

Hospice Insights: The Law and Beyond



Episode 38: Staying Prepared: Hospices and the False Claims Act, Part II – Successful Approaches to Government Investigations

May 19, 2021

Speaker	Statement
Meg Pekarske	<p>Hello, and welcome to Hospice Insights: The Law and Beyond, where we connect you to what matters in the ever-changing world of hospice and palliative care.</p> <p><i>Hospices and the False Claims Act, Part II – Successful Approaches to Government Investigations.</i> In this second episode of our Hospice and the False Claims Act series, Meg Pekarske, Bryan Nowicki, Jody Rudman and Brian Flood discuss the precursor to almost every False Claims Act lawsuit, the government investigation.</p> <p>Before an FCA case proceeds in court, the government typically conducts a thorough investigation. FCA cases can be won or lost at this stage, and how hospices respond to such investigations can set the stage for future success when done properly, or future problems and liabilities if mishandled. We discuss the ways in which the government investigates hospices in the FCA context and provide tips for a successful response to an investigation.</p> <p>Welcome, Jody, Bryan and Brian. Thanks again for joining me for this again. My blood pressure is rising already as we talk about government investigations, but really important topic and I think that I've been looking forward to you sharing your insights with our audience.</p> <p>So Jody, let's start out with how do you know that you're under investigation? What are the things that happen that may give you an inkling, because the government, you know, sometimes it's very clear,</p>



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other times it's a little innocuous about what's going on. So how do these things start?

Jody Rudman

So let's begin at the beginning. So how they start is really one of three ways. Sometimes the government, integrity contractors or various agencies might see a spike as a certain analytics or certain data or certain claim experience, and decide on their own this is probably something we need to look into and out go the audit letters and the requests for information. And that can be, isn't always, but can be the beginning of what will ultimately blossom into a False Claims Act investigation. Perhaps the government gets tipped off by a whistleblower who makes a phone call and reports what he or she thinks is going wrong. And whistleblowers themselves can initiate these investigations under the qui tam provisions of the False Claims Act, wherein if they file a lawsuit which is originally filed under seal, that will trigger a government investigation while the government determines whether it wants to intervene. And regardless of how the matter is initiated, how the investigatee, if that's really the appropriate word, becomes aware of an investigation is really when people start showing up, document requests start coming in the mail, or there may be a subpoena for a deposition or a subpoena, a CID, for documents. And that is really a perfectly appropriate time, whenever those papers first come in, to get outside counsel or experienced in-house counsel involved. It's never too soon the minute that audit request comes in.

Bryan Nowicki

And this Bryan Nowicki here, it's not always easy to know what the source of that investigation is, whether it's any of the number of different things that Jody just mentioned, data analytics or whistleblower. Sometimes when you're dealing with the investigators, the U.S. Attorneys, they might not be able to, or in a position to confirm, that their investigation stems from a whistleblower complaint or from their own internal analytics. It's typically one of the very first questions I ask an investigator once we know it's out there is, is there a complaint under seal somewhere that is driving this? And that would mean a whistleblower complaint. And I think it can be an important distinction to find out really what the source is if you can and find that out as soon as you can, because I think the government is likely to take much more seriously those investigations that are driven by their own analysis and data, as opposed to their investigations that are driven by a whistleblower complaint. My understanding is that there has been some griping among the U.S. Attorneys about how whistleblower complaints are really driving their work and docket, because they have an obligation to investigate whistleblower complaints, and it's kind of taking over their lives in some respect. And whistleblower complaints don't get vetted by the government before they're filed, so you could have whistleblower complaints out there that really lack all sorts of merit, yet



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the government has to investigate. And so getting that perspective on, well, is this one driven by the government itself, is the government just jumping through some hoops to satisfy its investigation obligation for a whistleblower complaint, can be helpful information to try to give you a sense of how big of an issue is this? But hard information to come by early on.

Meg Pekarske

And to pull on something that I think our audience is going to be more familiar with, Jody, is the program integrity audits and we have audit series that we're starting and that's why I do think folks need to take those seriously as well, because while it's not a foregone conclusion that you could get referred over, most of the audits that we work on are treated as simple overpayments and conclusions of fraud are not made, but they can be a source for referral, and auditors are required to refer potential fraudulent conduct to authorities.

So let's talk about these investigation techniques, Brian Flood, because as you being a former prosecutor and sort of seeing things from that vantage point, let's talk about what a subpoena is versus a CID. And I guess before we even go into those descriptions, how much energy has the government spent on looking at a hospice before it issues those subpoenas and CIDs? Or is it really, I haven't put a lot of thought in, let's sort of cast a wide net and then I'll think about it later. What's the approach?

Brian Flood

Well, you can get both and I'll describe both. And whenever you're talking like Bryan Nowicki was saying about a homegrown investigation, in that case, they're going to start with record requests that appear fairly innocuous. They'll typically come out of UPIC, will issue record requests and start sampling or reviewing records because, in their contract with the government, they're supposed to support government with their expertise. And so you may start getting record requests from what appear to be a non-threatening source, but what they're starting to do is build a case to build a theme to see if their ideas are right or wrong using that expertise and then they'll add OIG agents and federal IRS agents and then FBI agents and then they'll start looking at those results and those conclusions. And so on the one hand, you're going to have normal-looking record requests that are going to be coming in, but they're being read by an adversary that you're going to face later on. It's not a normal response to CMS.

The other cases, the numbers were as high as 90% of the federal docket, was qui tam driven and so Bryan's right, they're pretty upset that their life is being taken over by the plaintiff's bar. So everyone in the world is filing qui tams to make money. I went to a recent conference where the guys couldn't spell Medicare or Medicaid, but they were changing over from toxic tort and asbestos law and needed something to do. So you've got



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these two ends of the spectrum, so you have to pay attention to the innocuous requests and look at them as themes and see why are they asking and what codes are they doing, is this building into a bigger problem.

And then at the other end of the spectrum, you're going to get a civil investigative demand, a CID, from a government agency, which we call that a clue that you're being looked at and you should probably call your lawyer on that one and not try to self-help, or a subpoena, a court-issued subpoena which you have to answer. Then it can either be a federal grand jury subpoena or a civil subpoena. Both of those need counsel to answer to make sure that you answer them properly. And that's going to be on the other end of spectrum, where you're being looked at the Department of Justice in either a civil or criminal investigation. And I would remind everyone that the Anti-Kickback Statute is both civil and criminal, so if it just says Anti-Kickback and you think civil, no, no, that has some more teeth in it. And so the primary point would be, when you get a record request, are you somehow tracking all the record requests you get in a year so that you would have a head's up, hey, I'm being looked at. I've gotten 10 requests for this code. That can't be good. Because as you know in the audit and educate program, if you start receiving multiple results from your audits, that is, you've been educated, then the government can then enter into a full blown extrapolation audit on you and the multiples go through the roof. And if that error rate is high and the dollars are high, then more likely they're going to refer under the UPIC's authority over to the Department of Justice, because you have a material high error rate and it's been consistent over time, you've been educated on it, and now you've got a dollar figure, and now you're into big results.

Meg Pekarske

Brian Flood, before I turn it over to others to chime in, why does the government issue a subpoena versus a civil investigative demand? How are they different, and is one more serious than the other? What can you glean from which method they use?

Brian Flood

I'll go with my personal opinion, and then I know Bryan and Jody are going to jump all over this in second. So, you know, you do the under-the-carpet approach, obviously, through the administrative process, the UPIC, so the target won't know you're coming, okay? Because whenever you issue a subpoena or a CID, that's a clue, right, that you're being investigated. So with a civil investigative demand, they're easier to issue by the government, there's not as much administrivia on them. They can put all the terms and conditions they want on how you're supposed to respond to them. It's like 15 pages of stuff you have to do. And so they issue those quite readily.

A subpoena, on the other hand, you have to bother a court, get a court involved, have a lawsuit, you know, be in a courtroom position, and now



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you have a judge involved and so it's a little more ticky-tacky. And so your response to the first one is under administrative rules and their second one is under the civil procedure rules or the criminal procedure rules, which Jody and Bryan can jump all over here in a second. So that's my distinction of them, coming from the more practical application side.

Jody Rudman

I would add that a grand jury subpoena, which indicates a criminal investigation, is probably one that I think would maybe cause the most amount of puckering. Not that any of this should be taken lightly, because it shouldn't be, but a grand jury subpoena, which indicates that there's an actual criminal investigation unfolding and a grand jury is looking at this, (a) it's going to be drafted enormously broadly, (b) is already going to have a federal prosecutor who is assigned to and leading the investigation and very hot on the production of the documents that are being requested, (c) is enforceable, as Brian Flood mentioned, by a court if you are in contempt of the grand jury by not adequately responding to the subpoena or timely responding to the subpoena. But there's another aspect of that whole world that I think probably ought to be fleshed out for a minute here, and that's this – a False Claims Act matter in and of itself is civil, a grand jury subpoena is a criminal matter. And often, especially in matters of the anti-kickback statute, but not exclusively, criminal and civil investigations can go hand-in-hand, and so what you have to be very careful of when you're working in this arena is being attuned to whether there is the possibility or actuality of parallel civil and criminal proceedings, because there is a lot of protecting of the entity that's doing the responding and protecting of the witnesses through amendment considerations. There are a lot more trees in the forest, so to speak, if there are parallel proceedings. So that distinction between subpoenas and CIDs and administrative requests really becomes very important when you're trying to understand how to best protect the entity that's under investigation.

Bryan Nowicki

And I wanted to bounce off a couple of things Brian Flood said. One was the potential use of auditors, kind of the run-of-the-mill auditors, to help support or lead into an investigation and something more serious. Meg, you and I a couple years ago had the experience of – we often issue Freedom of Information Act requests – and at one point, we got a real bonanza in a response where the UPIC provided us with their investigative file and we saw exactly how they analyzed the information, they were in touch with CMS, they were recommending a referral to the FBI. Fortunately for that client, they ended up not referring to the FBI, but you can see all of the things that Brian Flood just mentioned about what they do and what they're charged with. We got a behind the curtain view of that, and I'm convinced they intended to give us all that inside information, but they did for a number of clients. And I think one of the benefits of a



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Freedom of Information Act request is sometimes you hit a bonanza like that, and we very regularly send those out to get that kind of information.

Meg Pekarske

Yeah, and I think, Bryan, it brings back the memories, but one thing that I think is really interesting when you do get that information and even when you don't, is – and we mentioned this at the offset about these informal interviews, it's not totally uncommon that someone will say, and it could be a patient, it could be a former employee, calls and says hey, someone showed up at my doorstep and said they were from Medicare and were asking me questions. And again, in those instances thankfully, to our knowledge, it never amounted to something more serious. But I think those informal interviews are something, and this gets into the culture of compliance, it's better to know this information and have your tentacles out within your organization that people know who to talk to and like if a patient tells a nurse something like that, that the nurse doesn't just say oh, okay, but try to get as much information as possible. So anyway, I think that you're exactly right and what was also sort of disturbing about those notes was, it was very clear in these patient assessments that they didn't know, they weren't focused on what matters in terms of hospice patients. There's a lot of discussion about what the patient was wearing and how they were sitting, but making conclusions without having looked at any medical records was just, I think, very, very ...

Bryan Nowicki

It was revealing and frightening, the level to which they can try to escalate things to the FBI without a whole lot of basis. And the anecdotal information we've encountered about the U.S. Attorney accidentally calling a current employee instead of a former employee, or contacting a former employee who is very close to the hospice still and thought they'd give us a head's up. It was kind of almost by accident that we received those insights, but your idea of making sure you tell your employees, if this happens, this is what you ought to do, give them a contact so that they can get back to the hospice so we could start to open that up. But I'm curious, and maybe Brian Flood, you have a perspective on this, how does the government coordinate between the written requests and the actual calling people up and interviewing them? Is there a protocol or a best practices that you're aware of, how they would use either one or both of those tactics?

Brian Flood

So once you get kicked off into a formal investigation, they'll typically get the Office of the Inspector General involved and their agents will start putting together a plan. And in that plan, they're going to roll out who they're going to contact and who's going to contact that person. And so they will have, essentially, an approved set of steps that they've already gone through. Now, when you get a DOJ attorney involved, no offense here, Jody, sometimes they jump in without the experience that they need



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that an agent would know and can do some pretty silly things. But as far as seasoned agents on the ground, they'll have an investigative plan where they're going to talk to patients and they'll have a list. They'll be sniffing out employees and they'll meet them early in the morning when they're about to leave or they'll meet them in the evening when they're coming home from work and they're going to try to get information from them. And so they'll start working the forest and try to figure out what they can find for evidence. Now you struck a good point – in the DOJ's guidance, Meg, it does have laid out what they expect for a compliance program to have in today's world so that the entity knows how to process information, look for bad stuff, and then do the right thing.

And then on the other hand, Bryan, the organization should have a policy so that when those things happen, the organization knows what to do and how to handle the employee and the employee knows what to do, because they're normally not going to have the opportunity to say hey, let me call the office, even though they have that right, because they're going to feel really pressured walking out to their car in the morning and there's a federal agent standing in the driveway. And so they will have an operative plan. It has to be approved, it goes up through ranks just like everything else does, but you'll never get a copy of it in a public information class.

Meg Pekarske

You're never seen our FOIA requests, Brian (*chuckles*).

Bryan Nowicki

They're very persuasive (*chuckles*).

Meg Pekarske

Exactly.

Brian Flood

(*inaudible – 20:21*) and see what they do. Now on the other hand, you can get new agents, especially from the FBI. They may have left the banking task force and now they're suddenly working healthcare and they'll be tagging along with an OIG agent who might have more healthcare experience than them. And so you can get some really silly experiences and responses and notes in the interview file, because the FBI agent may be just taking a swag at what's going on. I have literally had agents who had no experience whatsoever going along with OIG agents because they needed a badge and a gun to go with them, and they really didn't have any idea what they were reviewing. And it was fun to watch the interviews because when the OIG agent was asking questions, they were medically necessary, medically relevant. And when the FBI agent was asking questions, it was more like gumshoe, on TV kind of stuff. You know, you're like really? You're in a medical office. I mean, (*inaudible – 21:25*) line of questioning?

Bryan Nowicki

Where were you on the night of January 22nd (*chuckles*).



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Brian Flood	Yeah, but I've met clients in the field when they say hey, you know, we've got these people coming over and sat through those interviews and tried to tamp down what the FBI's perception of what is going on versus what we from the industry see is going on. And they can be very different things, based on their background and experience.
Meg Pekarske	So one question, because hopefully most of our listeners will never have to deal with this, but I think that oftentimes when people talk about legal things, they go to what they see on TV and there's some raid and take the computers, all that stuff, and that's not typically what is happening in these situations. Nonetheless, it is scary and you need to take it seriously, but it's usually you're not getting raided. But you talked about different parts of the government and just for our listeners, I want to break that down. You talked about OIG, you talked about FBI, I think early on you mentioned IRS – how do you know what's going on if someone has a FBI badge versus an OIG versus IRS versus Department of Justice? How are they interchangeable, or does it mean something if you're getting one or the other or what does that mean?
Brian Flood	So that goes back to having a policy in place, right? Because it's like having an insurance policy, you have it but you never really want to use it and if you are using it, something's gone really bad. But if you have a policy in the organization, it kind of sets out hey, this is what we're going to do if this type of person shows up. And when I was talking about the different types of people, you of course have the UPIC, right? They're going to send you record requests all day long. And you're going to have their independent contractors that may be involved to do site visits and interviews and that kind of stuff and you need to have a policy for what you're going to do with them. If the matter escalates out of the administrivia side of things, past CMS, then it goes into the Health and Human Services Office of Inspector General that has authority to investigate anything that CMS or the UPIC refers to them or that they develop independently, and so they are an independent arm of the HHS to do investigations. And what the audience needs to know is that they have both civil and criminal authority, they can do both. And so they shouldn't be disregarded, and they're commonly involved in DOG investigations because of their knowledge of the program, and they add that expertise to the investigation. Now, because the investigation involves money, it's not unusual for them to add an IRS agent to the investigation team because of the analysis of money. And with the IRS agent on the team, they can get access to IRS records much easier. And so with big cases, you will see an IRS agent card. And what's interesting is to look at the cards that are left at the different locations or ask for the card of the agent so that they have to identify themselves and leave a card behind. That should actually be in



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your policy, never talk to anyone unless they give you their credentials card, and then you'll see what agency they're representing.

And then of course you have the Department of Justice which oversees all of that, and they can use any of those agents in their investigation under their authority.

Meg Pekarske

That's helpful. So I want to talk about tips and pulling on something you said, Brian, about having some policies about this, because the time to prepare isn't when it's happening. So let's start talking about what are some things that you can do and then we can talk about okay, you did get this, what are some tips to do to narrow it. Because you mentioned policies and I think that this is universal to our audience of what do you do, because you want to know if people are talking to your staff. And so can you tell us, Jody, Bryan, Brian, about training that you do for your staff, like I know sometimes people have cards that their staff can carry around, like what you should do if you're contacted or who you should call or something like that. So can you share a few tips about what should be in a policy and how you train staff and what information staff should take away from those meetings?

Bryan Nowicki

This is Bryan Nowicki; I'll get us started here. I think a lot of the elements that are described are important to that, to having the policy or protocol. It's who is the primary contact at the hospice who's going to be the head person to review or address any kind of investigation and make sure those public-facing points of contact know who that person is. If the receptionist at your hospice business office receives an agent, you get the card, you contact the person on the list who's supposed to interface with those people and have a single point of contact so you can try to control those communications. Having a policy about if you're interacting with federal agents that that same person, that same point of contact, you go back to and alert them to that and to what is happening. I think it's a matter of being able to control and monitor those communications so that the hospice is able to cooperate efficiently with an investigation through a single person and present consistent information, as opposed to multiple different people, each telling an agent a little bit or piece of this or that, which can muddle the investigation rather early on.

And another thing that we do when it's very clear that there is an investigation going on, or something that I have done, like we get a CID or a subpoena or something like that, is I will talk to the client, encourage them to retain me because they will need an attorney's assistance with that, and then make sure we develop a core team that we can communicate with as attorneys and make sure that we put the attorney-client privilege into place for the appropriate kinds of communication you would want to have about that investigation. And I caution the hospices I work with that there



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shouldn't be internal discussions or emails about the investigation because ultimately or eventually in an investigation, you'll get the first round of requests, but then a year later, you might get a supplemental request saying, give me all your internal communications that related to this investigation. And so the email upon receiving a CID that says oh my gosh, did they finally find out about this or that, that is not protected by the attorney-client privilege and may be completely off base, becomes something that you have to explain later on. So you want to try to control the communications and involve an attorney and not have all sorts of speculation pervading the company, the hospice, that's going to later on require you to have an explanation.

Jody Rudman

I agree with those comments entirely, Brian, and without repeating them, I would just sort of put a little gloss on them to add that there is no interaction with an investigating agency, no matter at what level of this process we're talking about, that should be treated casually or off-handedly. There's no telephone call or request for a chart, a document, a copy of a claim form that should be dealt with other than through these channels.

I would add another sort of gloss to what Brian said by saying that one of the things I think internally that should be done in the event that an investigation of any kind is known to immediately put into place preservation holds on emails and on electronic communications. There are a lot of places that have, for example, automatically deleting software or auto-archiving, and so it's a good idea to put an immediate stop on all of that archiving and deleting so that everything gets preserved and nobody can be accused of spoiling data or obstructing by getting rid of stuff.

And then the final gloss I'll put on it is that by involving senior leadership, who then should know to involve counsel, you are creating and not missing the opportunity to begin the advocacy process during the investigation. Because if you're not conducting advocacy during the investigation, you're missing a really important opportunity to be advocated for and to be advocating. So all of those things that Brian said sort of lead to this inevitable conclusion that it's never too soon to begin speaking with one voice, shaping the message and helping to shape the investigation in the hospice's best interest.

Meg Pekarske

So what does advocacy look like? What are the goals of advocacy? Because bringing back all these fond memories, Bryan, you can't, even lawyers, as skilled as they may be, it's not like we make a phone call and be like, oh yeah, we're really good, you don't need this request. So you're not going to be able to stop them in their tracks, but – and maybe I just want to pause here because I do think that the things that we work on, this is the beginning, it's not the end. Nearly everything that Bryan and I work



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on, there are happy endings at the end now. You don't call them happy because you wish you never had to go through that, but just because you're getting these things doesn't mean that it's going to conclude with the government intervening in a whistleblower case or the governing taking anything on. So I think your point about advocacy is incredibly important because it might be able to shorten the investigation, get to the truth of the matter earlier, you may be able to guide and focus it and whatnot. But let's sort of unpack that a little bit about what advocacy looks like and what should be the goals, because it's not going to be like you don't really need this information, do you? So what is a reasonable goal for advocacy?

Jody Rudman

In a second, I'll punt that to Brian Flood because I think that he's so amazingly effective on this, but in my assessment, there's a couple of things that fall within that umbrella of early advocacy and one is, as I mentioned in some opening comments, CIDs or subpoenas or document requests are typically drafted incredibly broadly, so one of the first opportunities for advocacy is to really narrow the scope of what is being requested and what is this about. And the idea here is, you want the government or the investigating agency to receive whatever it is that they're looking for, but not conduct a fishing expedition to find them stuff that they may not otherwise have been looking for but that happens to be in a pile of things that you just throw their way. I think it's terribly important to really hone in on what exactly do you want? And then I think it is also terribly important to eyeball that stuff without just doing a document or data dump on the investigator and going here, and hoping there's nothing in that that gives you a little pause. So that would be sort of thing #1, is shaping what we're actually given and understanding what it is. And that may lead to some internal investigation. Super good idea to look within and interview under the protections of the attorney-client privilege some of the key people who may be involved here and figure out, okay, what happened? So what is the message going to be about what happened? And then I would, the final point of advocacy early on is to begin developing a comfortable rapport with the folks on the government side of this, because there will be discretionary calls that get made, there will be an opportunity to sell your own integrity as the lawyer for the client and as the client itself. And I think starting early on in a very productive – understanding that you're adversaries – but starting early on in a very productive and integrity-filled relationship will do more good for handling this investigation down the road than meets the eye when it's going on.

So with that, I'll flip it to Brian for more advocacy tips because he's awesome at this.

Brian Flood

So everything Jody said is true. You want to get involved in talking with the government as much as you can so that you can understand what is the



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conflict that's developing. And that way, you can reverse engineer back into the materials that you're reviewing where this is going and you can kind of project where this is going. And you can start with options for discussion or if you have to do some type of settlement, months ahead of when it would actually occur, because the further you go down the road just acting automatically and in the blind, the more difficult their perception of you is going to be to change because you have sat back, you have let them read the information, they have come to conclusions and so now it's going to be very difficult to get them to back off those conclusions as wrong. Whereas if you get involved further in the investigation way up front, you can start to have those conversations and really have a dynamic effect on where this thing goes and how expensive it's going to be to resolve, because changing an auditor's or a prosecutor's mind after they've already decided what they think is a very difficult thing to do. Whereas if you get involved way up front, you may have auditing standards you need to look at, like in Yellow Book. You may have NCDs, LCDs, other technical documents that they're completely unaware of. You may have a long tradition of warfare in a particular type of procedure that's being done that they're completely unaware of that's going to be in the industry regs and other documents that they just don't read. And to the extent that you can insert all of that information into the investigation early, then you start to get the investigation using the right ruler to measure you by, whereas if you let them choose their own ruler, that's going to be a whole different day. And so I always advocate to get involved early, often, and understand what my opponent is thinking.

Bryan Nowicki

And I think that's great advice, and I just want to provide some practical information here because we've been talking about getting involved early and this is the long haul, and I think if you have an appreciation of what that really means, it's going to be helpful. So a government investigation is not something that is going to end in 30 or 60 days. This is likely to take many, many months and going into years. I've been involved in some that have taken over a year, over two years, where you are giving information to the government. It's not just responding to their document requests, but they might have written questions they want you to answer. And then there's the second set of written questions and then the third set of written questions. And as Brian Flood said, if you're able to get in there early and understand what they're after, you can start to characterize the information in an accurate way, but in a way that really puts the hospice's best foot forward. And I think with hospices in particular, what we've had an advantage of is our knowledge of hospices, which is much more broad and deep than that of the investigators. The investigators are typically not hospice specialists, and when you get the U.S. Attorneys, they may work in healthcare, but that could be pharmacies and hospitals and so on. What we've been able to do is use our hospice experience by identifying the



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information, as Brian Flood suggested, that is relevant to the investigation that the investigators may not be aware of. And I've had good conversations with Assistant U.S. Attorneys where I'm helping them understand what hospice is all about, what a plan of care is and what an election and certifications are and how does an IDG work. And they're only going to rely on me if they trust me, and that's why honesty and fair dealing with these investigators is so critical. I want to be a trusted resource for them so I can start to characterize what it is that they're seeing without them looking at something and guessing at well, does this look right or wrong, I don't know, and maybe they'll instinctively form a negative impression until we prove them otherwise. But it's a long game and you've got to keep at it for the duration of these investigations.

Meg Pekarske

I think, Brian, that's an excellent point, and in terms of what we're able to bring to the table when we're helping clients, there is no one who has been a hospice lawyer longer than we've been doing this and that education about what this looks like, it's not, I mean, the False Claims Act applies to many, many different types of people, and you're not going to have an expert in your area, necessarily, on the other side. And hospice is still somewhat of a niche even though there's lots of activity in this context. I think that was one of the exciting things about moving to Husch was just the ability to marry our substantive and litigation skills with additional resources, and Jody and Brian have been really helpful in cases that we've been working on. So I think that's absolutely right, Brian, is developing that rapport early on and explaining and putting context around it, because I think, especially, electronic medical records were never meant to be in paper form so they don't make any sense to anyone. And so I think explaining, because there can be a lot of redundancy with care plans because it prints out everything that's ever happened to this patient, and so I think that, as you said, Jody, doing a parallel investigation but understanding what you're putting forth and so then you can put that in proper context and whatnot. And I think that in the cases that we've worked on, we've really been able to bring things to a conclusion where the government doesn't intervene or otherwise just says yeah, I don't think there's much here, I'm going elsewhere. So that was a result of a lot of work, even though there is nothing, like much of what we do as lawyers, right, there's no practical piece of paper that you frame on the wall and I did this, but it's sort of the absence of more happening to you.

This has been a wonderful conversation and I think really insightful about what are reasonable goals to have at this phase, and I think when we talk next time in our third part in the series, we'll touch again on some compliance tips. But I just want to reiterate what you said, Brian Flood, of having policies and procedures about how you're going to deal with these kinds of auditors, because rushing and trying to do those when you think



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you might be getting, someone's calling your employees, it's very awkward to call an all-staff meeting and tell people like hey, you might be contacted by someone. So if it's somehow not in a crisis that you're having to educate people on this, I think it's really helpful, and we'll pepper that in during our next session where we actually talk about to the extent you go through this process and there is a decision to move forward in a False Claims Act, you know, what does that look like and what are defenses that one may have in those types of cases.

Any closing remarks?

Bryan Nowicki

Thanks, Meg, for the conversation. Thanks, Brian Flood and Jody, for their valuable input. It's great to have them on the team here, and I'm looking forward to the next session.

Meg Pekarske

Wonderful, and you take care until next time.

Well, that's it for today's episode of Hospice Insights: The Law and Beyond. Thank you for joining the conversation. To subscribe to our podcast, visit our website at huschblackwell.com or sign up wherever you get your podcasts.

Until next time, may the wind be at your back.

