

# Healthcare Investigations: Preparation and Response



In today's heavily regulated healthcare industry, unfortunately, it is no longer a question of "whether" you may become the subject of a government investigation; it's "when." Arnall Golden Gregory's Government Investigations and Special Matters team regularly helps healthcare companies to plan for, respond to, and manage government investigations. AGG's team, which includes former federal prosecutors and former state and federal regulators, helps clients navigate the process discreetly, with experience, and knowledge gained from the inside. In government investigations, there is not a one-size-fits-all solution; however, through careful advance preparation and with a comprehensive response plan in place, your organization can better weather the storm. Here are a few suggestions to help you prepare and respond:

## **1 Establish a Comprehensive Compliance Program**

The company should establish and sustain a top-down, highly visible compliance program, and emphasize the expectation that each and every employee fully shares in the company's compliance responsibilities. The compliance program must be vibrant and dynamic, with regular monitoring and updating to meet changing enterprise risks.

## **2 Establish, Practice, and Maintain Investigation Response Plans**

The company should have policies and call trees in place to respond to government investigations and other similar events. It is not enough, however, to have the policy filed away in a drawer. The company should train employees on the appropriate practices in responding to government inquiries, including search warrants, subpoenas, and unannounced visits to employees. Call hotlines and call trees should be publicized and visible for rapid access and response.

## **3 Prepare Legal Hold Policies and Train on Compliance**

Upon being reliably informed of an investigation, the company must promptly issue a litigation hold tailored to the scope of the issues and that includes all potential custodians. With e-mail and modern electronic communications storage, consultation with an electronic discovery expert is advisable.

## **4 Retain Outside Counsel as Warranted and Consider Parallel Internal Investigations**

If it appears that a government investigation is likely, or if the company becomes aware – either through its own compliance program or from other sources – of concerns or issues that may attract government attention, the company should consider hiring outside counsel early in the process to conduct a parallel internal investigation and to assist with coordinating the response to the government investigation.

## **5 Identify Conflicts of Interest and Engage Separate Counsel if Needed**

The company should promptly identify all potential conflicts of interest, including identifying all officers, directors, committees, and/or employees who may require separate counsel. To the extent separate counsel is needed to represent any individuals, the lead investigation counsel should participate in identifying and retaining these additional attorneys.

## 6 Review Potential Disclosure Obligations

The company should evaluate whether the issues involved in the investigation require disclosure under any federal or state laws or regulations or, alternatively, whether and when voluntary self-disclosure may be advisable. From a financial perspective, the company may need to set and then routinely adjust reserves as the investigation unfolds.

## 7 Document Responsive Activities and Interviews

Whether producing information to the government or conducting a parallel internal investigation, document the sources for all the information, as well as the efforts to obtain it. Also, document all witness interviews, including warnings regarding document preservation and tampering with evidence.

## Communicate With Employees

8 News spreads quickly within any organization. As warranted by the scope of the investigation, the company should communicate with employees about the investigation and inform them of their obligations and their rights. Of course, the communications must be carefully reviewed to avoid allegations of obstruction or witness tampering.

## Communicate With Patients and Media

9 Depending on the nature of the allegations, management may want to consider preemptive communications with patients and their families. Alternatively, if news of the investigation is already in the public eye, any press releases or interviews should be carefully planned and reviewed with assistance of counsel. The company may consider retaining outside public relations experts if warranted by the circumstances.

## Review, Update, and Revisit

10 During the investigation, and in light of the evolving nature of any investigation, regularly revisit the scope and strategy of the company's response and handling of the investigation. Issues such as witness and counsel conflicts, litigation holds, the scope of the investigation, and required disclosures, should be reassessed as often as circumstances warrant.

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### About Arnall Golden Gregory

Arnall Golden Gregory LLP is a law firm with offices in Atlanta and Washington D.C., that serves the business needs of growing public and private companies. Its areas of focus include real estate, healthcare, corporate, litigation, international, employment, life sciences, global logistics, privacy and intellectual property law. With the help of Arnall Golden Gregory's experienced attorneys, clients across a broad range of industries and around the globe turn legal challenges into business opportunities.