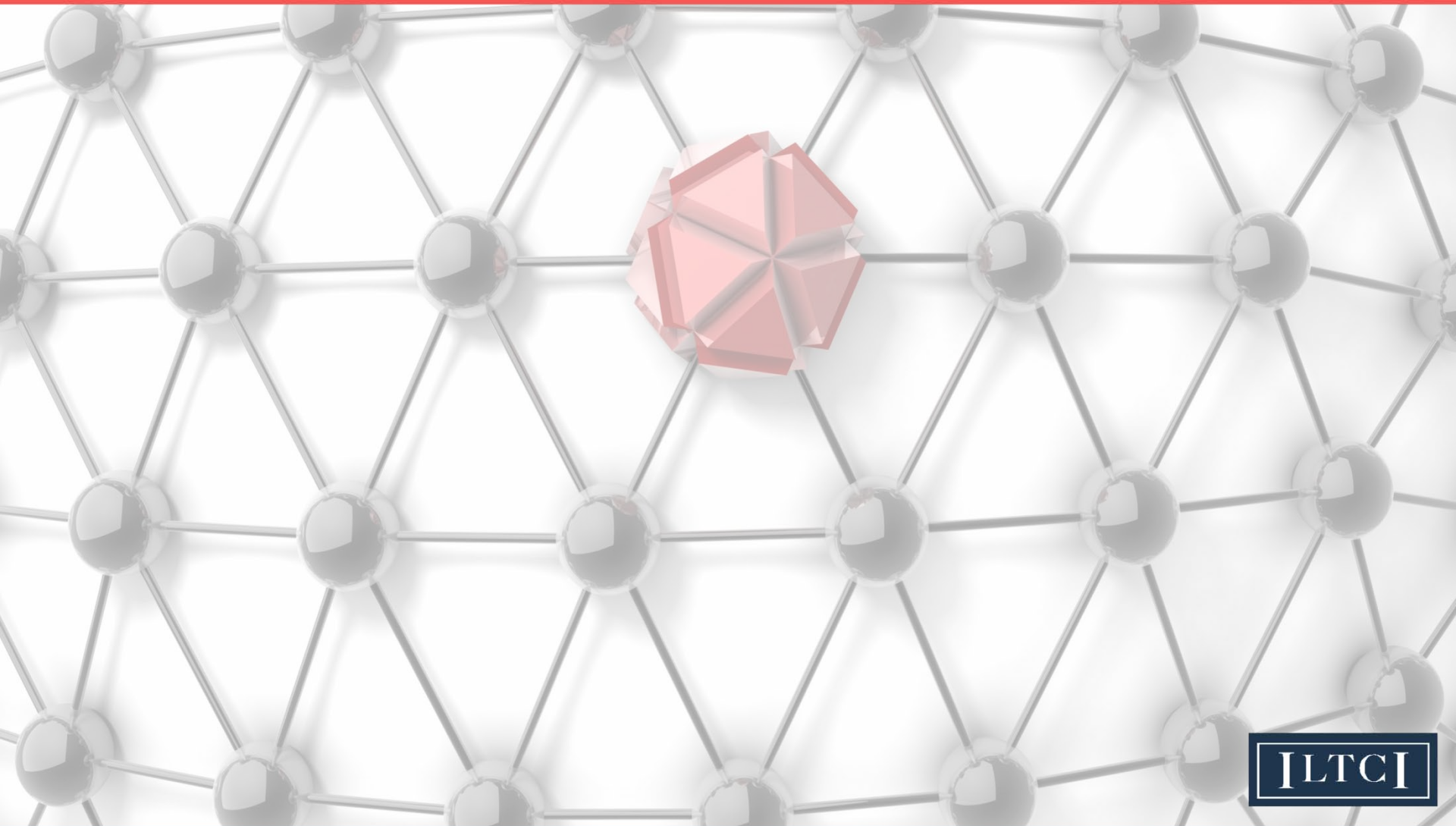
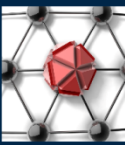


Legal, Compliance & Regulatory



ILTCI

18th Annual Intercompany Long Term Care Insurance Conference



How Kindergarten Prepared Me To Be A Compliance Officer:



Hot Compliance Issues
for LTCi &
Combination Products

ILTCI Mobile App Download Instructions

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iPad

- 1) Type <https://crowd.cc/s/1flyo> in web browser
- 2) Click “Download iPhone/iPad App” to load Apple’s App Store and download the app.

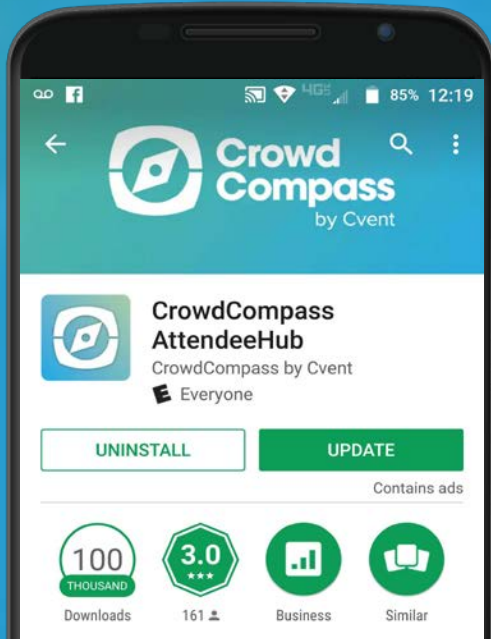
android

- 1) Type <https://crowd.cc/s/1flyo> in web browser
- 2) Click “Download Android App” to load the Google Play Store and download the app.

BlackBerry

- 1) You’ll be using the web version of the app. Open the web browser, click the BlackBerry menu button, select “Go To” and type <https://crowd.cc/s/1flyo>.

You can also just go to your app store and search ‘AttendeeHub’. Once installed search ‘ILTCI’ and you’ll find our app.

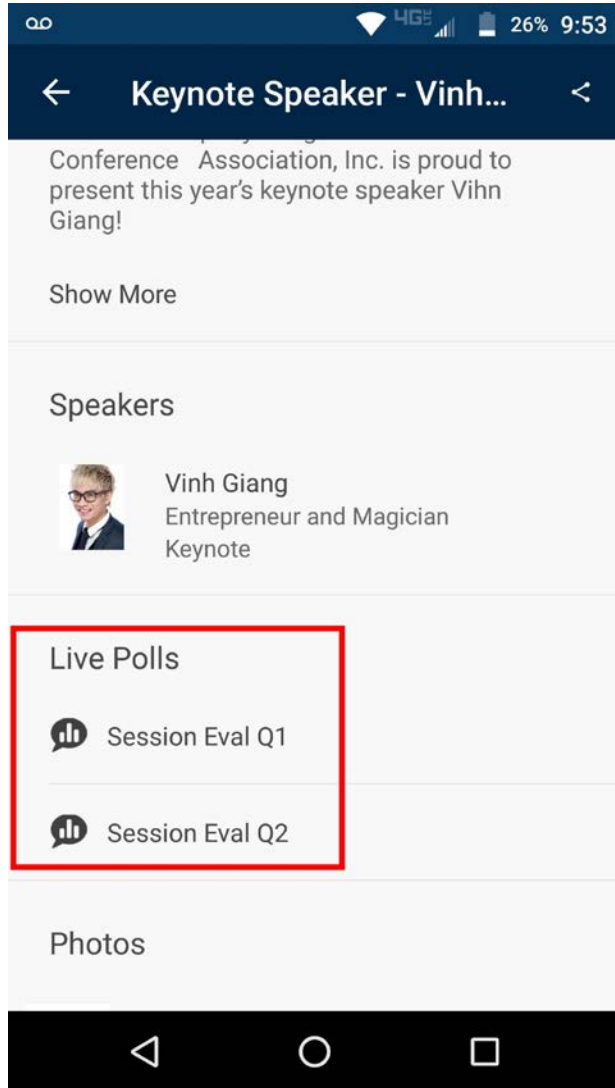


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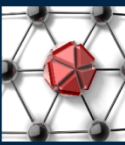
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The Tale of Compliance

The Main Characters



Regulatory & Ethics Compliance Officer

Privacy Officer

Compliance Analysts

Communication Coordinator

Lawyers

Producers



The Setting & Conflict

Highly Regulated Business

State & Federal Regulations

Internal & External Oversight





The Main Plot

Regulatory Compliance

Ethics

Privacy

Business Resilience

Communications



The Side Plots

Enterprise Risk Management

Governance

Records & Information Management

Business Partner Management

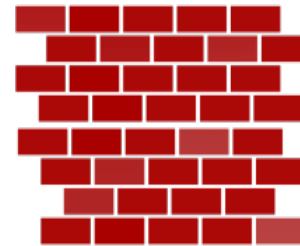


The 3 Little Pigs

3 pigs decided to build homes. The 2 who are hasty soon learn that it is better to be prepared! You never know when the wolf is right outside your door.

Compliance Hot Topics:

- ⇒ Workplace violence
- ⇒ States of Emergency Orders
- ⇒ Incident Management
- ⇒ Business Continuity Planning
- ⇒ Disaster Recovery



Lesson:

1. Hard work and dedication pay off.
2. Take the time to properly prepare.
3. Prize safety above all.

James Halliwell-Phillipps, 1886



Alice in Wonderland

Alice finds herself in a nonsensical world with strange rules and characters. She has to start at the beginning, following instructions as she goes, until she reaches the end.

Compliance Hot Topics:

- ⇒ Product design mandates
- ⇒ Consumer notice instructions
- ⇒ Reporting requirements
- ⇒ Prompt pay timeframes



Lessons:

1. Observe before you take action.
2. Understand 'new' realities.
3. Work within the 'rules' for success.
4. See it through to the end (document).

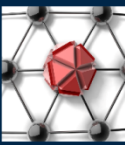
Lewis Carroll, 1865



- Regulators remain interested in innovative product design, particularly to address gaps
- Product development
 - Careful preparation is key when working with regulators
 - Understand the rules, and the personalities
 - Engage early so that regulators know what's coming (and what they will be asked to do)
 - Obtain preliminary buy-in upfront, and learn what the regulator will need/want
 - Include regulators in the sandbox, when it makes sense

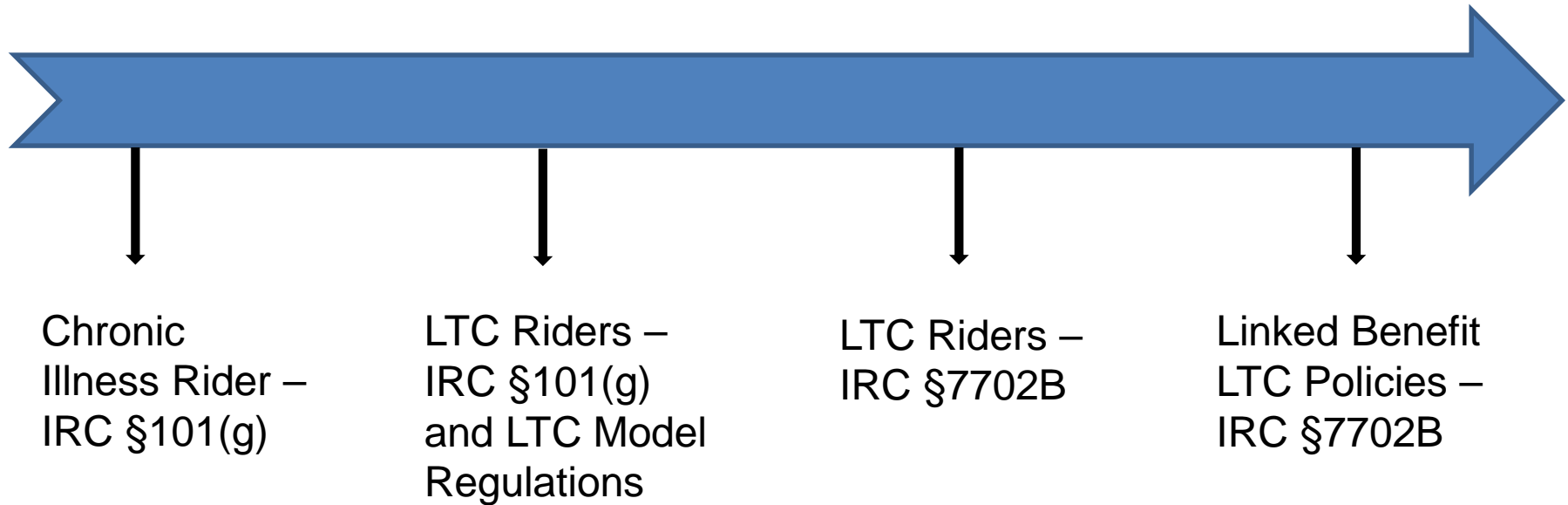


- Any rider placed on a financial product.....
that pays a benefit.....
if the insured is qualified as chronically ill.
 - Chronic illness riders on life insurance
 - LTC riders on life insurance and annuities
 - Linked Benefit LTC policies

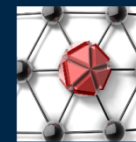


- Covers a broad spectrum
 - Regulatory, product design
 - Contract and policy application language
 - Prospectus (where appropriate)
 - Product filings
 - Operations and claim procedures
 - Producer Licensing and Training Requirements
 - Disclosures
 - Marketing and sales idea disclosures
 - Point of sale disclosures
 - Sales practices
 - Client discussion
 - Replacement and suitability

Spectrum of Compliance & Regulation



Examples of regulation and compliance



	Chronic Illness- §101(g)	LTC rider - §101(g)	LTC rider - §7702B	Linked Benefit LTC - §7702B
Claim triggers	2 ADLs or Cognitive Imp.	2 ADLs or Cognitive Imp.	2 ADLs or Cognitive Imp.	2 ADLs or Cognitive Imp.
IRC tax free rules	Same	Same	Same	Same
Plan of Care	No	Yes	Yes	Yes
Can be called LTC	No	Yes	Yes	Yes
CE Required	No	Yes	Yes	Yes
Replacement	No	Yes	Yes	Yes
LTC Consumer Protections	Not required	Yes* (no inflation required)	Yes* (no inflation required)	Yes
Also an accident and health policy	No	No	Yes	Yes
Disclosure at sale	No	Yes	Yes	Yes
LTC Suitability	No	No most states	No most states	Yes

* LTC Riders are exempted from inflation requirements. Most states also exempt suitability requirements.



Pinocchio meets The Boy Who Cried Wolf

Pinocchio learns to never tell a lie. A lie, no matter how small, is still a lie. He also learns to prize hard work & good character.

Compliance Hot Topics:

- ⇒ Hotlines & Zero Tolerance Policies
- ⇒ Clarity & Complaint Management

Lessons:

1. Be honest and brave.
2. Have morals & work hard.
3. Don't reject responsibility.

Carlo Collodi, 1883

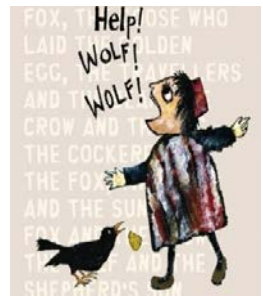


A shepherd boy tricks villagers with tales of a wolf, and comes to regret his actions in the end.

- ⇒ Disclaimers
- ⇒ Consumer Notices

1. Communicate accurately.
2. Communicate with morals.
3. Trickery will not pay off.

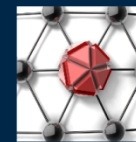
Aesop's Fables, 1830





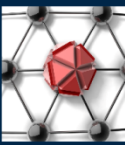
- Disclosures can color a marketing piece, with potential to muddle the message
 - Disclosures should be adequate yet clear
 - The wrong language can squash a sale
 - Improper wording can imply “tax advice”

Disclosure challenges

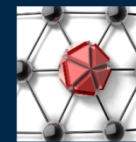


- What's your opinion? Place the following statements as
 - Giving tax advice ** sales prevention ** or neutrally compliant
- 1. “Paying family members to provide care could result in a taxable event – please consult your tax professional”
 - Potential Sales prevention – client (even advisor) may believe LTC benefit is taxable if a family member is paid
- 2. “When paying family members to provide care, please consult your tax professional regarding proper tax withholding”
 - Could be interpreted as giving tax advice
- 3. “Please consult you tax professional when paying family members”
 - Neutral – is language adequate enough?

Disclosure of Potential Rate Increases



- Good for the consumer purchasing policies in which rate increases result in policy premium increases
- May cause confusion with LTC rider or linked benefit policies with guaranteed premiums.
- Example:
 - Policy premium is guaranteed (calculated using guaranteed charges)
 - Cost of LTC rider has current and guaranteed charges
 - but only takes current charge
 - if LTC charge increases, premium remains the same
 - yet, the insurance company is required to include rate disclosures
 - Disclosure confuses client into believing the policy premium could increase when that is not the case.



- 1099-R's are sent each tax season
 - Companies selling LTC riders on life insurance (and annuities) must report the annual cost of the rider
 - Many clients, some advisors and even some tax professionals misinterpret the form
 - The amount reported is the annual cost of the rider
 - It is considered a non-taxable distribution
 - This distribution does reduce the cost basis in the policy
 - It is not reported on the tax return – it's informational only



- Advisors should never state or imply that a chronic illness rider is LTC
 - How practical or easy is this to comply with?
 - The client asked for LTC, and/or sees the coverage as LTC
 - Discounted riders are harder to explain, but should be well explained
 - death benefit is reduced more than the CI benefit paid
 - Not covered in CE, and CE not required - are advisors well informed?
- LTC Riders should be sold to people with DB need
 - Family protection now, LTC later
 - Asset protection if LTC is needed
 - Legacy enhancement if LTC benefits are little or never used
 - Dollar for dollar reduction of death benefit
- Linked Benefit Policies for people with primary LTC need
 - Should not be sold to people needing life insurance
 - “simplified underwriting” not an excuse to go this route for life insurance



- Recent litigation highlights the need to strike the right balance (disclosures v. conciseness/clarity)
- Some foresight and (indisputably) clear language and disclosures are key
- Balancing clarity with full disclosure
 - Four corners rule: Generally, litigants cannot use extrinsic evidence (e.g., marketing materials) to inject ambiguity into an insurance contract
 - But extrinsic evidence will be allowed to “disambiguate” a policy
 - And marketing materials may be used to inform other trending causes of action (e.g., consumer fraud and unfair trade practices)



Willie Wonka meets Rapunzel

Charlie is small, but has great inner strength which he uses to become the big winner in the end. He witnesses, first hand, that what goes around comes around.



Compliance Hot Topics:

- ⇒ Protect PHI/PII = the golden ticket.
- ⇒ Policies & Procedures paired with
- ⇒ Training = glass elevator.

Lessons:

Don't let your company be seen as the goose with a golden egg.



Roald Dahl, 1971

The Witch prizes Rapunzel's beauty so much that she locks her away from the world. But at what cost? And ...is a tower the right tool?



- ⇒ What is a corporate record?
- ⇒ Destruction versus retention.



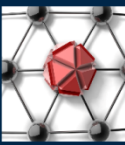
Identify 'real' value.

Appropriately protect value.

The Grimm Brothers, 1812



- New cybersecurity laws are here (and coming)
- Training the workforce to protect PHI
 - Engage the workforce—more than just an annual box to check
 - Routine reinforcement on key privacy principles helps establish strong self-regulators and encourages a common sense approach
- Proactive privacy and security program is a must
 - Establish protocols or resources to help address everyday privacy questions (e.g., whether a POA is valid and whether a trustee can access PHI)
 - Risk assessments, cyber vulnerability assessments and penetration testing



- OCR demonstrates continued focus on cybersecurity and breach notification
 - May 2017 – OCR issues response checklist and cybersecurity incident response guidance
 - October 2017 – OCR reminds entities regulated by HIPAA to include mobile devices in their enterprise-wide risk analysis and to take action
 - February 2018 – \$3.5M penalty to settle risk management breakdowns, including failure to act on report regarding suspected privacy incidents



- OCR Enforcement

- February – FMCNA - 521 individual (5 entities) - \$3.5M
- April 2017 – CardioNet - 1,391 individuals - \$2.5M
- February 2017 – Memorial Health Care System - 115,143 individuals - \$5.5 M
- February 2017 – Children’s Medical Center of Dallas – 6,262 individuals - \$3.2M
- January 2017 – MAPFRE Life Ins. Co. of Puerto Rico – 2,209 individuals - \$2.2M
- January 2017 – Presence Health – 836 individuals - \$475K
(1st HIPAA enforcement action for lack of timely breach notification)
- October 2016 – St. Joseph Health – 31,800 individuals - \$2.1M
- August 2016 – Advocate Health Care - 4 million records- \$5.5M
- July 2016 – University of Mississippi Medical Center – 10,000 individuals - \$2.75M
- March 2016 – Feinstein Institute for Medical Research - 13,000 records - \$3.9M



- Large network of dialysis facilities, outpatient labs and urgent care centers
 - Compliance hotline report about a missing hard drive was ignored (35 individuals)
 - Three desktop computers were stolen (231 individuals)
 - An unencrypted USB drive stolen (245 individuals)
 - Unencrypted laptop stolen (10 individuals)—stored in a bag with a list of passwords.
- FMCNA settled with HHS (\$3.5M and a robust corrective action plan)



- **Memorial Healthcare System**

- Non-profit corporation, operates six hospitals, and other health facilities in South Florida
- The login credentials of a former employee were used to access the ePHI of over 80,000 people
- Memorial settled with HHS, agreeing to pay a fine of \$5.5M and implement a robust corrective action plan



- Generally, covered entities are prohibited from using or disclosing PHI for marketing purposes without an authorization
 - PHI is defined broadly
- Health-related products and services exception to the marketing restrictions
 - Most interpret narrowly
 - Limited informal guidance by HHS could arguably support a broader interpretation



- The definition of marketing excludes communications to:

“[D]escribe a health-related product or service (or payment for such product or service) that is provided by, or included in a plan of benefits of, the covered entity making the communication, including communications about . . . replacement of, or enhancements to, a health plan; and health-related products or services available only to a health plan enrollee that add value to, but are not part of, a plan of benefits.”

45 C.F.R. § 164.501(2)(ii)(B).



To qualify, a communication must be:

(i) About a “health-related” product or service;

E.g., discounts to movie theatre v. discounts for eye glasses.

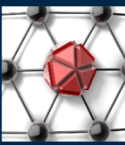
(ii) That is “available only to health plan enrollee;”

Must not be an item/service available to the public.

(iii) And “that add[s] value to, but is not part of, a plan of benefits.”

Must not be a mere pass-through discount.

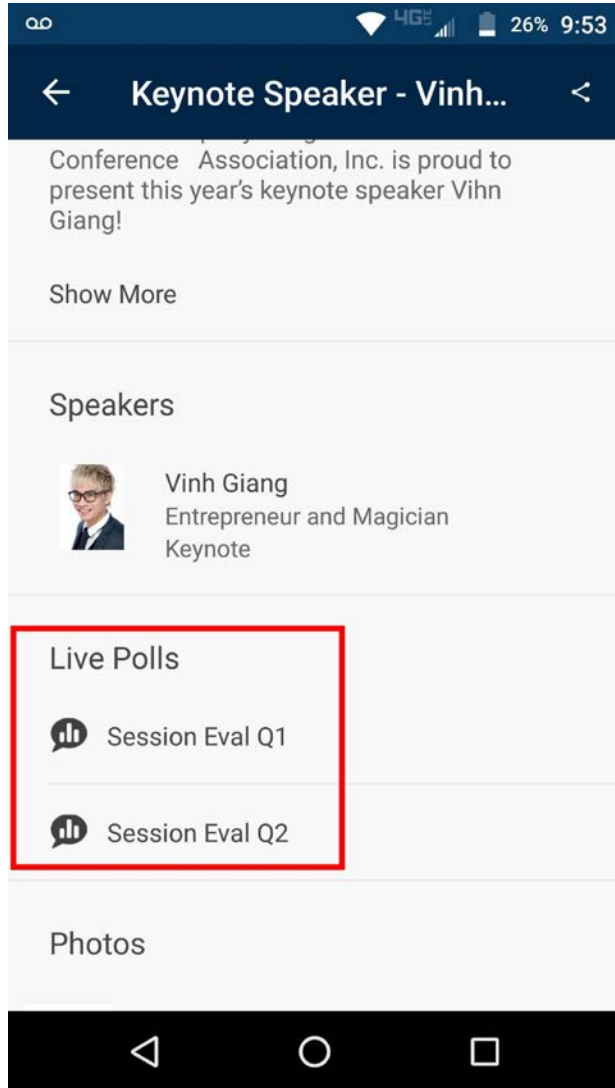
45 CFR § 164.501.



Mirror
Mirror
On
The
Wall ...?



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