GOING ON THE OFFENSIVE: STRATEGIES FOR INVESTIGATING, COMBATING, AND AFFIRMATIVELY LITIGATING AGAINST FRAUD

BENTON CURTIS SENIOR COUNSEL, BROAD & CASSEL

> JONATHAN M. PHILLIPS GIBSON, DUNN & CRUTCHER

PATRICE SULLIVAN
DEPUTY CHIEF, CRIMINAL DIVISION, U.S. ATTORNEY'S
OFFICE FOR THE EASTERN DISTRICT OF LOUISIANA)

DISCLAIMER: THE STATEMENTS CONTAINED IN THIS PRESENTATION REPRESENT THE PERSONAL VIEWS OF THE OR MORE OF THE AUTHORS, NOT THE VIEWS OF THE DEPARTMENT OF JUSTICE, AND ARE NON-BINDING ON THE DEPARTMENT OF JUSTICE.

GENERAL	AREAS	OF	DISCUSSION

- I. Proactively Combating the Potential for Fraud
- II. Investigating Allegations of Fraud, Both Historical and Real-Time
- III. Litigating Allegations of Fraud by the Government
- IV. Examples of Recent Federal Cases (Civil & Criminal)

I. PROACTIVELY COMBATING THE POTENTIAL FOR FRAUD

- A. Create and Maintain a Legitimate, Enforceable Compliance Program
- B. Emphasize REPEATEDLY Appropriate Coding and Supporting Documentation
- C. Constantly Analyze and Review Data to Spot Trends Early On
- D. Constantly Review Existing and Proposed Relationships for Possible Anti-Kickback Statute Issues
- $\textbf{E.} \quad \textbf{Develop Procedures for Returning Overpayments to the Government}$

I. If no compliance program exists, implement one immediately with completed assistance, be if a law firm or consultant. Gather information about compliance efforts to date (if any) and confirm what currently is in place, i.e. compliance report logs, sudditing place, power of the compliance program, partialing programs and records, etc. Jednity what you hope to address, both short-term and long-term. Do not procrastinate because of cost concerns. Do not procrastinate because of cost concerns. A. DEFENSE AND DOJ PERSPECTIVE: CREATE AND MAINTAIN A LEGITIMATE, ENPORCEABLE COMPLIANCE PROGRAM I. Assuring printin compliance program manual and palicias are always by place, notice of the compliance program manual and palicias are always by place, notice of the compliance program manual and palicias are always by place, notice of the compliance program. July 2016 2018—The chapter of the program manual and palicias are always by place, notice of the compliance program. July 2018 2018—The chapter of the compliance program. July 2018 2018—The chapter of the compliance program. July 2018 2018—The chapter of the compliance program on the chapter of the compliance program and the chapter of the compliance program on the chapter of the compliance program and the chapter of the chapter of the compliance program and edger of the chapter of the compliance program and edger of the chapter of the compliance program and edger of the compliance program and t	A.	DEFENSE PERSPECTIVE: CREATE AND MAINTAIN A LEGITIMATE, ENFORCEABLE COMPLIANCE PROGRAM	
confirm what currently is in place, i.e. compliance report logs, auditing plans, Board reactions related to the compliance program, training programs and records, etc. Identify what you hope to address, both short-term and long-term. Do not procrastinate because of cost concerns. A. DEFENSE AND DOJ PERSPECTIVE: CREATE AND MAINTAIN A LEGITIMATE, ENFORCEABLE COMPLIANCE PROGRAM Is. Assuming written compliance program meanal and policies are already in place, review against the Got Model Compliance Programs and the control settlements of duddiens for Organizations to returns an effective compliance program. In the compliance of the doct Compliance program and the compliance program. In the compliance of the doct Compliance program and the compliance program. The maintenance of the doct Compliance program. In the compliance of the doct Compliance program. The maintenance of the doct Compliance program. The maintenance of the doct Compliance program. The maintenance of the doct Compliance program and the compliance and the compliance program and the compliance program and the compliance and th			
A. DEFENSE AND DOJ PERSPECTIVE: CREATE AND MAINTAIN A LEGITIMATE, ENFORCEABLE COMPLIANCE PROGRAM II. Assuming written compliance program manual and policies are already in place, review against the GO Mont Compliance Program and the Federal Scientificing Guidelines for grant and the Federal Scientificing Guidelines for grant and the Federal Scientificing Guidelines for grant and the Federal Scientificing Guidelines for the GO Mont Compliance Program and the Federal Scientificing Guidelines for grant and grant		confirm what currently is in place, i.e. compliance report logs, auditing plans, Board resolutions related to the compliance program,	
A. DEFENSE AND DOJ PERSPECTIVE: CREATE AND MAINTAIN A LEGITIMATE, ENFORCEABLE COMPLIANCE PROGRAM II. Assuming withen compliance program manual and policies are advesely in place, review against the DOS Model Compliances Programs and the Federal Sentencing Guidelines for the Compliance of the Compliance of Programs and the Federal Sentencing Guidelines for the Compliance of the Complianc		Identify what you hope to address, both short-term and long-term.	
CREATE AND MAINTAIN A LEGITIMATE, ENFORCEABLE COMPLIANCE PROGRAM II. Assuming writer compliance program retarult and policies are stready in place, review of compliance in the compliance program. I. USAN 9-23.00- Factors to be Considered - "The Filip Factors" • USAN 9-23.00- Factors to be Considered - "The Filip Factors" • "While the Department requires that no configurate programs • "While the Department requires that no configurate programs are whether the programs and entertheres of the compliance programs are whether the programs and whether covered in expenses in a series of the compliance programs are whether the program are whether the programs are programs. • The the construction of the program are whether the programs are programs are whether the programs are programs. • In the copporation's compliance program are whether the programs are programs. • In the copporation's compliance program are whether the programs are programs. • In the copporation's compliance programs are programs. • In the copporation's compliance program are whether the programs are programs. • In the compliance program are whether cooperations are programs. • In the program are program		Do not procrastinate because of cost concerns.	
CREATE AND MAINTAIN A LEGITIMATE, ENFORCEABLE COMPLIANCE PROGRAM II. Assuming writer compliance program retartal and policies are stready in place, review of compliance in the compliance program. I. USAN 9-23.00- Fractors to the Considered - "The Filip Factors" • USAN 9-23.00- Fractors to the Considered - "The Filip Factors" • "White the Department recognizes that no consignate programs • "White the Department requires that no consignate programs are whether the programs and effectives of the compliance programs are very compliance programs are very compliance to the compliance program are very compliance to the compliance to the compliance program are very compliance to the compliance to the compliance program are very compliance to the compliance to the compliance program are very compliance programs are very compliance programs. • "White the Department requirements regrading and effectives of the technique of the compliance program are very compliance programs. • In the composition of the compliance program well designed? • Is the composition of compliance program well designed? • Is the composition of compliance program well-designed? • The third of the program of the program well-designed? • Is the composition of the compliance program well-designed? • In the prograding and program well-designed? • In the program the program well-designed? • In the program the program well-designed? • In the program the program well-designed? • In the prograding and the program well-designed? • In the program the program well-designed programs. • The program of the			
CREATE AND MAINTAIN A LEGITIMATE, ENFORCEABLE COMPLIANCE PROGRAM II. Assuming writer compliance program retartal and policies are stready in place, review of compliance in the compliance program. I. USAN 9-23.00- Fractors to the Considered - "The Filip Factors" • USAN 9-23.00- Fractors to the Considered - "The Filip Factors" • "White the Department recognizes that no consignate programs • "White the Department requires that no consignate programs are whether the programs and effectives of the compliance programs are very compliance programs are very compliance to the compliance program are very compliance to the compliance to the compliance program are very compliance to the compliance to the compliance program are very compliance to the compliance to the compliance program are very compliance programs are very compliance programs. • "White the Department requirements regrading and effectives of the technique of the compliance program are very compliance programs. • In the composition of the compliance program well designed? • Is the composition of compliance program well designed? • Is the composition of compliance program well-designed? • The third of the program of the program well-designed? • Is the composition of the compliance program well-designed? • In the prograding and program well-designed? • In the program the program well-designed? • In the program the program well-designed? • In the program the program well-designed? • In the prograding and the program well-designed? • In the program the program well-designed programs. • The program of the			
CREATE AND MAINTAIN A LEGITIMATE, ENFORCEABLE COMPLIANCE PROGRAM II. Assuming writer compliance program retartal and policies are stready in place, review of compliance in the compliance program. I. USAN 9-23.00- Fractors to the Considered - "The Filip Factors" • USAN 9-23.00- Fractors to the Considered - "The Filip Factors" • "White the Department recognizes that no consignate programs • "White the Department requires that no consignate programs are whether the programs and effectives of the compliance programs are very compliance programs are very compliance to the compliance program are very compliance to the compliance to the compliance program are very compliance to the compliance to the compliance program are very compliance to the compliance to the compliance program are very compliance programs are very compliance programs. • "White the Department requirements regrading and effectives of the technique of the compliance program are very compliance programs. • In the composition of the compliance program well designed? • Is the composition of compliance program well designed? • Is the composition of compliance program well-designed? • The third of the program of the program well-designed? • Is the composition of the compliance program well-designed? • In the prograding and program well-designed? • In the program the program well-designed? • In the program the program well-designed? • In the program the program well-designed? • In the prograding and the program well-designed? • In the program the program well-designed programs. • The program of the			
CREATE AND MAINTAIN A LEGITIMATE, ENFORCEABLE COMPLIANCE PROGRAM II. Assuming writer compliance program retartal and policies are stready in place, review of compliance in the compliance program. I. USAN 9-23.00- Fractors to the Considered - "The Filip Factors" • USAN 9-23.00- Fractors to the Considered - "The Filip Factors" • "White the Department recognizes that no consignate programs • "White the Department requires that no consignate programs are whether the programs and effectives of the compliance programs are very compliance programs are very compliance to the compliance program are very compliance to the compliance to the compliance program are very compliance to the compliance to the compliance program are very compliance to the compliance to the compliance program are very compliance programs are very compliance programs. • "White the Department requirements regrading and effectives of the technique of the compliance program are very compliance programs. • In the composition of the compliance program well designed? • Is the composition of compliance program well designed? • Is the composition of compliance program well-designed? • The third of the program of the program well-designed? • Is the composition of the compliance program well-designed? • In the prograding and program well-designed? • In the program the program well-designed? • In the program the program well-designed? • In the program the program well-designed? • In the prograding and the program well-designed? • In the program the program well-designed programs. • The program of the			
CREATE AND MAINTAIN A LEGITIMATE, ENFORCEABLE COMPLIANCE PROGRAM II. Assuming writer compliance program retartal and policies are stready in place, review of compliance in the compliance program. I. USAN 9-23.00- Fractors to the Considered - "The Filip Factors" • USAN 9-23.00- Fractors to the Considered - "The Filip Factors" • "White the Department recognizes that no consignate programs • "White the Department requires that no consignate programs are whether the programs and effectives of the compliance programs are very compliance programs are very compliance to the compliance program are very compliance to the compliance to the compliance program are very compliance to the compliance to the compliance program are very compliance to the compliance to the compliance program are very compliance programs are very compliance programs. • "White the Department requirements regrading and effectives of the technique of the compliance program are very compliance programs. • In the composition of the compliance program well designed? • Is the composition of compliance program well designed? • Is the composition of compliance program well-designed? • The third of the program of the program well-designed? • Is the composition of the compliance program well-designed? • In the prograding and program well-designed? • In the program the program well-designed? • In the program the program well-designed? • In the program the program well-designed? • In the prograding and the program well-designed? • In the program the program well-designed programs. • The program of the			
CREATE AND MAINTAIN A LEGITIMATE, ENFORCEABLE COMPLIANCE PROGRAM II. Assuming writer compliance program retartal and policies are stready in place, review of compliance in the compliance program. I. USAN 9-23.00- Fractors to the Considered - "The Filip Factors" • USAN 9-23.00- Fractors to the Considered - "The Filip Factors" • "White the Department recognizes that no consignate programs • "White the Department requires that no consignate programs are whether the programs and effectives of the compliance programs are very compliance programs are very compliance to the compliance program are very compliance to the compliance to the compliance program are very compliance to the compliance to the compliance program are very compliance to the compliance to the compliance program are very compliance programs are very compliance programs. • "White the Department requirements regrading and effectives of the technique of the compliance program are very compliance programs. • In the composition of the compliance program well designed? • Is the composition of compliance program well designed? • Is the composition of compliance program well-designed? • The third of the program of the program well-designed? • Is the composition of the compliance program well-designed? • In the prograding and program well-designed? • In the program the program well-designed? • In the program the program well-designed? • In the program the program well-designed? • In the prograding and the program well-designed? • In the program the program well-designed programs. • The program of the	Α.	DEFENSE AND DOJ PERSPECTIVE:	7
against the Old Model Compilance Programs and the Federal Sentencing Guidelines for Organizations to name an effective compilance program. • USAM 9-23.00 - Phicipies of Federal Presecution of Business Organizations • USAM 9-23.00 - Phicipies of Federal Presecution of Business Organizations • "The satistance and effectiveness of the corporation pre-existing compilance programs are useful to compilance programs and effectiveness of the corporation programs." • "While the Department recognities that no compilance program can ever prevent in evaluating any program and whether the wrongolding by employees, the critical textory, the critical textory is evaluating and program and whether the wrongolding by employees to engage in indiconduct to achieve business depletives. The Department has be through the program of the textory of the companies of the composition of the critical textory. • The third textory of the critical textory and the textory of the critical textory and the critical textory of the critical textory. • The textory of the critical textory. • The textory of the critical textory of t		CREATE AND MAINTAIN A LEGITIMATE, ENFORCEABLE	
B. DEFENSE PERSPECTIVE: EMPHASIZE - REPEATEDLY - APPROPRIATE CODING AND Supporting Documentarions i. Inappropriate coding Not capturing all receivables. ii. Inappropriate coding Not capturing all receivables. iii. Inappropriate coding Not capturing all receivables. iii. Inappropriate coding Not capturing all receivables. iii. Residence and selection generated as knowing generated generated as kn		against the OIG Model Compliance Programs and the Federal Sentencing Guidelines for	
- "The custance and effectiveness of the corporation's pre-existing compliance program." - "While the Department recognizes that no congliance program can ever prevent all criminal activity by a corporation's employees, the citical scircia in evaluating any program as a venther the program is adequately designed for maximum effectiveness in preventing and detecting varrogation's by employees, the citical scircia in evaluating any detecting varrogation's by employees and whether cooperate management is enterioring the program or is facility Department has no formulatic requirements regarding corporate compliance programs. - The fundamental questions any prosecutor should ask are: - Is the corporation's compliance program work designed? - Is the program being applied carresting and in good railtr? - Does the corporation's compliance program work?" B. DEFENSE PERSPECTIVE: EMPHASIZE - REPEATEDLY - APPROPRIATE CODING AND SUPPORTING DOCUMENTATION i. Inappropriate coding - Not capturing all receivables. - Risk that actions could be interpreted by government as knowing or reckless upcoding.		USAM 9-28.000 - Principles of Federal Prosecution of Business Organizations	
by a corporation's employees, the critical factors in evaluating any program are whether the program is adequately designed for maximum detectiveness in preventing and distorting is latelly encouraging or pressuring employees to engage in misconduct to achieve business objectives. The Department has no formulate requirements regarding corporate compliance programs. The fundamental questions any prosecutor should ask are: Is the program being applied semestly and in good faith? Does the corporation's compliance program work? B. DEFENSE PERSPECTIVE: EMPHASIZE – REPEATEDLY – APPROPRIATE CODING AND SUPPORTING DOCUMENTATION i. Inappropriate coding Not capturing all receivables. Risk that actions could be interpreted by government as knowing or reckless upcoding.		 "The existence and effectiveness of the corporation's pre-existing compliance 	
program is adequately designed for maximum effectiveness in prevating and detecting wrongoing by employees and whether corporate management is enforcing the program or is tacity encouraging or pressuring employees to engage in misconduct to achieve business objectives. The triansparent program with the program		"While the Department recognizes that no compliance program can ever prevent all criminal activity by a corporation's employees, the critical factors in evaluating any program are whether the	
Department has no formulaic requirements regarding corporate compliance programs. The fundamental questions any prosecutor should sak are: Is the corporation's compliance program well designed? Is the program being applied earnestly and in good stath? Does the corporation's compliance program work?* B. DEFENSE PERSPECTIVE: EMPHASIZE - REPEATEDLY - APPROPRIATE CODING AND SUPPORTING DOCUMENTATION i. Inappropriate coding Not capturing all receivables. Risk that actions could be interpreted by government as knowing or reckless upcoding.		program is adequately designed for maximum effectiveness in preventing and detecting wrongdoing by employees and whether corporate management is enforcing the program or is tacitly	
B. DEFENSE PERSPECTIVE: EMPHASIZE - REPEATEDLY - APPROPRIATE CODING AND SUPPORTING DOCUMENTATION i. Inappropriate coding • Not capturing all receivables. • Risk that actions could be interpreted by government as knowing or reckless upcoding.		Department has no formulaic requirements regarding corporate compliance programs. The fundamental questions any prosecutor should ask are:	
EMPHASIZE - REPEATEDLY - APPROPRIATE CODING AND SUPPORTING DOCUMENTATION i. Inappropriate coding • Not capturing all receivables. • Risk that actions could be interpreted by government as knowing or reckless upcoding.		 Is the program being applied earnestly and in good faith? 	
EMPHASIZE - REPEATEDLY - APPROPRIATE CODING AND SUPPORTING DOCUMENTATION i. Inappropriate coding • Not capturing all receivables. • Risk that actions could be interpreted by government as knowing or reckless upcoding.			<u> </u>
EMPHASIZE - REPEATEDLY - APPROPRIATE CODING AND SUPPORTING DOCUMENTATION i. Inappropriate coding • Not capturing all receivables. • Risk that actions could be interpreted by government as knowing or reckless upcoding.			
EMPHASIZE - REPEATEDLY - APPROPRIATE CODING AND SUPPORTING DOCUMENTATION i. Inappropriate coding • Not capturing all receivables. • Risk that actions could be interpreted by government as knowing or reckless upcoding.			
EMPHASIZE - REPEATEDLY - APPROPRIATE CODING AND SUPPORTING DOCUMENTATION i. Inappropriate coding • Not capturing all receivables. • Risk that actions could be interpreted by government as knowing or reckless upcoding.			
EMPHASIZE - REPEATEDLY - APPROPRIATE CODING AND SUPPORTING DOCUMENTATION i. Inappropriate coding • Not capturing all receivables. • Risk that actions could be interpreted by government as knowing or reckless upcoding.			
EMPHASIZE - REPEATEDLY - APPROPRIATE CODING AND SUPPORTING DOCUMENTATION i. Inappropriate coding • Not capturing all receivables. • Risk that actions could be interpreted by government as knowing or reckless upcoding.			_
i. Inappropriate coding • Not capturing all receivables. • Risk that actions could be interpreted by government as knowing or reckless upcoding.	В.		
Not capturing all receivables. Risk that actions could be interpreted by government as knowing or reckless upcoding.			
Risk that actions could be interpreted by government as knowing or reckless upcoding.		EMPHASIZE - REPEATEDLY - APPROPRIATE CODING AND	
Risk that actions could be interpreted by government as knowing or reckless upcoding.		EMPHASIZE - REPEATEDLY - APPROPRIATE CODING AND SUPPORTING DOCUMENTATION	
or reckless upcoding.		EMPHASIZE - REPEATEDLY - APPROPRIATE CODING AND SUPPORTING DOCUMENTATION i. Inappropriate coding	
If possible, consider using in-house coders/billers.		EMPHASIZE - REPEATEDLY - APPROPRIATE CODING AND SUPPORTING DOCUMENTATION i. Inappropriate coding • Not capturing all receivables.	
		EMPHASIZE - REPEATEDLY - APPROPRIATE CODING AND SUPPORTING DOCUMENTATION i. Inappropriate coding • Not capturing all receivables. • Risk that actions could be interpreted by government as knowing	
		EMPHASIZE - REPEATEDLY - APPROPRIATE CODING AND SUPPORTING DOCUMENTATION i. Inappropriate coding • Not capturing all receivables. • Risk that actions could be interpreted by government as knowing or reckless upcoding.	
		EMPHASIZE - REPEATEDLY - APPROPRIATE CODING AND SUPPORTING DOCUMENTATION i. Inappropriate coding • Not capturing all receivables. • Risk that actions could be interpreted by government as knowing or reckless upcoding.	

В.	DEFENSE PERSPECTIVE: EMPHASIZE – REPEATEDLY – APPROPRIATE CODING AND SUPPORTING DOCUMENTATION	
	ii. Supporting documentation	
	Standard request at outset of any CMS audit or DOJ investigation.	
	 The strength of supporting medical documentation is at the core of many cases, whether investigations of medical necessity, 	
	Medicare Advantage payments, or other issues.	
	Particularly important if your claims data is aberrant.	
		_
	DEFENSE COUNSEL & DOJ PERSPECTIVE: CONSTANTLY ANALYZE & REVIEW DATA TO SPOT TRENDS EARLY	
	i. Data Analysis is a crucial component of identifying and managing	
	risks as part of an effective compliance program. What types of data has the company identified to help detect the	
	types of misconduct most likely to occur in your line of business?	
	 How often does the company collect and analyze such data? Who performs the analysis? 	
	Who reviews it?How is the data used to enhance the compliance program?	
	How did you address/respond to red flags?	
		J
		п
	DOJ PERSPECTIVE: INCREASED USE OF DATA ANALYTICS IN CRIMINAL HCF CASES	
	ii. Significant Law Enforcement Investment in Data Analytics Resources, Tools	<u> </u>
	and Personnel Newly-Formed Fraud Section Data Analytics Team Supports Medicare Strike Force cities (Fraud Section and U.S.	
	Attorneys' Offices) Access to real-time billing data	
	Find investigative leads, identify trends and targets, corroborate fraud tips HIS ONE Concellidated Data Applytics Contex (CDAC)	
	HHS-OIG Consolidated Data Analytics Center (CDAC) Supports HHS components/OIG investigations iii. Data Analytics Focus	
	High-risk providers Billing outliers (by geographic area, type of service, specialty/peers)	
	S (70 S), Symmetric Sympton	<u> </u>

C. DOJ PERSPECTIVE: SOURCES OF CRIMINAL HCF CASES	
 Data analysis Referrals from law enforcement partners (HHS-OIG, FBI, FDA-OI, Medicaid Fraud Control Units, DCIS, IRS, Postal OIG) Cooperating defendants Cooperating witnesses HHS-OIG and FBI hotline complaints Zone Program Integrity Contractor (ZPIC) referrals Medicare Hotline Complaints from beneficiaries Qui Tam False Claims Act complaints/relators 	
D. DEFENSE PERSPECTIVE:	
CONSTANTLY REVIEW EXISTING AND PROPOSED RELATIONSHIPS FOR POSSIBLE ANTI-KICKBACK STATUTE AND STARK ISSUES	
AKS continues to be an area of focus for criminal HCF investigations and prosecutions, particularly where conduct: causes overutilization of items or services involves patient steering that interferes with or undermines patient choice frustrates/impedes patient access to care	
Higher is any doubt as to a relationship, seek legal advice. What are you really paying for? If there is any doubt as to a relationship, perform a sincere cost-benefit analysis – Is it really that worth it?	
E. DEFENSE PERSPECTIVE: DEVELOP PROCEDURES FOR RETURNING OVERPAYMENTS TO THE GOVERNMENT WHEN IDENTIFIED	
Medicare Advantage organizations: develop procedures for prompt return of overpayments that are identified through compliance programs and other channels	
"60-day Rule": must use "reasonable diligence" to investigate credible information of overpayments	
 Timely, good-faith investigation not to exceed six months If overpayment is identified, must look back six years 60-day repayment clock begins when the overpayment is identified and quantified 	
Knowing failure to return overpayments under these rules can lead to False Claims Act liability	
	ш

II.	DEFENSE PERSPECTIVE: INVESTIGATING ALLEGATIONS OF FRAUD, BOTH HISTORICAL AND REAL-TIME	
	A. Tailor Data Mining to Specific Allegations of Misconduct	
	B. Review Pertinent Bank Records, Corporate and Individual (if necessary)	
II.	DEFENSE PERSPECTIVE:	1
	INVESTIGATING ALLEGATIONS OF FRAUD, BOTH HISTORICAL AND REAL-TIME	
	C. Review Pertinent Documentation	
	 Emails, letters, and texts Contracts, both draft and final 	
	 Compliance material Marketing material Previous legal advice 	
	• Misc.	
		-
II.	DEFENSE PERSPECTIVE:]
	INVESTIGATING ALLEGATIONS OF FRAUD, BOTH HISTORICAL AND REAL-TIME	
	D. Conduct Necessary Interviews	
	E. If Necessary, Retain Consultant – UNDER PRIVILEGE – to Perform Forensic	
	Review F. If Appropriate, Implement Remedial Measures	
		J

III.	DEFENSE PERSPECTIVE: LITIGATING ALLEGATIONS OF HCF FRAUD BY THE GOVERNMENT	
	A. Establish Positive Dialogue with Government Attorneys and/or Agents How to build the reservoir of trust Make contact as early as possible Be as cooperative and forthcoming as possible	
		7
111.	DOJ PERSPECTIVE: LITIGATING ALLEGATIONS OF HCF FRAUD BY THE GOVERNMENT – COOPERATION "To be eligible for any cooperation credit, corporations must provide to the Department all relevant facts relating to the individuals responsible for the misconduct." Memo from Deputy Attorney General Sally duillian Yates to DOJ, "Individual Accountability for Corporate Wrongdoing" (Sept. 5, 2015). "A company should not expect to receive cooperation credit for just producing documents in response to a grand jury subpoena. That has never been considered cooperation in any other context, and it will not be recognized as cooperation in the health care fraud context either. To the contrary, compliance with lawful process is a legal requirement, not voluntary cooperation." "Cooperation means that a corporation has made an affirmative effort to investigate potential wrongdoing, and that it has turned over the facts uncovered during that investigation in a timely way to our prosecutors. In particular—and as I have said in other contexts over the last year—it is important that cooperating companies identify the culpable individuals. Prosecuting individuals for their criminal wrongdoing, including for health care fraud, is a top priority for the Criminal Division."	
	Assistant Attorney General Leslie R. Caldwell's Remarks at the American Bar Association's 25th Annual National Institute on Health Care Fraud in Miami, Florida on May 14, 2015.	
		7
! !	DEFENSE PERSPECTIVE: KNOW WHAT YOU ARE RESPONDING TO AND HOW TO RESPOND – IS THE UNDERLYING INVESTIGATION CIVIL OR CRIMINAL OR PARALLEL OR ADMINISTRATIVE?	
	Civil Investigative Demands ("CIDs"): Request for Documents Interrogatories Deposition Document subposess	
	Document subpoenas HHS-OlG subpoena HEPAA subpoena a/k/a Authorized Investigative Demand ("AID") Grand Jury subpoena Interviews	
	Government request for informal interview Law enforcement drop-in interview	

B. DEFENSE PERSPECTIVE: KNOW WHAT YOU ARE RESPONDING TO AND HOW TO	
RESPOND – IS THE UNDERLYING INVESTIGATION CIVIL OR CRIMINAL OR PARALLEL OR ADMINISTRATIVE?	
Criminal Indictment	
Civil Complaint	-
Be Aware of Potential Collateral Consequences: Administrative remedies, including potential impact on government program participation	
including potential impact on government program participation	
	п
B. DEFENSE PERSPECTIVE: KNOW WHAT YOU ARE RESPONDING TO AND HOW TO	
RESPOND – IS THE UNDERLYING INVESTIGATION CIVIL OR CRIMINAL OR PARALLEL OR ADMINISTRATIVE?	
Department of Justice Office of Public Affairs	
FOR DIMEDIATE RELEASE Monday, January 5, 2015 Government Intervenes in Lawsuit Against Florida Cardiologist Alleging	
Government Intervenes in Lawsuit Against Florida Cardiologist Alleging Unnecessary Peripheral Artery Interventions and Payment of Kickbacks The government has intervened in two lawsuits against a Florida cardiologist, Dr. Asad Quanar, and his physician proug, the listitute for Cardiovascular Excellence FLLC (CE), alleging that Quanar and ICE Dilled Medicare for medically unnecessary	
peripheral artery interventions and paid kickbacks to patients by waiving Medicare copsyments irrespective of financial hardship, the Justice Department announced today.	
"Performing medically sumenessary procedures parts gateins at risk and contributes to the souring coats of health care," said Acting Assistant Attempt General Joyce R. Benché nor the Justice Papartment's Crit il Division. "Today's action evidences the Department of Justice's efforts both to safaguard federal health case program beneficiaries and to protect public fonds." The lavouits allege that Quanar and ICE performed encessive and medically sumenessary peripheral artary interventional	
services and affiliated procedures on Medicare patients. One of the law-usin further alleges that Quanar induced patients to undergo thous unnecessary procedures by routinely wairing the 20 percent Medicare copayment, regardless of the patients' financial need.	
	<u> </u>
	п
C. DEFENSE PERSPECTIVE: MACRO CONCEPTS TO ALWAYS KEEP IN MIND	
	1
Be aware of applicable privileges (attorney/client, 5 th	
Amendment, etc.) Be precise, but not unnecessarily pugilistic	
 Be aggressive if and when appropriate Document communications in writing only when necessary 	
	<u> </u>

	_
IV. EXAMPLES OF RECENT FEDERAL CASES	
A. Civil Settlements	
A. Civil Settlements	
D. Ottobal Burner Burn	
B. Criminal Prosecutions	
	<u> </u>
	_
CIVIL SETTLEMENTS	
CIVIL SETTLEMENTS	
THE UNITED STATES ATTOMNEYS OFFICE.	
CENTRAL DISTRICT of CALIFORNIA	
ARCHIVE	
Long Beach-Based Health Plan Pays Nearly \$320 Million to Settle Allegations that it Received Overpayments for Medi-Cal	
FOR IMMEDIATE RELEASE FOR IMMEDIATE RELEASE August 23, 2012	-
SCAN Health Plan Pays Another \$3.82 Million to Resolve Claims of Inflated Risk Adjustment Scores' that Increased Reimbursements from Medicare Part C	
LOS ANGELES – In the largest recovery ever obtained from a single Medi-Cal provider, a Long Beach- based managed one bealth plan has paid \$3.90.85 million to resolve allegations that it received oversprunnts from Medi-Cal.	
On August 10, 2012, SCAN Healt On August 10, 2012, SCAN also past an additional \$3,85 million to the Federal government — bringing the On August 10, 2012, SCAN Healt to that settlement in this matter to \$322,670,650 — to settle a whistleblower lawsuit's allegations that the the State of California to resolve 4 company unlawfully caused an inflation of some of its patients' "risk adjustment zones," which then	
Under Medicine Petr Ci managed eine mytten, physicians for gentlent enrolled in a Medicine a Armatage besith plan report particular diagonies does bet ned pass, mich them perspect the ordes to the deficial Genera for Medicine and Medical Services (CSM), which then uses the needes to develop risk adjustment occess for the particular, bill, adjustment occess measures has hashed of particular and are used by Mediciner Part C to	-
determine how much to pay the plan as a monthly capitated rate for each patient.	
-	1
CRIMINAL PROSECUTIONS	
Department of Justice	
Office of Public Affairs	
FOR IMMEDIATE RELEASE Wednesday, June 22, 2016	
National Health Care Fraud Takedown Results in Charges against 301 Individuals for Approximately \$900 Million in False Billing	
for Approximately \$900 Million in False Billing Most Defendants Charged and Largest Alleged Loss Amount in Strike Force History	
Attorney General Loretta E. Lynch and Department of Health and Human Services (HHS) Secretary Sylvia Mathews Burwell	
amounced today an unprecedented nationsides reveap led by the Medicare Franci Strike Force in gib federal districts, resulting in criminal and civil charges against part inside/abla, including do clotters, surreare and other lineased medical professionals, for their alleged participation in beath care frand schemes involving approximately Spoo million in false billings. Twenty-three state Medical Faren Control Unita has participated in today a result. In addition, the HIST Centers The Control Control Control Control Unitaria has participated in today a result. In addition, the HIST Centers and the Control Control Control Control Unitaria has participated in today a result.	
Policings. Twenty-three state Medicaid Fraud Control Units also participated in today's arrests. In addition, the HHS Centers for Medicarde Medicaid Services (CMS) is suspending payment to a number of providers usine its suspension authority	
for Medicare & Medicaid Services (CMS) is suspending payment to a number of providers using its suspension authority provided in the Affordable Cars Act. This coordinated takedown is the largest in history, both in terms of the number of dericulants charge and loss amount.	
For the Strike Force Josephons in the Southern District of Florids a total of son defendants were charged with offenses	
relating to their participation in various fraud schemes involving approximately \$220 million in false billings for home health care, mental health services and pharmacy fraud. In one case, nine defendants have been charged with oseratine six	
valuting to their participation in various fraud obsemus involving approximately 5200 million in false billings for bome both care, mental health services and pharmacy reland. In one case, nine derindentals have been damped with operating tix different Manni-wave home health companies for the purpose of submitting false and fraudulent claims to Medicare, including for services that we not medically necessary and that were based on bribes and kicholos. In total, Medicare	-
paid the six companies over \$24 million as a result of the scheme.	

	CRIMINAL PROS	
	Office of Public Affairs	SHARE (*
	R IMMEDIATE RELEASE	Friday, July 22, 2016
	Three Individuals Charged in \$1 Billion Medicare Fraud and Mone Scheme	y Laundering
pi	e owner of more than 30 Miami-area skilled nursing and assisted living facilities, a hospital admini- spician's assistant were charged with conspiracy, obstruction, money laundering and health care fra shillion scheme involving numerous Miami-based health care providers.	strator and a sud in connection with
of in	sistant Attornsy General Lealis R. Caldwell of the Justice Department's Criminal Division, U.S. Atto the Southern District of Florida, Special Agent in Charge George L. Piro of the FBT Minni Field Of Charge Shimon R. Richmond of the U.S. Department of Health and Human Services-Office of Inspe (3) Minni Regional Office made the amountment.	ffice and Special Agent
tì	isis is the largest single criminal health care fraud case ever brought against individuals by the Depa s is further evidence of how successful data-driven law enforcement has been as a tool in the ongoin of fraud," said Assistant Astorney General Caldwell.	ortment of Justice, and ng fight against health ONE BIL HEALTH
		ESF NET
		NEI