

Covington Burling LLP
Decision Tracker: Universal Health Services v. United States ex rel. Escobar

Case Citation	Date	Court	Circuit	Industry Sector	Escobar Issue	Posture	Disposition	Summary of Holding
United States ex rel. Thayer v. Planned Parenthood of the Heartland, Inc., No. 4:11-cv-00129-JAJ-CFB, 2016 WL 7474797 (S.D. Iowa June 21, 2016)	6/21/2016	S.D. Iowa	8th Cir.	Health Care	Implied Certification; Materiality	Motion to Dismiss	Some Claims Dismissed/Denied; Some Claims Proceed	Relator adequately pled an implied certification claim, materiality, and scienter in its complaint alleging that defendant health services provider fraudulently billed Medicaid for reproductive health services by impliedly certifying compliance with applicable Iowa Medicaid laws and regulations.
United States ex rel. Creighton v. Beauty Basics Inc., No. 2:13-CV-1989-VEH, 2016 WL 3519365 (N.D. Ala. June 28, 2016)	6/28/2016	N.D. Ala.	11th Cir.	Education & Labor	Implied Certification; Materiality	Motion to Amend Complaint	Claims Dismissed/Denied	Relator inadequately pled an implied certification claim and materiality in its complaint alleging that defendant beauty school fraudulently submitted financial aid applications to the U.S. Department of Education by impliedly certifying compliance with accreditation requirements. In order to raise an implied certification claim, relator "must" allege the two-part falsity test set forth in <i>Escobar</i> . Relator's proposed amended complaint did not contain sufficient "specific representations about the goods or services provided" to satisfy the "rigorous" standard of materiality under <i>Escobar</i> .
United States ex rel. Voss v. Monaco Enterprises, Inc., No. 2:12-CV-0046-LRS, 2016 WL 3647872 (E.D. Wash. July 1, 2016)	7/1/2016	E.D. Wash.	9th Cir.	Government Contracts	Materiality	Motion to Dismiss	Claims Dismissed/Denied	Relators did not sufficiently demonstrate materiality in support of claims that defendant contractor fraudulently submitted claims for payment by certifying compliance with relevant contractual and regulatory requirements. <i>Escobar</i> "reinforced the necessity of pleading facts to support allegations of materiality" and stated that "limits on FCA liability are to be addressed through strict enforcement of the materiality and scienter requirements."
United States ex rel. Dresser v. Qualium Corp., No. 5:12-cv-01745-BLF, 2016 WL 3880763 (N.D. Cal. July 18, 2016)	7/18/2016	N.D. Cal.	9th Cir.	Health Care	Materiality	Motion to Dismiss	Claims Dismissed/Denied	The government inadequately pled an implied certification claim and materiality in its complaint alleging that defendant health care provider fraudulently submitted claims for payment for sleep-related medical devices by certifying compliance with relevant Medicare regulations. On materiality, the government alleged that it would not have paid defendants had it known of regulatory noncompliance, but it did "not explain why." This failure does not meet <i>Escobar</i> 's "heightened materiality standard."
United States ex rel. Doe v. Health First, Inc., No. 6:14-cv-501-Orl-37DAB, 2016 WL 3959343 (M.D. Fla. July 22, 2016)	7/22/2016	M.D. Fla.	11th Cir.	Health Care	Implied Certification	Motion to Dismiss	Claims Dismissed/Denied	Relator inadequately pled an implied certification claim that defendant health care providers fraudulently submitted claims for reimbursement to Medicare by impliedly certifying compliance with the Anti-Kickback Statute and the Stark Act. After <i>Escobar</i> , the two prongs of the falsity test "must exist to impose liability under the [Implied] Certification Theory." Relators must "be mindful" of this "obligation" when filing a complaint.
United States ex rel. Southeast Carpenters Regional Council v. Fulton Cty., Georgia, No. 1:14-CV-4071-WSD, 2016 WL 4158392, at *1 (N.D. Ga. Aug. 5, 2016)	8/5/2016	N.D. Ga.	11th Cir.	Government Contracts	Materiality	Motion to Dismiss	Claims Dismissed/Denied	Relators inadequately pled materiality in its complaint alleging that defendant contractor fraudulently submitted claims for payment by certifying compliance with the "prevailing wage" provisions of the Davis-Bacon Act. Relators failed to demonstrate this misrepresentation was "so central" to the contract that "the government would not have paid [defendants'] claims had it known of these violations." Therefore, relators failed to show that defendant's compliance was material to the government's decision to pay their claims.
United States ex rel. Cohen v. City of Palmer, Alaska, 668 Fed. App'x 247 (9th Cir. 2016) (memorandum opinion)	8/12/2016	9th Cir.	9th Cir.	Government Contracts	Implied Certification	Appeal from Dismissal	Claims Dismissed/Denied	Dismissal of relator's complaint alleging that defendant contractor fraudulently applied for government stimulus funds by certifying compliance with certain laws, regulations, and contractual provisions was affirmed on appeal. Relator did not demonstrate that defendant failed to comply with any applicable law. Consequently, relator could not demonstrate that that defendant failed to disclose a material noncompliance which made defendant's statements "misleading half-truths."
New Jersey ex rel. Santiago v. Haig's Service Corp., No. 12-4797 (WJM), 2016 WL 4472952 (D.N.J. Aug. 24, 2016)	8/24/2016	D.N.J.	3d Cir.	Government Contracts	Implied Certification	Summary Judgment	Claims Dismissed/Denied	In a New Jersey FCA case, relator inadequately demonstrated an implied certification claim. Relator alleged in its complaint that defendant fraudulently submitted claims to the state by certifying compliance with the New Jersey Prevailing Wage Act. Since the New Jersey FCA is similar to the federal FCA, the court applied <i>Escobar</i> . Like the federal FCA, the New Jersey FCA "proscribes misrepresentation by omission[.]" But even if the defendant failed to properly pay wages, there was no "statutory or contractual requirement" to certify payrolls for payment.

Covington Burling LLP
Decision Tracker: Universal Health Services v. United States ex rel. Escobar

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United States v. Crumb, No. 15-0655-WS-N, 2016 WL 4480690 (S.D. Ala. Aug. 24, 2016)	8/24/2016	S.D. Ala.	11th Cir.	Health Care	Implied Certification; Materiality	Motion to Dismiss	Claims Proceed	The government adequately pled an implied certification claim for several alleged schemes by defendant health care provider to submit false claims to government health insurers for Botox and ultrasound procedures that were not medically necessary, were not supported by qualifying diagnoses, and were represented as multiple patient encounters. The misrepresentations were material to the government's payment decision because, without them, the underlying claims "are not covered and payable claims under applicable rules, regulations, policies and contract terms."
United States ex rel. Knudsen v. Sprint Communications Co., Nos. C13-04476 CRB, C13-4465 CRB, C13-4542 CRB, 2016 WL 4548924 (N.D. Cal. Sept. 1, 2016)	9/1/2016	N.D. Cal.	9th Cir.	Government Contracts	Materiality	Motion to Dismiss	Claims Dismissed/Denied	Relator inadequately pled materiality in its complaint alleging that defendant telephone companies fraudulently overcharged the government in providing cellular and data plan services. A failure to meet a regulatory requirement is not per se material to the government's payment decision. To sufficiently plead materiality, the government must show more, "such as alleging that the government consistently refuses to pay claims that violate the allegedly material term."
United States ex rel. Lee v. Northern Adult Daily Health Care Center, 205 F. Supp. 3d 276 (E.D.N.Y. 2016)	9/7/2016	E.D.N.Y.	2d Cir.	Health Care	Implied Certification; Materiality	Motion to Dismiss	Claims Dismissed/Denied	Relator inadequately pled materiality in its complaint alleging that defendant health care center billed government insurers for inappropriate and discriminatory services that were inconsistent with U.S. Department of Health and Medicaid regulations. Under <i>Escobar</i> , a relator must demonstrate that defendant's "misrepresentations were material and that the government would have refused reimbursement had it known of [defendant's] noncompliance" with applicable regulations.
United States v. TXL Mortgage Corp., No. 15-1658 (JEB), 2016 WL 5108019 (D.D.C. Sept. 20, 2016)	9/20/2016	D.D.C.	D.C. Cir.	Financial Services; Housing	Materiality	Motion for Default Judgment	Default Judgment Entered	The government adequately demonstrated materiality in its complaint alleging that defendant mortgage company provided "facially inaccurate facts" and "violated key FHA underwriting requirements, which then fraudulently induced the government" into endorsing home mortgage loans which subsequently required payout.
United States ex rel. Rose v. Stephens Institute, No. 09-cv-05966-PJH, 2016 WL 5076214 (N.D. Cal. Sept. 20, 2016); 2016 WL 6393513 (N.D. Cal. Oct. 28, 2016)	9/20/2016	N.D. Cal.	9th Cir.	Education & Labor	Implied Certification; Materiality	Reconsideration of Denial of Summary Judgment	Claims Proceed	Relators adequately pled an implied certification claim and materiality in their complaint alleging that defendant university fraudulently obtained funds from the U.S. Department of Education by certifying compliance with Title IV's incentive compensation ban ("ICB"). On implied certification, <i>Escobar</i> "did not establish a rigid two-part test for falsity that must be met every single implied certification case." Here, defendant did make "specific representations" in its payment claims that were "misleading half-truths." On materiality, "[n]othing in <i>Escobar</i> suggests that actions short of a complete revocation of funds are irrelevant to the court's materiality analysis." Thus, relators' evidence concerning the government's use of corrective reforms, fines, and settlement agreements show that ICB compliance was "capable of influencing" the government's payment decision. On October 28, 2016, the court certified three questions for interlocutory appeal: (1) whether <i>Escobar</i> 's two-part test must always be satisfied for implied certification liability; (2) whether an educational institution automatically loses its institutional eligibility if it fails to comply with the ICB; and (3) whether <i>Escobar</i> overruled <i>United States ex rel. Hendow v. Univ. of Phoenix</i> , 461 F.3d 1166, 1174 (9th Cir. 2006), finding that an ICB violation is material under the FCA.
United States ex rel. George v. Fresenius Medical Care Holdings, Inc., No. 2:12-cv-00877-AKK, 2016 WL 5361666 (N.D. Ala. Sept. 26, 2016)	9/26/2016	N.D. Ala.	11th Cir.	Health Care	Implied Certification; Materiality	Summary Judgment	Claims Dismissed/Denied	Relator inadequately demonstrated an implied certification claim and materiality in its complaint alleging that defendant dialysis provider fraudulently obtained funds from Medicare by purposefully shortening run times and then billing Medicare for full treatment times. Though Medicare does not ask providers to report on treatment duration, there is "an inherent assumption" that treatment will be of a "sufficient duration" to "realize" treatment benefits. Even so, relator failed to provide evidence regarding how much time was shaved off and whether this affected treatment efficacy, preventing the court from determining whether the defendants omitted "critical qualifying information" that would be material to the payment decision.

Covington Burling LLP
Decision Tracker: Universal Health Services v. United States ex rel. Escobar

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United States ex rel. Ferris v. Afognak Native Corp., No. 3:15-cv-0150-HRH, 2016 WL 9088706 (D. Alaska Sept. 28, 2016)	9/28/2016	D. Alaska	9th Cir.	Government Contracts	Materiality	Request for Leave to File Motion for Judgment on the Pleadings	Claims Proceed	Relator's complaint alleged that defendants fraudulently obtained government contracts by falsely certifying that its business complied with the Small Business Administration's 8(a) Business Development Program. Relator also alleged these misrepresentations "had the potential" to influence payment. Under <i>Escobar</i> , "such vague allegations are probably not sufficient." Instead, a relator "must allege some facts that show that the government actually does not pay claims if they involve the statutory violations in question." However, defendants failed to make this argument in its motion for judgment on the pleadings, which instead argued that defendants were eligible 8(a) business, and so leave to file the motion was denied.
United States ex rel. Scharff v. Camelot Counseling, No. 13-cv-3791 (PKC), 2016 WL 5416494 (S.D.N.Y. Sept. 28, 2016)	9/28/2016	S.D.N.Y.	2d Cir.	Health Care	Materiality	Motion to Dismiss	Claims Dismissed/Denied	Relator inadequately pled materiality in its complaint alleging that defendant substance-abuse treatment center fraudulently submitted claims for Medicaid reimbursement that did not comply with New York Medicaid regulations. Relator's "conclusory assertion" that defendant "failed to comply with material Medicaid regulations" does not meet the "demanding" requirement to allege materiality after <i>Escobar</i> . Specifically, relator failed to connect the fraudulent conduct to specific claims for reimbursement, to explain why the conduct was material, to cite express conditions for reimbursement, and to allege that the government has refused to reimburse other clinics for engaging in similar conduct.
City of Chicago v. Purdue Pharma L.P., 211 F. Supp. 3d 1058 (N.D. Ill. 2016)	9/29/2016	N.D. Ill.	7th Cir.	Health Care; Pharmaceuticals & Medical Devices	Implied Certification; Materiality	Motion to Dismiss	Claims Dismissed/Denied	The City did not state an implied certification claim in its complaint alleging that defendant pharmaceutical companies deceptively marketed opioid drugs, causing medical professionals to submit false claims for prescription and office visit reimbursement. On implied certification, <i>Escobar</i> abrogated Seventh Circuit doctrine rejecting the implied certification theory. Notwithstanding, the City alleged that it "continues to pay" for false claims, in contradiction to the materiality standard presented in <i>Escobar</i> .
United States ex rel. Miller v. Weston Educational, Inc., 840 F.3d 494 (8th Cir. 2016)	10/19/2016	8th Cir.	8th Cir.	Education & Labor	Materiality	Appeal from Summary Judgment to Defense	Claims Proceed	Relators adequately demonstrated materiality in their complaint alleging that defendant university fraudulently induced the U.S. Department of Education to provide Title IV financial aid funds by altering grade and attendance records. The government "expressly conditions" defendant's participation in Title IV with recordkeeping compliance. Also, the government relied upon these records to ensure regulatory compliance. Finally, relators did not have to prove "actual harm" because this is not an element of materiality.
United States ex rel. Nelson v. Sanford-Brown, Ltd., 840 F.3d 445 (7th Cir. 2016)	10/24/2016	7th Cir.	7th Cir.	Education & Labor	Implied Certification; Materiality	Appeal from Summary Judgment to Defense	Claims Dismissed/Denied	In case on remand from Supreme Court for reconsideration in light of <i>Escobar</i> , which abrogated court's prior opinion rejecting relator's claims on the ground that the implied certification theory cannot give rise to liability under the FCA, relator failed to establish an implied certification claim based on allegations that defendant, a for-profit higher education enterprise, fraudulently obtained funds from the government by certifying compliance with Title IV regulations. Relator did not meet either of <i>Escobar's</i> two conditions establishing false certification liability (defendant (1) made "specific representations about the goods or services provided" (2) that were rendered "misleading half-truths" based on defendant's "failure to disclose noncompliance with material statutory, regulatory, or contractual requirements"), because he failed to offer any evidence that misrepresentations were made in connection with claims for payment. Relator also failed to establish materiality due to his failure to demonstrate that the "government's decision to pay [defendant] would likely or actually have been different had it known of [defendant]'s alleged noncompliance with Title VI regulations," when the payer agency had already examined defendant's practices multiple times and declined to impose any penalties.
United States v. Dynamic Visions, Inc., 216 F. Supp. 3d 1 (D.D.C. 2016)	10/24/2016	D.D.C.	D.C. Cir.	Health Care	Materiality	Summary Judgment (Government Motion)	Claims Granted	The government adequately pled an implied certification claim and materiality in its complaint alleging that defendant home health care provider fraudulently submitted claims for Medicaid reimbursement that did not contain "plans of care" as required by regulation. The government demonstrated materiality through three undisputed forms of evidence: the D.C. Medicaid regulation stated that reimbursement is only made for "authorized services"; the defendant's contract states that the government can withhold payment for regulatory noncompliance; and the Medicaid Director stated it does not reimburse for services without a plan of care.

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United States ex rel. Fisher v. IASIS Healthcare LLC, No. CV-15-00872-PHX-JJT, 2016 WL 6610675 (D. Ariz. Nov. 9, 2016)	11/9/2016	D. Ariz.	9th Cir.	Health Care	Implied Certification; Materiality	Motion to Dismiss	Claims Proceed	Relators adequately pled an implied certification claim in their complaint alleging that defendant fraudulently submitted claims for Medicare and Medicaid reimbursement that did not comply with multiple contractual and regulatory requirements. Even though a "legal or contractual violation alone is not enough" to satisfy materiality, relators point to relevant contractual requirements which were "fundamental to Medicare and Medicaid operation and material to any government decision to pay claims." Since these requirements were the "sine qua non" of government payment, relators adequately pled materiality.
New York ex rel. Khurana v. Spherion Corp., No 15 Civ. 6605 (JFK), 2016 WL 6652735 (S.D.N.Y. Nov. 10, 2016); 2017 WL 1437204 (S.D.N.Y. Apr. 21, 2017)	11/10/2016	S.D.N.Y.	2d Cir.	Government Contracts	Implied Certification	Motion to Dismiss	Claims Dismissed/Denied	Relator brought suit under the New York False Claims Act and the New York City False Claims Act, alleging that defendant contractor fraudulently submitted claims to the City and State of New York that did not comply with multiple contractual provisions. Relying on <i>Escobar</i> , the court found that relator inadequately pled an implied certification claim. False certification applies "not to a breach of a contractual provision itself, but instead to a false certification of contractual, statutory, or regulatory compliance made in connection with a claim submission." Relator failed to allege that defendant "expressly certified compliance with any provision of its contract" or made "specific representations" in connection with its claim for payment.
United States ex rel. Panarello v. Kaplan Early Learning Co., No. 11-CV-00353-WMS-JJM (W.D.N.Y. Nov. 14, 2016)	11/14/2016	W.D.N.Y.	2d Cir.	Government Contracts	Implied Certification; Materiality	Reconsideration of Dismissal	Claims Dismissed/Denied	The government inadequately pled an implied certification claim in its complaint alleging defendant contractor fraudulently submitted claims for payment by certifying compliance with the Davis-Bacon Act's requirement to pay "prevailing wages." <i>Escobar</i> clarified that specific representations must be present in "some" circumstances. However, <i>Escobar</i> "cannot be read to impose the 'specific representation' requirement in every case." On materiality, the government must demonstrate more than it would have the "option to decline" payment.
United States ex rel. Grant v. United Airlines, Inc., No. 2:15-cv-00794, 2016 WL 6823321 (D.S.C. Nov. 18, 2016)	11/18/2016	D.S.C.	4th Cir.	Government Contracts	Implied Certification	Motion to Dismiss	Claims Dismissed/Denied	Relator inadequately pled an implied certification claim in its complaint alleging that defendant airline fraudulently submitted claims for payment for repair work that was not in compliance with internal policies and industry standards. Though relator alleged violations of internal policies and industry standards, he did not include any evidence that these were incorporated into defendant's contract. Consequently, relator could not meet the requirements of an implied certification theory because it "failed to tether any of the broad allegations of a fraudulent scheme to an actual claim that [defendant] submitted to the government."
United States ex rel. Escobar v. Universal Health Services, Inc., 842 F.3d 103 (1st Cir. 2016)	11/22/2016	1st Cir.	1st Cir.	Health Care	Materiality	Appeal from Dismissal	Claims Proceed	The government sufficiently pled materiality in its complaint alleging that defendant health care provider fraudulently submitted claims for Medicaid reimbursement that did not comply with Massachusetts Medicaid regulations. <i>Escobar</i> requires a "holistic" approach to materiality "with no one factor being necessarily dispositive." Three factors together demonstrate materiality. First, regulatory compliance was a condition of payment. Second, the relevant regulations were "the very essence" of the contractual relationship. Finally, there was no evidence that the government paid claims despite having knowledge of defendants' violations.
United States v. Luce, No. 11 C 05158, 2016 WL 6892857 (N.D. Ill. Nov. 23, 2016), <i>aff'd in part, rev'd in part</i> 873 F.3d 999 (7th Cir. 2017)	11/23/2016	N.D. Ill.	7th Cir.	Financial Services; Housing	Materiality	Summary Judgment (Government Motion)	Claims Granted	The government sufficiently demonstrated materiality with respect to its claim that defendant, the owner and president of a mortgage servicer, violated FCA by falsely certifying that he had no criminal history so that his company could receive mortgage insurance from the U.S. Department of Housing and Urban Development (HUD) under the Fair Housing Act (FHA). HUD regulations made certification a condition of basic eligibility for participation in the FHA insurance program and, as such, certification was more than just a condition of payment; fact that HUD did not immediately suspend defendant's company from the program upon learning of his false certification, but instead initiated debarment proceedings, is not evidence that HUD would have allowed participation in the program despite knowledge of the false certification. Further, <i>Escobar</i> does not require application of proximate causation standard, and court appropriately followed Seventh Circuit's longstanding rule that FCA violations require only "but for" causation.

Covington Burling LLP
Decision Tracker: Universal Health Services v. United States ex rel. Escobar

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United States ex rel. Beauchamp v. Academi Training Center, Inc., 220 F. Supp. 3d 676 (E.D. Va. 2016)	11/30/2016	E.D. Va.	4th Cir.	Government Contracts	Implied Certification; Materiality	Motion for Judgment on the Pleadings	Claims Proceed	Relator adequately alleged an implied certification claim in its complaint alleging that defendant security company fraudulently billed the U.S. Department of State by impliedly certifying compliance with contractual weapon qualifications requirements. "[B]y using payment and other codes that conveyed weapons qualifications information without disclosing defendant's many alleged violations of the contract's weapons qualifications requirement, defendant's claims constituted misrepresentations." On materiality, "common sense" shows that the government's payment decision is affected by whether the weapons were built in accordance with weapons qualifications requirements.
United States v. Savannah River Nuclear Solutions, LLC, No. 1:16-cv-00825-JMC, 2016 WL 7104823 (D.S.C. Dec. 6, 2016)	12/6/2016	D.S.C.	4th Cir.	Government Contracts	Materiality	Motion to Dismiss	Claims Proceed	The government sufficiently pled materiality in its complaint alleging that defendant nuclear waste disposal contractor fraudulently submitted claims for payment to the U.S. Department of Energy by certifying compliance with contractual provisions that all costs were "allowable." Two factors were used to demonstrate materiality. First, "common sense" suggested that the alleged "unallowability" of certain personnel costs would influence the government's payment decision. Second, defendants' alleged conduct in "covering up" costs suggested they were material. Statements were material even though they were made to a third party and not to the government because the third party had an obligation to forward that information to the government.
United States ex rel. Johnson v. Golden Gate National Senior Care, LLC, 223 F. Supp. 3d 822 (D. Minn. 2016)	12/9/2016	D. Minn.	8th Cir.	Health Care	Materiality	Summary Judgment	Claims Proceed	Relator adequately pled materiality in its complaint alleging that defendant occupational therapy service provider fraudulently submitted Medicare claims in connection with services provided to nursing home patients by certifying compliance with Medicare regulations. Defendant argued that the regulatory violations constitute "conditions of participation" and "not conditions of payment," but this distinction "is not dispositive of the FCA's materiality requirement." Instead, courts must "engage in a fact-intensive inquiry." Thus, "fact issues remain" as to materiality.
United States ex rel. Tessler v. City of New York, No. 14 CV-6455 (JMF), 2016 WL 7335654 (S.D.N.Y. Dec. 16, 2016), <i>aff'd</i> --- F. App'x ---, No. 17-178-cv, 2017 WL 4457141 (2d Cir. Oct. 5, 2017)	12/16/2016	S.D.N.Y.	2d Cir.	Health Care	Implied Certification	Motion to Dismiss	Claims Dismissed/Denied	Dismissal of relator's claim that defendant fraudulently submitted claims to the federal government after failing to recertify "at least a thousand" Medicare recipients was warranted. Relator failed "to identify a sufficiently 'specific' representation about the services provided" to support an implied certification claim. On scienter, relator's complaint supported an inference that defendant acted "through mistake or system error"; this does not "remotely support" the inference that defendant "knew (or was reckless in not knowing) that it was causing false claims to be presented."
D'Agostino v. ev3, Inc., 845 F.3d 1 (1st Cir. 2016)	12/23/2016	1st Cir.	1st Cir.	Health Care; Pharmaceuticals & Medical Devices	Materiality	Appeal from Dismissal	Claims Dismissed/Denied	Relator inadequately pled materiality in its complaint alleging that (1) defendant medical device manufacturer fraudulently caused the Food and Drug Administration ("FDA") to approve its device by making misrepresentation and (2) hospitals have sought reimbursement from the federal government through the Centers for Medicare and Medicaid Services ("CMS"). Ultimately, the court recognized that FCA should not be used as a vehicle to "second-guess" FDA judgments. But even if an FCA claim could proceed, relator inadequately demonstrated materiality. Relator failed to make the necessary allegations showing that defendant's misrepresentations "actually" caused the FDA to grant approval it would not have otherwise granted. Furthermore, the fact that the CMS has continued to reimburse despite allegations "casts serious doubt on the materiality of the fraudulent representations."
United States ex rel. Williams v. City of Brockton, No. 12-cv-12193-IT, 2016 WL 7428187 (D. Mass. Dec. 23, 2016)	12/23/2016	D. Mass.	1st Cir.	State/Local Government	Materiality	Motion to Dismiss	Claims Proceed	Relator adequately pled materiality in its complaint alleging that defendant police department fraudulently obtained funding from the U.S. Department of Justice by certifying compliance with statutory, regulatory, and contractual requirements related to anti-discrimination. Relator adequately alleged materiality under non-discrimination provisions because they go "to the very essence of the bargain" of the DOJ's decision to provide funding and "compliance is an express condition of payment." Relator also alleged materiality with respect to provisions requiring police departments to maintain the budgeted number of officers after receiving funding; despite relator's failure to "identify the statutes that underlie those requirements," relator alleged that the government has barred payment for violating these requirements.

Covington Burling LLP
Decision Tracker: Universal Health Services v. United States ex rel. Escobar

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United States ex rel. Brown v. Celgene Corp., 226 F. Supp. 3d 1032 (C.D. Cal. 2016)	12/28/2016	C.D. Cal.	9th Cir.	Health Care; Pharmaceuticals & Medical Devices	Implied Certification; Materiality	Summary Judgment	Some Claims Dismissed/Denied; Some Claims Proceed	Relator adequately pled an implied certification claim in its complaint alleging that defendant pharmaceutical company promoted non-medically accepted uses of two drugs, causing physicians to prescribe those drugs for off-label uses, which naturally and foreseeably led to claims being presented to government healthcare programs. <i>Escobar</i> "leaves undisturbed" the Ninth Circuit cases holding that "a claim is 'false' if it is statutorily ineligible for reimbursement." On materiality, it is "highly 'relevant'" that Medicaid Part D regulations only allow for reimbursement for a "medically accepted indication." <i>Escobar</i> "does not foreclose that a statutory requirement may be so central to the functioning of a government program that noncompliance is material as a matter of law."
United States ex rel. Kelly v. Serco, Inc., 846 F.3d 325 (9th Cir. 2017)	1/12/2017	9th Cir.	9th Cir.	Government Contracts	Implied Certification; Materiality	Appeal from Summary Judgment to Defense	Claims Dismissed/Denied	Relator inadequately did not demonstrate an implied certification claim that defendant, a technology and project management services provider, fraudulently submitted claims for payment to the U.S. Department of Defense by impliedly certifying compliance with contractual provisions on cost reporting. Since relator only disputed the cost reporting "format" and did not pinpoint specific misrepresentations in those reports, defendant's implied certification claim failed. Additionally, <i>Escobar</i> 's "demanding" materiality standard was not demonstrated because the government had previously accepted defendant's non-compliant cost reports and paid for their work.
United States ex rel. Worthy v. Eastern Maine Healthcare Systems, No. 2:14-cv-00184-JAW, 2017 WL 211609 (D. Me. Jan. 18, 2017)	1/18/2017	D. Me.	1st Cir.	Health Care	Materiality	Motion to Dismiss	Claims Proceed	Under the First Circuit's "holistic approach" to materiality, which looks to "1) whether regulatory compliance was a condition of payment; 2) the centrality of the requirement to the regulatory program; and 3) whether the government pays claims despite actual knowledge that certain requirements were violated," relator sufficiently alleged plausible claims that defendant health care provider's violations of Medicare bundling rules were in violation of the FCA. The court particularly found compelling that the government had previously investigated violations of the "three day" and "same day" billing rules as fraud, as this showed that the violation of such rules was "sufficiently important" to the government to be material under the FCA. In addition, relator had sufficiently alleged that the three-day rule was a condition of payment under certain circumstances and that Medicare would not have paid the claims if it had known of the violations of either rule.
United States ex rel. Mateski v. Raytheon Co., No. 2:06-cv-03614-ODW(KSx), 2017 WL 1954942 (C.D. Cal. Feb. 10, 2017)	2/10/2017	C.D. Cal.	9th Cir.	Government Contracts	Implied Certification	Motion to Dismiss	Claims Dismissed/Denied	Relator's "largely incomprehensible" complaint failed to allege specific representations about the alleged fraud committed by defendant in its claims for payment based on statements about the status of a weather satellite program and technological defects. Although <i>Escobar</i> did not address "whether claims for payment must always contain specific representations about the underlying services" and prior 9th Circuit precedent established that claims for payment alone, even without specific representations, could form the basis for FCA liability, the most recent 9th Circuit FCA decision in <i>United States ex rel. Kelly v. Serco, Inc.</i> , 846 F.3d 325 (9th Cir. 2017), suggested that "mere claims for payment no longer suffice under an implied certification theory." As such, " <i>Escobar</i> , as interpreted by <i>Kelly</i> , requires that the claim contain specific representations to be actionable." Relator failed to allege any specific representations made by defendant in its claims for payments and 9th Circuit precedent does not relax FCA pleading standards based on relator's lack of knowledge of billing practices.
United States ex rel. Landis v. Tailwind Sports Corp., 234 F. Supp. 3d 180 (D.D.C. 2017)	2/13/2017	D.D.C.	D.C. Cir.	Government Contracts	Implied Certification	Summary Judgment	Claims Proceed	Relying on a pre- <i>Escobar</i> D.C. Circuit decision, the court held that relator need only show that the "contractor withheld information about its noncompliance with material contractual requirements." <i>Escobar</i> had explicitly reserved judgment on whether "all claims for payment implicitly represent that the billing party is legally entitled to payment," but the D.C. Circuit had previously held in <i>United States v. SAIC</i> , 626 F.3d 1257 (D.C. Cir. 2010), that "a claim for payment need not include express contractual language specifically linking compliance to eligibility for payment" in order to attach liability under an implied certification theory. In this case, government had alleged sufficient evidence that Lance Armstrong and his team withheld information about the team's drug use and that the anti-doping provisions of the sponsorship agreements with the U.S. Postal Service were material to its decision to make payments under the agreements.

Covington Burling LLP
Decision Tracker: Universal Health Services v. United States ex rel. Escobar

Case Citation	Date	Court	Circuit	Industry Sector	Escobar Issue	Posture	Disposition	Summary of Holding
United States ex rel. McBride v. Halliburton Co., 848 F.3d 1027 (D.C. Cir. 2017)	2/17/2017	D.C. Cir.	D.C. Cir.	Government Contracts	Materiality	Appeal from Summary Judgment to Defense	Claims Dismissed/Denied	Under <i>Escobar's</i> "rigorous" materiality standard, the relator had inadequate evidence that allegedly inflated headcount data impacted the defendant's billings to the government and the government's decision to pay under contract to maintain recreation centers for U.S. troops at military camps in Iraq.
Bishop v. Wells Fargo & Co., 137 S. Ct. 1067 (2017)	2/21/2017	SCOTUS	SCOTUS	Financial Services	Implied Certification	Appeal from Dismissal	Claims Proceed	Supreme Court granted petition for certiorari from the Second Circuit, vacating and remanding the decision below in light of the <i>Escobar</i> ruling. The Second Circuit had affirmed an E.D.N.Y. decision to dismiss a FCA claim alleging that defendant bank had knowingly falsely certified that it was in compliance with banking laws and regulations when it claimed eligibility for preferential interest rates from the Federal Reserve. The district court and circuit court had relied on prior circuit precedent in <i>Mikes v. Straus</i> , 274 F.3d 687 (2d Cir. 2001), which had placed limitations on implied certification liability.
United States ex rel. Kolchinsky v. Moody's Corp., 162 F. Supp. 3d 186 (S.D.N.Y. 2017)	3/2/2017	S.D.N.Y.	2d Cir.	Financial Services	Materiality	Motion to Dismiss	Claims Dismissed/Denied	Relator was unable to meet the materiality requirement under <i>Escobar</i> when "the relator's chronology suggests that the Government knew of the alleged fraud, yet paid the contractor anyway." There had been credible public reports regarding inaccuracies in Moody's credit ratings for residential mortgage-backed securities and collateralized debt obligations, and Congress had launched an investigation into the alleged fraud and its effect on the 2007-2008 financial crisis, yet the government had continued to pay Moody.
United States v. Quicken Loans Inc., No. 16-cv-14050, 2017 WL 930039 (E.D. Mich. Mar. 9, 2017)	3/9/2017	E.D. Mich.	6th Cir.	Financial Services; Housing	Materiality	Motion to Dismiss	Claims Proceed	Under <i>Escobar's</i> "holistic approach" to materiality, the government plausibly alleged that defendant's alleged violation of FHA underwriting requirements when underwriting, approving, and endorsing mortgage loans for FHA insurance. Although the complaint did not allege that the underwriting requirements were an express condition of payment or that the Government has refused to pay claims in cases involving noncompliance with the requirements, the complaint does support an inference that FHA would not have insured the loans at issue if it had known of the noncompliance, based on allegations that a lender's certification of compliance with the FHA requirements is a prerequisite to the endorsement of FHA insurance and defendant's officials knew the FHA would not have endorsed the loans for mortgage insurance had it know of the violations.
United States ex rel. Barko v. Halliburton Co., 241 F. Supp. 3d 37 (D.D.C. 2017)	3/14/2017	D.D.C.	D.C. Cir.	Government Contracts	Implied Certification	Summary Judgment	Claims Dismissed/Denied	Relator did not plead an implied certification claim based on defendant's alleged anticompetitive bidding practices for procuring subcontractors for government contracts, including allegations that defendant's employees received bribes or kickbacks from subcontractors. While compliance with anti-kickback laws or contractual provisions could be material to the government's decision to pay under <i>Escobar</i> , the relator failed to present evidence of bribes, kickbacks, or other noncompliance with applicable regulations or contract provisions.
Abbott v. BP Exploration & Production, Inc., 851 F.3d 384 (5th Cir. 2017)	3/14/2017	5th Cir.	5th Cir.	Energy	Materiality	Appeal from Summary Judgment to Defense	Claims Dismissed/Denied	Relator did not create a genuine dispute of material fact as to whether defendant's alleged regulatory violations in building and maintaining a semi-submersible floating oil production facility in the Gulf of Mexico were material under <i>Escobar</i> . Relator's allegations had sparked an investigation by the Department of the Interior that ultimately found no grounds to suspend operations of the facility or revoke defendant's status as its operator.
United States ex rel. Emanuele v. Medicor Associates, 242 F. Supp. 3d 409 (W.D. Penn. 2017)	3/15/2017	W.D. Penn.	3d Cir.	Health Care	Materiality	Summary Judgment	Claims Proceed	The materiality standard of <i>Escobar</i> was met with respect to relator's allegations that defendants submitted false Medicare claims based on referrals from defendants that violated the Stark Act and the Anti-Kickback Act, when the Stark Act expressly prohibits Medicare from paying claims that do not satisfy its requirements, the writing requirements allegedly violated by defendants "go to the very essence of the bargain between the government and health care providers with respect to Stark Act compliance," and public records suggest that health care providers have paid penalties after self-reporting similar violations on at least nine occasions since 2009.

Covington Burling LLP
Decision Tracker: Universal Health Services v. United States ex rel. Escobar

Case Citation	Date	Court	Circuit	Industry Sector	Escobar Issue	Posture	Disposition	Summary of Holding
United States ex rel. Al-Sultan v. The Public Warehousing Co., 242 F. Supp. 3d 1351 (N.D. Ga. Mar. 16, 2017)	3/16/2017	N.D. Ga.	11th Cir.	Government Contracts	Materiality	Motion to Dismiss	Claims Proceed	The government's complaint in intervention adequately pled materiality with respect to claims that defense contractor and its supplier participated in a scheme to inflate the price of food supplied for American soldiers in Iraq, notwithstanding the defendants' <i>Escobar</i> -based government knowledge defense that (1) the contractor's proposal disclosed the supplier's role in the contract, (2) the government continued to pay invoices after the filing of the relator's original complaint, and (3) a government officer approved the challenged invoices as "fair and reasonable." Because the United States claimed that defendants had "lied" to the government about the true nature of their dealings, the government could not have knowledge of the alleged misrepresentation unless it was aware of the defendants' "deception"; even if the government did have the requisite knowledge, that did not undermine materiality because the continued execution of the contracts was "essential" to the "important government interest" of procuring "necessary supplies for American troops in an active theater of war." Additionally, pleading materiality with particularity does not depend on "the presence or absence of the magic word 'material' in connection with a fact" when a complaint pleads facts that "by their nature support a finding of materiality."
United States ex rel. Berkowitz v. Automation Aids, No. 13 C 08185, 2017 WL 1036575 (N.D. Ill. Mar. 16, 2017)	3/16/2017	N.D. Ill.	7th Cir.	Government Contracts	Implied Certification	Motion to Dismiss	Claims Dismissed/Denied	Relator inadequately pled an implied certification claim in its complaint alleging that defendant fraudulently sold goods to the General Services Administration by impliedly certifying compliance with the Trade Agreements Act. Though <i>Escobar</i> affirmed that an FCA case can be based upon an implied certification theory, the government must do more than "simply alleg[e]" implied certification to satisfy the particularity requirement of Rule 9(b). Indeed it is often "tougher" to satisfy Rule 9(b) for implied certification cases because "usually it will be easier to set forth the specific details of a fraud scheme that is premised on affirmative lies than it is to sufficiently allege the specifics of a scheme based on material omissions."
United States ex rel. Jacobs v. Bank of America Corp., No. 1:15-cv-24585-UU, 2017 WL 2361943 (S.D. Fla. Mar. 21, 2017)	3/21/2017	S.D. Fla.	11th Cir.	Financial Services; Housing	Implied Certification; Materiality	Motion to Dismiss	Claims Proceed	Defendant banks allegedly knowingly filed misleading promissory notes bearing rubber-stamped endorsement signatures (which were not authorized by the signatories) in order to obtain foreclosure judgments and repayment of mortgage insurance claims. Under <i>Escobar</i> 's materiality standard, a fraudulent promissory note that had been used to unlawfully foreclose mortgages would have a "natural tendency to influence" the government's decision to pay an insurance claim.
United States ex rel. Schimelpfenig v. Dr. Reddy's Laboratories Ltd., No. 11-4607, 2017 WL 1133956 (E.D. Penn. Mar. 27, 2017)	3/27/2017	E.D. Penn.	3d Cir.	Health Care	Implied Certification; Materiality	Motion to Dismiss	Claims Dismissed/Denied	Relator's claim, as pled, fell short of <i>Escobar</i> 's two-step implied certification standard by failing to allege "that Defendants made specific representations about their products that would, in conjunction with Defendants' failure to disclose noncompliance with the [statutes], render their claims 'misleading half-truths' subject to FCA liability." The complaint also failed to adequately plead materiality under <i>Escobar</i> ; "Beyond broad conclusory statements, the [Complaint] does little to allege the materiality of [statutory] compliance to the Government's decision to accept Defendants' claims for reimbursement."

Covington Burling LLP
Decision Tracker: Universal Health Services v. United States ex rel. Escobar

Case Citation	Date	Court	Circuit	Industry Sector	Escobar Issue	Posture	Disposition	Summary of Holding
United States ex rel. Wood v. Allergan, Inc., 246 F. Supp. 3d 772 (S.D.N.Y. 2017)	3/31/2017	S.D.N.Y.	2d Cir.	Health Care	Implied Certification; Materiality	Motion to Dismiss	Claims Proceed	Although <i>Escobar</i> modified the standard for implied false certification theory under the FCA, part of the 2001 Second Circuit decision in <i>Mikes v. Straus</i> , 274 F.3d 687 (2d Cir. 2001), remains good law, namely that “falsity may arise from the defendant’s submission of a claim for payment that does not include a specific representation about the goods or services provided, coupled with noncompliance with a material payment requirement.” <i>Escobar</i> and <i>Mikes</i> together “stand for the proposition that liability can be predicated on a false representation of compliance with a federal statute or regulation or prescribed contractual term, so long as compliance with that regulation is ‘material’ to the government’s payment decision.” Any fear of such a rule being too broad so as to attach fraud liability to any “contractors who file claims for payment without disclosing every instance of regulatory noncompliance” were countered by the “rigorous” materiality standard under <i>Escobar</i> . In the present suit, compliance with the Anti-Kickback Statute (AKS) was material to reimbursements under Medicare and Medicaid, as the law now explicitly provides that claims violating the AKS would be false or fraudulent, Medicare and Medicaid Provider Applications designate compliance as a precondition for payment, and the government has actively pursued FCA investigations and cases against those who violate the AKS.
United States ex rel. Quartararo v. Catholic Health System of Long Island Inc., No. 12-CV-4425 (MKB), 2017 WL 1239589 (E.D.N.Y. Mar. 31, 2017)	3/31/2017	E.D.N.Y.	2d Cir.	Health Care	Implied Certification; Materiality	Motion to Dismiss / Summary Judgment	Claims Dismissed/Denied	Relator did not plead FCA claims based on defendant nursing home’s alleged scheme to submit false reimbursement claims to the Department of Health (DOH) based on outdated and inaccurate reimbursement rates and to misuse Medicare and Medicaid funds for non-Medicaid and non-Medicare purposes. Submitting outdated reimbursement rates did not violate a material condition for reimbursement because DOH continued reimbursing the nursing home “despite understanding that the Nursing Home was using an outdated rate.” Defendant’s alleged misuse of Medicare and Medicaid funds did not fall under the implied certification theory; although the language of the regulation referenced a condition of payment to be compliance with “a Federal Health Program” and relator plausibly alleged that Defendants knew that “DOH would refuse the Nursing Home’s reimbursement claims if it was aware of Defendant’s . . . violations,” relator failed to connect the misappropriation of funds and alleged fraudulent scheme to any particular reimbursement claim.
United States ex rel. Westrick v. Second Chance Body Armor, Inc., No. 04-0280 (PLF), Unites States v. Toyobo Co., No. 07-1144 (PLF) (D.D.C. Mar. 31, 2017)	3/31/2017	D.D.C.	D.C. Cir.	Government Contracts	Implied Certification	Reconsideration of Summary Judgment to Defendants	Claims Dismissed/Denied	<i>Escobar</i> and the subsequent D.C. Circuit ruling in <i>United States ex rel. McBride v. Halliburton Co.</i> , 848 F.3d 1027 (D.C. Cir. 2017), expanded implied false certification theory to now permit “liability to attach to material misrepresentations concerning noncompliance with ‘statutory, regulatory, or contractual requirements,’” not just misrepresentations regarding “material contract requirements.” However, the initial ruling only examined contractual provisions, so the expansion in <i>Escobar</i> did not change the determination that the three other contractual provisions were not material to the government’s decision to pay defendant body armor makers for defective bulletproof vests. The final extracontractual provision, a “catalog guarantee” of ballistics performance of the vests could continue to go to trial, as before, as it was material.
United States ex rel. Doe v. Heart Solutions PC, No. CV143644SRCCLW, 2017 WL 1234130 (D.N.J. Apr. 3, 2017)	4/3/2017	D.N.J.	3d Cir.	Health Care	Materiality	Summary Judgment (Government Motion)	Claims Granted	The government proved materiality with respect to its claim that defendant health care provider fraudulently submitted claims for Medicare reimbursement which did not comply with Medicare regulations requiring medical services to be supervised by a licensed neurologist. Defendant’s misrepresentations were material under <i>Escobar</i> because Medicare “attached importance” to the claims that physicians were supervising the tests and “would not have paid [defendant] had it known the truth.”

Covington Burling LLP
Decision Tracker: Universal Health Services v. United States ex rel. Escobar

Case Citation	Date	Court	Circuit	Industry Sector	Escobar Issue	Posture	Disposition	Summary of Holding
United States ex rel. Brown v. Pfizer, Inc., No. CV 05-6795, 2017 WL 1344365 (E.D. Penn. Apr. 12, 2017), stay granted, motion to certify appeal granted, 2017 WL 2691927 (E.D. Penn. June 22, 2017)	4/12/2017	E.D. Penn.	3d Cir.	Health Care; Pharmaceuticals & Medical Devices	Materiality	Motion to Dismiss	Claims Proceed	Relators adequately pled materiality in their complaint alleging that defendant pharmaceutical company made false statements to the FDA for approval of its anti-fungal medicine in order to induce Medicare and Medicaid payments. Defendant sought to defeat materiality by arguing that the government continued to pay for the medicine despite knowledge of the allegations against defendant. However, while the government's continued payment of a claim "despite actual knowledge" of a violation is "strong evidence" that the requirement is not material, "mere knowledge of allegations regarding noncompliance is insufficient to prove actual knowledge of noncompliance." Thus, continued payment in the face of mere allegations is "insufficient to establish that relators' claims fail for lack of materiality."
United States ex rel. Grabcheski v. American International Group, Inc., 687 Fed. App'x 84 (2d Cir. 2017) (summary order)	4/18/2017	2d Cir.	2d Cir.	Financial Services	Materiality	Appeal from Dismissal	Claims Dismissed/Denied	Assuming the relator had sufficiently alleged a knowing false statement related to agreements the defendant entered with the Federal Reserve Bank of New York, the relator failed to allege facts demonstrating materiality when the 0.4% difference in the value of the agreements due to the alleged misrepresentation was "minor" and "insubstantial" under <i>Escobar</i> .
United States ex rel. Scutellaro v. Capitol Supply, Inc., No. 10-1094 (BAH), 2017 WL 1422364 (D.D.C. Apr. 19, 2017)	4/19/2017	D.D.C.	D.C. Cir.	Government Contracts	Implied Certification; Materiality	Summary Judgment (Government Motion)	Claims Proceed	In suit alleging false claim based on implied certification that products sold to federal agencies were manufactured in compliance with the Trade Agreements Act ("TAA") and Buy American Act, government and relator were not entitled to summary judgment on materiality. An issue of material fact existed because, on the one hand, the GSA regional office gave defendant "exceptional" rates on its "report cards" and never marked defendant down for TAA non-compliance, even though, on the other hand, the GSA New York office sent defendant regular notices for contract breaches, culminating in a Cure Notification Letter, citing TAA non-compliance.
United States v. Lang, No. 7:16-CV-305-BO, 2017 WL 1449674 (E.D.N.C. Apr. 21, 2017)	4/21/2017	E.D.N.C.	4th Cir.	Social Security	Implied Certification	Motion to Dismiss	Claims Dismissed/Denied	The government inadequately pled an implied certification claim in its complaint alleging that defendant fraudulently accepted social security disability benefits to which she was not entitled. The government did not allege that defendant was not eligible for benefits when they were first awarded. Instead, the government alleged defendant continued to access funds after she began to "engage in substantial gainful activity and was no longer entitled to benefits." At most, accessing these funds could be considered a demand for payment, but the government did not "identify any specific misrepresentations made by defendant" when the benefits were received and thus the government could not prove an implied certification claim under <i>Escobar</i> .
United States ex rel. Hall v. LearnKey, Inc., No. 2:14-cv-379-PMW, 2017 WL 1592472 (D. Utah Apr. 28, 2017)	4/28/2017	D. Utah	10th Cir.	Government Contracts	Implied Certification; Materiality	Summary Judgment (Cross Motions)	Claims Dismissed/Denied	Defendant, who received funding from the U.S. Department of Veterans Affairs ("VA") to provide video training courses to disabled veterans, did not knowingly submit materially false claims under <i>Escobar</i> for allegedly unqualified courses or unreimbursable employee bonuses. Defendant accurately described its courses and charges to the VA in course catalogues and invoices, and the VA routinely enrolled veterans in the defendant's courses and paid the defendant's invoices.

Covington Burling LLP
Decision Tracker: Universal Health Services v. United States ex rel. Escobar

Case Citation	Date	Court	Circuit	Industry Sector	Escobar Issue	Posture	Disposition	Summary of Holding
United States ex rel. Petratos v. Genentech, Inc., 855 F.3d 481 (3d Cir. 2017)	5/1/2017	3d Cir.	3d Cir.	Health Care	Materiality	Appeal from Dismissal	Claims Dismissed/Denied	<p>Relator was unable to meet the materiality standard in a suit challenging defendant's alleged concealment of a drug's health risks in Medicare claims that allegedly resulted in noncompliance with the statutory condition to be medically "reasonable and necessary." The "mere fact that [the Medicare statute] is a condition of payment, without more, does not establish materiality" under the FCA. In both failing to plead any factual allegations that "knowledge of the violation could influence the government's decision to pay" and conceding that the government had continued to pay the claims with such knowledge, relator's case was "doom[ed]." Additionally, the materiality inquiry is not focused on whether the "misrepresentations were material to the physician's determinations" as the initial recipient of the false claim, as Escobar exclusively refers to the government as the recipient of the false claim: "[S]ince the Government decides on payment, it is the Government's materiality decision that ultimately matters." Furthermore, the Court noted that after learning of the relator's allegations, the FDA continued its approval of the drug and did not require any label changes, and DOJ took "no action . . . and declined to intervene."</p> <p><i>*Covington & Burling represented the defendant in this matter.</i></p>
United States ex rel. Oberg v. Pennsylvania Higher Education Assistance Agency, No. 1:07-cv-00960, 2017 WL 1758074 (E.D. Va. May 3, 2017)	5/3/2017	E.D. Va.	4th Cir.	Education & Labor	Materiality	Motion for Judgment on the Pleadings	Claims Proceed	In non-intervened case brought by a relator alleging that student loan company engaged in improper billing practices, defendant sought judgment on the pleadings arguing relator had not met Escobar's high materiality standard. Construing defendant's motion as one for reconsideration of the court's pre-Escobar denial of a Rule 12(b)(6) motion to dismiss, court concluded that Escobar did not merit reconsideration because: (1) it clarified, but did not redefine, the statutory definition of materiality under the FCA; and (2) it revolved around an implied false certification theory, whereas the instant case alleged express false certifications.
United States ex rel. Badr v. Triple Canopy, Inc., 857 F.3d 174 (4th Cir. 2017)	5/16/2017	4th Cir.	4th Cir.	Government Contracts	Implied Certification; Materiality	Appeal from Dismissal	Claims Proceed	On remand from the U.S. Supreme Court for further consideration in light of Escobar, the government in intervention stated an implied certification claim against the defendant for alleged falsification of marksmanship test results for guards hired under contract to provide security services at Al Asad Airbase in Iraq. The defendant's invoices for time worked by the guards constituted an actionable misrepresentation that defendant had complied with core contract requirements. Both "common sense" and allegations that defendant went to great lengths to cover up the noncompliance demonstrated that the marksmanship requirements were material, as did the government's decisions not to renew defendant's base contract and to intervene in the litigation after learning about the allegations.
United States v. Dyncorp International, 253 F. Supp. 3d 89 (D.D.C. May 19, 2017)	5/19/2017	D.D.C.	D.C. Cir.	Government Contracts	Implied Certification; Materiality	Motion to Dismiss	Claims Proceed	The D.C. Circuit's "broader statement of implied certification theory" in <i>United States v. SAIC</i> , 626 F.3d 1257 (D.C. Cir. 2010), remains good law after Escobar, such that the government can make out an implied certification claim "by demonstrating that (1) a contractor withheld information about its noncompliance with contractual or regulatory requirements; and (2) those contractual or regulatory requirements were material." In the instant case, the government successfully alleged that, with respect to a contract involving training for the Iraqi police force, defendant billed the government for cost-reimbursable charges that were unreasonable, in violation of FAR requirements; the defendant withheld information about the unreasonableness of its billings from the government; and the billings were "significantly higher than reasonable" and therefore material.
United States ex rel. Cairns v. D.S. Medical, L.L.C., No. 12-CV-00004 AGF, 2017 WL 2269006 (E.D. Mo. May 23, 2017)	5/23/2017	E.D. Mo.	8th Cir.	Health Care; Pharmaceuticals & Medical Devices	Implied Certification	Summary Judgment (Government Motion)	Claims Proceed	The government had not met the standard for summary judgment on alleged false claims for Medicare/Medicaid reimbursement based on Anti-Kickback Statute ("AKS") violations. Although a violation of the AKS can form the basis of an FCA claim, the government had failed "to establish adequate factual support" for each element of the underlying AKS violation for each defendant.

Covington Burling LLP
Decision Tracker: Universal Health Services v. United States ex rel. Escobar

Case Citation	Date	Court	Circuit	Industry Sector	Escobar Issue	Posture	Disposition	Summary of Holding
United States ex rel. Perry v. Pacific Maritime Industries Corp., No. 13cv2599-LAB (JMA), 2017 WL 2348930 (S.D. Cal. May 30, 2017)	5/30/2017	S.D. Cal.	9th Cir.	Government Contracts	Materiality	Motion to Dismiss	Claims Dismissed/Denied	Relator inadequately pled materiality in his complaint arguing that defendant produced and sold doors for Navy ships without informing the Navy that it had failed to comply with a weight requirement. The relator pointed to an "an old and ambiguous military provision" as proof that the doors needed to adhere to a specific weight, but that provision could be interpreted other ways. Because defendants made "a good faith call" on the weight requirement, a failure to adhere to the supposed requirement could not be a material omission. The omission was also not material because the government accepted the doors despite the fact that the Defense Contract Management Agency had not conducted a review. The government's decision with respect to the doors was analogous to an agency accepting parts despite actual knowledge of a violation.
United States ex rel. Hinkle v. Caris Healthcare LP, No. 3:14-CV-212-TAV-HBG, 2017 WL 3670652 (E.D. Tenn. May 30, 2017)	5/30/2017	E.D. Tenn.	4th Cir.	Health Care	Materiality	Motion to Dismiss	Claims Proceed	The government adequately pled materiality in its complaint alleging that defendant hospice provider fraudulently submitted Medicare claims for payment on behalf of patients who were not terminally ill and were therefore ineligible for hospice care. These alleged violations were material because "requests for payment may only be made when supported by written certification of the patient's terminal illness" and the government "would not have paid defendants' claims for reimbursements had it known that the patients were not terminally ill."
United States ex rel. Penelow v. Johnson & Johnson, No. 12-7758 (MAS) (LHG), 2017 WL 2367050 (D.N.J. May 31, 2017)	5/31/2017	D.N.J.	3d Cir.	Health Care; Pharmaceuticals & Medical Devices	Materiality	Motion to Dismiss	Claims Proceed	Relators' FCA claims could proceed against one of the defendant pharmaceutical companies for allegedly improper marketing and kickback schemes promoting two HIV/AIDS drugs, which caused false claims to be submitted to the Medicare and Medicaid Programs. Relators adequately pled that drugs were not "reasonable and necessary," and thus were not eligible for Medicare/Medicaid reimbursement, under standards set forth by the 3rd Circuit in <i>United States ex rel. Petratos v. Genentech Inc.</i> , 855 F.3d 481 (3d Cir. May 1, 2017). Relators also sufficiently pled materiality by alleging that each of the challenged reimbursement claims "included false certifications rendering the claims 'ineligible for reimbursement'" and that "claims for prescriptions caused by [defendants'] misconduct are not reimbursable." In contrast to <i>Petratos</i> , "Relators have adequately pled that Defendants' misconduct would have caused the Government to refuse reimbursement."
United States ex rel. Curtin v. Barton Malow Co., No. CV 14-2584, 2017 WL 2453032 (W.D. La. June 6, 2017)	6/6/2017	W.D. La.	5th Cir.	Government Contracts	Materiality	Motion to Dismiss	Claims Dismissed/Denied	Relator inadequately pled materiality with respect to its claim that defendant fraudulently sought payment from the government by impliedly certifying that it had complied with contractual requirement to use roofing panels that were covered by a warranty, when the roofing panels actually used were not. Roofing panels were just one of "many different materials" used in building construction, and relator did not argue that defendant failed to install the panels at all or that the panels were "of particular importance to the building being constructed." Relator's complaint that the panels were no longer under warranty constitutes merely a "garden-variety breach of contract."
United States ex rel. Florida Society of Anesthesiologists v. Choudhry, No. 8:13-cv-2603-T-27AEP, 2017 WL 2591399, 2017 WL 2604930 (M.D. Fla. June 14, 2017)	6/14/2017	M.D. Fla.	11th Cir.	Health Care	Implied Certification	Motion to Dismiss	Claims Dismissed/Denied	Relator could not bring an implied certification claim under 31 U.S.C. § 3729(a)(1)(B)--implied certification claims can only be brought under 31 U.S.C. § 3729(a)(1)(A)--and Relator's theory of an implied false certification based on a violation of the Anti-Kickback Statute ("AKS") may no longer be viable, in light of a 2010 Amendment to the AKS.
United States ex rel. Jersey Strong Pediatrics, LLC v. Wanaque Convalescent Center, No. CV 14-6651-SDW-SCM, 2017 WL 2577544 (D.N.J. June 14, 2017)	6/14/2017	D.N.J.	3d Cir.	Health Care	Implied Certification; Materiality	Motion to Dismiss	Claims Dismissed/Denied	Relator inadequately pled an implied certification claim in its complaint alleging that defendants fraudulently billed Medicare and Medicaid as primary payer despite the existence of alternative coverage, thereby violating secondary payer laws. Relator recognized that secondary payer laws were meant to make Medicaid/Medicare the "payer of last resort," but relator failed to specifically discuss whether the violation of secondary payer laws was material to the government's payment decision "in this context."

Covington Burling LLP
Decision Tracker: Universal Health Services v. United States ex rel. Escobar

Case Citation	Date	Court	Circuit	Industry Sector	Escobar Issue	Posture	Disposition	Summary of Holding
United States ex rel. O'Donnell v. America at Home Healthcare & Nursing Services, Ltd., No. 14-cv-1098, 2017 WL 2653070 (N.D. Ill. June 20, 2017)	6/20/2017	N.D. Ill.	7th Cir.	Health Care	Materiality	Motion to Dismiss	Claims Proceed	Relator adequately pled that the defendant had submitted claims for Medicare and Medicaid reimbursement with material omissions that it had improperly solicited patients, paid kickbacks in violation of the Anti-Kickback Statute, and referred patients in violation of the Stark Law. Importantly, "other courts have routinely found the various statements and regulations at issue to be central to the government's Medicare and Medicaid programs." In addition, the complaint did not suggest that the government had paid claims despite knowing of similar violations.
United States ex rel. Prather v. Brookdale Senior Living Communities, Inc., 265 F.Supp.3d 782 (M.D. Tenn. 2017)	6/22/2017	M.D. Tenn.	6th Cir.	Health Care	Implied Certification; Materiality	Motion to Dismiss	Claims Dismissed/Denied	Relator inadequately pled a material omission, when it argued that the defendant had failed to inform Medicare that its home health services certification was untimely, and therefore in violation of federal regulation. Although the timing requirement was an express condition of payment, this is not dispositive under <i>Escobar</i> . Rather, CMS publications from the relevant time period that failed to mention the timing requirement showed it was not material.
United States ex rel. Dickson v. Bristol-Myers Squibb Co., No. 13-1039 (FLW)(LHG), 2017 WL 2780744 (D.N.J. June 27, 2017)	6/27/2017	D.N.J.	3d Cir.	Health Care; Pharmaceuticals & Medical Devices	Materiality	Motion to Dismiss	Claims Dismissed/Denied	Relator failed to plead materiality in her claim that defendant pharmaceutical company misstated the effectiveness of its drug to physicians, thereby fraudulently causing the submission of false claims to Medicaid for reimbursement for that drug. <i>Escobar</i> imposed a heightened pleading standard for materiality. In pleading that every state provided automatic reimbursement for the drug, relator's complaint showed that representations of the physicians, and the alleged misrepresentations to those physicians, were immaterial.
United States ex rel. A1 Procurement, LLC v. Thermcor, Inc., No. 2:15cv15, 2017 WL 2881350 (E.D. Va. July 5, 2017)	7/5/2017	E.D. Va.	4th Cir.	Government Contracts	Materiality	Summary Judgment	Claims Dismissed/Denied	Relator failed to satisfy the element of materiality on summary judgment, after claiming that defendants had made false statements to the Small Business Administration ("SBA") regarding their compliance with the 8(a) Business Development program. Documents showed that the SBA was aware of defendants' non-compliance and yet still granted 8(a) certification, proving defendants' alleged misstatements were not central to the 8(a) program. The regulatory scheme vested the SBA with the discretion to evaluate subjective factors, and finding materiality in this instance would take away that discretionary authority.
United States ex rel. Campie v. Gilead Sciences, Inc., 862 F.3d 890 (9th Cir. 2017)	7/7/2017	9th Cir.	9th Cir.	Health Care	Implied Certification; Materiality	Appeal from Dismissal	Claims Proceed	The court ruled that Relator's complaint was sufficient under Rule 8(a), but the court did not assess the claims under the particularity standard of Rule 9(b), as the district court had not addressed that standard. Relator claimed defendant had made false representations to the FDA about the source of the ingredients in its drugs, and then submitted reimbursement requests which implied the drugs met FDA requirements. The court allowed to proceed a claim that an implied false statement had been made to CMS as the payor agency, even though the alleged false statement had only been made to the FDA. The court also ruled that Relator sufficiently pled materiality, notwithstanding the FDA's knowledge of the alleged regulatory noncompliance and CMS' continued reimbursement of the medicines even after learning of the same. The Ninth Circuit's mandate has now been stayed pending a petition for writ of certiorari to the Supreme Court. and the Court has called for the views of the Solicitor General. <i>*Covington & Burling represents the defendant in this matter.</i>

Covington Burling LLP
Decision Tracker: Universal Health Services v. United States ex rel. Escobar

Case Citation	Date	Court	Circuit	Industry Sector	Escobar Issue	Posture	Disposition	Summary of Holding
United States ex rel. Nargol v. Depuy Orthopaedics, Inc., 865 F.3d 29 (1st Cir. 2017)	7/26/2017	1st Cir.	1st Cir.	Health Care; Pharmaceuticals & Medical Devices	Materiality	Appeal from Dismissal	Claims Dismissed/Denied	Relator's claim based on alleged that medical device manufacturer had misrepresented the safety and effectiveness of the device in securing FDA approval was dismissed, because the FDA's decision not to take action "in the wake of Relators' allegations so as to withdraw or even suspend its approval of the [device] . . . renders a claim of materiality implausible." Under <i>Escobar</i> , "when an agency armed with robust investigatory powers to protect public health and safety is told what Relators have to say, yet sees no reason to change its position," this is "compelling" evidence that the supposed misrepresentation was not material. Relators' suggestion that Ninth Circuit's ruling in <i>United States ex rel. Campie v. Gilead Sciences, Inc.</i> , 862 F.3d 890 (9th Cir. July 7, 2017), dictates a contrary result is unpersuasive, as that Ninth Circuit ruling was neither controlling nor on all fours with the instant case. (In contrast, relator's alternative theory--that defendants passed off defective versions of the FDA-approved device on unsuspecting providers--did meet the minimum pleading requirements of Rule 9(b).)
RDA Construction Corp. v. United States, 132 Fed. Cl. 732 (2017)	7/27/2017	Fed. Cl.	Fed. Cir.	Government Contracts	Materiality	Opinion and Order After Bench Trial	Claims Dismissed/Denied	In contractor's lawsuit seeking an equitable adjustment in response to differing site conditions on construction project, the government could not sustain a FCA counterclaim that the contractor had submitted false invoices due to its failure to perform in accordance with specifications. The government had not proven materiality under <i>Escobar</i> , primarily because the government had continued to pay invoices despite actual knowledge that the contractor had not complied with certain contract specifications. Even with respect to other noncompliance about which the government had not known, including failure to promptly pay subcontractors in accordance with the terms of the Prompt Payment Act, the government had not borne its burden of proof in demonstrating materiality, and indeed had not even mentioned materiality in its brief.
United States ex rel. Smith v. Carolina Medical Center, No. 11-2756, 2017 WL 3310694 (E.D. Penn. Aug. 2, 2017)	8/2/2017	E.D. Penn.	3d Cir.	Health Care	Implied Certification; Materiality	Motion to Dismiss	Claims Proceed	Relator stated FCA claim based on allegations that the director of a clinic had been excluded from participating in Medicare and Medicaid, thereby rendering false the invoices for payment submitted by the clinic under those programs. Relator's "claims based on false statements in enrollment or application documents" support a fraud-in-the-inducement theory and therefore "need not rely on a theory of implied false certification . . . and need not meet the [implied false certification] standard laid out in <i>Escobar</i> ." The misrepresentation on the clinic's enrollment application was material, as demonstrated by laws that forbid payment to clinics controlled by excluded individuals, administrative guidance stating the same, and letters sent directly to the excluded individual. The continued payment of the clinic's invoices after the agency became aware of the allegation in this lawsuit did not outweigh the other evidence supporting materiality because "mere awareness of allegations concerning noncompliance with regulations is different from knowledge of actual noncompliance," and because even actual knowledge that certain requirements were violated "is not dispositive."
United States ex rel. Durkin v. County of San Diego, No. 15cv2674-MMA (WVG), 2017 WL 3315784 (S.D. Cal. Aug. 3, 2017)	8/3/2017	S.D. Cal.	9th Cir.	Government Contracts	Implied Certification; Materiality	Motion to Dismiss	Claims Dismissed/Denied	Relator failed to adequately plead falsity, scienter, or materiality in allegations that the defendants had made misrepresentations in applications for federal grant funding from the FAA. With respect to materiality, Relator had failed to meet <i>Escobar's</i> "demanding" standard, which requires more than the government's designation of "compliance with a particular statutory, regulatory, or contractual requirement as a condition of payment," as the complaint "merely concludes, with respect to every cause of action: 'The [agency] would not have provided the federal funding for the project had it been aware the foregoing was false.'"

Covington Burling LLP
Decision Tracker: Universal Health Services v. United States ex rel. Escobar

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United States ex rel. Mateski v. Raytheon Co., No. 2:06-cv-03614-ODW(KSx), 2017 WL 3326452 (C.D. Cal. Aug. 3, 2017)	8/3/2017	C.D. Cal.	9th Cir.	Government Contracts	Implied Certification; Materiality	Motion to Dismiss	Claims Dismissed/Denied	The Ninth Circuit's post- <i>Escobar</i> ruling in <i>United States ex rel. Kelly v. Serco, Inc.</i> , 846 F.3d 325 (9th Cir. Jan. 12, 2017), requires the plaintiff advancing an implied certification claim to pinpoint "a specific representation the defendant made that implicitly certified its compliance with the material conditions of payment." Relator's general statements that defendant "falsely represented that [it] had performed the [contract] in conformity with the requirements and specifications," and that it "failed to disclose that [defendant] had not obtained the requisite approvals for major deviations from the mandatory requirement" were not sufficiently specific to satisfy Rule 9(b). Moreover, Relator's "bare bones," one-sentence allegation about materiality was not enough to satisfy Rule 9(b).
United States ex rel. Forcier v. Computer Sciences Corp., No. 12 Civ. 1750 (DAB), 2017 WL 3616665 (S.D.N.Y. Aug. 10, 2017)	8/10/2017	S.D.N.Y.	2d Cir.	Health Care	Implied Certification	Motion to Dismiss	Claims Dismissed/Denied	Following "the majority of district courts in [the Second] Circuit" by "interpret[ing] <i>Escobar's</i> holding as creating affirmative limitations on implied false certification claims, such that liability may only attach where (1) the claim makes specific representations about the goods or services provided, and (2) the failure to disclose noncompliance with material legal requirements renders these representations misleading half-truths," government failed to demonstrate that defendants' statements in connection with Medicaid reimbursement claims satisfied the second of these two prongs, and the statements were therefore not actionable under an implied false certification theory. (But a separate fraud-in-the-inducement claim survived the motion to dismiss.)
United States ex rel. Laporte v. Premiere Education Group, L.P., No. 11-3523, 2017 WL 3471163 (RBK/AMD) (D.N.J. Aug. 11, 2017)	8/11/2017	D.N.J.	3d Cir.	Education & Labor	Implied Certification; Materiality	Reconsideration of Denial of Motion to Dismiss	Claims Proceed	Where defendants' compliance with certain terms was a condition for eligibility to receive funds under Title IV of the Higher Education Act, defendants' subsequent requests for payment under Title IV, when defendants knew they were not in compliance with the terms of eligibility, amounted to "specific representations about the goods and services provided which constituted misleading half-truths." With respect to materiality, the court declined to reconsider its prior ruling that relators had "plead with sufficient particularity that the United States would have refused payment had it known of [defendants'] regulatory violations."
United States ex rel. Lisitza v. Par Pharmaceutical Cos., No. 06 C 06131, 2017 WL 3531679 (N.D. Ill. Aug. 17, 2017)	8/17/2017	N.D. Ill.	7th Cir.	Health Care; Pharmaceuticals & Medical Devices	Implied Certification	Summary Judgment	Claims Dismissed/Denied	The government had not established an implied certification claim against defendant pharmaceutical company for allegedly inducing national pharmacy chains to fill prescriptions, and obtain Medicaid reimbursements, for forms and dosages of drugs manufactured by defendant in lieu of less expensive generic drugs originally prescribed by medical providers. The government failed to identify any "specific representation with respect to the goods or services provided" that was rendered a "misleading half-truth" by defendant's alleged violation of Medicaid requirements related to physician authorization, medical necessity, and economical treatment. The reimbursement claim forms submitted contained a certification that the information provided was "true, accurate, and complete," but they did not affirm that the claimant had complied with all applicable laws and regulations; and, in contrast to <i>Escobar</i> , the reimbursement claim forms were not misleading as to what treatment was provided and how much it cost, even if defendants were in violation of Medicaid requirements that affected their legal entitlement to payment and that could give rise to liability or penalties under other provisions of law.
United States ex rel. Emanuele v. Medicor Associates, C.A. No. 10-245 Erie, 2017 WL 3675921 (W.D. Penn. Aug. 25, 2017)	8/25/2017	W.D. Penn.	3d Cir.	Health Care	Materiality	Reconsideration of Denial of Summary Judgment	Claims Proceed	The Third Circuit's decision in <i>United States ex rel. Petratos v. Genentech, Inc.</i> , 855 F.3d 481 (3d Cir. 2017), did not merit reconsideration of court's 3/15/17 opinion on summary judgment that plaintiffs had met <i>Escobar's</i> materiality standard. <i>Petratos</i> was not an "intervening change in the law" as it applied the same "demanding" and "rigorous" materiality standard under <i>Escobar</i> as did the court in its 3/15/17 opinion. Nor did <i>Petratos</i> , the facts of which were "largely inapposite," clarify existing law in a manner that rendered the court's 3/15/17 opinion clearly erroneous.

Covington Burling LLP
Decision Tracker: Universal Health Services v. United States ex rel. Escobar

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United States ex rel. Higgins v. Boston Scientific Corp., No. 11-cv-2453 (JNE/SER), 2017 WL 3732099 (D. Minn. Aug. 29, 2017)	8/29/2017	D. Minn.	8th Cir.	Health Care; Pharmaceuticals & Medical Devices	Implied Certification; Materiality	Motion to Dismiss	Claims Dismissed/Denied	Relator's allegations "fit the mold" of <i>Escobar's</i> two-pronged implied certification theory, in that he alleged defendant "defrauded the FDA into approving and maintaining approval of [defibrillators it manufactured] as safe and effective"; "the devices would not have been approved had the FDA been fully informed"; "the devices were therefore not medically necessary as required for Medicare reimbursement"; and defendant "thus caused doctors to select their products and then to unwittingly falsely certify to the government that the devices were medically necessary in submitting their reimbursement claims." Relator's allegations also "appear calculated to meet" <i>Escobar's</i> "demanding" materiality standard. Notwithstanding, relator failed to plead fraud with particularity under Rule 9(b), so the complaint was dismissed with leave to amend.
United States ex rel. Kolchinsky v. Moody's Corp., No. 12cv1399, 2017 WL 3841866 (S.D.N.Y. Sept. 1, 2017)	9/1/2017	S.D.N.Y.	2d Cir.	Financial Services	Materiality	Reconsideration of Dismissal	Claims Dismissed/Denied	The court's 3/2/17 decision dismissing relator's claims took full account of <i>Escobar's</i> materiality standard and was consistent with <i>Grabcheski v. American International Group, Inc.</i> , 687 Fed. App'x 84 (2d Cir. 2017), the only Second Circuit decision to date to interpret <i>Escobar</i> , and so reconsideration was not warranted. Relator's argument that <i>Escobar</i> required a "holistic approach" to materiality misconstrued the Supreme Court case; although the First Circuit used the "holistic approach" language in <i>United States ex rel. Escobar v. Universal Health Services, Inc.</i> , 842 F.3d 103 (1st Cir. 2016), on remand from the Supreme Court, that holding was not binding on the court and was not an appropriate basis for reconsideration.
United States ex rel. Payton v. Pediatric Services of America, Inc., No. CV416-102, 2017 WL 3910434 (S.D. Ga. Sept. 6, 2017)	9/6/2017	S.D. Ga.	11th Cir.	Health Care	Implied Certification; Materiality	Motion to Dismiss	Claims Dismissed/Denied	Relator did not state an implied certification claim based on allegations that defendants submitted claims for Medicare and Medicaid reimbursement despite alleged noncompliance with health care regulations regarding the contents of nursing notes. Relator failed to allege that defendants falsely certified compliance with the relevant regulations or that existence of complete nursing notes was material to the government's decision to pay.
United States ex rel. Carmichael v. Gregory, No. 14-1702 (R.JL), 2017 WL 3972464 (D.D.C. Sept. 6, 2017)	9/6/2017	D.D.C.	D.C. Cir.	Housing	Materiality	Motion for Default Judgment	Default Judgment Entered	Defendant landlord's submission of claims was implied certification of compliance with Section 8 program rules concerning amount of rent charged to tenant. Charging rent over amount stated in federal housing assistance payment contract was material to government's decision to pay, given that program's purpose was to aid low-income people.
United States ex rel. Bishop v. Wells Fargo & Co., 870 F.3d 104 (2d Cir. 2017)	9/7/2017	2d Cir.	2d Cir.	Financial Services	Implied Certification; Materiality	Appeal from Dismissal	Claims Proceed	<i>Escobar</i> overruled the requirements of <i>Mikes v. Straus</i> , 274 F.3d 687 (2d Cir. 2001), that (1) "implied false certification is appropriately applied only when the underlying statute or regulation upon which the plaintiff relies expressly states the provider must comply in order to be paid" and (2) an expressly false claim is "a claim that falsely certifies compliance with a particular statute, regulation or contractual term, where compliance is a prerequisite to payment." Remand to the district court was appropriate for consideration of whether relator's allegations that defendants "falsely certified their compliance with banking laws in order to borrow money at favorable rates from the Federal Reserve System" met <i>Escobar's</i> materiality standard.
United States ex rel. King v. Solvay Pharmaceuticals, Inc., 871 F.3d 318 (5th Cir. 2017)	9/12/2017	5th Cir.	5th Cir.	Health Care; Pharmaceuticals & Medical Devices	Materiality	Appeal from Summary Judgment to Defense	Claims Dismissed/Denied	After concluding relator's claims that defendant pharmaceutical manufacturer induced false Medicaid claims through off-label marketing and kickback scheme to promote three drugs could not survive summary judgment on causation, the court stated in dicta, citing <i>Escobar</i> : "The parties suggested at oral argument that Medicaid pays for claims without asking whether the drugs were prescribed for off-label uses or asking for what purpose the drugs were prescribed. If this is true, given that it is not uncommon for physicians to make off-label prescriptions, we think it unlikely that prescribing off-label is material to Medicaid's payment decisions under the FCA."

Covington Burling LLP
Decision Tracker: Universal Health Services v. United States ex rel. Escobar

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United States v. Americus Mortgage Corp., No. 4:12-cv-02676, 2017 WL 4083589 (S.D. Tex. Sept. 14, 2017)	9/14/2017	S.D. Tex.	5th Cir.	Financial Services; Housing	Materiality	Motion for Judgment as a Matter of Law	Claims Granted	At trial, the United States presented sufficient evidence of materiality to support its FCA claims based on false statements made by defendants to secure U.S. Department of Housing and Urban Development (HUD) insurance on mortgage loans issued by unauthorized "shadow branches." Documentary evidence and trial testimony included "detailed analyses of various HUD requirements" violated by defendants and explained "the importance of these requirements" and "why these requirements were necessary for HUD to make an informed decision," including testimony from a fourteen-year HUD employee that HUD will not approve applications for insurance on loans originated by non-registered branches.
United States ex rel. Jersey Strong Pediatrics, LLC v. Wanaque Convalescent Center, No. 14-6651-SDW-SCM, 2017 WL 4122598 (D.N.J. Sept. 18, 2017)	9/18/2017	D.N.J.	3d Cir.	Health Care	Materiality	Motion to Dismiss	Claims Proceed	Relator sufficiently pled an implied certification claim in its complaint alleging that defendants fraudulently billed Medicare and Medicaid as primary payer despite the existence of alternative coverage, in violation of secondary payer laws. Relator met its burden to plead materiality by alleging that secondary payers face penalties for failing to gather accurate information to determine if Medicare/Medicaid is the primary payer for a patient; claims are "consistently/continually/automatically" denied if alternative, primary benefits are available; and the government contracts with "private auditors to strictly enforce secondary payment laws to prevent improper payments."
United States ex rel. Gelman v. Donovan, No. 12-CV-5142 (CJD), 2017 WL 4280543 (E.D.N.Y. Sept. 25, 2017)	9/25/2017	E.D.N.Y.	2d Cir.	Health Care	Materiality	Motion to Dismiss	Claims Proceed	Relator's implied certification claim was adequately pled based on allegations that defendants fraudulently billed Medicaid and Medicare by allowing graduate students to render podiatric care without supervision and then falsifying records to camouflage lack of supervision. <i>Escobar</i> requires undisclosed regulatory violations to be plausibly pled as relevant to the payment decision, either "as a matter of common sense, or in the mind's eye of the filer of the claim." Alleged fraud was material as a matter of common sense, because a "reasonable person would realize the imperative" of adequate supervision of treatment. In addition, the allegation that defendants falsified records supported finding of materiality, because it indicated that defendants believed the lack of supervision could have affected government's payment decision.
United States ex rel. Heath v. Wisconsin Bell Inc., 272 F.Supp.3d 1094 (E.D. Wis. 2017)	9/25/2017	E.D. Wis.	7th Cir.	Telecommunications	Materiality	Motion for Judgment on the Pleadings	Claims Proceed	In alleging that defendants had knowingly overcharged for telecommunication services provided to schools and libraries that were subsidized by the government under the "E-rate" program, relator stated an implied certification claim based on violation of requirement that defendants charge the "lowest corresponding price" (LCP) for similar services. Misrepresentations about LCP compliance would "naturally influence" the government's payment decision, as the LCP requirement was a "core component" of the E-rate program, which ensures schools and libraries have access to quality telecommunications services at "just, reasonable, and affordable rates." The LCP rule also implemented a statutory requirement for service providers to charge schools and libraries lower rates for eligible services, and aggregate E-rate subsidies are capped each year so overcharges depleted funds available to subsidize services for other schools and libraries. The fact that the government continued to subsidize defendants' services under E-rate despite having previously investigated relator's claims does not establish that alleged violations are immaterial, as government's involvement in the case and opposition to defendants' motion suggests it believes relator's claims may have merit.
United States ex rel. Lacey v. Visiting Nurse Service of New York, No. 14-cv-5739 (AJN), 2017 WL 5515860 (S.D.N.Y. Sept. 26, 2017)	9/26/2017	S.D.N.Y.	2d Cir.	Health Care	Implied Certification; Materiality	Motion to Dismiss	Claims Proceed	Relator successfully pled that defendant submitted false claims under an implied certification theory, because defendant's use of certain Medicare billing codes were "misleading half-truths" under <i>Escobar</i> in light of defendants' alleged noncompliance with patients' Plans of Care. Relator also adequately pled that the alleged noncompliance was material, based on identification of regulations suggesting that following Plans of Care is a condition for payment, provisions regarding Plans of Care in Center for Medicare (CMS) guidance and manuals, and cases in which CMS denied or terminated home health agencies' participation in Medicare for providing services below the level prescribed in Plans of Care.

Covington Burling LLP
Decision Tracker: Universal Health Services v. United States ex rel. Escobar

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United States ex rel. Hussain v. CDM Smith, Inc., No. 14-CV-9107 (JPO), 2017 WL 4326523 (S.D.N.Y. Sept. 27, 2017)	9/27/2017	S.D.N.Y.	2d Cir.	Government Contracts	Implied Certification; Materiality	Motion to Dismiss	Some Claims Dismissed/Denied; Some Claims Proceed	Relator adequately stated implied certification claim relating to billings on USAID contracts for rebuilding efforts in the wake of an earthquake in Pakistan. Relator plausibly pled materiality under <i>Escobar</i> and <i>United States ex rel. Bishop v. Wells Fargo & Co.</i> , 870 F.3d 104 (2d Cir. 2017), because government's payment decision could have been affected by contractor's alleged practice of shifting costs from fixed-fee contracts to cost-plus-fee contracts.
United States ex rel. Harman v. Trinity Industries, Inc., 872 F.3d 645 (5th Cir. 2017)	9/29/2017	5th Cir.	5th Cir.	Transportation	Materiality	Appeal from Denial of Motion for Judgment as a Matter of Law	Claims Dismissed/Denied	Defendant was entitled to judgment as a matter of law on materiality, overturning jury verdict and \$663 million judgment against defendant, when relator alleged that defendant concealed a design change to the highway guardrails it manufactured from Federal Highway Administration (FHWA), but FHWA continued to approve the guardrails for reimbursement after learning of the design change and issued a memorandum expressly approving of defendant's guardrails. Multiple post- <i>Escobar</i> circuit decisions confirm that government's decision to pay in full despite actual knowledge that regulatory requirements were violated "is very strong evidence against the materiality of those requirements." The "gravity and the clarity" of FHWA's decision to allow the guardrails to be installed throughout the country, even when relator alleged that the design change made them defective and dangerous, confirmed that FHWA considered the design change to be immaterial to the payment decision.
United States ex rel. Swoben v. Scan Health Plan, No. 09-5013-JFW (JEMx), 2017 WL 4564722 (C.D. Cal. Oct. 5, 2017)	10/5/2017	C.D. Cal.	9th Cir.	Health Care	Materiality	Motion to Dismiss	Claims Dismissed/Denied	In first case where government intervened in whistleblower claims alleging Medicare Advantage fraud, government's complaint-in-partial-intervention was dismissed without prejudice for, <i>inter alia</i> , failure to allege that government would not have made risk adjustment payments for insurers' coverage of sicker patients if they had known that defendants UnitedHealth and related entities allegedly ignored deficient chart reviews by co-defendant, resulting in billings for unsubstantiated diagnoses.
United States v. Luce, 873 F.3d 999 (7th Cir. 2017)	10/23/2017	7th Cir.	7th Cir.	Financial Services; Housing	Materiality	Appeal from Summary Judgment to Plaintiff	Claims Proceed	Lower court correctly determined that defendant, owner and president of a mortgage servicer, made material false statement under <i>Escobar</i> when certification that he had no criminal history, in order for his company to receive mortgage insurance from the U.S. Department of Housing and Urban Development (HUD) under the Fair Housing Act (FHSA). Certification was an eligibility requirement for participation in the FHA insurance program, and HUD initiated debarment proceedings against defendant's company when it learned of the false certification. However, summary judgment for government should be vacated because statement in <i>Escobar</i> that "fraudulent" in FCA incorporated the common-law meaning of fraud abrogated prior Seventh Circuit precedent requiring "but-for" causation for FCA claims. The case should be remanded to district court for application of common-law standard of proximate causation, under which defendant is liable only for pecuniary losses that were the reasonably foreseeable result of his false statements.
United States ex rel. Lutz v. Berkeley Heartlab, Inc., No. 9:14-230-RMG, 2017 WL 4803911 (D.S.C. Oct. 23, 2017)	10/23/2017	D.S.C.	4th Cir.	Health Care	Materiality	Summary Judgment	Claims Proceed	Summary judgment was not warranted based on defendants' materiality defense that government continued to pay claims after learning they were made in violation of Anti-Kickback Statute (AKS), as defendants failed to demonstrate government knowledge that claims were "actually tainted" by kickback scheme. Although government was aware that "some claims may have been tainted by kickbacks" in 2011, the record evidenced that government took "years of investigation" to determine whether defendants had requisite scienter to violate AKS and FCA. During this time, the government continued to pay claims, however, because "[t]he Government does not enjoy the luxury of refusing to reimburse health care claims the moment it suspects there may be wrongdoing."
United States v. Palin, 874 F.3d 418 (4th Cir. 2017)	10/31/2017	4th Cir.	4th Cir.	Health Care	Materiality	Appeal from Conviction	Conviction Affirmed	In appeal from conviction for criminal health care fraud, defendants' misrepresentations to insurers that sophisticated tests for insured patients were medically necessary was material under <i>Escobar</i> , as insurers that reimbursed the tests knew the type of test and frequency of testing but did not know the tests were not medically necessary. (Although the court noted that <i>Escobar</i> likely does not apply in the context of criminal fraud, which the Fourth Circuit subsequently held in <i>United States v. Raza</i> , 878 F.3d 604 (4th Cir. 2017).)

Covington Burling LLP
Decision Tracker: Universal Health Services v. United States ex rel. Escobar

Case Citation	Date	Court	Circuit	Industry Sector	Escobar Issue	Posture	Disposition	Summary of Holding
United States ex rel. Lott v. Not-For-Profit Hospital Corp., --- F. Supp. 3d ----, No. 16-CV-1546, 2017 WL 5186344 (D.D.C. Nov. 8, 2017)	11/8/2017	D.D.C.	D.C. Cir.	Health Care	Implied Certification; Materiality	Motion to Dismiss	Claims Dismissed/Denied	Relator's allegations that defendant submitted reimbursement claims to Medicare and Medicaid despite knowledge that it was ineligible for reimbursement due to violations of unspecified "Office of Inspector General guidelines and other federal laws" did not state FCA violation under <i>Escobar</i> . Relator did not aver any "specific representations about the goods or services" rendered false by defendant's alleged violations of law. In failing to identify any particular law or regulation that defendant allegedly violated, relator also failed to allege that any such violation was material.
United States ex rel. Lord v. NAPA Management Services Corp., No. 3:13-2940, 2017 WL 5450757 (M.D. Penn. Nov. 14, 2017)	11/14/2017	M.D. Penn.	3d Cir.	Health Care	Materiality	Motion to Dismiss	Claims Proceed	Relator's claim that defendants had submitted false claims to Medicare regarding anesthesiology services was allowed to proceed, because defendants allegedly billed for more expensive "medical direction" when they in fact performed less expensive "medical supervision." These claims were highly material because they concerned the amount to be paid.
United States ex rel. Spay v. CVS Caremark Corp., 875 F.3d 746 (3d Cir. 2017)	11/16/2017	3rd Cir.	3d Cir.	Health Care	Materiality	Appeal from Summary Judgment to Defense	Claims Dismissed/Denied	Relator's claims based on defendant's alleged use of "dummy" prescriber identification numbers when submitting reimbursement claims were denied because government had full knowledge of defendant's use of dummy codes. Lower court's conclusion that government's knowledge negated scienter was incorrect, as defendant had failed to proffer evidence that it was aware of the government's knowledge when it submitted false claims. But, government's continued payment despite knowledge of defendant's use of dummy codes showed false statements were not material under <i>Escobar</i> . And, <i>Escobar's</i> materiality standard does not apply solely to the post-2009 amendments FCA; the Congressional addition of a definition of materiality in the 2009 amendments was intended to increase clarity, not to inject a new element into the claim.
United States ex rel. Bailey v. Gatan Inc., No. 2:12-CV-00106-MCE-CKD, 2017 WL 5754787 (E.D. Cal. Nov. 28, 2017)	11/28/2017	E.D. Cal.	9th Cir.	Government Contracts	Materiality	Summary Judgment	Claims Dismissed/Denied	Summary judgment warranted on relators' claims that defendants fraudulently concealed x-ray radiation risks associated with defendant's electron microscope equipment that was sold to government customers, because defendants demonstrated that there were no "legally binding standards [regarding x-rays] applicable to electron microscope equipment," and there was no evidence that compliance with "any standard, whether externally imposed or internally driven, was material to the government customer."
United States ex rel. Lutz v. Berkeley Heartlab, Inc., No. 9:14-230-RMG, 2017 WL 6015574 (D.S.C. Dec. 4, 2017)	12/4/2017	D.S.C.	4th Cir.	Health Care	Materiality	Written Request for Jury Instructions	Government's Proposed Jury Instruction Accepted	Government's proposed jury instruction that "whether a laboratory service resulted from an [Anti-Kickback Statute (AKS)] violation . . . is material, as a matter of law" correctly stated the law and defendants' proposed instruction that AKS violation would only be "strong evidence" of materiality misstated the law. The Patient Protection and Affordable Care Act (PPACA) included express language stating that any claim made in violation of AKS was false or fraudulent, therefore making AKS compliance <i>per se</i> material to the government's decision to pay. In addition, AKS compliance would be <i>per se</i> material even if PPACA did not include express language, because "[n]o reasonable person could believe that AKS compliance is unimportant to the Government's reimbursement decisions for laboratory services."
United States ex rel. Headen v. Adams & Associates, Inc., No. 4:16-CV-1164-VEH, 2017 WL 6017775 (N.D. Ala. Dec. 5, 2017)	12/5/2017	N.D. Ala.	11th Cir.	Education & Labor	Implied Certification	Motion to Dismiss	Claims Dismissed/Denied	Defendant job training center's alleged noncompliance with procedural requirements of the Job Corps Act did not state an implied certification claim related to payments received under agreement with Department of Labor. Relator failed to allege that defendants were required to comply with any of the identified requirements and to plead with particularity that defendants falsely certified compliance with those requirements.
United States ex rel. Cairns v. D.S. Medical LLC, No. 1:12CV00004 AGF (E.D. Mo. Dec. 12, 2017)	12/14/2017	E.D. Mo.	8th Cir.	Health Care; Pharmaceuticals & Medical Devices	Materiality	Motion for Judgment as a Matter of Law	Claims Granted	Evidence presented at trial that "prosecutors aggressively pursue allegations of improper kickback relationships between physicians and their distributors and vendors for medical devices was sufficient for a jury to find that the Defendants' kickback activities would influence the payment decision made by Medicare for the claims submitted" and were therefore material.
Coyne v. Amgen, Inc., --- F. App'x ----, 2017 WL 6459267 (2nd Cir. Dec. 18, 2017)	12/18/2017	2nd Cir.	2nd Cir.	Health Care; Pharmaceuticals & Medical Devices	Materiality	Appeal from Dismissal	Claims Dismissed/Denied	Lower court correctly dismissed relator's complaint for failure to state a claim, when complaint failed to allege that misrepresentation contained in drug's marketing materials would have affected government's reimbursement decisions for that drug.

Covington Burling LLP
Decision Tracker: Universal Health Services v. United States ex rel. Escobar

Case Citation	Date	Court	Circuit	Industry Sector	Escobar Issue	Posture	Disposition	Summary of Holding
United States ex rel. Schiff v. Norman, No. 8:15-CV-1506-T-23AEP, 2018 WL 264253 (M.D. Fla. Jan. 2, 2018)	1/2/2018	M.D. Fla.	11th Cir.	Health Care	Materiality	Motion to Dismiss	Claims Dismissed/Denied	Relator's complaint alleging that defendants billed Medicare for radiation therapy that was not supervised by a physician dismissed because, among other things, Relator failed to allege facts showing that the "United States routinely refuses to reimburse a defendant for radiation therapy not supervised by a physician."
United States ex rel. O'Donnell v. America at Home Healthcare & Nursing Services, Ltd., No. 14-cv-1098, 2018 WL 319319 (N.D. Ill. Jan. 8, 2018)	1/8/2018	N.D. Ill.	7th Cir.	Health Care	Materiality	Motion to Dismiss		Relator pleaded that the defendant was violating the Health Insurance Portability and Accountability Act (HIPAA) by improperly obtaining individuals' health information to solicit home health services. However, the defendant was falsely representing that it was complying with HIPAA. The court concluded that these representations were material, because they were similar to "purchas[ing] patients by paying kickbacks"--an act which had been found to be material in a previous case. Moreover, the complaint alleged that the government does not knowingly pay claims to providers that violate HIPAA.
United States ex rel. Calderon v. Carrington Mortgage Services, LLC, No. 1:16-CV-00920-RLY-MJD, 2018 WL 372348 (S.D. Ind. Jan. 10, 2018)	1/10/2018	S.D. Ind.	7th Cir.	Financial Services; Housing	Materiality	Motion to Dismiss	Claims Dismissed/Denied	Relator's complaint alleging that mortgage loan servicer had recklessly underwritten loans and falsely certified that underwritten loans were eligible for U.S. Department of Housing and Urban Development (HUD) insurance was dismissed under "strict standard" announced in <i>Escobar</i> , because complaint "merely recit[ed] in a generalized manner that hundreds or thousands of loans contained at least one material violation of the applicable HUD underwriting guidelines." Relator failed to provide any examples of regulatory or guideline violations that HUD had considered material in the past.
United States ex. rel. Durkin v. County of San Diego, --- F. Supp. 3d ----, 2018 WL 376581 (S.D. Cal. Jan. 11, 2018)	1/11/2018	S.D. Cal.	9th Cir.	Transportation	Materiality	Motion to Dismiss	Claims Dismissed/Denied	Although relator alleged a nexus between county's false statement that it would use FAA-provided funds to acquire interest in land in Runway Protection Zone (RPZ) and the government's payment of funds, and further alleged that relevant statute expressly conditioned payment on certification that funds would be used to restrict land use in RPZ, relator's complaint failed to allege facts that FAA regularly refused to make payments "in the mine run of cases" based on noncompliance with statute. Therefore, relator failed to sufficiently allege that assertions of compliance were the " <i>sine qua non</i> " of receipt of government funding.
United States ex rel. Ruckh v. Salus Rehabilitation, LLC, No. 8-11-CV-1303-T-23TBM, 2018 WL 375720 (M.D. Fla. Jan. 11, 2018)	1/11/2018	M.D. Fla.	11th Cir.	Health Care	Materiality	Motion for Judgment as a Matter Of Law	Claims Dismissed/Denied	Defendants were entitled to judgment as a matter of law on materiality, overturning jury verdict and \$350 million judgment against defendants, because federal and state governments continued to pay with knowledge of defendants' disputed practices. Relator alleged that defendant nursing homes had falsely certified compliance with regulatory requirement to maintain a "comprehensive care plan" under Medicaid and failed to keep records to standard required by Medicare regulations. But, relator failed to present sufficient evidence of materiality, as she argued only that certain recordkeeping requirements were not met and failed to present evidence that recordkeeping deficiencies led to discontinuation of payments.
United States ex rel. Vatan v. QTC Med. Servs. Inc., --- F. App'x ----, No. 16-55406, 2018 WL 387286 (9th Cir. Jan. 12, 2018)	1/12/2018	9th Cir.	9th Cir.	Health Care	Implied Certification	Appeal from Dismissal	Claims Proceed	Complaint had met the pleading standard for Rule 8(a), as the relator had alleged "requisite elements of False Claims Act claims under theories of both factually false and implied false certification." With regards to implied false certification, Relator had alleged that checklists submitted by the defendant had "omitted critical information" regarding the nature of the services provided, and therefore had pled a sufficient "misleading half-truth" under <i>Escobar</i> .
United States ex rel. Marsteller v. Tilton, 880 F.3d 1302 (11th Cir. 2018)	1/26/2018	11th Cir.	11th Cir.	Government Contracts	Implied Certification	Appeal from Dismissal	Claims Proceed	District court's dismissal for failure to show that allegedly improper relationship between defendant and contracting officer violated an "express condition of payment," following <i>Mikes v. Straus</i> , 274 F.3d 687 (2d Cir. 2001), should be reversed and the case remanded for reconsideration in light of Supreme Court's holding in <i>Escobar</i> that the designation of a statutory, regulatory, or contractual provision as a condition of payment is "relevant, but not automatically dispositive."
United States ex rel. Dean v. Paramedics Plus LLC, No. 4:14-CV-00203, 2018 WL 620776 (E.D. Tex. Jan. 30, 2018)	1/30/2018	E.D. Tex.	5th Cir.	Health Care	Materiality	Defendant's Motion to Compel Discovery	Defendant's Motion to Compel Discovery Granted In Part	Government must produce documents relating to whether government paid similar claims filed by other companies in the ambulance industry, based on the language in <i>Escobar</i> that "if the Government regularly pays a particular type of claim in full despite actual knowledge that certain requirements were violated, and has signaled no change in position, that is strong evidence that the requirements are not material."

Covington Burling LLP
Decision Tracker: Universal Health Services v. United States ex rel. Escobar

Case Citation	Date	Court	Circuit	Industry Sector	Escobar Issue	Posture	Disposition	Summary of Holding
United States v. Strock, No. 15-CV-0887-FPG, 2018 WL 647471 (W.D.N.Y. Jan. 31, 2018)	1/31/2018	W.D.N.Y.	2nd Cir.	Government Contracts	Materiality	Motion to Dismiss	Claims Dismissed/Denied	Complaint dismissed (with leave to amend) because government failed to adequately allege materiality, when the small business regulations allegedly violated by defendant governed a company's ability to participate in small business set aside program, but did not govern whether government would pay company. Although defendant had been investigated to determine whether it met small business contracting requirements, it was unclear whether government continued to pay defendant during this investigation. And, it was unclear whether defendant would have been terminated from the contracts it had been awarded if it was determined not to be a small business.
United States ex rel. O'Neill v. Somnia, Inc., No. 1:15-cv-00433-DAD-EPG, 2018 WL 684765 (E.D. Cal. Feb. 2, 2018)	2/2/2018	E.D. Cal.	9th Cir.	Health Care	Materiality	Motion to Dismiss	Claims Dismissed/Denied	In implied certification claim based on submission of Medicare claims for anesthesia services using an improper billing code, relator failed to plead any facts that the alleged misuse of the billing code was material. Relator's argument that use of the billing code violated a local health care district's bylaws was tantamount to "an assertion that any violation of an applicable law, regulation, or contract violation is inherently material," which is "inconsistent with the Supreme Court's holding in <i>Escobar</i> ."
United States ex rel. Poehling v. UnitedHealth Group, Inc., No. 2:16-CV 16-08697-MWF-SS, 2018 WL 1363487 (C.D. Cal. Feb. 12, 2018)	2/12/2018	C.D. Cal.	9th Cir.	Health Care	Materiality	Motion to Dismiss	Some Claims Dismissed/Denied; Some Claims Proceed	Government's complaint-in-intervention failed to plead materiality with respect to defendant's submission of allegedly false "Risk Adjustment Attestations," which certified to the accuracy of diagnostic data used to determine risk adjustment payments to defendants for patients enrolled in defendant's Medicare Advantage Plans. While the complaint successfully alleged that the underlying diagnostic data was material to defendants' claims for risk adjustment payments, it did not allege that the Attestations were likely to influence the payment decision, despite allegations that the Attestations and the diagnostic data were "intertwined." But, government adequately pled reverse false claim through allegations that defendants failed to delete invalid diagnoses, which would trigger an obligation to return Medicare overpayments. Without deciding whether <i>Escobar's</i> materiality standard applies to reverse false claims, the court found that the complaint contained "enough factual allegations of the effect of the submission of invalid diagnosis codes on the Government's risk adjustment payments, and on Defendants' retention of risk adjustment payments to which they are not entitled, to satisfy the <i>Escobar</i> standard." The fact that CMS continued to make risk adjustment payments to defendants despite generalized knowledge about problems with the diagnostic data did not change materiality analysis, as defendant's allegedly false representations prevented CMS from identifying which diagnoses were valid and which were not.
United States ex rel. Sloan v. Waukegan Steel, Inc., No. 15-C-458, 2018 WL 1087642 (N.D. Ill. Feb. 28, 2018)	2/28/2018	N.D. Ill.	7th Cir.	Government Contracts	Materiality	Motion to Dismiss	Claims Proceed	Complaint alleged that the defendant fabricated inspection certifications. That alleged false statement was found to be "plausib[y]" material, based on the fact that (1) the contract stated that certifications were required; (2) the customer required that the certifications be submitted before payment was made; and (3) the customer made a specific request for the certifications.
United States ex rel. Potter v. CASA de Maryland, Civ. A. No. PX-16-0475, 2018 WL 1183659 (D. Md. Mar. 6, 2018)	3/6/2018	D. Md.	4th Cir.	Education	Implied Certification; Materiality	Motion to Dismss	Claims Dismissed/Denied	Relator pleaded that the defendant improperly completed I-9 Forms ("Employment Eligibility Verification Forms"), but had made a general certification that its paperwork was in compliance. However, the court noted that this general certification did not request information about immigration compliance or Form I-9. In addition, the relator provided no facts showing that funding is tied to the sufficiency of I-9 Forms. Thus, the allegations failed to demonstrate materiality.
United States ex rel. Branscome v. Blue Ridge Home Health Services, Inc., Civ. A. No. 7:16cv00087, 2018 WL 1309734 (W.D. Va. Mar. 13, 2018)	3/13/2018	W.D. Va.	4th Cir.	Health Care	Materiality	Motion to Dismiss	Claims Dismissed/Denied	The relator did not plead that a specific false claim had been submitted to the government. The court explained that, when assessing materiality, the fact that "the Government designates compliance with a particular . . . requirement as a condition of payment" is not enough. Because the relator could not even show a false claim, the relator could not show that a false claim would have an actual impact on payment. For that reason (which was similar to the court's reasoning on the falsity element), the relator's failure to show materiality constituted an independent ground for dismissal.

Covington Burling LLP
Decision Tracker: Universal Health Services v. United States ex rel. Escobar

Case Citation	Date	Court	Circuit	Industry Sector	Escobar Issue	Posture	Disposition	Summary of Holding
United States ex rel. Kolchinsky v. Moody's Corp., No. 12cv1399, 2018 WL 1322183 (S.D.N.Y. Mar. 13, 2018)	3/13/2018	S.D.N.Y.	2d Cir.	Financial Services	Materiality	Motion to Dismiss	Claims Dismissed/Denied	The cCourt held that media reports and Congressional investigations related to the conduct at issue meant that the Government and the public were on notice of all the facts relied upon to support the allegation of fraud. Despite being on notice of those facts, the Government continued to make payments. Accordingly the court concluded that the relator failed to demonstrate materiality.
United States ex rel. Hedley v. ABHE & Svoboda, Inc., Civ. A. No. RDB-14-2935, 2018 WL 1378827 (D. Md. Mar. 19, 2018)	3/19/2018	D. Md.	4th Cir.	Government Contracts	Implied Certification; Materiality	Summary Judgment	Claims Dismissed/Denied	Relator claimed that the defendant made implied certifications that it was complying with federal disadvantaged business enterprise ("DBE") regulations, but the allegedly relevant aspects of those regulations only applied to the "recipient" state agency, and not the defendant. Therefore, relator could not succeed on an implied certification theory. For similar reasons, and based on the fact that the state agency continued to make payments despite not even receiving the DBE forms, the court found insufficient evidence of materiality.
United States ex rel. Coffman v. City of Leavenworth, Kansas, --- F. Supp. 3d ----, 2018 WL 1456428 (D. Kan. Mar. 23, 2018)	3/23/2018	D. Kan.	10th Cir.	Government Contracts	Implied Certification; Materiality	Summary Judgment	Some Claims Dismissed/Denied; Retaliation Claims Proceed	Relator alleged that a monthly sewage service bill from a city to the federal government had impliedly certified compliance with federal environmental laws. However, relator presented no evidence that regulatory compliance was a condition of payment. Moreover, the federal government never requested or audited the city to confirm compliance with environmental laws. Therefore, these "implied certifications" were not material.
United States ex rel. Freedom Unlimited, Inc. v. City of Pittsburgh, Pennsylvania, --- F. App'x ----, 2018 WL 1517159 (3d Cir. Mar. 28, 2018)	3/28/2018	3d Cir.	3d Cir.	Housing	Materiality	Appeal from Dismissal	Claims Proceed	Court reversed district court's pre-Escobar dismissal of FCA claims based on defendants' alleged violation of HUD requirements with respect to community development grant programs. The district court had concluded that defendant's alleged violations were not material because they related to "conditions of participation" and not "conditions of payment," a distinction that was superseded when "[t]he Supreme Court in Escobar instructed courts making a materiality inquiry to ascertain whether the matter at issue was capable of influencing the government's payment decision."
United States ex rel. Kietzman v. Bethany Circle of King's Daughters of Madison, Indiana, No. 4:16-cv-00009-SEB-DML, 2018 WL 1566814 (S.D. Ind. Mar. 30, 2018)	3/30/2018	S.D. Ind.	7th Cir.	Health Care	Materiality	Motion to Dismiss	Some Claims Dismissed/Denied; Some Claims Proceed	Relator simply asserted that false claims were material, rather than alleging facts that would show the claims were material. The court held that "bald conclusions" do not meet Escobar's "demanding" materiality standard, especially where "[n]o facts are alleged as to what types of claims the government usually did or did not pay, nor as to what the government's compliance priorities were, nor as to the degree of severity of the alleged breaches of regulation." Accordingly, relator failed to state a claim.
United States ex rel. Kelly v. Select Specialty Hospital-Wilmington, Inc., Civ. A. No. 1:16-CV-347, 2018 WL 1568874 (D. Del. Mar. 30, 2018)	3/30/2018	D. Del.	3d Cir.	Health Care	Materiality	Motion to Dismiss	Some Claims Dismissed/Denied; Some Claims Proceed	Relator alleged that the defendant forged medical practitioners' signatures in documentation submitted in support of claims for reimbursement under Medicare, Medicaid, and FEHBP. The court found that the relator had sufficiently pled materiality, based on: (1) numerous statutory and regulatory provisions, cited by relator, which stated that reimbursement is conditional on medical practitioners' certification; (2) no indication existed that the government would have continued to pay had it known about the signatures; and (3) the court believed that this forgery could not be seen as "minor or insubstantial."
United States ex rel. Brooks v. Stevens-Henager College, --- F. Supp. 3d ----, 2018 WL 1614336 (D. Utah Mar. 30, 2018)	3/30/2018	D. Utah	10th Cir.	Education	Implied Certification; Materiality	Motion for Reconsideration on Motion to Dismiss	Some Claims Dismissed/Denied; Some Claims Proceed	On reconsideration following the Supreme Court's ruling in Escobar, Relator alleged that the defendant falsely certified that it would comply with the Incentive Compensation Ban ("ICB") in order to get Title IV funding. The Court concluded this was material for five reasons: (1) the government conditioned Title IV eligibility on a promise to comply with the ICB; (2) legislative and regulatory history stressed the importance of the ICB; (3) the government required annual certifications demonstrating compliance with the ICB; (4) the Department of Education was allowed to withhold funds based on noncompliance with the ICB; and (5) based on the allegations, the defendant took steps to actively conceal its noncompliance -- suggesting it knew that this was a condition of payment.

Covington Burling LLP
Decision Tracker: Universal Health Services v. United States ex rel. Escobar

Case Citation	Date	Court	Circuit	Industry Sector	Escobar Issue	Posture	Disposition	Summary of Holding
United States ex rel. Folliard v. Comstor Corp., --- F. Supp. 3d ----, 2018 WL 1567620 (D.D.C. Mar. 31, 2018)	3/31/2018	D.D.C.	D.C. Cir.	Government Contracts	Implied Certification; Materiality	Motion to Dismiss	Claims Dismissed/Denied	Relator alleged that defendant sold products to the government that originated in non-designated countries, in violation of the Trade Agreements Act ("TAA"). The court noted that, for the element of falsity, the defendant had made implied certifications only about "end products" -- as opposed to "configurable options" or "open market items." The court then turned to the element of materiality, and determined that Relator had failed to allege facts that sufficiently demonstrated the materiality of the defendant's certifications regarding end products. Relator only pointed out FAR provisions that concerned the TAA, and provided no factual allegation that the government consistently refuses to pay claims based on those FAR provisions. Moreover, Relator conceded that exceptions to those rules existed, which proved the government can continue to make payments even after learning of TAA violations.
United States ex rel. Cressman v. Solid Waste Services, Inc., Civ. A. No. 13-5693, 2018 WL 1693349 (E.D. Penn. Apr. 6, 2018)	4/6/2018	E.D. Penn.	3d Cir.	Government Contracts	Materiality	Summary Judgment (Cross Motions)	Claims Dismissed/Denied	Relator had not pled that defendant trash collection company's alleged violation of environmental laws was material to defendant's federal waste collection and disposal contracts. The court noted that federal agencies continued to pay for defendant's services after the alleged violation and after relator filed his <i>qui tam</i> suit, DOJ investigated relator's claims and declined to intervene in the case, and the services defendant performed for the agencies had no nexus to the transfer station at which the incident occurred.
United States ex rel. Hamilton v. Yavapai Community College District, No. CV-12-08193-PCT-GMS, 2018 WL 1784692 (D. Ariz. 2018)	4/13/2018	D. Ariz.	9th Cir.	Education; Veterans' Benefits	Materiality	Summary Judgment (Cross Motions)	Some Claims Dismissed/Denied; Some Claims Proceed	The court found a question of material fact on the issue of materiality for one claim, given that the defendant's program was eventually suspended by the government for failing to comply with the rule in question. On another claim, however, the court found that the defendant's practice was known to the government and that the government continued to pay. Accordingly, defendant was entitled to summary judgment on that second claim on materiality grounds.