

Supreme Court to Rule on Theory Underlying False Claims Act Suits: The United States Supreme Court recently granted *certiorari* in the case of *Universal Health Services v. United States ex rel. Escobar*. The case before the court focuses on one theory whistle-blowers and the government use in bringing False Claims Act (“FCA”) cases to court – implied certification. It is widely accepted and understood that the FCA makes it illegal to knowingly submit fraudulent claims to the government. Typically, such cases involve billing for services not actually performed. In recent years, however, FCA litigation has expanded under the theory of “implied certification.” Implied certification cases involve whistle-blowers who allege providers submitted false claims by failing to follow applicable regulations. Providers sometimes are held liable for not following technical regulations even if the government never explicitly stated that following those regulations was a condition of payment, and even if the provider never explicitly vouched that it had complied with the regulation. Opponents and critics of the implied certification theory believe it is unconscionable to sue organizations under the FCA for compliance issues arising from thousands of pages of state and federal rules and regulations. It is their belief that federal and state agencies, not the courts, should deal with such violations. With lower courts split on the issue, the Supreme Court will weigh in on this issue, which could potentially deal a crucial blow to many pending and future FCA suits.

Medicare Penalizes 758 Hospitals Over Patient Safety Issues: The CMS recently released a report noting that it would be fining 758 hospitals with higher rates of patient safety incidents. The penalties, which were created in 2010 with the passing of the Affordable Care Act, are the toughest sanctions Medicare has taken on hospital safety to date. The report further noted that more than half of these hospitals were also fined last year. In determining which hospitals should be penalized, the CMS assessed the frequency of several kinds of infections, sepsis, hip fractures and other complications. In response to its findings, Medicare will lower all its payments to the penalized hospitals by 1 percent over the course of the federal fiscal year, which Medicare estimates will cost these hospitals \$364 million. Still, patient safety advocates believe the fines are not significant enough to alter hospital behavior and that they only examine a small portion of the types of mistakes that take place at hospitals. Medicare has announced, though, that it does plan to assess more types of conditions in future years. Critics of the Medicare penalties, however, believe that they are counterproductive and unfairly levied against hospitals that have made progress in safety but have not caught up to most facilities. Of particular concern to hospital administrators is the fact that the health law unjustifiably requires Medicare to punish a quarter of hospitals each year. In practice, though, only about 1 in 6 hospitals is being penalized due to Congress’ exemption of veterans hospitals, children’s hospitals and critical access hospitals, which are generally the sole providers in their areas.

United States Attorney Settles with NOVARTIS: The U.S. Attorney for the Southern District of New York announced a \$390 million settlement against NOVARTIS Pharmaceuticals Corp. (“Novartis”) in a civil fraud lawsuit based on claims that NOVARTIS gave kickbacks to specialty pharmacies in return for recommending two of its drugs, Exjade and Myfortic. Exjade is an iron chelation drug and Myfortic is an anti-rejection drug for kidney transplant recipients. The settlement resolves claims under the federal False Claims Act and numerous state false claims act allegations. This is the third settlement in the lawsuit—in January 2014 and April 2015 two specialty pharmacies, Bioscrip Inc. (“Bioscrip”) and Accredo Health Group (“Accredo”), agreed to pay a total of \$75 million to resolve federal and state claims against them based on the same allegations. Together with the NOVARTIS settlement, the federal and state governments will recover \$465 million based on the kickback allegations in the lawsuit. NOVARTIS agreed to forfeit \$20 million in proceeds and of the remaining \$370 million, the federal government will be paid over \$286 million and the settling states will be paid over \$83 million. The federal Government first intervened against NOVARTIS in April 2013 in an action which was initially brought as a whistleblower lawsuit. For more information see <http://ow.ly/VUjEx>.

For more information on the above items, contact Kern Augustine Conroy & Schoppmann, P.C. at 1-800-445-0954 or via email at info@DrLaw.com.

An educational component of

DrLaw
Insider



INTRODUCING THE NEW PREMIER PROGRAM

We wanted to bring you a step closer to total legal coverage.

We thought you deserved more.

Email us at info@ThePAP.co for more details

To Stay Updated Daily: Search for “KERN AUGUSTINE CONROY & SCHOPPMANN, P.C.” on

