

5 years focusing on "Compliance."  
Where from here?

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8<sup>th</sup> February, 2002

# Industry's Perspective....

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Douglas D. Henley, MD, executive vice president of the American Academy of Family Physicians

"Under the previous administration, you were guilty until proven innocent. We would hope that under the new administration, you would be innocent until proven guilty."

American Medical News, Feb 26<sup>th</sup>, 2001. "Bush on health fraud: Physicians hope for lighter touch."

# Industry's Perspective....

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Donald J. Palmisano, MD; an AMA Board Member, and lawyer.

"The criminalization of the practice of medicine is extremely regrettable."

American Medical News, Feb 26<sup>th</sup>, 2001.

"Bush on health fraud: Physicians hope for lighter touch."

# Bush Administration Perspective....

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Tommy Thompson, the new HHS Secretary:

“Rules are constantly changing. Complexity is overloading the system, criminalizing honest mistakes and driving doctors, nurses and other health care professionals out of the program.”

American Medical News, Feb 26<sup>th</sup>, 2001. “Bush on health fraud: Physicians hope for lighter touch.”

# Bush Administration Perspective....

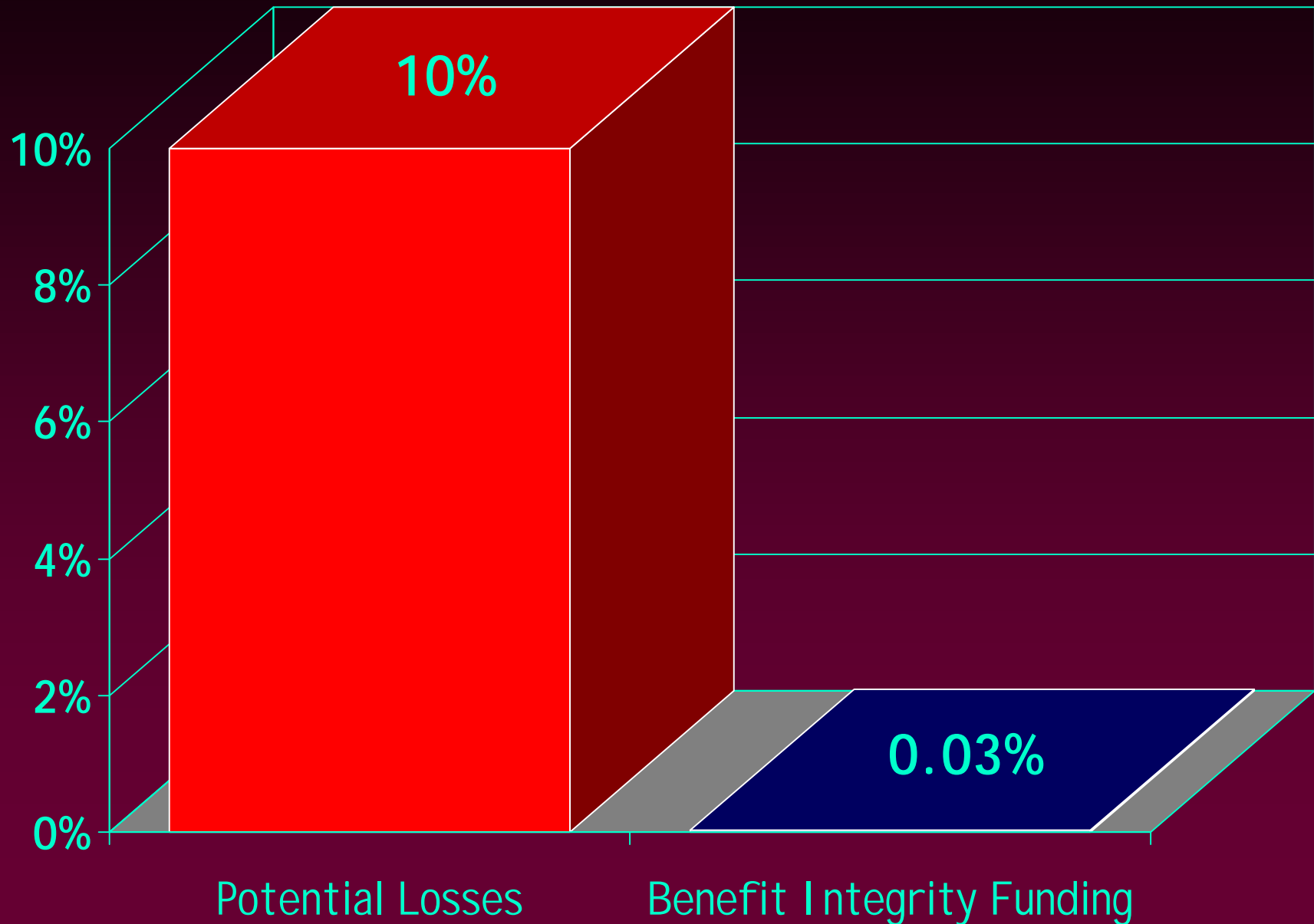
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Thomas Scully, CMMS Administrator

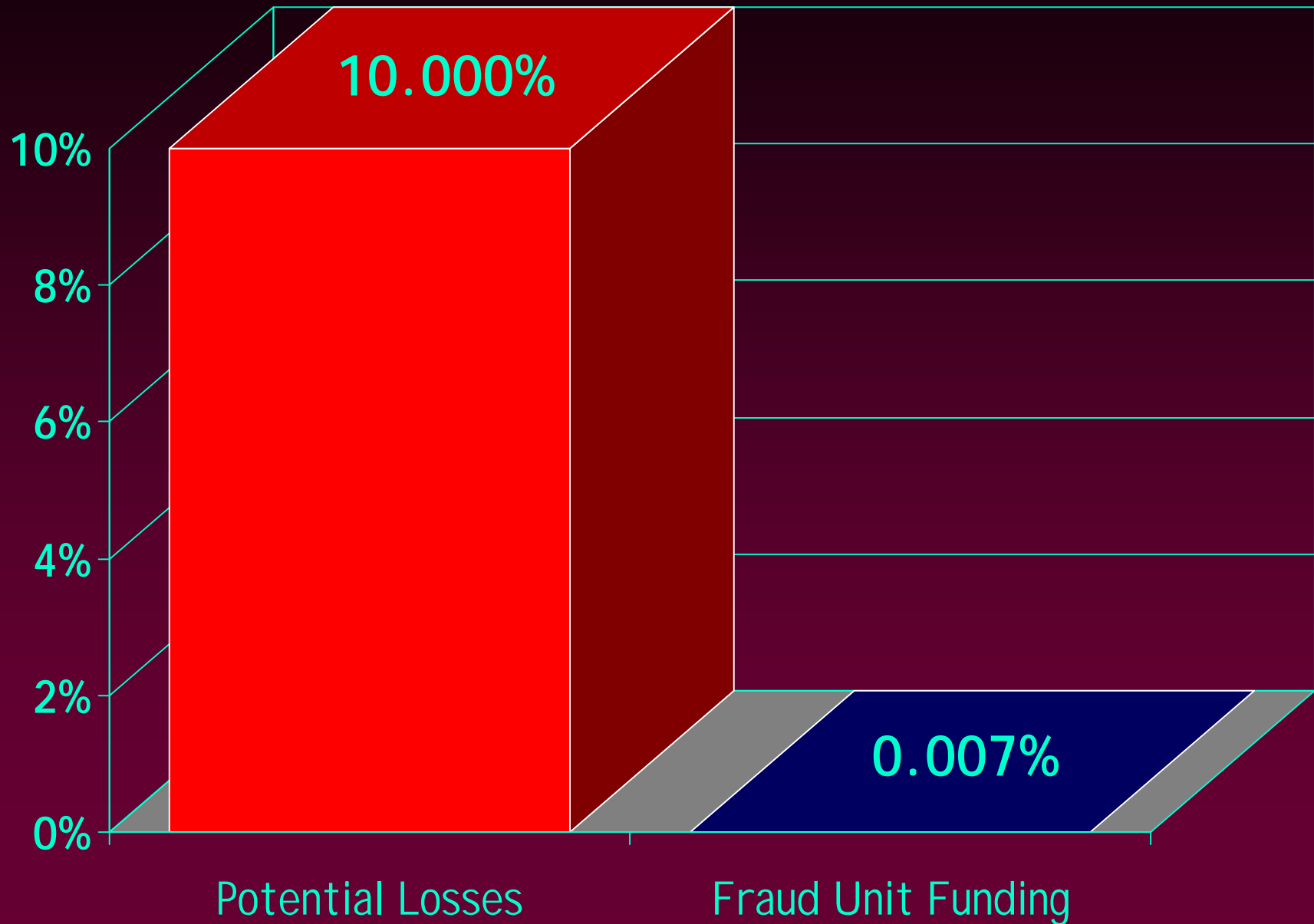
"The pendulum swung too far" [under the Clinton Administration]....."it is now time to restore the balance."

5<sup>th</sup> Annual National Congress on Health Care  
Compliance, Feb 7<sup>th</sup>, 2002

# Scale of the intervention:



# Scale of the intervention:



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# Looking back... ...biggest regret

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# "False Claims"

# Focus on “False Claims”

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- claims that contain some material falsehood:
  - billed, paid, and false
- in particular, the most blatant type:
  - billing for services not provided
- provider's state of mind? Never mind!!
- consumers' state of mind: *extreme* irritation, frustration, and anger.

# ....of prisoners

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- OIG report (A-04-00-05568), April 2001:
  - Identified \$32 million in improper Medicare FFS payments (1997-1999), w.r.t. 7,438 prisoners
- What sort of problem?
  - Option (a) Medicare shouldn't have paid
  - Option (b) phantom billings...they didn't know the beneficiaries were in prison.
- If (a): then we should improve process for screening
- If (b): how big might issue be? (BOTEC)
  - 38,600 in prison (7/19/2000) out of 40 million. (0.1%)
  - Could represent \$32 billion in phantom billing
  - Process approach would help the criminals
- How to tell the difference? Find out "were the services provided?"
- Report doesn't answer that question. OIG didn't ask that question.

# ...and of dead patients

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- What if the patients were dead?
  - Could be DME rentals, or facility charges, not terminated
  - Could be efforts to revive
  - Both can be eliminated from analysis...wait a month, and limit analysis to services that *began* after the patient was dead.
- Common in Medicaid programs. Medicare?
- OIG report "Medicare payments for Service after Date of Death" (OEI -03-99-00200)
  - \$20.6 million in 1997.
  - Medicare didn't know... \$12.6 million
- Two approaches:
  - Focus on "how did this claim get paid?" Process approach: implement timely/accurate filters and deny claims.
  - Focus on "how did this claim get submitted?" Crime-control approach: seize opportunity to detect phantom billers
- OIG made no inquiries regarding "how did this claim get submitted."

# 5 years on... and still missing the point

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- In setting up fraud and abuse reporting mechanisms
- In measuring “overpayment” rates.

# Dealing with False Claims: Advice for Consumers

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## WHO PAYS? YOU PAY Report Medicare Fraud

- Step 1:** Call your health care provider for an explanation of unusual or questionable Medicare charges. Most are honest and want to prevent fraud.
- Step 2:** If you still have questions, call your Medicare insurance company
- Step 3:** If you continue to have questions, call the Medicare Fraud Hotline at: 1-800-HHS-TIPS  
(1-800-447-8477)

# The OIG Medicare Audits

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## Measuring the Medicare Overpayment Rate:

# OIG's Medicare Audits.

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- Required by Government Management Reform Act, 1994.
- Instituted in 1997, repeated in 1998, 1999, 2000 and 2001.
- "Overpayment rates" determined:

- 1996	14%	\$23.2 billion
- 1997	11%	\$20.3 billion
- 1998	7.1%	\$12.6 billion
- 1999	7.97%	\$13.5 billion
- 2000	6.8%	\$11.9 billion

# GAO review of methodology

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Asked by House Budget Committee to review OIG measurement methodology:

“Overall, our work shows that because the methodology was not intended to detect all fraudulent schemes such as kickbacks, and false claims for services not provided, the estimated improper payments of \$12.6 billion would have been greater. **How much greater, no one knows.”**

[GAO/AIMD-00-69R Efforts to Measure Medicare Fraud.  
February 4th, 2000. Letter to Rep. John R. Kasich, (Chair)]

# GAO review (continued)

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".....I t was not designed to identify or measure the full extent of levels of fraud and abuse in the Medicare program. The HHS OIG testified [in July, 1997] that the estimate of improper payments did not take into consideration numerous kinds of outright fraud such as "phony records" or kickback schemes. The methodology assumes that all medical records received for review represent actual services provided."

[GAO/AIMD-00-69R Efforts to Measure Medicare Fraud.  
February 4th, 2000. Letter to Rep. John R. Kasich, (Chair)]

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# Looking forward... ...fondest dream

# ...three ideas

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- Emerging theme: relationship between:
  - Compliance
  - Risk Management
  - Ethics
- Conference agenda items:
  - 1.01 "Compliance as Risk Management (and vice versa)," William Altman & David Orbuch
  - 2.06 "Silk Purses from Sow's Ears," Barry Fogel and Mary Beth Thomas. (Quality of Care, Corporate Integrity, Risk Management)
  - 3.07 "Integrating Ethics into your compliance program," John Gallagher
  - Plenary, today: "Integrating Ethics into a Compliance Program" Edward Petry.

# What do we know about the relationship?

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- 1) “ideas” carry no weight in complex organizations, without systems, structures, budgets, role-definitions, and accountability
  - ❑ and the battle of ideas plays out in budgets, turf wars, and competition for credit and resources
- 2) Operational risk-management is an important, and emerging field
  - ❑ As significant as the “quality” movement (PM/CPI /PR etc.)
- 3) Compliance risks constitute a subset of risks faced by any organization
  - ❑ Focused on legal liability, financial exposure, and reputational risk associated with non-compliance

# What do we know about the relationship?

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- 4) Ethics doesn't bite, except where it connects to fiduciary duty to shareholders, and generally lacks any substantial organizational manifestation
  - ❑ Ethics bites through reputational risk, and market consequences
  - ❑ Reputational risks and market risks are recognized under broader risk-management frameworks
- 5) Focus on compliance may diminish
  - ❑ Republicans/FBI /error-rate/conference
- 6) Risk-management will become dominant paradigm
- 7) Risk-management, outside the financial world, is very immature

# Different Types of Work

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(1) Functions

+ (2) Processes

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= (3) Problems/Risks

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# Does risk-management need a structure?

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- if executives delegate the risk-control function to line operational (functional or program) managers, and asks them to identify vulnerabilities, they will, as a general rule, identify only those risks which:
  - align neatly with their functional or programmatic areas, and
  - of which they are aware, and
  - which they are happy to disclose
- These will constitute:
  - A small subset
  - The most visible ones, therefore the best controlled already

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