

NEWS RELEASES

PUBLISHED: FEBRUARY 22, 2021

Services

False Claims Act

Hospice & Palliative Care

Hospice Medicare & Medicaid Audits

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Husch Blackwell's Hospice Team Opens 2021 with Significant Audit Victory

GROUP COMPLETES FIRST YEAR AT HUSCH BLACKWELL WITH A STRING OF CLIENT SUCCESSES

In late January Husch Blackwell's Hospice & Palliative Care team secured a \$44 million reduction of an alleged overpayment for a hospice client involved in an audit of Medicare payments. The auditor, a contractor hired by the Centers for Medicare & Medicaid Service (CMS) to audit hospices, had used statistical extrapolation to find this extraordinary overpayment amount. The Husch Blackwell team appealed that overpayment finding and persuaded CMS to throw out the extrapolation, leaving a final overpayment of less than \$30,000—an over 99% decrease in the hospice's liability.

The victory was the most significant victory to date for the Madison, WI-based team, which arrived at Husch Blackwell in January 2020. In the last few months alone, the team has secured the elimination of extrapolated overpayments amounting to \$44 million, \$8.6 million, and \$2.5 million, for a total of well over \$50 million in connection with CMS audits that employ extrapolation, a method for estimating system-wide claim errors based on the review of a small set of patient medical records.

“Extrapolations are used by CMS and its contractors, but they are also prone to error and can be eliminated, if you can make the right arguments,” said Meg Pekarske, the head of Husch Blackwell's Hospice & Palliative Care team. “Our group really digs into the data and is able to frame practical, real-world legal approaches for clients involved in audits, including those that use extrapolation.”

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The group also posted impressive results for clients in audits that do not involve extrapolation. The team has achieved millions in overpayment reductions through the administrative appeal process during 2020, including in hearings before administrative law judges (ALJs).

“Covid notwithstanding, 2020 was an active year in ALJ hearings,” said Bryan Nowicki, a partner with Husch Blackwell’s Hospice & Palliative Care team. “Our team has achieved the reversal of 50 to 100% of the claim denials that were at issue at the many ALJ hearings we handled in 2020, which is well above the published overall reversal rate of approximately 17%.”

In addition to regulatory and litigation assignments, Husch Blackwell’s Hospice & Palliative Care team also assisted clients in a very active year for corporate transactions. The team assisted deal participants on transactions totaling several hundreds of millions of dollars in 2020, providing counsel on all aspects of hospice acquisitions, mergers, and other reorganizations and strategic collaboratives.

“Throughout the pandemic, the hospice space has seen continued interest in the deal markets, particularly from financial buyers and the private equity industry,” said Pekarske. “Some of these buyers are new to the hospice space and are looking to diversify their holdings. Our team is perfectly positioned to help hospices identify and take advantage of the many opportunities that exist in this market. We see a continued high interest in hospice operations throughout 2021 from acquirers, both private-equity backed and strategic buyers.”

Husch Blackwell’s Hospice & Palliative Care team handled nearly 100 active audits during 2020, a number that the team expects to increase in 2021.

“The turnover in the White House and Congress, and the end of certain COVID-related suspensions of audit and enforcement activity, will likely result in a spike in regulatory activity,” said Nowicki. “After all, 2020 saw a slowdown in new audits and the lowest government recoveries from False Claim Act (FCA) litigation in well over a decade. You have to expect that enforcement and FCA efforts will rebound during the Biden administration, particularly given the billions of dollars disbursed by the government due to COVID relief.”