Compliance
What’s Happening Now?

Ronald Chillemi
Assistant Attorney General
State of New Jersey

Blessing (Or Curse)

May you have the good fortune to live in interesting times.
## Enforcement Increasing - Why?

<table>
<thead>
<tr>
<th>Elderly</th>
<th>Costs</th>
<th>Enforcement</th>
</tr>
</thead>
<tbody>
<tr>
<td><img src="image1.png" alt="Image" /></td>
<td><img src="image2.png" alt="Image" /></td>
<td>FCA</td>
</tr>
<tr>
<td>ACA</td>
<td>RICO</td>
<td>AKS</td>
</tr>
<tr>
<td>Fraud</td>
<td>Anti-trust</td>
<td></td>
</tr>
</tbody>
</table>

Source: Average of AARP and Pew statistics, aarp.org/personal-growth, pewresearch.org/daily-number

NB – Hospital serv.s (.9B) = 32% of NHE
NB – Meds (1T) = 31% of NHE

## Enforcement - Where?

3 Categories Of Interaction With Patient

1. **Obtain**
2. **Treat**
3. **Bill**
### Enforcement - Where?

**3 Categories Of Interaction With Patient**

1. **Obtain**

   - **A.** As reimbursements ↓, competition for market share ↑
   - **B.** Activity = Risk
   - **C.** Quid ⇔ Quo

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### Enforcement - Where?

**3 Categories Of Interaction With Patient**

2. **Treat**

   - ACA, HIPAA, EHR, Quality, Medical Necessity
### Enforcement - Where?

**3 Categories Of Interaction With Patient**

*3. Bill*

#### Coding

**FCA**

A. *scope expanding beyond pharma.*

B. *2009-2010 changes to FCA*

C. *Coming – re provider as MDs*

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### Enforcement – Prosecutor

**First Who – Trial lawyers and analysts**
Enforcement - Prosecutor

<table>
<thead>
<tr>
<th>Then What – Select deterrence cases</th>
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<td><img src="image1.png" alt="Diagram" /></td>
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Enforcement - Prosecutor

<table>
<thead>
<tr>
<th>What – Select deterrence cases</th>
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<tr>
<td><img src="image2.png" alt="Diagram" /></td>
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Ashcroft Memo – Highest Provable Felony
Enforcement - Prosecutor

How – Tempo & Intent

Results - APS

<table>
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<tr>
<th>Years of Prison</th>
<th>Calendar Year</th>
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<tbody>
<tr>
<td>0.92</td>
<td>2008</td>
</tr>
<tr>
<td>0.82</td>
<td>2009</td>
</tr>
<tr>
<td>1.25</td>
<td>2010</td>
</tr>
<tr>
<td>3.59</td>
<td>2011</td>
</tr>
<tr>
<td>2.97</td>
<td>2012</td>
</tr>
<tr>
<td>4.35</td>
<td>2013</td>
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Reforms Implemented | 3.636
Enforcement - Prosecutor

Passaic County Home Health Aide Indicted for Stealing $3,797 From Medicaid

Trenton -- Acting Attorney General John J. Saposnick announced Monday the indictment of Christine Young of Wayne in connection with a scheme to defraud Medicaid and Medicare. Young faces 27 counts of theft, fraud, and false statements in a Medicaid/Medicare application.

The scheme was uncovered by Health Care Investigations Division of the Department of the Attorney General and charged to Christine Young of Wayne. Young made false claims to Medicaid and Medicare totaling $48,000. She then used the proceeds to pay back her customers. She faces up to 10 years in prison, a $500,000 fine, and 3 years on probation.

10/6/2015

Enforcement – Comprehensive

Culture Of Compliance To Preempt Problems

Insurance Fraud = PRISON

Compliance = GOOD BUSINESS

YourCompany.com

10/6/2015
Attorney-Client Privilege

Dual Purpose Communications

If Severable, Sever

If Not Severable, Determine “Primary Purpose”

VS.

LEGAL

BUSINESS

“Primary Purpose”


“One Of The Significant Purposes”

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LEGAL
Attorney-Client Privilege

"One Of The Significant Purposes" KBR

Dual Purpose Communications

GC
Privileged
GC

AGC
LEGAL

AGC

Privileged


Attorney-Client Privilege

Dual Purpose Communications

GC
Privileged
GC

AGC
LEGAL
LEGAL

AGC

Privileged

Work Product

10/6/2015
Attorney-Client Privilege

Best Practices Re Dual Purpose Communications

Control By Severing In Advance

1. **BUSINESS**

2. **LEGAL**

\[ \text{[Need To Know Test – “[P]ersons who . . . need to know its contents.”] Diversified Industries, 572 F.2d 596, 609 (8th Cir. 1978)(emphasis added)} \]
Attorney-Client Privilege

Crime-Fraud Exception

STOP

Esq.
What’s Next?

**Appification**

Telemedicine
Drones
Oshbot, 10/28/14 WSJ, B3

**Robotics**

**Immigration**

Qualifications
Licensure