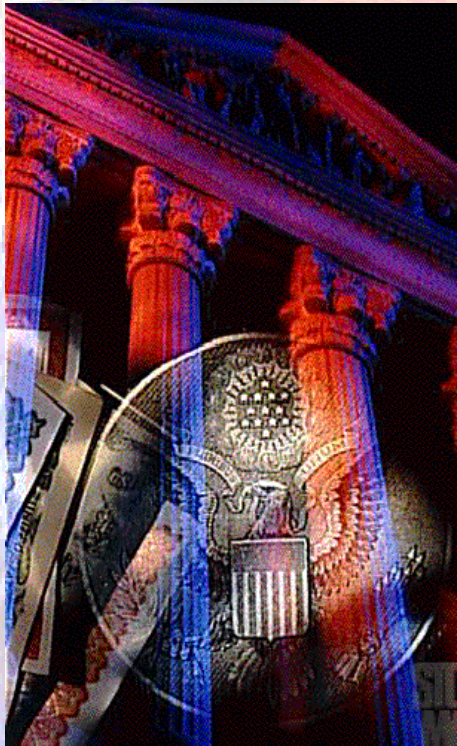
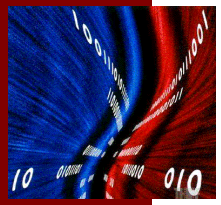
The First National HIPAA Summit

Risk Management and Coverage for Privacy, Data Security and HIPAA Violations

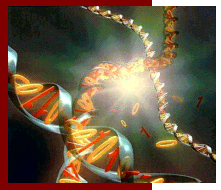


Risk Management and Coverage for Privacy, Data Security and HIPAA Violations

Moderator: Steve Lazarus, Chairman Elect WEDI and President, Boundary Information Systems



Insurance Coverage - Ed Robin, President, NAS Insurance, Lloyds Correspondents

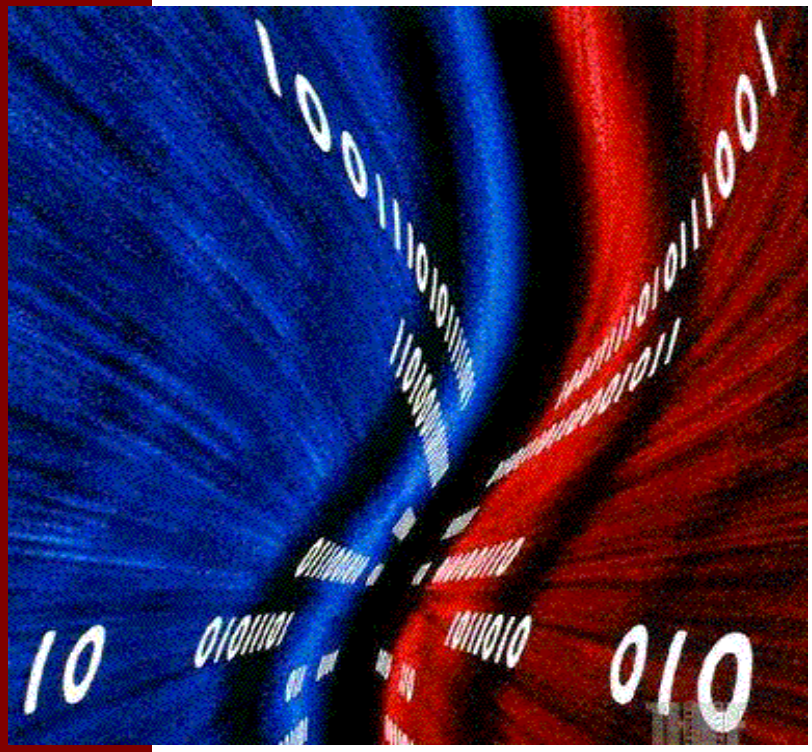


Risk Management - Kathleen Stillwell, President, SQM Consulting Group, LLC

Insurance Marketplace - Pete Biagiotti, Vice President, Aon Healthcare Insurance Services

Introduction to Panel Discussion

- Introductions
- HIPAA ASPs - Insurance and Risk Management
- Changing HIPAA ASP Landscape:
  - Standard Transactions - August 17th
  - Security and Privacy - not published
  - Broad definitions of: ‘electronic,’ ‘transactions’ and ‘covered’ entities
  - Paper produced electronically
    - DHHS commented - authority to regulate non electronic paper
  - Workers Compensation
  - Automobile Medical Payments
- Pre-emption of State Law:
  - Standard Transactions and Security
- Enforcement - FBI and Justice Department
- Insurance: Clearing House example



Insurance Coverage

Ed Robin, President, NAS Insurance

Lloyds Correspondents

HIPAA Coverage Issues

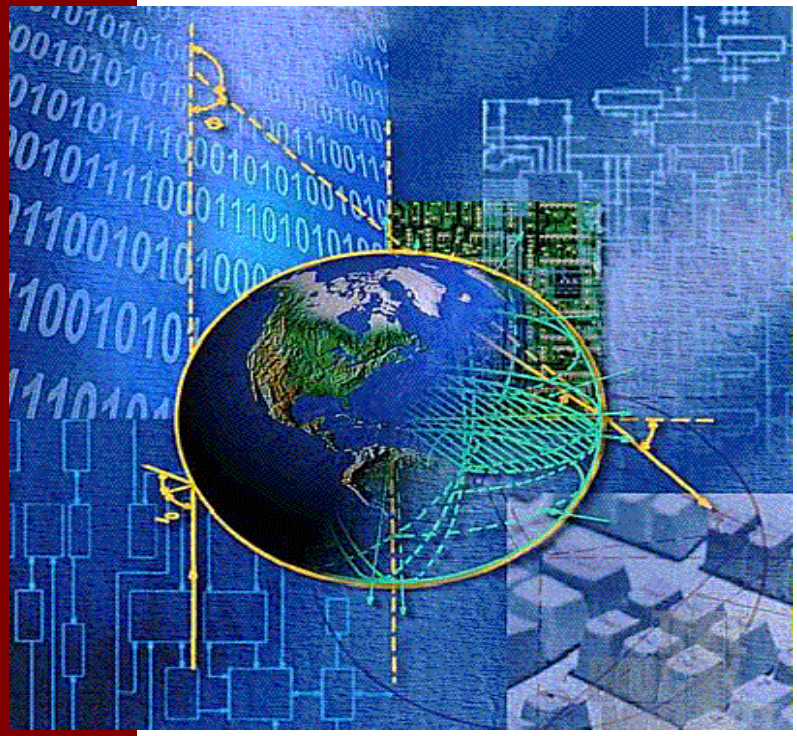
- First Party and Third Party exposures
- Whistleblower Provisions
- Right of Private Action
- Insurability of Criminal acts vs. Civil acts:
  - Defense
  - CMPs
    - insurability varies by state
- Typical Traditional Insurance Policy Exclusions:
  - Fines and penalties
  - Intentional acts
  - Criminal Acts

HIPAA Coverage Issues (continued)

- Existing insurance policies:
  - General Liability insurance
  - Directors and Officers Liability insurance
  - Professional Liability insurance
    - Medical Malpractice
    - Managed Care Errors and Omissions
    - Errors and Omissions
- Nuances and ramifications:
  - Duty to defend
  - CUMIS
  - Claims made retroactive dates

HIPAA Coverage Issues (continued)

- Settlement process:
  - Plaintiff:
    - Governmental
    - Private Sector
    - Private Person
    - Whistleblower
    - Anyone
  - Criminal and civil allegations
    - Allocation
  - Before the fact, HIPAA compliance programs
  - Mandated Corporate Integrity Programs
- No exclusion from medicare or medicaid program
  - Different than fraud and abuse



Insurance Marketplace

Pete Biagiotti, Vice President

Aon Healthcare Insurance Services

Insurance Marketplace

- At risk parties vary by the three HIPAA ASPs:
  - Standard Transactions - CMPs, where one cannot transmit and accept electronically
    - Payors
    - Self Insured, Employee Benefits', providers
    - Clearing Houses - defined as public or private:
      - Billing services
      - Re-pricing companies
      - Community Health Management Information Systems
      - Value Added Networks
      - Switches
  - Entity security of electronic patient information, CMPs
    - All creators, storers and recipients - Storage and Transfer
  - Patient privacy, criminal fines
    - All creators, storers and recipients - How the information is used

Insurance Marketplace (continued)

- Fraud and abuse lessons learned by federal government
  - fuel the HIPAA fire:
    - Income to federal government
    - Whistleblower plus right of private action
    - Enforcement funding
- Two years away:
  - Pre compliance date, application by plaintiff bar
- Defense cost:
  - Attorneys
  - Fraud and abuse: + auditors and IT consultants
  - HIPAA: + security consultants
- Business partners:
  - Them on your policy
  - You on their policy

Qui Tam = whistleblower = "he who brings an action for the king as well as for himself."

Insurance Marketplace (continued)

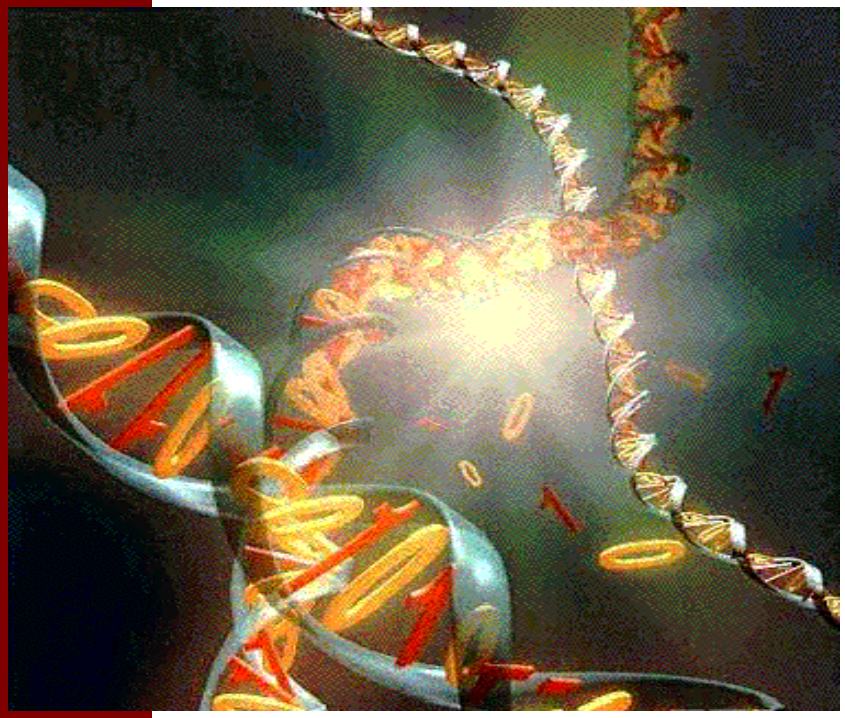
- Aggregating CMPs:
  - Standard transactions:
    - $100 per violation
    - $25k cap per standard transaction
      - Per payor or per provider?
      - Catastrophe
- Entity security
  - Over 70 different exposures involving CMPs

Insurance Marketplace (continued)

- Patient privacy
  - Criminal
    - Defense, maybe
    - Criminal Fines, no
      - Wrongful disclosure
        - » Not more than $50K per violation
        - » Not more than one year
      - False pretenses
        - » Not more than $100k per violation
        - » Not more than five years
      - Intent to sell, transfer or use
        - » Not more than $250k per violation
        - » Not more than 10 years

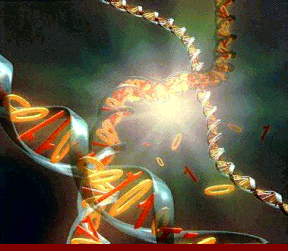
Insurance Marketplace (continued)

- CMPs - Instrument of social justice
- Institutional vs. solo practitioner marketplaces
- Four insurance product lines:
  - Defense only endorsements
  - Logical extension, to include HIPAA CMPs in:
    - Billings Errors and Omissions Insurance policy
    - Fraud and Abuse Insurance policy
  - E-commerce insurance
  - Free standing HIPAA insurance
- After three years now starting to sell
- London and domestic Market
  - WEDI briefed the London Market in early 2000
  - No HIPAA coverage at this point
  - Defense only solo practitioner - easy



Risk Management

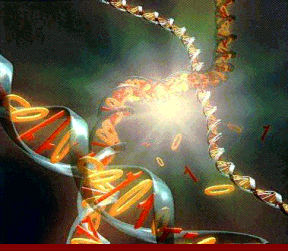
Kathleen Stillwell, President
SQM Consulting Group, LLC



WHAT DOES HIPAA RISK MANAGEMENT INCLUDE?

An Enterprise Approach…

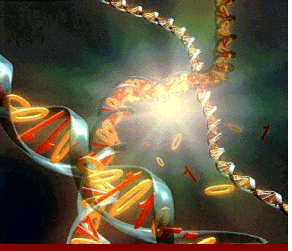
- Compliance management
- Security risk management
- Business risk management



WHAT IS THE DIFFERENCE BETWEEN PRIVACY AND SECURITY?

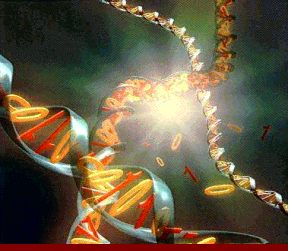
Security Standards: measures to keep organizational information safe

Privacy Standards: deals with things patients may expect from organizations in terms of the way their health information is used



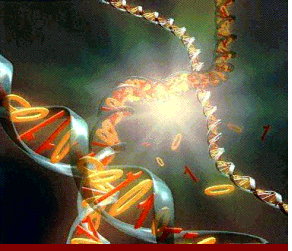
KEY PLAYERS INVOLVED IN MANAGING HIPAA RISK

- Information Services
- Medical Records
- Risk Management
- Compliance Officer
- Human Resources
- Senior Management
- Quality Management



PHASE I HIPAA RISK MANAGEMENT

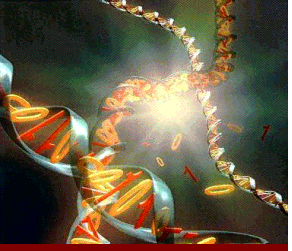
- Establish a task force
- Identify scope of oversight
- Evaluate scope of current organizational policies
- Determine extent of technical/administrative support required



ESTABLISH A PRIVACY DEPARTMENT OR A PRIVACY OFFICER

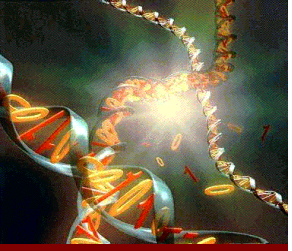
Responsible for organizing and centralizing:

- Reporting
- Training
- Internal/External dissemination



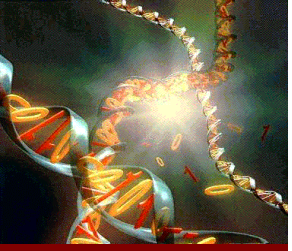
DEVELOP AN INTEGREATED & SECURE SYSTEM…

- Storage
- Retrieval accounting
- Retrieval dissemination
- Data input of protected health information
- Audit criteria



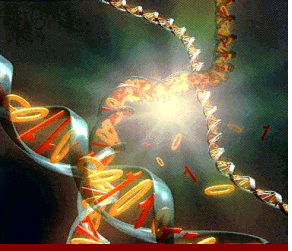
CONDUCT A COMPLETE ASSEESMENT…

- Draft an organizational privacy statement
- Collect & review all existing policies and statement
- Assess current risks of exposures: internal and external



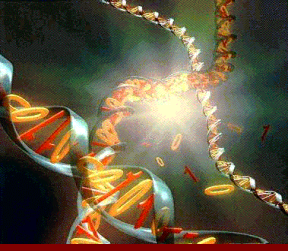
CONDUCT A COMPLETE ASSEESMENT…

- Develop a process for the dissemination of privacy statement
- Evaluate security systems for compliance
- Identify any conflicts with state laws
- Determine insurance coverage issues



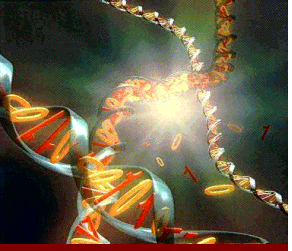
PHASE II HIPAA RISK MANAGEMENT

- Establish guidelines for all contract review
- Ensure all business partners are compliant
- Finalize privacy statement & policies



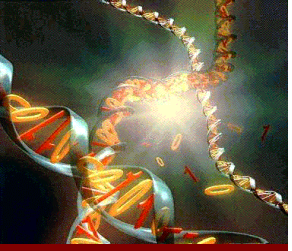
PHASE II HIPAA RISK MANAGEMENT

- Implement privacy policies
- Incorporate privacy compliance into organizational compliance program
- Develop & implement training program
- Finalize redesign of security system



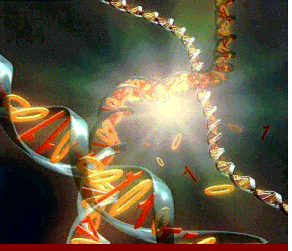
PHASE II HIPAA RISK MANAGEMENT

- Publish notice of compliance policies
- Implement guidelines for all contract review for existing & new business partners
- Establish internal & external monitoring
- Implement audit program to assure organizational compliance



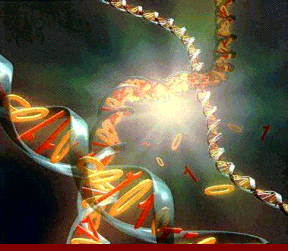
IMPORTANT HIPAA CONSIDERATIONS…

- Risk Management for HIPAA is not optional
- Responsibility to ensure compliance is a Board issue
- Is insurance coverage for HIPAA violations available?



IMPORTANT HIPAA CONSIDERATIONS…

- Identify a broker with strong technical knowledge of HIPAA issues
- Compliance is an organizational responsibility
- Failure to develop a HIPAA risk management strategy threatens your survival



KEY HIPAA WEBSITES…

- Department of Health and Human Services: http://aspe.hhs.gov/admnsimp
- HCFA Internet Security Policy
- http://www.hcfa.gov/security/isecplcy.htm
- X12 Implementation Guides
- http://www.wpc-edi.com/hipaa
- For an email copy of this presentation:
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