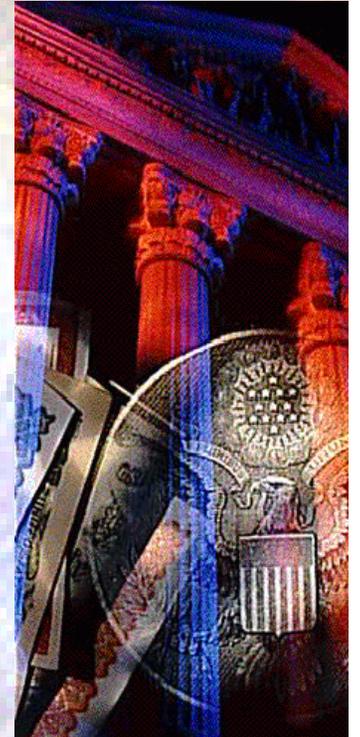


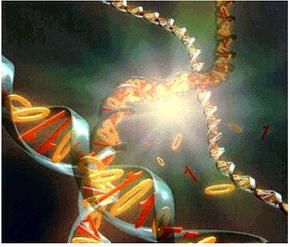
The HIPAA Summit West

Risk Management and HIPAA Insurance

**Kathleen Stillwell, RN, MPA, HSA
President, SQM Consulting Group
Seal Beach, CA**

June 22, 2001

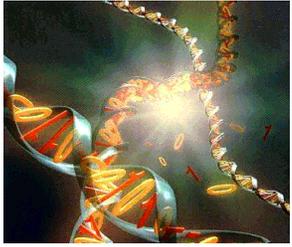




WHAT DOES HIPAA RISK MANAGEMENT INCLUDE?

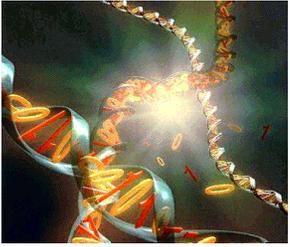
An Enterprise Approach...

- ➔ **Compliance management**
- ➔ **Security risk management**
- ➔ **Business risk management**



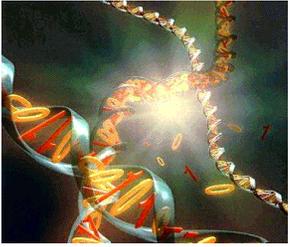
KEY PLAYERS INVOLVED IN MANAGING HIPAA RISK

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



PHASE I HIPAA RISK MANAGEMENT

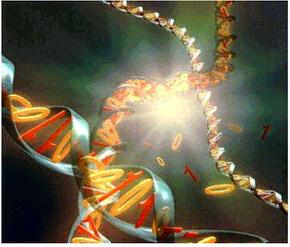
- ✓ **Establish a task force**
- ✓ **Identify scope of oversight**
- ✓ **Evaluate scope of organizational policies**
- ✓ **Determine extent of technical and administrative support required**



ESTABLISH A PRIVACY DEPARTMENT OR A PRIVACY OFFICER

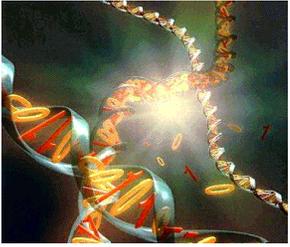
**Responsible for organizing &
centralizing:**

- ➔ Reporting**
- ➔ Training**
- ➔ Internal & External dissemination**



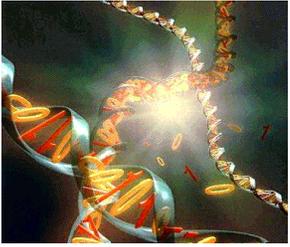
DEVELOP AN INTEGRATED & SECURE SYSTEM...

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



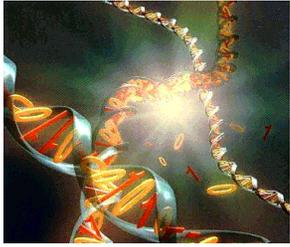
CONDUCT A COMPLETE ASSESSMENT...

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



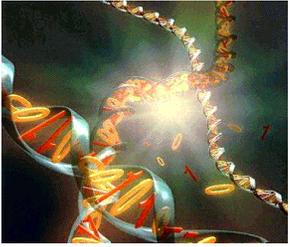
CONDUCT A COMPLETE ASSESSMENT...

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



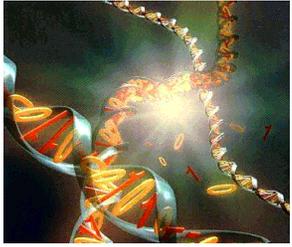
PHASE II HIPAA RISK MANAGEMENT

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



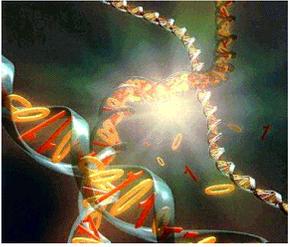
PHASE II HIPAA RISK MANAGEMENT

- ☒ Implement privacy policies**
- ☒ Incorporate privacy compliance into organizational compliance program**
- ☒ Develop & implement training program for all staff**
- ☒ Finalize redesign of security system**



PHASE II HIPAA RISK MANAGEMENT

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



IMPORTANT HIPAA CONSIDERATIONS...

**Risk Management for HIPAA is not
optional**

**Responsibility to ensure HIPAA
compliance is a Board issue**

**Is insurance coverage for HIPAA
violations available?**

CMPs an instrument of social justice



HIPAA COVERAGE ISSUES

First Party & Third Party exposures

Whistleblower Provisions

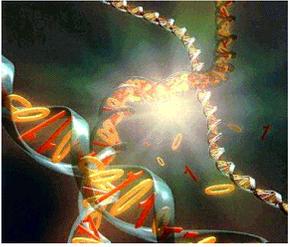
Right of Private Action

Insurability of Criminal acts vs.

Civil acts:

–Defense

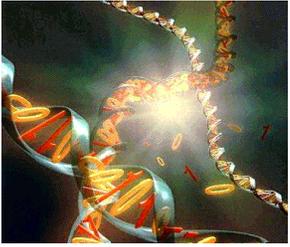
–CMPs



HIPAA COVERAGE ISSUES

Typical Traditional Insurance Policy Exclusions:

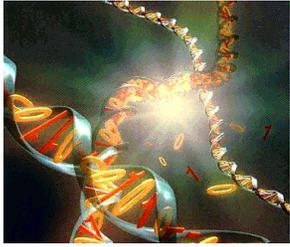
- Fines and penalties**
- Intentional acts**
- Criminal Acts**



HIPAA COVERAGE ISSUES

Existing Insurance Policies:

- General Liability Insurance**
- Directors & Officers Liability**
- Professional Liability Insurance**
- Medical Malpractice**
- Managed Care Errors & Omissions**
- Errors & Omissions**



HIPAA COVERAGE ISSUES

Who Will Be The Plaintiff?

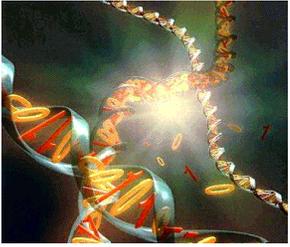
Government

Private Sector

Private Person

Whistleblower

Anyone



HIPAA COVERAGE ISSUES

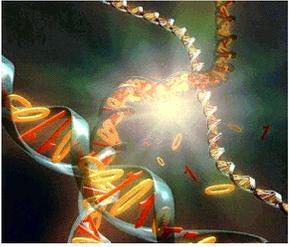
Criminal and civil allegations

Allocation

**HIPAA compliance programs
(before the fact)**

**Mandated Corporate Integrity
Programs**

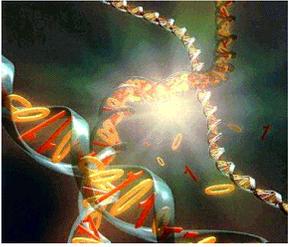
**No exclusion from Medicare or
Medicaid program (different than
fraud & abuse)**



WHO IS AT RISK FOR WHAT?

Standard Transactions - where one cannot transmit & accept transactions electronically

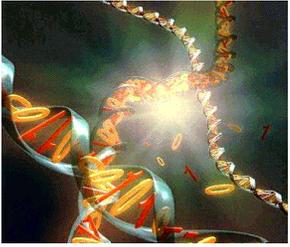
- **Payors**
- **Self Insured, Employee Benefits', providers**



WHO IS AT RISK FOR WHAT?

Clearing Houses – public or private:

- Billing services**
- Re-pricing companies**
- Community Health Management Information Systems**
- Value Added Networks**
- Switches**



LESSONS LEARNED BY FEDERAL GOVERNMENT

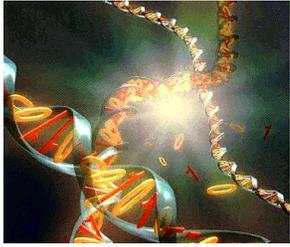
Fraud and abuse lessons learned:

Income to federal government

**Whistleblower plus right of private
action**

Enforcement funding

CMPs as a social instrument



LESSONS LEARNED BY FEDERAL GOVERNMENT

Costs are high:

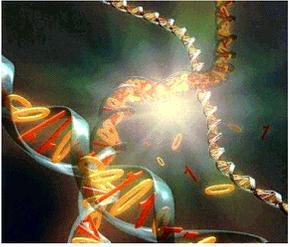
Attorneys

Fraud and abuse: + auditors

Information technology consultants

HIPAA consultants

Security consultants



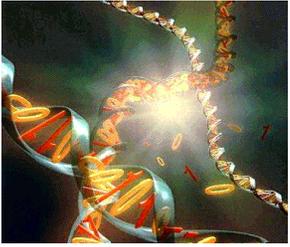
WHAT SHOULD YOU DO WITH BUSINESS PARTNERS?

Discuss the issues

Develop a strategy

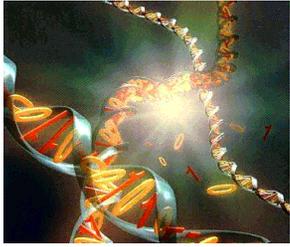
**Consider them on your policy...you
on their policy**

Work together



WHO IS AT RISK FOR WHAT?

- Patient privacy, criminal fines
- Entity security of electronic patient information, CMPs
 - All creators, storers & recipients
 - Storage and Transfer
 - All creators, storers and recipients
 - How the information is used



WHAT IS THE FINANCIAL RISK?

Aggregating CMPs for standard transactions:

\$100 per violation

\$25k cap per standard transaction

– Per payor or per provider?

Entity security

**Over 70 different exposures involving
CMPs**



THE INSURANCE MARKETPLACE WILL DETERMINE AVAILABLE COVERAGES...

Patient privacy

Criminal

Defense Costs

Criminal Fines

Wrongful disclosure

False pretenses

Intent to sell, transfer or use



THE INSURANCE MARKETPLACE

Four insurance product lines:

Defense only endorsements

**Logical extension, include HIPAA
CMPs in:**

- Billings Errors & Omissions
Policy**

- Fraud and Abuse Policy**

E-commerce insurance

Free standing HIPAA insurance



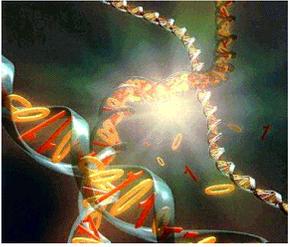
THE INSURANCE MARKETPLACE

London and domestic Market

**No specific HIPAA coverage at this
point**

**Institutional vs. solo practitioner
marketplaces**

Defense only solo practitioner

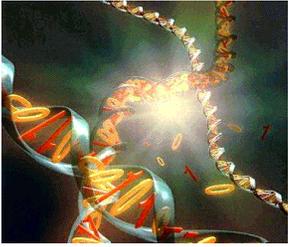


IMPORTANT HIPAA CONSIDERATIONS...

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 organization's 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>

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kstillwell@home.com