**Health Care Compliance Association: 21st Annual Compliance Institute**

**March 26 – 29, 2017**

**Criminal and Civil Enforcement Trends: Focus on Federal Enforcement of Fraud and Abuse Involving Hospice Programs and Opioid Abuse**

**A Funny Thing Happened on the Way to the Compliance Institute**

For the past five years, Sally Smith has served as the Director of Nursing at Live Longer Hospice, which is part of a large hospice chain in Wisconsin. Two years ago, Live Longer was purchased by a private equity company, and there has been a push from corporate ever since to obtain patients that reside in nursing homes.

As Director of Nursing, Sally manages the nurses who do assessments of patients for admission to hospice and for continuation of the hospice benefit. Sally also participates in the interdisciplinary team (IDT) meetings where patients are evaluated for certification and recertification for hospice. The Executive Director (ED) of Live Longer is Sally’s boss and does not have any healthcare background, except that she was previously a pharmaceutical sale representative. The ED supervises the marketing staff, and Sally occasionally interacts with the sales staff to coordinate admissions visits for potential patients.

Many of Live Longer patients reside in local nursing homes and its Medical Director, Dr. Small, also serves as the medical director for two of these nursing homes. Dr. Small also is the primary care physician for many of the patients and writes prescriptions for these patients, including narcotics prescriptions for pain control. The drugs are then administered to patients by the hospice nurses, who have access to the automated dispensing machines (ADMs) used by the nursing homes.

Sally is aware that, in addition to having access to the ADMs, the hospice nurses have been asked by nursing homes to contact the closed door pharmacy that they use when the nurses notice that one of the hospice patients have run out of pain medication so that the pharmacy can start the process of refilling the prescription. The medical director recently commented that she’s noticed that she often signs prescriptions provided to her by the nursing home’s pharmacy several weeks after she believes the drugs to have been dispensed. She assumes that the DEA has blessed this process for nursing home and hospice patients.

Last week, Sally called me because two of her nurses complained that they feel pressured to admit patients to hospice when they don’t think the patient qualifies for the Medicare benefit. For example, at recent IDT meetings, the ED questioned why there were patients that the nurses were not recommending for admission. The ED suggested that another nurse evaluate all patients who were not recommended for admission. The ED also suggested that, for patients that were being recommended for discharge, the nurses were being “too positive” in their notes.

That same day, the nursing home called Sally to let her know that it was discovered in a controlled substance audit that they were short 50 80mg Oxycotin pills from the ADM and would be conducting an investigation of possible diversion of those pills.

When I talked with Sally, I asked whether these issues have come up before, and she indicated that Live Longer has a compliance program that audits medical records for each office annually. Over the last 5 years, 30% of the programs have had audit findings that patients receiving services didn’t qualify for the Medicare hospice benefit. Findings are referred back to the ED to be addressed. Sally can’t recall what happens to those audits after they are sent back to the ED. The compliance program does not address controlled substances.

Sally also mentioned that, when she approached the ED about these concerns, she responded that corporate is directing that they “look carefully” at all prospective clients. The ED also told Sally that, by the way, she can only take 2 weeks of maternity leave when her baby is due next week.