

Health Care Industry  
Emerging Legal Issues  
Webinar Series

**Webinar #5**  
**How to Survive a  
Subpoena/CID**

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# Surviving a Subpoena/CID Discussion Points

- Who is This From, and Can They Really Do This?
- Inspecting the Subpoena – How to Read the Tea Leaves and Limit the Pain
- Approaching the Government
  - Who Do You Talk To?
  - What Do You Say?
  - What Can You Learn?
  - What Can You Negotiate?
  - Understanding the Parallel Risks
    - What Agencies Do You Need to Deal With?
    - The Relator and the Government – How to Deal with The Relationship Successfully
- Tending to the Home Front
  - Maintaining Client Control
  - Protecting and Producing Documents
  - Initial Investigative Steps

# Subpoena/CID Authority

## Department of Justice

- DOJ has the authority to issue subpoenas for the investigation of a “Federal health care offense” under section 248 of HIPAA (18 USC § 3486)
- DOJ and US Attorneys have the authority to issue Civil Investigative Demands pursuant to the False Claims Act. 31 U.S.C. §§ 3729-3733 in the course of a False Claims Act investigation to determine whether there has been a violation of 31 U.S.C. § 3729.
- The HHS OIG has the authority to issue administrative subpoenas to investigate Medicare, Medicaid and other matters related to program fraud and abuse.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE OF INSPECTOR GENERAL



OFFICE OF INVESTIGATIONS

February 13, 2014

Custodian of Records

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Dear Sir or Madam:

Accompanying this letter is a subpoena addressed to you returnable at the Office of Inspector General (OIG), Office of Investigations, before my designee, General Investigator. The subpoena has been issued pursuant to the authority provided to the Inspector General by Public Law 95-452 (see 5 U.S.C. App. 3 § 6(a)(4)), as amended by Public Law 100-504.

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Under the health information privacy regulation that implements the Health Insurance Portability and Accountability Act of 1996, also known as HIPAA, providing the information requested by the attached subpoena is a permitted disclosure since it is "required by law" (see 45 C.F.R. §§ 164.512(a), 164.103), and will be used for "health oversight" activities by OIG, which meets the definition of a "health oversight agency" (see 45 C.F.R. §§ 164.512(d), 164.501).

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Fully legible and complete copies of the records called for by the subpoena will be accepted in response to the subpoena, provided that the original records will be made available to employees of my office, upon request, during normal business hours. Otherwise, original documents (including copies as maintained in your files) should be produced.

Failure to appear at the time and place specified in the subpoena may be taken as a failure to comply with the subpoena. However, as a convenience and in lieu of your personal appearance, you may assemble the documents requested and mail them by certified mail on or before March 14, 2014, to:

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If you have any questions, please feel free to contact

NOTE: Subpoena Handout sent via email from WEBEX this morning.

## Inspecting the Subpoena: Reading the Tea Leaves and Limiting the Pain (Subpoena sent via WEBEX email)

- Using the Subpoena to Identify the Potential Issue(s), Risks and the Potential Relator
- Limiting the Scope of the Specifications in Order to Manage the Process and Reduce Costs

# Establishing a Reasonable Working Relationship with the Government

- Identifying the Key Agency and All Other Actors
- Establishing Favorable Relationships
- Creating and Controlling the Resolution Process
- Recognizing Parallel Risks
- The Government and the Relator: Who is The Real Enemy?

# Managing the Home Front

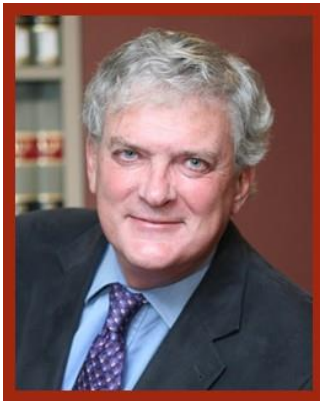
## Establishing Client Control

- Who Needs Counsel?
- Document Production and Production Hold Order Considerations
- Identifying Witnesses
- Identifying IT Issues
- Initial Investigative Steps Publicity/Media Attention and Internal Communications
- Approaching the Overpayment Issue

# Questions?



# Speakers – Contact Information



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## Health Care Industry Emerging Legal Issues Webinar Series

- *Advertising and Marketing Issues in the Health Care Industry*: TBD - Chris Cole, David Ervin