

AMERICAN HEALTH LAWYERS ASSOCIATION
2009-2010 Practice Group Planned Activities and Project Report
June 2010

Practice Group: Fraud and Abuse

Chair: Kathleen McDermott

* Also see chart for Medicare Part D Task Force for additional information

Project Title	Project Coordinator(s)	Project Description	Start Date	Projected Completion Date	Actual Completion Date	Status
<u>Chair</u>	Kathleen McDermott	8/3/09: Submit FY 2010 Planned Activities and Project Report to staff 12/11/09: Submit written Mid-Year Report to the Board of Directors 5/21/10: Submit written Annual Report to the Board of Directors	7/1/09	8/3/09 12/11/09 5/21/10	8/10/09 1/4/10	Ongoing
<u>Membership</u>	Mark Bonanno	Vice Chair to serve as liaison between Practice Group and Membership Board Committee to recruit and retain members for the Association and the Practice Group.	7/1/09	6/30/10		Ongoing
<u>Publications</u>	Beth McClain	Vice Chair to serve as liaison between Practice Group and Professional Resources Board Committee and to coordinate Member Briefings, etc.	7/1/09	6/30/10		Ongoing
<u>Educational Programs</u>	William Mathias	Vice Chair to coordinate Mid-Year and Annual Meeting luncheons, teleconferences, and serve as a liaison between Practice Group and Program planning committee.	7/1/09	6/30/10		Ongoing
<u>Research & Website</u>	Kimberly Brandt	Vice Chair to coordinate <i>AHLA Connections</i> feature article and email alerts. Monitor and oversee relevant PG sub-site of AHLA website; make suggestions for additional postings, web links, etc.	7/1/09	6/30/10		Ongoing

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<u>Strategic Activities</u>	Laura Laemmle-Weidenfeld	Vice Chair responsible for special projects throughout the year. May include: coordination of Affinity Group development and activities; assistance with coordination of mentoring program for new members; assistance with coordination of Mid-Year and Annual Luncheons etc.	7/1/09	6/30/10		Ongoing
<u>Website</u>	New Volunteer	Monitor and oversee relevant PG sub-site of AHLA website; make suggestions for additional postings, web links, etc.	7/1/09	6/30/10		Ongoing
<u>Discussion List (#1)</u> <i>Health Compliance</i>	Sara Kay Wheeler	Regularly monitor the Health Compliance discussion list and post questions to stimulate activity.	7/1/09	6/30/10		Ongoing
<u>Discussion List (#2)</u> <i>Stark Law List</i>	Bill Maruca	Regularly monitor the Stark Law discussion list and post questions to stimulate activity.	7/1/09	6/30/10		Ongoing

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<u>Meeting: Mid-Year</u>	Katie McDermott	Sponsor a Luncheon meeting at the Fraud and Compliance Forum (October 4-6, 2009) in Baltimore, MD. Description and faculty due to AHLA on July 7, 2009. Date: Monday, October 5, 2009 Title: 2009 False Claims Act Amendments and Voluntary Disclosure Issues Speaker: Roann Nichols, Assistant U.S. Attorney and Health Care Fraud Coordinator (Baltimore), Margaret (Peg) Hutchinson, Assistant U.S. Attorney and Civil Chief, Philadelphia U.S. Attorney's Office	7/1/09	10/5/09	10/5/09	Done
<u>Meeting: Annual</u>	Katie McDermott	Sponsor a luncheon meeting at the 2010 Annual Meeting in Seattle, WA (June 28- 30, 2010). Description and faculty due to AHLA on February 13, 2010. Date: Wednesday, June 30, 2010 Title: The Whistleblowers and The Prosecutors: What is in Store for the Healthcare Industry? Discussion Panel: Frederick Morgan and Mark Kleinman (Relator Counsel) Roann Nichols, and Sara Winslow (Government Counsel) Moderator: Katie McDermott	2/13/10	6/30/10		
<u>Executive Summary (#1)</u>	Katie McDermott	Title: Community Hospitals: A Discussion of Physician Recruitment and Retention Issues Author: Howard Bogard Reviewer: Beau Haynes Co-sponsors: BL&G, Fraud, HHS and Physicians PGs	5/09	11/09	12/16/09	Done
<u>Member Briefing (#1)</u>	Katie McDermott	Title: Misbranding Under the Food, Drug, and Cosmetic Act: Promotion Guidelines, Off-Label Enforcement Trends, and Defenses Author: Brian Stimson and Kimyatta McClary Co-sponsors: Fraud and LS PGs	8/7/09	11/09	12/14/09	Done

Project Title	Project Coordinator(s)	Project Description	Start Date	Projected Completion Date	Actual Completion Date	Status
<u>Member Briefing (#2)</u>	Katie McDermott	Topic: Healthcare Representatives in the Operating Room: Compliance Best Practices	8/7/09	1/10		
<u>Member Briefing (#3)</u>	Laura Laemmle-Weidenfeld	Topic: 2009 FCA Amendments Author: Laura Laemmle-Weidenfeld, Katie McDermott	8/7/09	1/10		
<u>Webinar (#1)</u> <i>The Top 10 Reasons Your Compliance Program Fails to Reduce the Risk of Whistleblower Claims and FCA Enforcement</i>	Katie McDermott	Title: The Top 10 Reasons Your Compliance Program Fails to Reduce the Risk of Whistleblower Claims and FCA Enforcement Speakers: Patrick S. Coffey, Chris J. Mollett, Linda Wawzenski Moderator: Lisa M. Ohrin Co-sponsors: BLG, Fraud, HHS, and In-House PGs	8/7/09	9/15/09	9/15/09	Done
<u>Webinar (#2)</u> <i>Best Practices in Structuring Call Coverage After the Recent OIG Advisory Opinion 09-05</i>	Katie McDermott	Title: Best Practices in Structuring Call Coverage After the Recent OIG Advisory Opinion 09-05 Speakers: Ann M. Bittinger, Neil W. Kunkel, Spencer K. Turnbull Moderator: Chip Hutzler Co-sponsors: Fraud, HHS, In-House, and Physicians PGs	8/7/09	9/24/09	9/24/09	Done
<u>Webinar (#3)</u> <i>Co-Management Arrangements: Legal, Structural, and FMV Implications</i>	Katie McDermott	Title: Co-Management Arrangements: Legal, Structural, and FMV Implications Speakers: Michael L. Blau, James B. Platt, Donald H. Romano Moderator: Scott M. Safriet Co-sponsors: Fraud, HHS, In-House, Physicians and RAP PGs	8/7/09	9/30/09	9/30/09	Done

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<u>Webinar (#4)</u> <i>False Claims Act Enforcements for the Health Industry- The FERA Game Changer for Compliance and Enforcement</i>	Katie McDermott	Topic: False Claims Act Enforcements for the Health Industry- The FERA Game Changer for Compliance and Enforcement Speakers: Jonathan Diesenhaus, Laura Laemmle Weidenfeld Moderator: Katie McDermott Co-sponsor: BL & G, Fraud, RAP, and TH/AMC PGs	8/7/09	10/29/09	10/29/09	Done
<u>Webinar (#5)</u> <i>Dealing with State Attorney General Investigations and Litigation: Practical Tips from the Enforcers and from the Defense</i>	Laura Laemmel-Weidenfeld	Title: Dealing with State Attorney General Investigations and Litigation: Practical Tips from the Enforcers and from the Defense Speakers: Hon. Troy King (invited), Linda Lacewell, and Laura Laemmle-Weidenfeld Moderator: William Jordan Co-sponsors: Fraud and HC Liability PGs	8/7/09	11/5/09 (rescheduled from 10/13/09)	11/5/09	Done
<u>Webinar (#6)</u> <i>Supervising Medicare Services: What You Need to Know in a Changing Landscape</i>	Katie McDermott	Title: Supervising Medicare Services: What You Need to Know in a Changing Landscape Presenter: Barry Alexander, Donald Romano Moderator: Jeffrey Micklos Co-sponsors: Fraud, HHS In-House, Physicians, RAP and TH/AMCPGs	7/09	12/8/09	12/8/09	Done
<u>Webinar (#7)</u> <i>Protecting Attorney-Client Privileges and Other Hot Topics in Legal Ethics</i>	Katie McDermott	Title: Protecting Attorney-Client Privileges and Other Hot Topics in Legal Ethics Speakers: Andrew Demetriou, William Horton, and Kirk Ogrosky Moderator: Lisa Ohrin Co-sponsors: All PGs	7/09	12/15/09	12/15/09	Done

Project Title	Project Coordinator(s)	Project Description	Start Date	Projected Completion Date	Actual Completion Date	Status
<u>Webinar (#8)</u> <i>White Collar Defense Update: Hot Buttons for the Healthcare Governance</i>	Katie McDermott	Title: White Collar Defense Update: Hot Buttons for the Healthcare Governance Speakers: John Joseph, Jonathan Kotlier, and John Pease Moderator: Ronald Levine Co-sponsors: BL&G, Fraud, and In-House PGs	7/09	12/16/09	12/16/09	Done
<u>Webinar (#9)</u> <i>Fraud and Abuse Fundamentals Part I: Anti-Kickback</i>	Mark Bonanno William Mathias	Title: Fraud and Abuse Fundamentals Part I: Anti-Kickback Speakers: Bob Homchick and Julie Kass	12/09	2/18/10	2/18/10	Done
<u>Webinar (#10)</u> <i>Fraud and Abuse Fundamentals Part II: Stark Physician Self-Referral Law</i>	Mark Bonanno William Mathias	Title: Fraud and Abuse Fundamentals Part II: Stark Physician Self-Referral Law Presenters: David Matyas and Cynthia Reisz	12/09	3/10/10	3/10/10	Done
<u>Webinar (#11)</u> <i>Best Practices in Structuring Call Coverage After the Recent OIG Advisory Opinion 09-05</i>	Katie McDermott	Title: Best Practices in Structuring Call Coverage After the Recent OIG Advisory Opinion 09-05 Speakers: Ann M. Bittinger, Neil W. Kunkel, Spencer K. Turnbull Moderator: Chip Hutzler Co-sponsors: Fraud, HHS, In-House, and Physicians PGs	8/7/09	3/31/10 (repeat of 9/24/09)	3/31/10	Done
<u>Webinar (#12)</u> <i>Co-Management Arrangements: Legal, Structural, and FMV Implications</i>	Katie McDermott	Title: Co-Management Arrangements: Legal, Structural, and FMV Implications Speakers: Michael L. Blau, James B. Platt, Donald H. Romano Moderator: Scott M. Safriet Co-sponsors: Fraud, HHS, In-House, Physicians and RAP PGs	8/7/09	5/11/10 (repeat of 9/30/09)	5/11/10	Done

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<u>Webinar (#13)</u> <i>Understanding CMS' Recent Program Integrity Initiatives: RACs, MACs, MICs, and ZPICs</i>	Kim Brandt Laura Laemmle-Weidenfeld	Title: Understanding CMS' Recent Program Integrity Initiatives: RACs, MACs, MICs, and ZPICs Speakers: Kimberly Brandt, Angela Brice-Smith, and Andrew Wachler Moderator: Laura Laemmle-Weidenfeld Co-sponsors: Fraud, HHS, In-House, LTC-SIR , PPMC and RAP PGs	8/7/09	5/19/10	5/19/10	Done
<u>Webinar (#14)</u>	Kim Brandt Laura Laemmle-Weidenfeld	Topic: What Constitutes Permissible Discounting After Omnicare Speakers: TBD Moderator: Co-sponsors: HC Liability, LTC-SIR, and Fraud PGs	8/7/09	TBD		
<u>Webinar (#15)</u>	Katie McDermott	Topic: Sales Reps and the OR or HC Reform Speakers: TBD Moderator: TBD Co-sponsors: TBD	8/7/09	TBD		
<u>Webinar (#16)</u> <i>Health Industry Representatives in the Operating Room</i>	Katie McDermott	Title: Health Industry Representatives in the Operating Room Speakers: Katie McDermott, Laura O'Donnell Moderator: Co-sponsors: Life Science, RAP, Physicians, and HHS PGs	8/7/09	TBD		

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<u>Email Alerts</u>	OIG Advisory Opinions and Enforcement Committees	Email membership upon issuance of important issues. See Exhibit A for a detailed list of email alerts issued by the PG (list also includes alerts generated by the Enforcement Subcommittee, and OIG Advisory Opinion summaries provided by the Advisory Opinion Panel).	7/09		47 Alerts 7/09 (5) 8/09 (5) 9/09 (3) 10/09 (7) 11/09 (3) 12/09 (4) 1/10 (4) 2/10 (1) 3/10 (10) 4/10 (1) 5/10 (2) 6/10 (2)	
<u>AHLA Connections Feature Article</u>	TBD-2010	Write a feature article for May 2010 issue of AHLA Connections. Article due to AHLA on March 15, 2010.	7/09	3/15/10	4/6/10	Done
<u>Leadership Conference Calls</u>	Katie McDermott	Schedule regular conference call with Chair, Vice Chairs, Liaison, Staff, and other interested parties.	8/09 Calls are held on 1st Fri. of every month at 11:00 am Eastern	8/7/09 9/4/09 10/2/09 11/6/09 12/11/09 1/15/10 2/5/10 3/5/10 4/16/10 5/14/10 6/4/10	8/7/09 9/4/09 10/2/09 11/6/09 12/11/09 1/15/10 2/5/10 3/5/10 4/16/10 5/14/10	
<u>PG Scope</u>	Leadership	Annually review Practice Group scope and discussion list description; recommend updates, if necessary.	8/7/09	11/30/09		

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<u>Membership Survey</u>	Mark Bonanno	Survey membership for suggested topics, projects, etc. for Practice Group and to solicit volunteers. Paper survey handed out at mid-year	10/5/09 – at Mid-Year Luncheon	10/5/09	10/5/09	Done
<u>Affinity Group #1</u> <i>Advisory Opinions</i>	Joseph M. Kahn, Chair Ingrid Brydolf Catherine Martin Claire Turcotte Julie Kass	Responsible for drafting summaries of CMS and HHS OIG Advisory Opinions. <i>See Exhibit A for a detailed list of summaries and other related alerts.</i>	7/09		15 Alerts 7/09 (3) 8/09 (4) 9/09 (3) 10/09 (1) 3/10 (1) 5/10 (1) 6/10 (2)	
<u>Affinity Group #2</u> <i>Fraud & Abuse Enforcement Committee</i>	Michael Paddock, Chair Tim Cahill Lynn Adams Robert Nicholson John Kelly Anjali Downs Jesse Witten	Focuses on developments from government enforcement investigations and litigation by providing the membership with complaints, indictments, and other materials that often illustrate how matters are resolved or pursued.	7/09	Ongoing	32 Alerts 7/09 (2) 8/09 (1) 9/09 (1) 10/09 (7) 11/09 (3) 12/09 (4) 1/10 (4) 2/10 (1) 3/10 (9)	Ongoing
<u>Affinity Group #3</u> <i>Voluntary Disclosure</i>	Larry Kahn, Co-Chair Mark Bonanno, Co-Chair	Affinity Group addressing health care compliance and enforcement disclosure issues. - Update and publish disclosure survey before Annual Meeting. - Assess new disclosure authorities.	8/7/09	06/10		Ongoing

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<u>Task Force (#1)</u> <i>Medicare Part D</i>	Janice Ziegler, Liaison	To facilitate discussion on the implications of Medicare Part D A joint task force of PPMC; LTC; RAP; HIT; TH/AMC, Life Sciences and F&A PGs.	7/09			Ongoing
<u>Special Project (#1)</u> <i>50 State Survey</i>	Kevin McAnaney	Fifty State Survey, which is accessible on the Practice Group's website. The survey is a collection of summaries of state healthcare fraud and abuse statutes, regulations, and other pertinent authorities such as the rules governing fee splitting, self-referral, and the corporate practice of medicine.				Ongoing – Most recent updates in progress
<u>Special Project (#2)</u> <i>Patricia T. Meador Leadership Award</i>	Katie McDermott	Patricia T. Meador Leadership Award in tribute to Patricia Meador and years of her outstanding contributions and exemplary leadership. The award will be presented annually to a Fraud and Abuse PG member who has demonstrated extraordinary commitment to the PG's mission of education and mentoring on healthcare Fraud and Abuse issues. <i>The first award was presented to Robert G. Homchick at the Fraud and Abuse Practice Group Luncheon on October 5, 2009 (Fraud and Compliance Forum).</i>	8/7/09	10/5/09	10/5/09	Done
<u>Special Project (#3)</u> <i>Tutorials</i>	Bill Mathias Mark Bonanno	Fraud and Abuse Primer Tutorial Series. Topics: (1) Anti-kickback statute and the Stark self-referral law	8/7/09	3/10		

EXHIBIT A

Title of Email Alert/Summary	Authors/Contributors	Date of Issuance
Summary of OIG Advisory Opinion 09-06	Written by Catherine Martin; reviewed by Claire Turcotte	7/2/09
Summary of OIG Advisory Opinion 09-07	Written by Claire Turcotte; reviewed by Julie Kass	7/7/09
The Justice Department Turns Up the HEAT on Alleged Medicare Fraud in Detroit	Written by Virginia Evans; reviewed by Michael Paddock	7/7/09
Two Synthes Executives Pleaded Guilty to FDCA Misdemeanor Violations Under “Responsible Corporate Officer” Doctrine.	Laurence Freedman; Laura F. Laemmle-Weidenfeld	7/28/09
Summaries of OIG Advisory Opinions 09-08 and 09-09	Written by Julie E. Kass; reviewed by Ingrid Brydolf	7/31/09
Summary of OIG Advisory Opinion 09-10	Written by Joseph M. Kahn; reviewed by Catherine Martin	8/4/09
Summary of OIG Advisory Opinion 09-11	Written by Catherine Martin; reviewed by Claire Turcotte	8/11/09
CMS Limits Consignment Closets	Heidi A. Sorensen and Lawrence C. Conn	8/13/09
Summary of OIG Advisory Opinion 09-12	Written by Claire Turcotte; reviewed by Julie Kass	8/17/09
Summary of OIG Advisory Opinion 09-13	Written by Catherine A. Martin; reviewed by Ingrid Brydolf	8/20/09
Summary of OIG Advisory Opinion 09-14 and 09-15	Written by Joseph M. Kahn; reviewed by Catherine Martin	9/8/09
Covenant Settlement Underscores Importance of Due Diligence in Setting Employed Physician Compensation	Written by David Lewis	9/15/09
Summary of OIG Advisory Opinion 09-16	Written by Julie Kass; reviewed by Ingrid Brydolf	9/30/09
Summary of OIG Advisory Opinion No. 09-17	Written by Claire Turcotte; reviewed by Julie Kass	10/9/09
New Stark Law Self-Disclosure Protocol on the Horizon	Written by Lynn Adam	10/14/09
UMDNJ Pays \$8.3 Million to Settle Alleged Cardiology Kickbacks	Written by Tim Cahill	10/15/09
Tenth Circuit Says Facility Costs Reports Are Not Material to Government’s Decision to Pay Claims, Not Actionable Under False Claims Act	Written by Michael Paddock	10/16/09
America’s Healthy Futures Act Could Nullify <i>Hanlester v. Shalala</i> , Impact Criminal, Civil Actions Based on Federal Healthcare Program Anti-Kickback Statute	Written by Robert Nicholson	10/27/09
"Retroactive" Amendments to False Claims Act Found Unconstitutional	Written by Michael Paddock	10/28/09
Senators Propose Health Care Fraud Enforcement Act of 2009--Would Enhance Prosecution Tools for Healthcare Fraud Enforcement	Written by Robert Nicholson	10/30/09
CMS Amends Stark Law Regulations and Solicits Comments Regarding Revised Definition of “Entity”	Written by Michael Paddock; reviewed by Jesse A. Witten	11/11/09

Southern Texas Health System Settles Allegations of Kickback, Stark, False Claims Act Violations for \$27.5 Million	Written by Matthew Fornataro	11/12/09
Guidant Defibrillator Settlement	Written by Lynn Adam	11/13/09
Kerlan Jobe Orthopaedic Clinic Pays \$3 Million to Settle Alleged Kickback Allegations	Written by Anjali N.C. Downs	12/10/09
Mercy Medical Center Settlement	Written by Jesse Witten	12/11/09
OIG Releases Semiannual Report—Announces \$20.97 Billion in Savings And Recoveries for FY2009	Written by Timothy Cahill	12/15/09
Medicare Fraud Strike Force Expands Operations into Brooklyn, Tampa, and Baton Rouge	Written by Practice Group Leaders	12/22/09
Guidant Kickback Settlement	Written by Lynn Adam	1/11/10
St. John Health System and Arlington Memorial Hospital Enter Into Settlement Agreements to Resolve Allegations of Improper Physician Payments	Written by Anjali N.C. Downs	1/15/10
OIG Posts Updated Special Fraud Alert on DME Telemarketing	Written by William Mathias	1/19/10
Physician Criminally Charged With Falsifying Research Data	Written by Paul Shaw	1/21/10
Summary of OIG Advisory Opinion No. 10-01, 10-02, and 10-03	Written by Julie Kass; reviewed by Claire Turcotte	3/1/10
Guidant LLC Charged With FDCA Violations for Alleged False Statements and Failure to Report Safety Issues With Implantable Cardiac Devices	Written by Robert Nicholson	3/2/10
U.S. District Court Embraces Expansive View of Scope of Certification on Hospital Cost Report, Declines to Dismiss Qui Tam Suit Based on “False Certification” Theory	Written by Michael Paddock; reviewed by Jesse Witten	3/4/10
Subsidiary of KV Pharmaceutical Company To Plead Guilty, Pay \$27.6 Million	Written by Jesse Witten	3/5/10
Rush University Medical Center Agrees to \$1.5 Million Settlement to Resolve Alleged False Claims Act Violations	Written by Milada Goturi	3/18/10
Alpharma Agrees to Pay \$42.5 Million to Settle FCA Allegations	Written by Jesse Witten	3/22/10
Providers Will Be Interested in Three Provisions of the Patient Protection and Affordable Healthcare Act That Addresses the Stark Self-Referral Act	Written by Julie Kass, Kristin Cilento Carter, Kim Harvey Looney, and Nate Gilmer	3/24/10
Health Reform Legislation Delivers New Transparency Requirements for the Health Industry	Written by Katie McDermott and Michele Buenafe	3/29/10
Employment Releases Are Not Presumptively Void for Public Policy under the False Claims Act--Fourth Circuit Follows the Ninth Circuit	Written by Katie McDermott, Meredith Auten, and Michael Paddock	3/30/10

Healthcare Reform Legislation: Healthcare Fraud and Abuse and Program Integrity Provisions	Written by Kathleen McDermott, Katie Pawlitz, Tisha Bai Schestopol, Meredith Auten, Coleen Meehan	3/31/10
District Court Issues Notice of Intent to Grant Defendant's Motion for Summary Judgment in FCA Case, on Statute of Limitations Grounds	Written by Chandra Westergaard; reviewed by Michael Paddock	4/1/10
Summary of OIG Advisory Opinion 10-04	Written by Ingrid Brydolf; reviewed by Joseph Kahn	5/10/10
OIG Issues Revised Guidance on CIA IRO Independence and Objectivity	Written by Howard Young	5/21/10
Summary of OIG Advisory Opinion 10-05	Written by Joseph Kahn; reviewed by Cathy Martin	6/2/10
Summary of OIG Advisory Opinion 10-06	Written by Cathy Martin; reviewed by Claire Turcotte	6/2/10