Banks and the Privacy of Medical Information

8th National HIPAA Summit

March 8, 2004

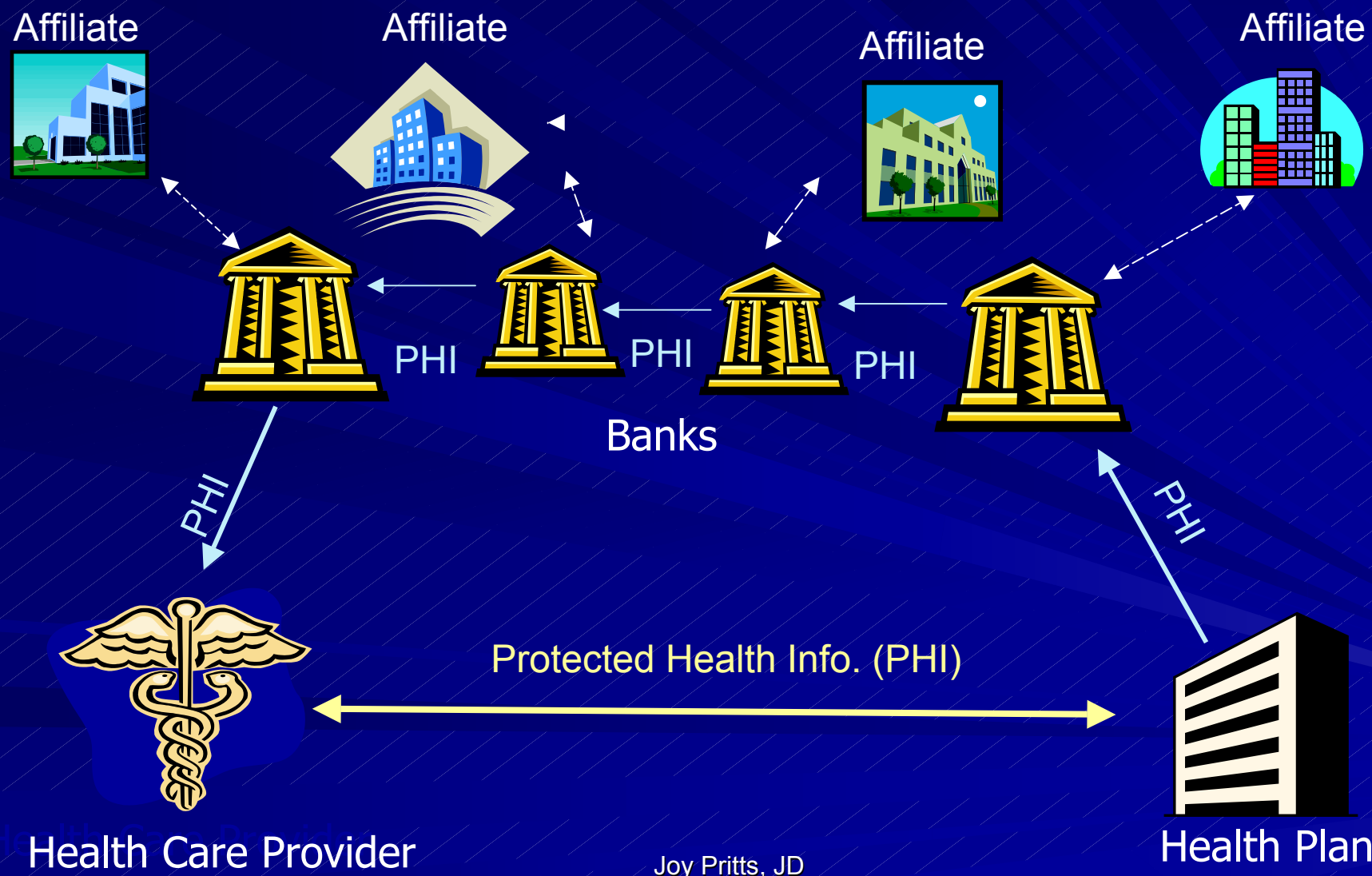
Joy Pritts, JD
Health Policy Institute
Georgetown University
202-687-0880

Public Concerns

95% adult Americans do not want banks to have access to their medical record information without their permission.*

* Gallup Organization nation-wide poll, August 2000, *available at*: http://forhealthfreedom.org/Gallupsurvey/index.html

Information Networks: HIPAA & GLBA



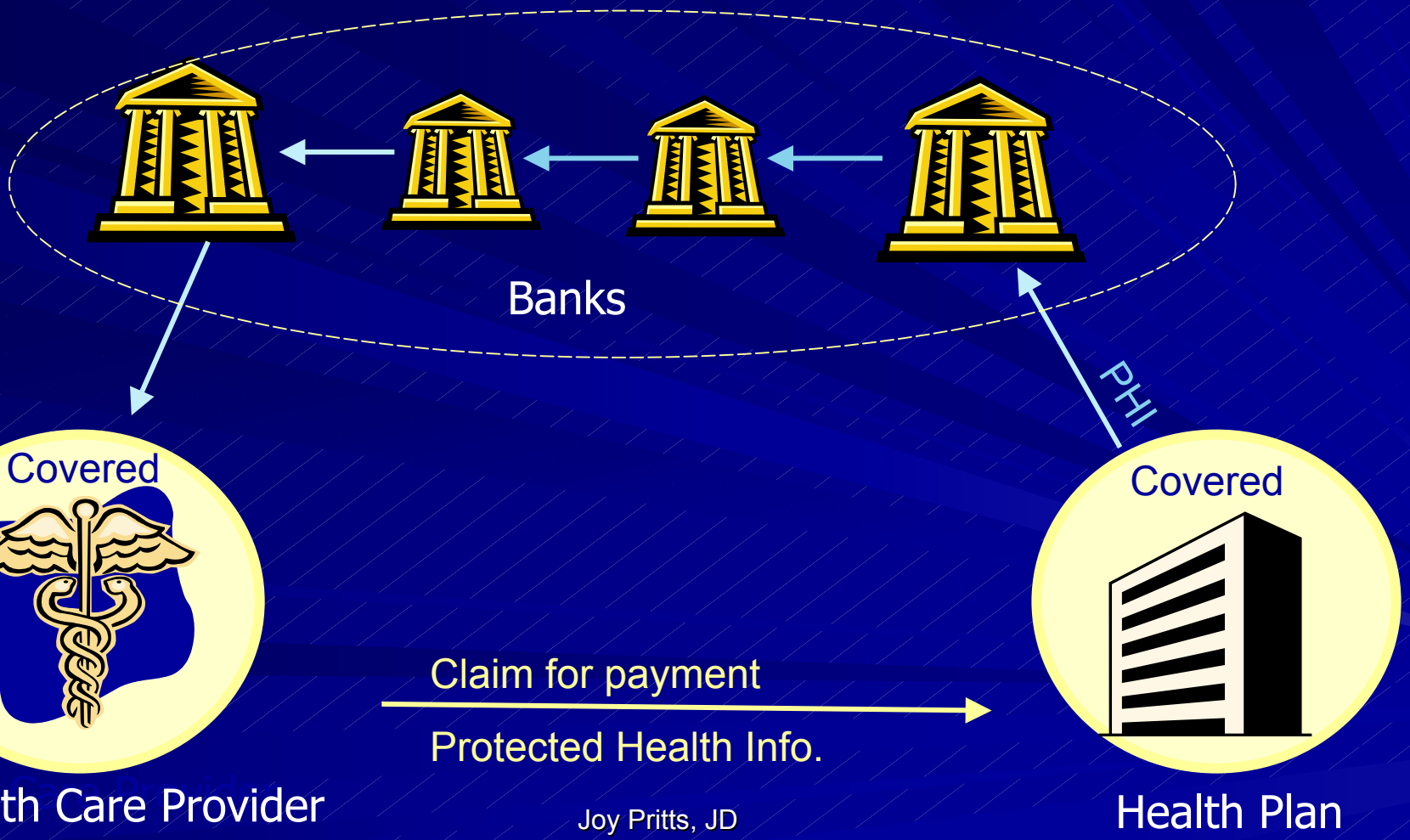
Public Concerns

Increased access to identifiable health information by banks

+ Increase in bank-insurer affiliations
+ More sophisticated computer technology
+ Potential financial incentive .

Concerns about banks obtaining and using health information for consumer credit decisions & sharing health information with affiliates

Goal: Protect Privacy of Health Info. as It Flows through the System



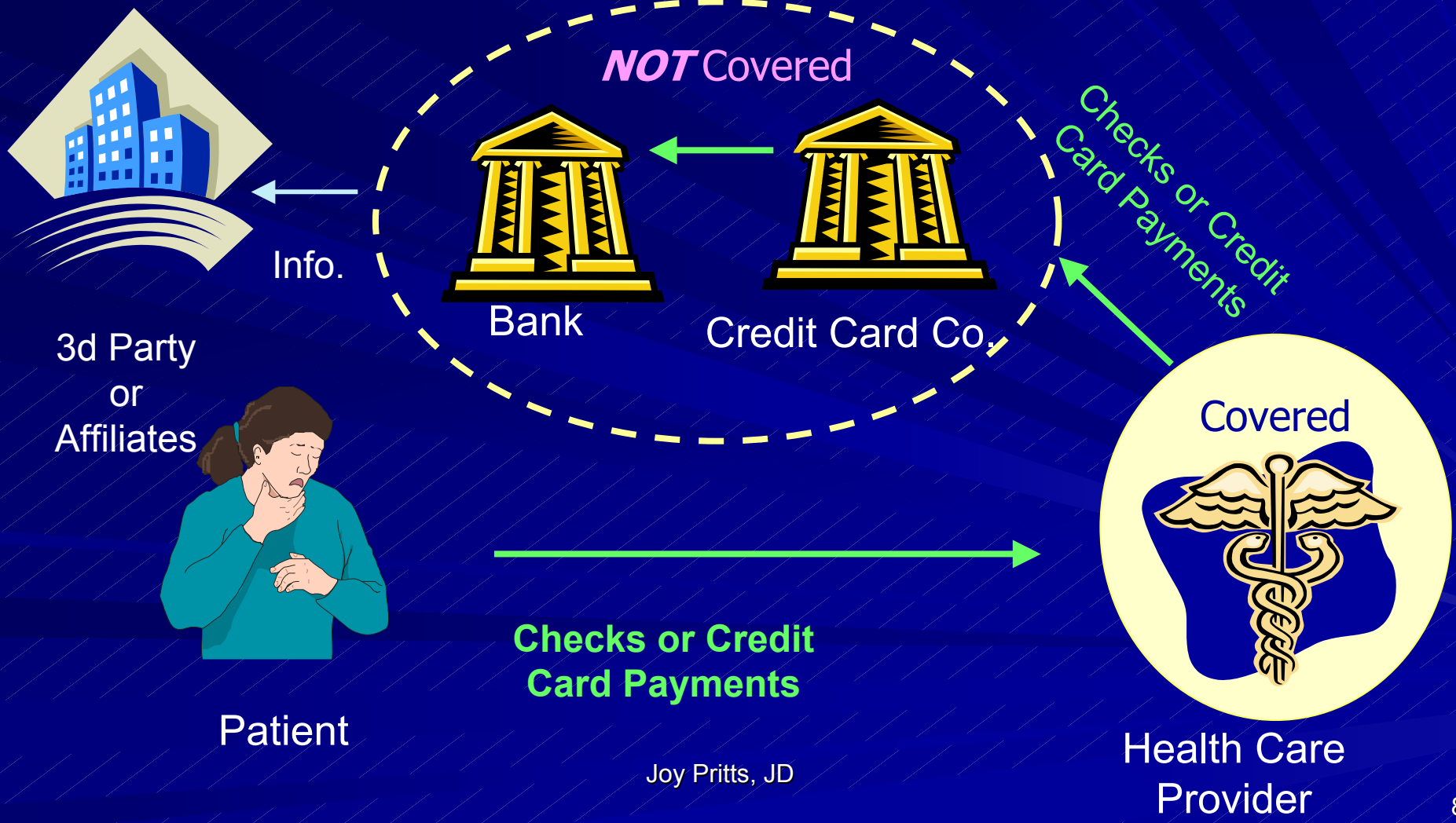
Primary Laws

- Health Insurance Portability and Accountability Act of 1996 (HIPAA)
- Gramm-Leach-Bliley Act (Financial Services Modernization Act) 1999
- Fair and Accurate Credit Transactions Act of 2003 (FACT Act)
  - Amendments to Fair Credit Reporting Act

HIPAA & Banks

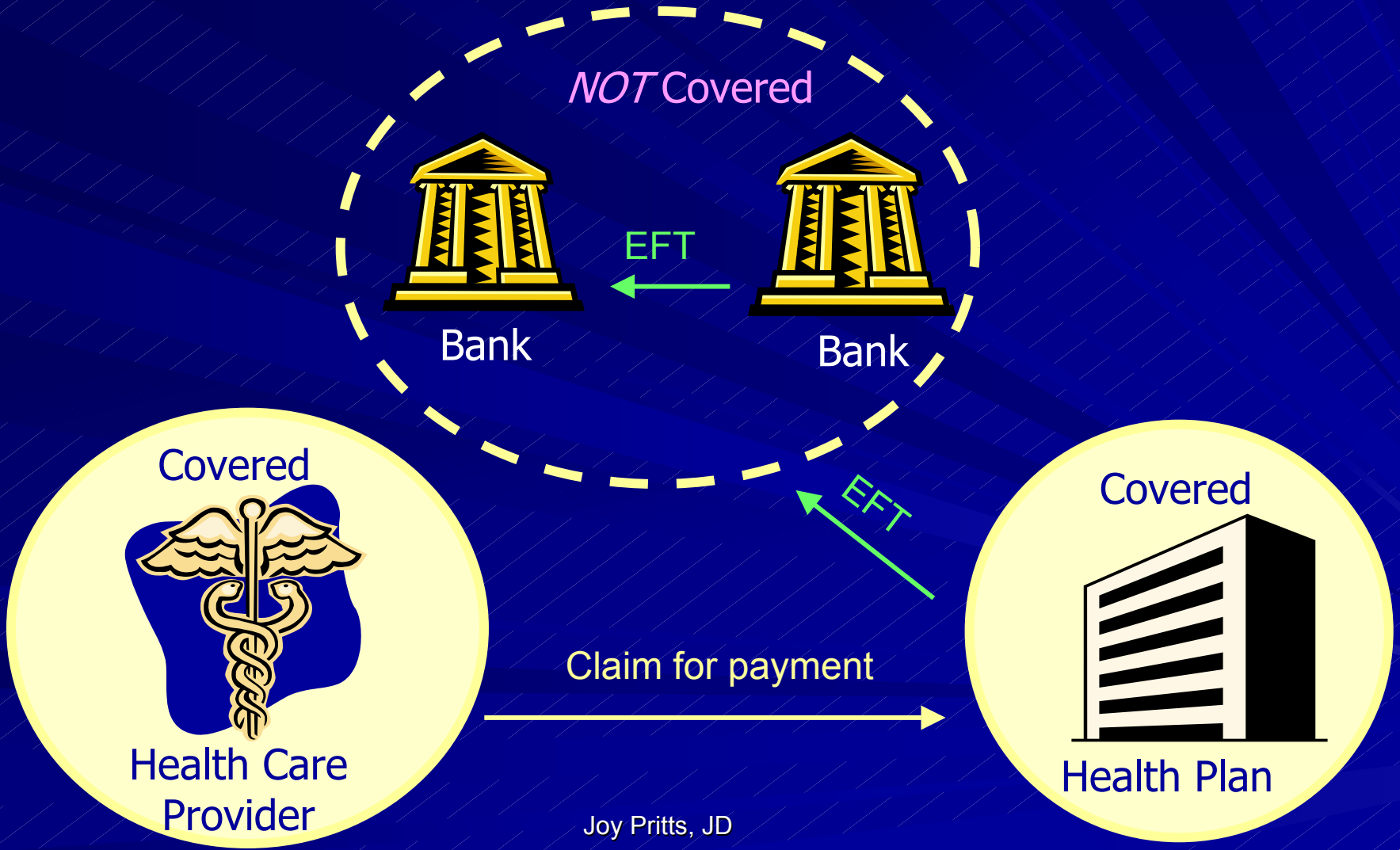
- Are banks covered by HIPAA?
- What activities of banks, if any, make them "health care clearinghouses" covered by HIPAA?

Processing Consumer Payment Info. Does *Not* Make a Bank a HIPAA Clearinghouse



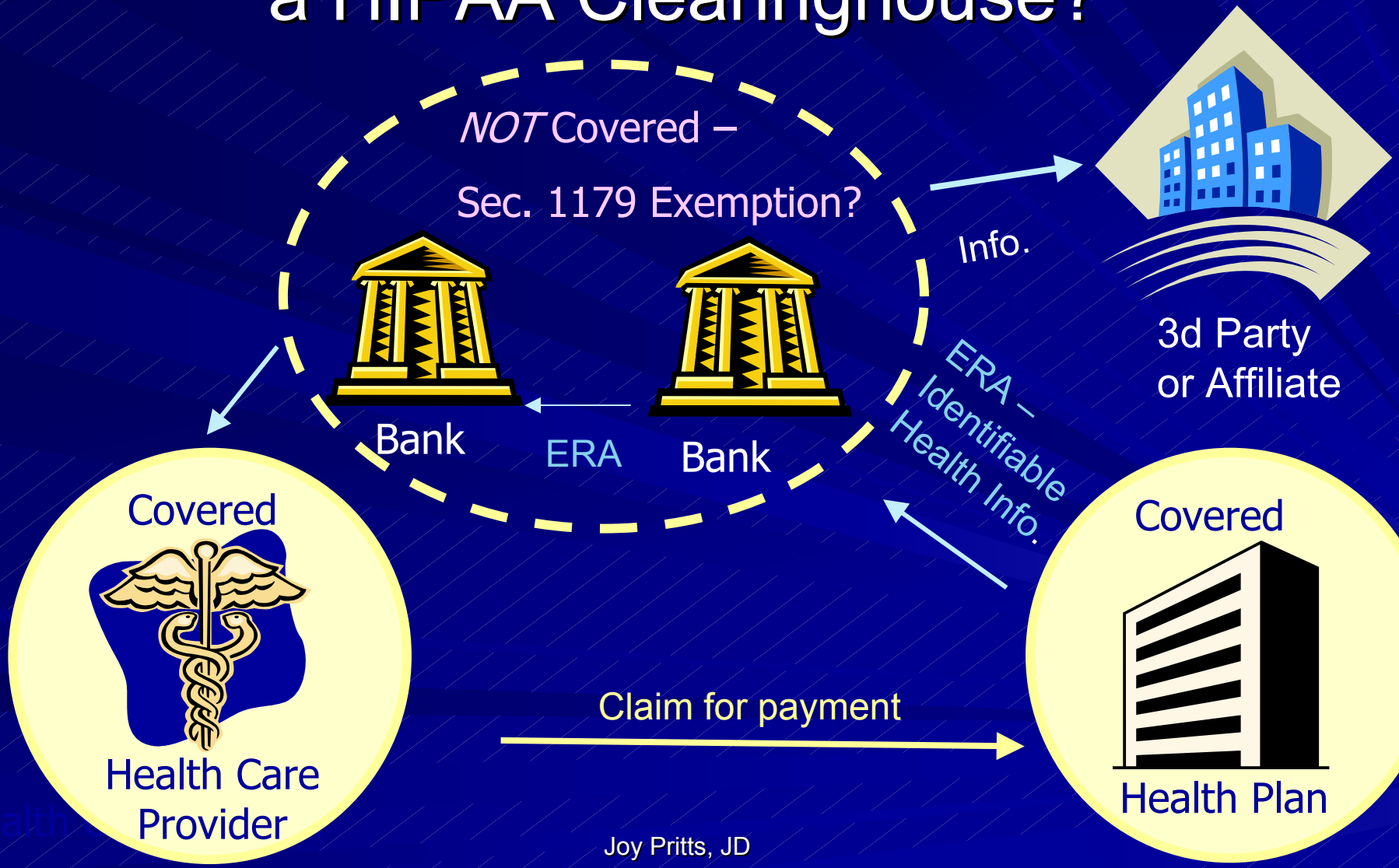
Joy Pritts, JD

Processing 3d Party EFT Does *Not* Make a Bank a HIPAA Clearinghouse



Joy Pritts, JD

Does Processing ERAs Make a Bank a HIPAA Clearinghouse?



Sec. 1179

PROCESSING PAYMENT TRANSACTIONS BY FINANCIAL INSTITUTIONS

SEC. 1179. To the extent that an entity is engaged in activities of a financial institution (as defined in section 1101 of the Right to Financial Privacy Act of 1978), or is engaged in authorizing, processing, clearing, settling, billing, transferring, reconciling, or collecting payments, for a financial institution, this part, and any standard adopted under this part, shall not apply to the entity with respect to such activities, including the following:

(1) The use or disclosure of information by the entity for authorizing, processing, clearing, settling, billing, transferring, reconciling, or collecting, a payment for, or related to, health plan premiums or health care, where such payment is made by any means, including a credit, debit, or other payment card, an account, check or electronic funds transfer.

* * *

42 USCS § 1320d-8

Issue

If banks are exempt from HIPAA under 1179, to what extent is medical information held by banks protected by other laws?

GLBA

- Designed to encourage affiliations between banks and other “financial institutions”
- Applies only to consumer & customer financial information, not commercial transactions
- Privacy provisions establish limits on *sharing* financial information (which may contain medical info.)

GLBA Limits *Sharing* Consumer Payment Info.

3d Party

Notice & Opt Out

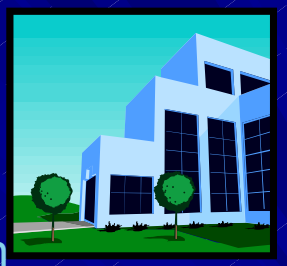
Information

Covered

Bank

Notice

Information



Affiliates

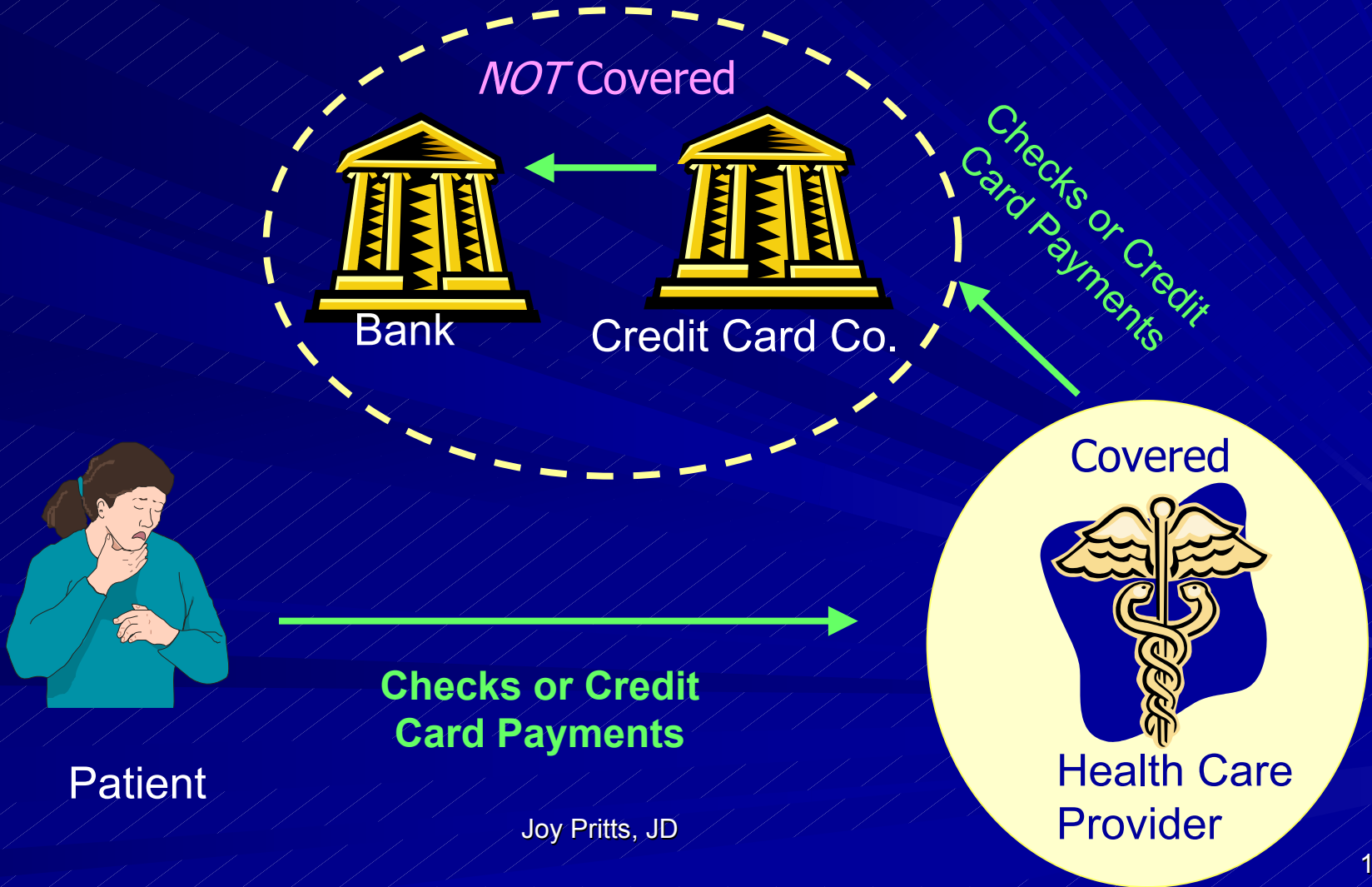
Patient

Checks or Credit Card Payments

Checks Credit

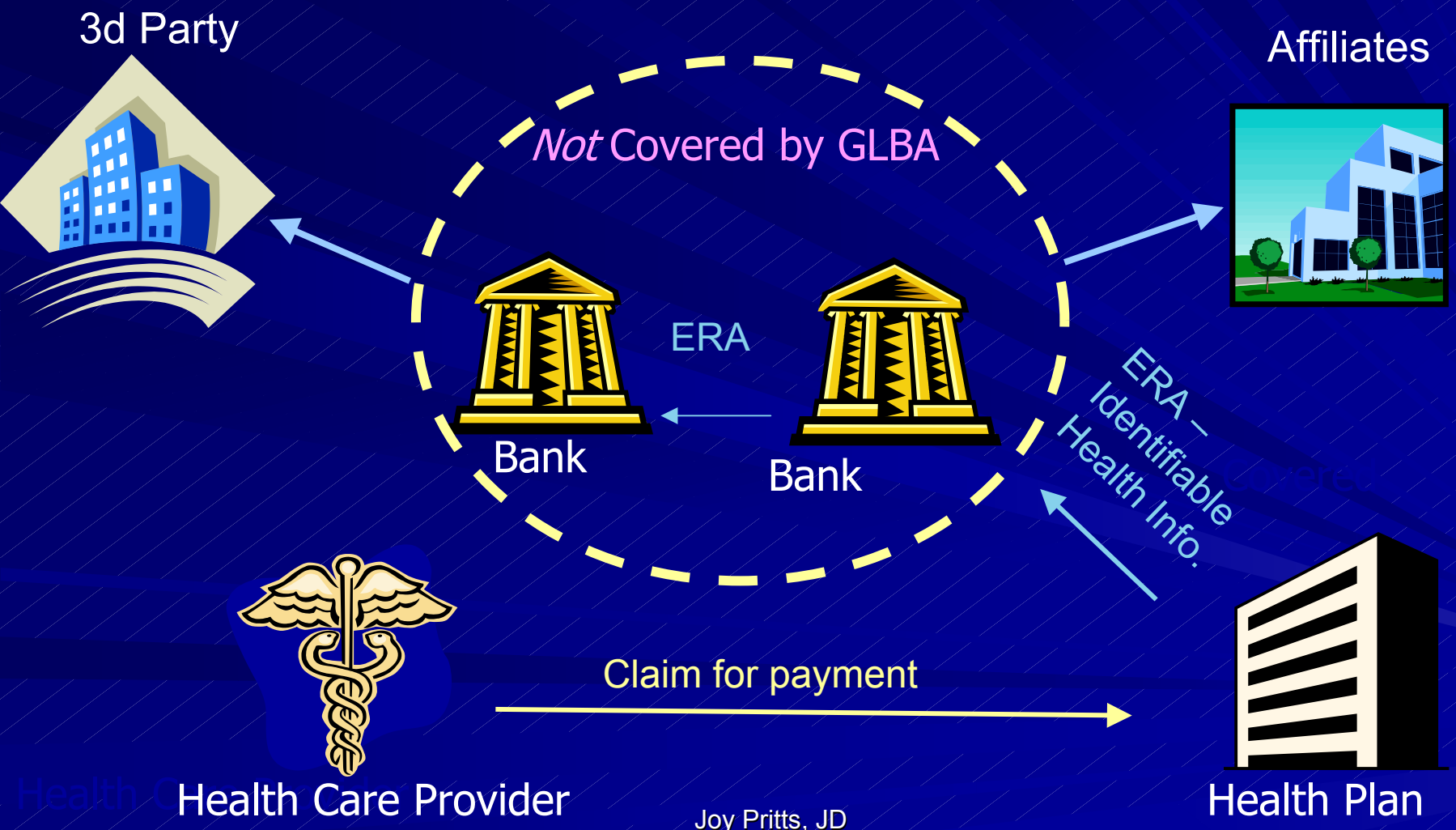
Health Care Provider

GLBA Does *Not* Prohibit Banks from *Using* Consumer Payment Info.



Joy Pritts, JD

GLBA Doe *Not* Prohibit Banks from *Using* or *Sharing* Info. from *Commercial* Transactions



Intent of FACT Act

Fill some of gaps in privacy protections in:

- HIPAA
- GLBA
- Within context of consumer credit protections

FACT Act

- Prohibits obtaining & using medical information for *consumer credit decision* purposes except where banking agencies determine it is "necessary and appropriate" to protect legitimate operational, transactional, risk, consumer and other needs
- Consistent with intent to restrict use of medical info. for inappropriate purposes

Regulations Drafted by Banking Agencies that Allow Using Info. for Credit May be Narrow. . .

Patient

Checks Credit

Checks Credit

Covered

Banks

ERA – Identifiable Health Info.

EFT

Claim for payment

Health Care Provider

Health Plan

Joy Pritts, JD

… or Broad

Patient

Checks
Credit

Covered

Banks

Checks
Credit

ERA –
Identifiable
Health Info.

EFT

Claim for payment

Health Care Provider

Health Plan

Joy Pritts, JD

FACT Act Does *Not* Prohibit *Using* Payment Info. for Insurance, Marketing or Other Purposes

Patient

Checks
Credit

NOT Covered

ERA

EFT

Bank

Bank

Checks
Credit

ERA

EFT

Claim for payment

Health Care Provider

Health Plan

Joy Pritts, JD

Limits on Sharing Medical Info. Are Not Clear

Under best circumstances, permits banks to share medical info. with affiliates for any purpose:

- Permitted without authorization under Privacy Rule or
- Referred to under Section 1179

Conclusion

If banks are fully exempt under Sec. 1179, the medical information that they receive is not fully protected by other laws.

The End