

Professional Risk Associates Joan Kassel, MLIS

- ◆ Was founded in 1989 on the basis of helping physicians find insurance solutions
- ◆ Largest independent agency in Mid-Atlantic region exclusively handling medical professional liability insurance
- ◆ Managed the MSNVA Medical Professional Liability program since 2007
- ◆ Employed by PRA since 2000
- ◆ Certified as a Management Liability Insurance Specialist
- ◆ Manage coordination of professional liability coverage enhancements

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Agenda

- ◆ Government Regulatory Risks
 - ◆ Claim Example
 - ◆ Appeal?
 - ◆ Options For Transferring Risk
- ◆ Privacy Data Breach Risks
 - ◆ Claim Example
 - ◆ How Do Breaches Occur?
 - ◆ Options For Transferring Risk


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Government Regulatory Risks

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• \$300,000

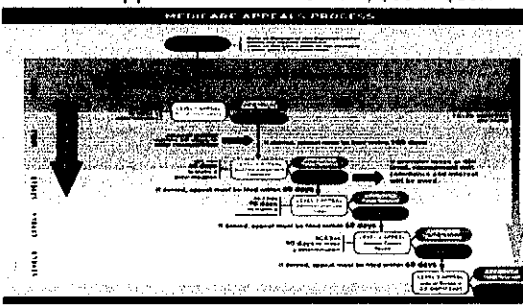
IN EXPENSE COSTS

- ◆ Group in NC – 8 physicians
- ◆ Medicare Audit
- ◆ Started as \$40K demand for overpayments; increased to over \$1M
- ◆ Appeal process – Level 5
- ◆ The appeal process helped reduce penalties to \$3,400
- ◆ Thousands of hours diverted from direct patient care

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Medicare Appeals Process – 2 Years; \$50K - \$80K



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According to the CMS report in 2011, the billings error rate was 8.6%. If you are audited and face allegations of overbilling, will you appeal?

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How can Insurance Help?

Compliance is not a get out of jail free card

- ❖ Expert Advice
 - ❖ Guidance through the appeals process
 - ❖ Avoid suspension of your Medicare Provider Number
 - ❖ Shadow Auditors



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Know your Coverage Enhancements Government Regulatory Risk Coverage

Typical Coverage Included: (will vary by carrier)

- ❖ Billing Error Proceedings (RAC Audits /ZPIC Audits)
- ❖ Disciplinary Proceedings
- ❖ HIPAA Complaints
- ❖ Some may cover fines and penalties

Typical Limits: (will vary by carrier)

- ❖ \$25k - \$50k/event
- ❖ Policy Aggregate



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Options for Purchasing Additional Coverage: Government Regulatory Risks

- ❖ Buy-ups
 - ❖ Limits - \$1M
 - ❖ Advantages: Pricing
 - ❖ Disadvantages: Potential Coverage Differences
- ❖ Stand Alone Policy
 - ❖ Limits - \$500K/\$500K - \$1M/\$5M
 - ❖ Deductible: \$2,500



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MEDEFENSE™ Plus

- ❖ \$500,000 - \$1,000,000/Event limit
- ❖ Defense costs and civil fines and penalties coverage for Billing Errors, HIPAA, EMTALA and Stark proceedings
- ❖ Full Prior Acts available
- ❖ Billing Errors Proceedings include both governmental and commercial payer audits and investigations, qui tam plaintiffs, or voluntary self-disclosure
- ❖ Payment for shadow audits



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Questions?



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Privacy Breach Risks




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Improperly Disposed Medical Records

- ❖ Physician group that worked at a hospital suffered a privacy breach when it discovered that the 3rd party medical billing company improperly disposed of confidential information at a dump site
- ❖ Physician group received a civil investigation demand from the state's attorney general
- ❖ Defense counsel appointed to determine notification requirements, handle the breach response process and the response to the attorney general
- ❖ As required by law, notifications were sent to the state's attorney general, Office of Consumer Affairs and Business Regulation and Department of Health and Human Services
- ❖ Defense counsel, in conjunction with the physician group, prepared responses to the multiple governmental agencies that conducted investigations
- ❖ The Attorney General's Office alleged that the group violated multiple sections of HIPAA and were going to pursue legal action looking for a monetary penalty of "at least six figures"

Legal Expenses - \$50,000
Settlement - \$35,000



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As of December 31, 2012:

- ❖ 163 Breaches
- ❖ 2,362,733 records
- ❖ 34.7% of all breaches to date
- ❖ 13.5% records to date

ITRC Breach Report, Identity Theft Resource Center, December 2012

As of June 11, 2013:

- ❖ 133 Breaches
- ❖ 1,982,390 records
- ❖ 46.7% of all breaches to date
- ❖ 31.5% records to date

ITRC Breach Report, Identity Theft Resource Center, June 2013

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How Do Data Breaches Occur?

- ❖ Negligence – Lost Laptops, Lost portable electronic devices; 35% of all breaches are a result of lost laptops
- ❖ Sensitive data is not encrypted; password protected is NOT encrypted
- ❖ Increased use of electronic databases
- ❖ Outsourcing Information Technology – You are still responsible for PHI

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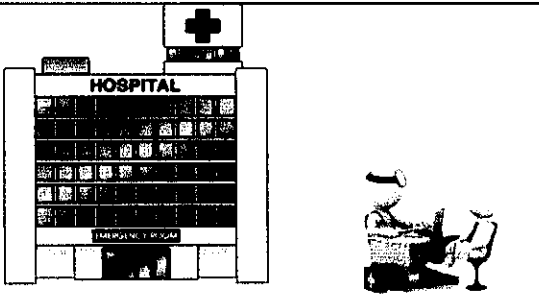
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A Privacy Breach Does Not Have To Be Via Electronic Media

- ❖ Rogue employees; 59% of employees leaving their place of work steal data
- ❖ "Gossip" among healthcare professionals in office & public settings
- ❖ Email or fax private information to wrong location
- ❖ Messages left on the wrong person's voicemail or answering machine
- ❖ Paper files sent for document destruction but never made it because the transporting vehicle was in an accident and all of the paper files were thrown from the vehicle (NC practice)
- ❖ Paper files destined for a document destruction bin were mistakenly placed in a regular trash bin (Maryland practice)

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But you are prepared...

- Meet Regulatory compliance requirements
- IT Security Plan
- Encrypted Email
- Password protected devices
- Data stored in a physically secured location
- Response Plan In Place
- Trained Employees
- Audits
- Business Associate Agreements in place
- Confidentiality Agreements in place
- Banned thumb drives



Do you still need to worry?

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It's a new age...

OLD: There are two types of businesses: those that have been a victim of a data breach and those that haven't been a victim yet

NEW: There are two types of businesses: those that know they have been breached and those that don't know they've been breached.

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Compliance is not a get out of jail free card

- ❖ Following a data breach, the turnover/churn rate for the healthcare industry is 4.2%
- ❖ Penalties are Increasing
- ❖ "The health care sector is expected to surpass the financial industry as the most breached industry in the country this year..."

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How can insurance help?

Cyber insurance can make the difference between staying in business or shutting your doors after an attack.

- ❖ Expert Advice
 - ❖ Hire PR Firms to repair reputational damage
 - ❖ Determine Notification Process
 - ❖ Handle Breach Response Process
 - ❖ Respond to State and Federal Government Agencies

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Know your Coverage Enhancements Privacy Breach Liability

Typical Coverage (can vary by carrier)

- ❖ Network Security & Privacy
- ❖ Patient Notification Costs and Credit Monitoring
- ❖ Regulatory Fines & Penalties
- ❖ Online assistance to set up protocols

Typical Limits: (can vary by carrier)

- ❖ \$50,000 per event

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Options for Purchasing Additional Coverage: Cyber Liability

- ❖ **Buy-ups**
 - ❖ Limits - \$1M
 - ❖ Advantages: Pricing
 - ❖ Disadvantages: Potential Coverage Differences
- ❖ **Stand Alone Policy**
 - ❖ Limits - \$1M/\$1M
 - ❖ Deductible: \$2,500

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eMD™ Cyber Liability Coverage

- ❖ **Multimedia Liability** - Coverage for expenses associated with multimedia perils such as defamation, libel, slander, product disparagement or trade libel, plagiarism, infringement of copyright
- ❖ **Security and Privacy Liability** - Coverage for expenses associated with a security and privacy wrongful act that results from a security breach
- ❖ **Privacy Regulatory Defense and Penalties**
- ❖ **Privacy Breach Responses Costs, Customer Notification Expenses, Customer Support and Credit Monitoring Expenses**
- ❖ **Network Asset Protection** - Coverage for all reasonable and necessary sums required to recover and/or replace data that is compromised, damaged, lost, erased or corrupted. Includes business interruption and extra expense coverage for income loss as a result of the total or partial interruption of the insured's computer system.
- ❖ **Cyber Extortion**
- ❖ **Cyber Terrorism** - Coverage for income loss and interruption expenses as a result of the total or partial interruption of the insured's computer system due to a cyber terrorism attack.

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Thank you!

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