

## Eli's Hospice Insider

### Lawsuits: Don't Get Lulled By Favorable Court Ruling On Terminal Prognosis

**You don't have a 'free pass,' lawyers warn.**

The recent court decision in the **AseraCare** case is good news, but providers shouldn't get a false sense of security from it, legal experts warn.

**Reminder:** The **U.S. District Court of Appeals for the 11th Circuit** ruled that "a mere difference of reasonable physicians' opinions on a terminal patient's prognosis will not constitute falsity under the False Claims Act," hospice chain AseraCare said when the court handed down the ruling last month (see Eli's Hospice Insider, Vol. 12, No. 11).

"While this case centered on hospice eligibility, its underpinnings - related to the question of whether a subjective difference of clinical opinion is sufficient for a finding of fraud - is a landmark finding that could impact the **Department of Justice's** (DoJ's) enforcement efforts from here forward in health care cases," cheers the **National Association for Home Care & Hospice** in its member newsletter. NAHC and several other trade groups, including the **National Hospice & Palliative Care Organization**, filed an amicus brief in the case.

**Watch out:** But **Baker Donelson** attorneys **Jonell Beeler**, **Linda Finley**, and **Hal Litchford** warn that "the decision is not a free pass for providers to rely solely on the physician's plan of care to establish medical necessity," according to online analysis.

"Providers still bear the obligation to make rational determinations about whether services supplied are provided at times and in quantities likely to be medically necessary," the attorneys continue. "Physician orders alone will not override Medicare's coverage decisions or its direct guidance on what it will consider a valid claim," the Baker Donelson lawyers note.

Note: The court's 57-page decision is online at <http://media.ca11.uscourts.gov/opinions/pub/files/201613004.pdf>.