# Senate Judiciary Committee Advances False Claims Act Amendment to Full Senate

 On October 28, a majority of members on the Senate Judiciary Committee voted 15-7 to advance to the full Senate a bipartisan bill that would make a number of amendments to the False Claims Act ("FCA"), including one that would make significant changes to the FCA's definition of "materiality." Senator Chuck Grassley of Iowa, who serves as the ranking member of the Judiciary Committee, argued for the materiality amendment, stating that it is intended to correct the "misinterpretations" of the FCA "created by the *Escobar* court."

Under the FCA, only a material violation – one that has "a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property by the government" – can form the basis for liability. The Supreme Court in *Universal Health Services v. United States ex rel. Escobar* stated that the FCA's materiality standard is "rigorous" and "demanding," and held that a violation of a particular requirement would likely not be considered material if (for example) the government had actual knowledge of the violation and chose to pay the claim anyway.

The materiality amendment advanced to the full Senate would undo the protections offered by the *Escobar* ruling, and instead states that "in determining materiality, the decision of the government to forego a refund or pay a claim despite actual knowledge of fraud or falsity shall not be considered dispositive if other reasons exist for the decision of the government with respect to such refund or payment."

The number of suits filed under the *qui tam* provisions of the FCA are steadily increasing over the years, with **672 *qui tam* actions filed in 2020** alone. Should this FCA amendment be enacted, its lowered materiality standard will make it significantly more difficult for defendants in *qui tam* actions to win motions to dismiss on materiality grounds, or to obtain summary judgment; as a result, many more of these cases will move forward to more expensive and time-consuming stages of litigation.

Health care providers and other health care companies who are the potential defendants in FCA cases already often spend significant resources defending against these claims. While the proposed amendment advanced by the Judiciary Committee last week is intended to reduce fraud and abuse – for example, the amended materiality standard would be particularly important in situations in which the government is aware of fraudulent claims but is unable or unwilling to stop paying for the provision of critical healthcare services***; but, it may also have an effect on the overall costs of defending a claim, whether or not meritorious. We will continue to monitor updates with respect to the FCA and related legislation.***