This case is expected to decide whether the False Claims Act (FCA) can be used as a sweeping enforcement mechanism for general regulatory compliance. *Escobar* involves a subsidiary of Universal that operates a mental health clinic in Lawrence, Massachusetts, and receives governmental funds from the state Medicaid program. The respondents are the parents of a clinic patient who died of a seizure. They claim Universal, by submitting bills to the state Medicaid agency for services rendered by its staff members, fraudulently misrepresented that those staff members were licensed and supervised in accordance with Massachusetts law and consequently violated the FCA, relying on the liability theory of "implied certification." Earlier this year, major organizations representing the health care industry offered arguments to dispute the implied certification theory. Those filing amicus briefs in favor of Universal included the American Hospital Association, Federation of American Hospitals, and Association of American Medical Colleges. These groups urged the court to consider that the implied certification theory "renders the complexity of the Medicare and Medicaid programs a potential gold mine for opportunistic relators." The American Medical Association quoted the court's previous warning, "expansive readings of the FCA can create 'almost boundless' liability." Universal argues violations of regulatory requirements do not render a claim for payment false or fraudulent. Rather, liability for implied certification, if any, "must rest on noncompliance with an expressly stated condition of payment."

Authored By



Caycee D. Hampton

Related Practices

Health Care

Related Industries

Health Care

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.