

Hospice Insights: The Law and Beyond



Episode 22 - Enforcement Relief: What New Regulatory Reforms Could Mean for Hospices

October 14, 2020

Speaker	Statement
Meg Pekarske	Hello welcome to Hospice Insights: The Law and Beyond. Where we connect you to what matters in an ever-changing world of hospice and palliative care. “Enforcement Relief: What New Regulatory Reforms Could Mean for Hospices.” The Trump administration has shown an interest in regulatory reform with the goal of reducing the regulatory burden on regulated parties such as hospice providers. This has recently come to the forefront as part of the administration’s effort to lessen the impact of the coronavirus on the economy. In this episode Meg Pekarske talks with Bryan Nowicki, Emily Park and Liz LaFoe about these recent regulatory changes and how they could result in reducing the regulatory burden on hospice providers. Particularly in the areas of audit investigations and surveys. So good morning. It’s Meg Pekarske. I’m here with my colleagues Bryan Nowicki and some new guests who are a part of our hospice audit team: Emily Park and Liz LaFoe. So welcome everyone, super glad to have you here and look forward to enjoying our time together.
Bryan Nowicki	Thanks Meg, great to be here.
Meg Pekarske	So terrific. So Liz LaFoe and Emily Park are part of, as I said, our audit team and work extensively with Bryan who heads up our hospice litigation and audit section. So I wanted them to join in the discussion because the things that we’re going to be talking about, some of these: one a proposed regulation and then second a White House memo. We’re thinking that this could absolutely have some opportunities for us as it relates to how we defend hospices. So we’re going to try to keep it high level and not get in the weeds because we know our listeners aren’t intending to become lawyers but more understand the law so they can run their businesses better and also see what’s on the horizon. So Emily and Liz we’re super happy to



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have you. Thanks for making the time. So I want to kick it off by maybe asking each one of you about the proposed rule and the White House memo at sort of the 2,000-foot level. So Emily why don't you tell us what this White House memo, or you're here to talk about the regulatory reform. Which is actually a proposed rule. So let's start there. What is this proposed rule and is it actually in effect and where are we in the process?

Emily Park

So this proposed rule was published on August 20th. It follows an executive order that was issued on October 9th of 2019 so quite a while ago. So it's taken them a while to do a proposed rule. The rule isn't in effect but the executive order would be in effect. The rule had a comment period that closed on September 16th and I'll talk a little bit more about that in a minute. What this rule does is set out requirements related to guidance documents and guidance documents are used by the Department of Health and Human Services to clarify existing statutory or regulatory requirements. But according to the executive order the agency has really started to use these guidance documents over the years to set out substantive requirements. Which is very concerning to the current administration which is why that executive order was issued. So to sort of curb the abuses that have gone on with respect to guidance documents the administration required that an online repository be created for guidance documents. It also required that certain elements be included in a guidance document going forward. So a guidance document sets forth the agencies...

Meg Pekarske

And maybe Emily let's pause there because that's really helpful and I want to dovetail it now with we see the building of this abundance of activity on essentially what agencies are doing and enforcement and how it changed. So before we dig in deeper to guidance Liz tell us what this White House Memo is? What is a memo compared to what Emily just talked about was a proposed rule? Hospices are very familiar with rulemaking. They're used to the wage index coming out every year. Tell us a little bit about what a White House memo is, what standing of law does that have and then the memo we're talking about in particular. Why don't you give us a high-level overview of that?

Liz LaFoe

Sure I'd be happy to and I'm really happy to be here and I love being part of the Hospice team and thanks for having me. Emily was talking about her rule stemmed from an executive order and the same is true of the White House memo. In response to the coronavirus pandemic back in May of this year President Trump signed executive order 13924. And Section 6 of this executive order has a number of directives to administrative agencies which would include agencies like CMS and OIG to make enforcement against regulated parties such as hospice providers more fair. Just a few parts of this order are that enforcement should be prompt and fair. Rules of evidence and procedure should be public, clear and effective.



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Administrative enforcement should be free of improper government coercion. The government should be the one to bear the burden of proof. Which we'll talk about a little bit more later. Administrative enforcement should be free of unfair surprise and agencies have to be held accountable for their enforcement decisions. So this was a very high-level order and this White House memo came down August 31st, 2020, and that came from the Office of Information and Regulatory Affairs. Their job is to help teach regulatory agencies such as CMS how to interpret the different provisions in Section 6 of this executive order. So what the memo did and its Memo-20-31 is it provided some guidance to agencies to tell them what this executive order is supposed to mean and what they're supposed to do. And the main thing that they're supposed to do is promulgate rules and regulations and they're supposed to do that by the end of November this year to carry out the executive order. So the memo kind of dives into what does it mean to have the burden of proof beyond the government? What does it mean to have rules of procedure that are fair? What does it mean to protect regulated parties from unfair surprise? So we won't probably have time to cover all of the memo but that's the big picture.

Meg Pekarske

That is really helpful and Bryan this doesn't sound radical right? Due process, rules like fairness. As we'll dig in deeper this is very different than the administrative process typically works. So I guess as the leader of our audit and litigation team. Tell us what your insights are into these two potential rules that could potentially blow things open. By rule I mean the White House memo saying we should create rules to codify some of this. So tell me what your thoughts are, Bryan.

Bryan Nowicki

Right I think you're exactly right Meg. This is not at all radical sounding. I think in the implementation though this comes as a real breath of fresh air for people like me, Emily and Liz who are working against and with the government on all sorts of audits and investigations, legal actions and that sort of thing. Where concepts like due process and fairness have grown stale at the agencies like CMS. They have their own version that they currently think is fair and appropriate, but I think any outsider coming into this like when I came into this a decade ago. Saw that there was something kind of screwy with how CMS stacked the deck in its favor throughout the appeal process and throughout the investigation process. So to me these are really fundamental common-sense types of statements. I think it's really smart for the administration to identify them in that way. It makes them hard to debate. Who's against due process? Who's against fairness? And I think it provides a good platform for hopefully actual reforms to take place getting into some of the specifics Emily and Liz are probably going to share with us later during the podcast. Yeah this very good news but to be clear these are preliminary steps the White House memo as Liz mentioned is really the executive, the White House office, trying to help



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administrative agencies interpret what the White House wants. What does the leadership really want? And the proposed rule you know that can be a very lengthy process in itself and it has begun, as Emily described, but it can take and probably more likely years before anything substantive comes out of that. It's very heartening to have these initial steps be taken and with all the chaos that 2020 has been it's kind of uncertain to predict where all of these are going to go. We have COVID which might have started some of this. We have an election coming up and will a new administration continue this kind of fundamental common-sense ideas or take a different path? Emily what are your thoughts on that?

Emily Park

I just wanted to comment that this is not just coming out of nowhere. It's not just totally the administration's doing. All these actions seem to be following some pretty significant cases that came out from the Supreme Court recently. For the rulemaking that we're going to talk about, that really follows the Allina case. I'm not going to give really specific details about that case but that's the case where the United States Supreme Court held that the Department of Health and Human Services had to put their interpretive rules to the notice and comment rulemaking process. Before they were just using guidance documents to just do that because they thought it was exempt from the notice and comment process. The court clarified that recently. I think this is all, it's not just going to end when the administration changes, if it does change. I think that certainly something that this administration is working towards is decreasing regulatory burden. There's no doubt about that. But that's not all that's prompting this sort of thing. So I would think that even if there is a change of administration that this sort of thing will continue. Maybe not as intensely as it has been but I just wanted to point that out as well.

Bryan Nowicki

Yeah that's a great point Emily and we've talked on this podcast, it's probably over a year ago now about those more recent Supreme Court decisions. The Allina case that came down and that has some role with this we've talked about other positive I guess Supreme Court cases and other cases that are good for hospices. So there is a lot of activity. Emily as you're pointing out on the judicial branch, the executive branch is having some favorable activity. We need it to get down to the administrative level and the front-line level and hopefully have those bureaucracies, kind of the lifetime bureaucrats at those levels embrace what the courts are saying and what the upper level executive branch leadership is trying to get them to do.

Meg Pekarske

So let's spend a little time talking about where you were going earlier since we have a sort of understanding about these two developments. I want to drill down a bit. You were going to say what guidance is and what this new development really applies to. Being mindful that something that we think



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of as guidance actually, for example LCDs, is this really going to have an impact on that? So why don't you tell us how the proposed rule defines guidance?

Emily Park

So guidance under the proposed rule is a document that sets forth a policy. The agency policy or interpretation of a statute regulation or maybe some technical or scientific issues. It applies generally to all people, or all regulated entities or a certain subset of regulated entities. It has future effect on those regulated entities. It doesn't include things like LCDs. Things like LCDs and the national coverage to terminations are sort of in their own group. So I would say there's three different things to look at here. There's regulations, there's guidance documents and then there's the local coverage determinations. So this guidance, this rulemaking doesn't apply to guidance that the agency issues internally for its own business. That includes guidance to contractors unless that guidance sets forth substantive requirements that are meant to impact the behavior or the regulated entities. We have a lot of that for hospices. When we talk about how the contractors to audits of hospices and how they do extrapolations and things like that. All of that is set forth in directions to the contractors but obviously that impacts the way we do things.

Meg Pekarske

I was going to say as you're saying that and this is maybe where you're going to Bryan is the program integrity manual which is where a lot of this instruction typically to UPICs about how they can audit, when they can audit. Now there's some favorable things in there that we rely on too. And some of the guidance things that we cite too in our briefs come from memos that didn't go through rulemaking about the sort of historical nature of hospice and whatnot. Anyway, I'm thinking that there could be some arguments we could make to chisel away on the MPIM. Like you said Emily, with the statistical extrapolation which is where they take those small sample audit findings and put them on steroids to be giant numbers, there's not a lot of – and you Bryan and Liz work with our statisticians very closely about the statistical principles in that MPIM. Are they correct? Really are they in conformance? So, let's explore that a little bit because I think that's the biggest thing probably on the mind of our listeners is these giant extrapolations, and could those stop as a result of either the White House memo or this proposed rules. So let's go there for a second, unless you wanted to make a different comment, Bryan.

Bryan Nowicki

No, that's what I was going to ask Emily about. We have the program integrity manual, the claims processing manual. There's a whole set of Internet-only manuals. My understanding and let me know, Emily, but those are the kinds of guidance documents that are being referred to in rule or going to be addressed in the rule. Those would be subject to note in



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comment rulemaking. As a result of this rule, if it goes out?

Emily Park

Well, there's actually two different types of guidance documents that have two different requirements under this rulemaking. The first one is just a regular "guidance" document. There is actually a definition for guidance document, and then there's a separate definition for significant guidance documents. So, a guidance document would be like I indicated before, just in interpretation of existing requirements or the agency's policy with respect to enforcement of those requirements. A significant guidance document is that, but it would have a significant impact on the economy. And, there's some language in there. It's going to have an annual effect on the economy of \$100 million or more. And if it meets the definition of a significant guidance document, then it has to go through a notice and comment process. But if it doesn't, it just have to include certain elements. Like it has to say, this does not have the force and effect of law.

Liz LaFoe

I was just going to say like Emily said, the rule is limited to be significant guidance documents. But the executive order and the White House memo that I was discussing has a little bit broader reach. So, one of the exciting things for us as lawyers and the memo, which agencies are being directed to produce regulation to response to this memo. And one of the exciting things is that the White House is instructing agencies to take a couple of principles from criminal law that are very favorable to defendants in the criminal law context and apply them to the administrative law context, even though usually we're dealing with civil matters not criminal. So, um, one of the rules from criminal law that they want applied in the administrative context is the rule of lenity. That requires courts to resolve ambiguities. Anything that's ambiguous. So, whether it's a regulation or rule or a guidance document. Whether it's significant or not, anything that's ambiguous, it would be resolved in favor of the regulated party. For example, there are a number of arguments we make in the hospice audit context where the regulation isn't crystal clear. For example, on the certifications, a brief physician narrative is required. And we always felt that brief means brief, and if it's one sentence, that should be good enough. And so having agencies actually apply this rule of lenity, could be really helpful, whether we're talking about a regulation, a guidance document or something like the MPIM. Maybe it's not significant enough to meet the threshold of Emily's rule that she was discussing, but we could make an argument that hey this is up for debate, whether it should be interpreted one way or the other. And, under this new White House memo, we want it interpreted in our favor, and we think that's consistent with the directive from the Executive Branch.

Bryan Nowicki

And so, Meg, both of those kind of principles combined, what Liz is talking about, with the White House memo, what Emily has discussed with



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this proposed rule. They're going to help hospices for the most part get through the audit process. Meg you raised the issue of statistical extrapolation. All these manuals, they contain a lot of do's and don'ts as far as documentation and so forth. And that's going to be more clearly addressed by the items that Emily and Liz are talking about. It should be more difficult to hold a hospice responsible for violating a guidance document given the rule of lenity given the proposed rules that Emily has described. So those do's and don'ts of what documentation to have and so forth. If they only exist in the guidance document, it's going to be harder for the auditors to punish the hospices for that. The extrapolation rule in those guidance documents is kind of a how-to guide about how to perform a statistical extrapolation. Meg, you and I worked on a bunch of these. Emily and Liz also, where an auditor will take a sample of let's say 30 claims from a two-year period. They'll develop an error rate and then extrapolate the results of that error rate across every one of those thousands of claims in a two-year period, and you get a denial amount of maybe 100,000 for those 30 claims. But all of a sudden it turns into 10, 15, 20 million when you extrapolate it. The guidance documents currently have rules about how to extrapolate. And I think it would be fickle for us to say you can't extrapolate based upon what Emily and Liz are talking about, because the basis for extrapolation exists in the statute and regulation. But as far as the guidance about how to extrapolate appropriately, I think it will be more difficult for the auditors to lean on the guidance documents as fully supporting their approach to extrapolation. And it's an approach to extrapolation that we and expert statisticians that we've retained have had a lot of serious problems with just their process of doing an extrapolation. We think the statistics is bad. It really is so bad, it kind of goes beyond being a statistical exercise and just being an attempt to follow this guidance document that's never gone through review and comment. It hasn't been vetted. And there's a really a very difficult way to, it's very difficult to appeal because it always points back to well we followed the guidance. So everything is fine here. These two elements that Liz and Emily are talking about are going to help the effort to push back and try to bring the science back into statistical extrapolation.

Meg Pekarske

And so, Liz, thoughts on that? Cause I know you worked along with our statisticians on these issues.

Liz LaFoe

Sure. I do. I agree with everything that Bryan said. It's very exciting. I think the memo and the rule that Emily's discussing both give us an opportunity to push back. Another thing that is very helpful that's in the memo which is another principle that's taken from criminal law, and it's supposed to be applied in the administrative context now is the use of what are called Brady disclosures. And in the criminal law context, if there is exculpatory evidence, if there's evidence that's favorable to a defendant,



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the government is supposed to disclose that. Now in the administrative law context or the hospices that we worked with, we were routinely in these big cases where there's an audit and extrapolation, we tried to gather as much information as possible using things like the Freedom of Information Act request, a request directly to the government. Historically, we've had a really hard time getting information from the government. They make difficult arguments about whether something is privileged, whether it's an exemption to the Freedom of Information Act rules. And this memo kind of instructs the agencies to promulgate rules and regulations that would have them produce any information that's helpful to the regulated party during an enforcement process. So that's another thing that could be really exciting and really helpful whenever we study these statistical extrapolations for these huge, huge audits, because we're routinely not getting all the information that we need to really give 110 percent against the extrapolation.

Bryan Nowicki

And it is a struggle. Oh I'm sorry Emily go ahead.

Emily Park

I'll let you go Bryan I was going to go off onto a different tangent.

Bryan Nowicki

Yeah I was just going to follow up on what Liz said about the Freedom of Information Act requests, or FOIA requests. That is a big tool and we know that there's a lot of information out there that the government has but does not disclose to us. It's really routine for us to issue a FOIA request with any audit or investigation to try to find out what does the government have that the law requires them to disclose to us that they are not voluntarily giving over? So we issue the FOIA request, try to get that. From time to time we get some interesting stuff like we've gotten notes of the government's investigation that they interviewed certain people. We get some insight into their internal decision-making process about whether to put a provider on payment suspension or not and what they are thinking about the threshold of error that exists with the hospice and what to do with it. All very good information but that's the exception right now. Most of the time when we issue a FOIA request it takes the government a long time to get back to us and when they do get back to us they cite to all of these exemptions from their disclosure obligation. They say we're not going to give you this information you asked for because it's privileged because it's part of a deliberative process etcetera and it could be thousands of pages of really interesting documents that give you insight into how they're doing medical review. Are they applying the right standards? Or are they going off the rails? So it really goes to the core of the audit process, the investigation process, whether they're applying hospice regulations correctly, whether they know what hospice medicine is or how it should be practiced. So the breadth of that memo as Liz pointed out getting into kind of a due process aspect of giving the accused provider the information it



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Meg Pekarske	needs put up a full defense is another significant development. That we hope really pans out.
Emily Park	Well I was going to talk about not just the statistical changes we might see going forward. The extrapolation changes we might see going forward as a result of this rulemaking. We also have some manuals and other documents that I think are pretty significant. We know that whenever these audits are conducted the auditors have denied claims based on the fact that the patient did not have a decline or maybe the patient stabilized to show some improvement. Well that I think may be based on some information that's in the Medicare benefit policy manual. We know that there's no statute or regulation that really supports that. And so under this rulemaking those kinds of things are no longer going to be allowed to just be in a guidance document. We can challenge those. It's very clear from the proposed rulemaking and the executive orders that it's based off of that the agency cannot just create these requirements and if they do set this kind of information out in a guidance document it's really just a suggestion and it's not anything that can be enforced later on. So I'm most excited about that because I have always had an issue with the fact that they require a decline I want to figure out what's that based on? It's not based on a regulation or a statute. This rule says challenge that in addition to the arguments we already make about that.
Bryan Nowicki	And Emily it's troubling enough that those kinds of standards are not based on a regulation or statute. But as we all have worked with hospice physicians and some of the best hospice physicians in the country. Many times those kinds of decisions are not even based upon good hospice medicine. They're based upon whatever sort of criteria a bureaucrat at CMS or one of its contractors decides should apply to a hospice patient. And their view of a hospice patient is not the reality view of a hospice patient. I think reading a lot of the decisions that we get you would expect that every hospice patient is curled up in the fetal position in pain suffering infections, kind of moaning out or non-communicative and that's not what hospice is about at all. I mean hospice patients can be very functional depending upon their condition and the cookie cutter approach that has evolved by CMS and its contractor analysis is not a fair or an accurate picture of the state of the medicine out there.
Meg Pekarske	So Liz did you have something you wanted to add there?
Liz LaFoe	Sure I was just going to kind of take off from what they were saying to point out another thing that's exciting that's in the memo. Which kind of goes back to what Bryan said of some of this doesn't seem radical but in



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practice it might very well be. And that is the burden of proof issue. As Emily was saying you know the statutes and regulations don't really require you to show decline but it seems like when a lot of investigators and auditors are reviewing these cases they are putting the burden on the provider to show decline. To essentially show that the patient would you know pass away within six months and as we know the statutes and regulations don't necessarily support that interpretation. So one of the other exciting parts of this memo is that it should be reminding agency regulators that it's the government's burden, not the providers, to prove any alleged violation of law or non-compliance. So I think that under the current regulations in the hospice audit appeal context it's not really clear who the burden of proof is on. I mean it certainly seems like at the initial determination level it's on the auditor but then as we move through the appeals process your redetermination, reconsideration, and appeal before an ALJ. That burden is shifted to the provider and the provider is in the position of having to explain why the auditor is wrong. It's not clear right now what will happen because of this memo and this is something Bryan and I are still sort of digesting how we might use this in appeals. Potentially this is another area that just could make the process more fair to providers.

Bryan Nowicki

Right Liz. Here's how that plays out in the whole appeal process and the ALJ. Because there's this sense that the provider really needs to prove that all of its patients were eligible or that it documented everything. The auditors and the contractors to the appeal process, they throw up a rather threadbare basis for denying claims. They will really put out conclusory statements that say patient not eligible and they might list some comorbidities in the principle diagnosis. They might list some other secondary conditions and conclusively state these don't contribute to the terminal illness. There's really no effort to expand upon and explain the reasoning of the auditors. They throw up a few sentences like that. And then the perception is now it's up to the hospice to prove in detail sometimes day by day or month by month why this patient was eligible for extended amounts of time. It's that kind of burden that goes to the hospice that really is not consistent with how the burden of proof works in other settings where the person alleging the violation needs to prove that there was in fact a violation and prove that in some detail. Especially combining the burden of proof being on the government with some of that openness of information position that the government has taken in the memo where they need to provide information and especially exculpatory information. It could really change the landscape of how these appeals work through the system. And what really does the government need to show before they start recouping thousands or millions of dollars from hospices?



Speaker**Statement****Meg Pekarske**

As we move to a close I mean this is just a really interesting conversation. As you said Liz we're just digesting this and obviously none of this stuff is final or fully implemented so we're sort of guessing how things will play out. We talk a lot about clinical eligibility but as I was listening to you all thinking about how this may shift things to more technical compliance and thinking about the new election requirements that came out which I think we had grave concerns that this election addendum that there was authority under the statute to create this new condition of payment and it's a condition of payment that essentially if you make a mistake with this election addendum it could somehow invalidate your election statement or something like that and all of this confusion about whether this particular element isn't met. So I don't know if anyone has thoughts on some of these nitty gritty kind of technical issues because when you mentioned the claims processing manual Emily, I was thinking about there's a lot of interpretation in there about what certain billing codes mean and how the start of care is defined and benefit periods are calculated. Things that can intersect with I guess claim denials on technical issues and I don't have the issue sitting here I'm just thinking somehow easier to make technical denials. I also think about the principle of materiality from the Escobar case which was a False Claim Case. When they talked about what impacts payment and it's things that are material to payment and what the government considers material. So conditions of payment are important but not necessarily dispositive and sometimes we've made those arguments as it relates to certain technical issues. There's just a lot of movement and change so Bryan I don't know if you have thoughts? You and I have been talking about these things for many years. Mostly just with ourselves with nothing to latch it onto. Now we have a reason to share our conversations over many years on this kind of stuff.

Bryan Nowicki

Yeah I think the way it will be helpful and increase opportunities for hospices if both the memo and the proposed rule go through and are honored by the agencies. Is that we currently have a set of guidelines and guidance that propose one interpretation to an issue. One solution to how to document something. You want to add a date? Here's the way you do it. You want to identify an attending? Here's the way you do it. Even though the regulation and the statute don't proscribe a single way to achieve compliance. Through the guidance documents CMS has tried to proscribe a single way to adhere and to follow the statute. Once that goes out so you can't hold a hospice liable because they didn't follow the one way that CMS decided it should be done in a guidance document. It gives you opportunity to follow the law, I mean this is not an area where we're suggesting hospices are not going to be bound by the law. They've got to follow the statute. They've got to follow the regulations but there may be more ways to do that than in the narrow way proscribed in the CMS guidance. There may be more ways to do that that fit within the way a



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	<p>hospice operates as a business. The way its clinicians practice medicine without a lot of the micromanaging that some of the guidance documents do now. So I think that there's opportunities to really go back to basics. What is the law? Let's follow the law and not get tripped up by a bureaucracy creating guidance or their preferred interpretation. Which may be the result of what's easiest for them to enforce as opposed to what is the way that hospices actually work in the real world and how hospice physicians actually operate in the real world.</p>
<p>Meg Pekarske</p>	<p>I think that is really important. Again someone listening to this podcast and when Liz was presenting what the goals of this White House memo are they as you said Bryan, these are not things that anyone would necessarily argue about. Fairness and due process and things like that. I think our experience has been that is not built into the system. Even though the actions of the government could be essentially shutting down your business through an administrative appeals process. So there have just not been as many rights proscribed for folks who are having to defend against these multimillion dollar audits. This is I think a very hopeful development. I think as we, as you mention, the administration may change but some of this further down the pipeline that we could, that even if there is an administration change that this will continue onward. Closing thoughts Emily?</p>
<p>Emily Park</p>	<p>I wanted to talk about one of the other goals and that's transparency. With the rulemaking the goal there is to increase the transparency related to the guidance and all of the requirements that Bryan just talked about . The one way that you add an attending physician and things like that. There's lots of time that stuff is put into a guidance document and nobody knows that it's been done. So one of the directive from an executive order is they create this guidance repository on the Department of Health and Human Services webpage. They've actually already done that but I don't think their goal of transparency is going to be met. I went out there this morning what kind of guidance documents had been put out there and there were over 35,000 documents in this database. I searched the keyword hospice and it came back with over 200 hits.</p>
<p>Meg Pekarske</p>	<p>Wow.</p>
<p>Emily Park</p>	<p>It is going to be difficult to really find or continue to find guidance documents. But I would hope that issue is going to be addressed down the road.</p>
<p>Meg Pekarske</p>	<p>Yeah no, trying to figure out what that list of 200 that have hospice in them, we'll start digesting that.</p>



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Bryan Nowicki	I'm getting nervous already.
Meg Pekarske	Bryan I see the sweat.
Bryan Nowicki	I know. I wish you wouldn't have said that Emily.
Emily Park	A lot of it relates to the hospice quality report system. So it's not just the regulatory requirements and the eligibility requirements that we've talked about. A lot of it is the technical stuff. That hospices need and already probably have but it has just been overwhelming the system. Because if they don't put the guidance document out on this repository before November 2nd it's considered rescinded. I think that's why there's been an overwhelming number of documents currently being uploaded.
Meg Pekarske	Wow stay tuned I guess on this. I think our listeners will find this conversation really interesting and I think it's very evident that you all have your finger on the pulse of what's new with information like this. It is insane I figured it all out. If you think you figured it all out you're not thinking hard enough about it. I think this has really been an enlightening conversation. I think room for hope, so much of audits it's sort of like well it's a matter of when. You can have serial audits and often times we're the bearers of bad news and I would say you know as a closing thought though, has it been 10 years that we've been dealing with all of these program integrity contract audits? We've had very good success and even with the cards stacked against us. So I think I'm hopeful this trend of transparency and due process and how has the burden those will continue onward but there's reason to be hopeful as we all update hospices that this is the beginning of the story not the end. All of those cases that we've worked on which could have shuttered the organization we have prevailed in a way that allowed business to continue. So I think it is very, no matter what happens, I think that there are ways to win I think we have a proven track records. One of the reasons why we came over to Husch was to be able to expand our team and Liz and Emily have been such great additions and really bring a unique perspective. Liz as a nurse and Emily from years of dealing with other post-acute care providers on administrative appeals. I think it's really hopped up our game and just increases our bench strength in what is an incredibly important area for our clients. So anyway I'm so glad to be working with you and marvel at your insights and it's nice that I don't need to know everything. Not that was ever possible but I feel in very good hands that you guys will find creative way to use these new developments to advocate and win for our hospice clients so really appreciate your time. Anyone, closing remarks? Bryan you always want the last word.



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Bryan Nowicki	I was going to refer to Superman’s motto in getting back to first principles. Which I think with both the memo and the proposed rule is doing. Anyone know Superman’s motto?
Meg Pekarske	No what is it?
Bryan Nowicki	Truth, Justice and the American Way
Meg Pekarske	Oh classic.
Bryan Nowicki	I was thinking that the Constitution and of course I was wrong. Life, Liberty and the Pursuit of Happiness, either way it’s good to see the government get back to first principles and really kind of tear down all the noise that has been built up. Let’s get back down to it. Let’s do what’s right and what we’re supposed to be doing. These are a couple of great items of news out there that are hopefully going in that direction.
Meg Pekarske	Bryan I miss seeing your pocket Constitution on your desk at the office. It should be on your desk because I’m going to quiz you next time we have a conversation. Now you don’t wear a shirt with a collar so you can’t even have it in your shirt pocket.
Bryan Nowicki	I know. I’m struggling to look for it now I don’t seem to be able to put my hands on it.
Meg Pekarske	You’re lost. We’ll have to have that Constitutional close next time. Tune in next time. It could be a quiz show, Bryan’s understanding of the Constitution. It is a fundamental document. You teach fourth graders about the Constitution.
Bryan Nowicki	I have, yes, I’ve been a guest lecturer at the Sacred Heart private Catholic school.
Meg Pekarske	Well really wonderful conversation. Thanks for all of your time and thoughts together. I think this will be really helpful to our listeners and in terms of the documents we talked about today we’ll post those with the liner notes so people can have those and they’ll be linked on the Hospice Resource Center. So people can get them there as well. I don’t think this is one of those areas that you as a hospice administrator compliance officer start trying to make arguments yourself but for those who are geeky and want to take a look at what these things said we’ll post them so they’re easy to find. Anyway thanks for your time and it was a joy and until next time.
Meg Pekarske	Well, that is it for today’s episode of “Hospice Insights: The Law and Beyond.” Thank you for joining the conversation. To subscribe to our



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