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CARE PRACTICE GROUP:

[Mary H. Michal](#), Chair
[Linda Dawson](#)
[Meg S. L. Pekarske](#)
[Matthew K. McManus](#)

22 East Mifflin Street
P.O. Box 2018
Madison, Wisconsin
53701-2018
608-229-2200
800-728-6239

1000 North Water Street
P.O. Box 2965
Milwaukee, Wisconsin
53201-2965
414-298-1000
800-553-6215

HEALTHCARE SETTLEMENT REMINDS HOSPICES TO EXAMINE THEIR COMPLIANCE PLANS

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On July 11, 2006, one of the largest providers of hospice care in the United States, entered into an agreement with the United States Department of Justice ("DOJ") and the United States Department of Health and Human Services, Office of Inspector General ("OIG") to settle claims related to allegations that the hospice submitted, or caused to be submitted, claims for payment for services furnished to hospice beneficiaries who did not qualify for the Medicare hospice benefit. As part of the settlement agreement, the hospice agreed to pay nearly \$13 million to the federal government and entered into a corporate integrity agreement with the OIG.

Although the hospice admitted no wrongdoing in the settlement and has vigorously defended the compliance program it had in place during the time of the alleged conduct, this investigation serves as a reminder to hospice programs to remain vigilant in their compliance activities. In addition, because this matter originated from a whistleblower complaint and the whistleblower received more than \$2.3 million as a part of this settlement, this matter may embolden other potential whistleblowers in similar cases.

Hospices can do several things to strengthen their compliance programs. Our recommendations include the following:

1. Develop, implement and consistently follow a compliance program designed to detect potentially fraudulent

activities. The OIG released guidance to the hospice industry in 1999 regarding the elements of effective compliance programs. The guidance is available on the compliance guidance page of the OIG's website, at <http://oig.hhs.gov/fraud/complianceguidance.html>. Having and following an effective compliance program will not only serve to curtail or eliminate fraud and abuse within the hospice program. In addition, the existence of an effective compliance program may also be emphasized by a hospice that comes under investigation by the DOJ or OIG. Based on the public statements made by the hospice subsequent to the settlement agreement, it was able to emphasize its existing compliance program in negotiating a favorable corporate integrity agreement with the OIG.

2. As part of a hospice's compliance program, have a transparent process to follow whenever an individual alleges that a troublesome, and potentially fraudulent, activity has occurred. Follow this process consistently whenever an allegation is made. This process likely will include a hotline or some other mechanism for individuals to register complaints, and documentation showing that the hospice investigated the complaint. The documentation should also show the findings of the investigation. Make sure your legal counsel is involved in this process, or is notified immediately upon receipt of an allegation.

3. Insist on complete and accurate documentation supporting hospice certifications and claims for payment. Because predicting a life expectancy of six months or less is an inexact science, supportive documentation is essential to be able to make the case later that a patient was in fact eligible for the Medicare hospice benefit. Recent revisions to Medicare hospice regulations also require that supportive documentation accompany certifications of terminal illness. For a more detailed discussion of these requirements, see our March 10, 2006 publication regarding the growing role of hospice medical directors at <http://www.reinhartlaw.com/webpages/2/publications.aspx>.

A hospice cannot eliminate the risk of becoming a party to an investigation related to allegations of fraud and abuse. However, by building a robust compliance structure and by remaining vigilant, a

hospice can significantly reduce its potential exposure to these types of actions.

Reinhart Boerner Van Deuren's Hospice and Palliative Care Practice Group serves hospices across the country in a variety of areas, including: regulatory compliance; survey and certification; accreditation; licensing; HIPAA; caregiver misconduct investigations; due diligence, mergers and acquisitions and other corporate matters; labor and employment; criminal and civil investigations by state or federal government agencies; litigation; contracts and daily operational issues.



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Hospices are encouraged to contact their legal counsel.