

HUSCH BLACKWELL

Federal False Claims Act Overview 31 U.S.C. §3729

Below is a summary of the Federal False Claims Act (“FCA”), including key liability provisions, definitions of certain terms, and common liability theories found in FCA cases involving health care providers.

Key Liability Provisions (§ 3729(a)(1) (A), (B), & (G))	Any person who presents, or causes another to present, a claim for payment that is false or fraudulent knowing the claim is false	Any person who knowingly makes, uses or causes to be made a false record or statement material to a false or fraudulent claim	Any person who <i>knowingly</i> makes, uses, or causes to be made or used, a false record or statement material to an <i>obligation</i> to pay or transmit money or property to the Government, or <i>knowingly</i> conceals or knowingly and improperly <i>avoids</i> or <i>decreases</i> an <i>obligation</i> to pay or transmit money or property to the Government
Key Terms (§ 3729(b))	<p>“Knowing” or “knowingly” means that a person:</p> <ul style="list-style-type: none"> • Has actual knowledge of the information • Acts in deliberate ignorance of the truth or falsity of the information; or • Acts in reckless disregard of the truth or falsity of the information 	<p>“Obligation” means:</p> <p>An established duty, whether or not fixed, arising from an express or implied contractual grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment</p>	<p>“Material” means:</p> <ul style="list-style-type: none"> • “[H]aving a natural tendency to influence, or be capable of influencing the payment or receipt of money or property” (§ 3729(b)(4)) • Clarified further in <i>Universal Health Services v. U.S. ex rel. Escobar</i> (2016) (136 S.Ct. 1989): <ul style="list-style-type: none"> - Government’s payment of claims, despite knowing a requirement was not met, is “very strong evidence” that requirement is material - Conditions of payment are “relevant but not dispositive” - “[M]inor or insubstantial” noncompliance is immaterial
Common Liability Theories	<p>Factually False</p> <p>Involves submitting a claim for services never provided or an incorrect description of the services</p>	<p>Legally False – Express Certification</p> <p>Explicitly stating that a provider has complied with all applicable regulations</p>	<p>Legally False – Implied Certification</p> <p>By submitting a claim, a provider is implicitly stating that it has complied with applicable and <i>material</i> statutory, regulatory, and contractual requirements (upheld by <i>Escobar</i>)</p>
Potential Penalties	<ul style="list-style-type: none"> • Civil monetary penalties that are periodically adjusted for inflation (and exceed \$10,000 - \$20,000 per claim) AND • Up to 3 times the amount of the Government’s damages 		