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HEALTH CARE ENFORCEMENT

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Enforcement Developments

- Broader Scope of Federal Investigations
- The Effect of the *Yates* Memorandum
- Changes in DOJ Policy Regarding Compliance Materials
- Reinvigoration of “patient harm” cases and Elder Justice Initiative





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Medicare Fraud Strike Force

- Lab cases
- Opioid Epidemic/Sober Houses
- Compounding Pharmacies
- Statistical Outliers
- The Usual Suspects (Home Health, Kickback cases, etc.)



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False Claims Act Cases

- \$3.7 billion recovered in 2017, of which \$2.5 billion was from health care (slight decrease from \$2.6 billion in 2016)
- Despite slight decrease in overall recovery, there was an **increase** in recovery in whistleblower actions where the government did not intervene





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Effect of Yates Memo

- The Individual Accountability Policy (called the “Yates memo”) is the DOJ policy for holding accountable and punishing culpable individuals in a corporation.
- In *United States ex rel. Garber v. Norman Regional Health Center*, 4/11/16), the former top executive and six physicians agreed, along with the hospital, to settle false claims allegations of improper billing because the physicians were not in the room when the services required them to be.



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Effect of Yates Memo

- Takeaway: The increasing focus on charging individuals as well as corporations will likely result in more self-policing and more whistleblowers from the corporate ranks when their policing falls on deaf ears.





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The Yates Memo and the Baer Memorandum

- Baer Deputy AAG Bill Baer issued a memorandum detailing the minimum requirements a corporation must meet to earn credit for cooperating in the resolution of civil matters.
- Parallel Proceedings: What happens when there is a civil and a criminal investigation at the same time.



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Compliance and the DOJ



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DOJ Guidance on Compliance

- US DOJ issued an “Evaluation of Corporate Compliance Programs” in February 2017.
- No rigid formula to assess effectiveness of corporate compliance programs.
- Individual determination in each case.
- Compliance officers should review and use as a tool for improving compliance program.



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Educating on Compliance

- Do your colleagues know what the compliance officer does?
- Educating DOJ on your efforts in compliance.





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Self Disclosure Do's and Don'ts

- Can you defend the scope of your audit?
- What was your methodology in arriving at the ultimate figure?
- Is this a true, proactive disclosure?



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Common Problems and Compliance

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|---|--|
| <ul style="list-style-type: none"> ➤ Claims Based on Improper Billing <ul style="list-style-type: none"> ➤ Services Not Rendered ➤ Lack of Required Supervision ➤ Bundling Tests ➤ Services Not Medically Necessary ➤ Medicare enrollment and credentialing issues | <ul style="list-style-type: none"> ➤ Claims Based on Personal Relationships with Referral Sources <ul style="list-style-type: none"> ➤ Anti-Kickback violations ➤ Stark Law violations |
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Questions?

