

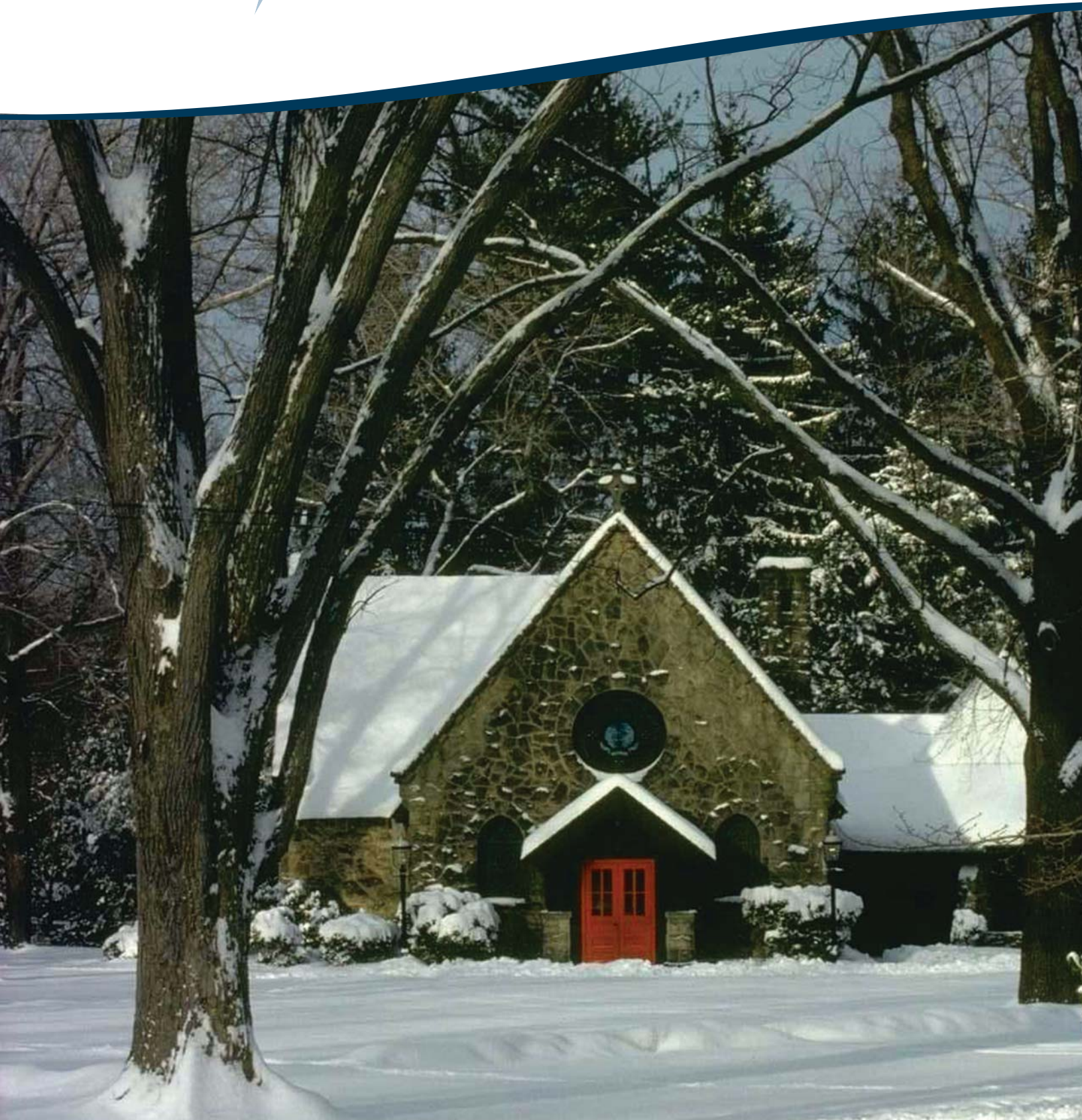


the *Compass*

setting direction for risk management and insurance for the healthcare industry

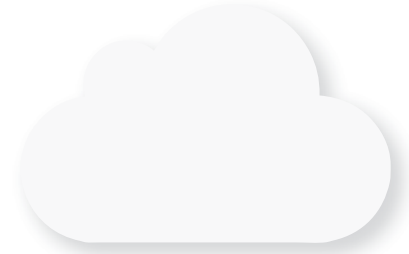
WINTER 2012

a publication of the Coastal Insurance Risk Retention Group, Inc. and Healthcare Workers' Compensation Fund



What is iCloud?

By: Diana R. Ford, MCP
Help Desk Support Specialist



iCloud is so much more than a hard drive in the sky. It makes it quick and effortless to access just about everything on the devices you use every day. iCloud automatically and securely stores your content so it's always available to your iPhone, iPad, iPod touch, Mac, or PC. It gives you access to your music, apps, latest photos, and more from whichever device you happen to be using. And it keeps your email, contacts, and calendars up to date across all your devices. No syncing required. No management required. In fact, no anything required. iCloud does it all for you.

Pros

- It's free — First and foremost, iCloud is a free service for all iPhone, iPad, iPod Touch, and Mac users. This is going to go over so much better than when Apple introduced MobileMe for a \$99 subscription fee.
- There's free storage, too — Apple is giving you 5GB of free storage to hold your emails, contacts, documents, settings, and your camera roll. Thankfully, purchased apps, books, your photo stream, and music won't count against your storage. If you think you might need more space, I'm sure it will be made available at a price.

- Automatic downloads — When you download music from the iTunes store on your Mac, you can enable automatic downloading to your other devices. No more syncing with your connectors! Additionally, you can automatically download all your past iTunes store purchases just by clicking the little cloud button next to the albums or songs.
- Scan and Match — Apple's "one more thing" at the WWDC presentation was the announcement of the Scan and Match service. Since iCloud only works with Apple-purchased tunes, Scan and Match will find all of your own ripped songs, and match them with those in iTunes so you can download and send to the cloud. This service will cost \$25 a year but the good news is, there's no limit to the number of songs you can match, and it will save you time since you don't have to upload entire albums to the cloud.
- You'll never lose your music — Since all of your music is stored in the cloud and pushed to all of your devices, you'll never lose your collection of music, books, or photos.

The Electronic Compass

Staying abreast of current business trends means exploring new and better ways to deliver news about our company.

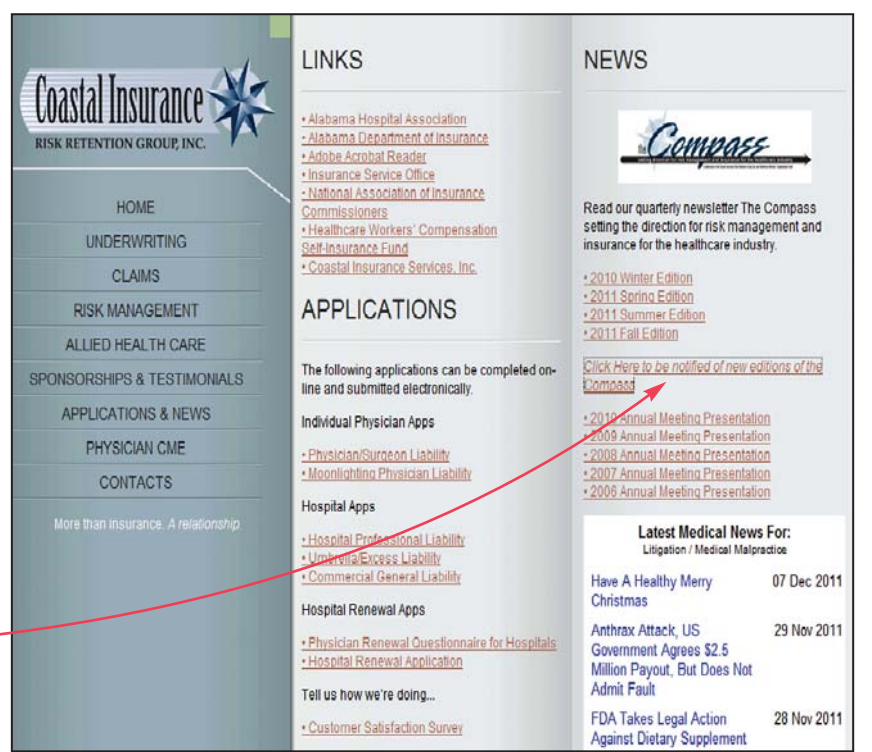
We'd like to invite you to join our latest project by subscribing to the electronic version of The Compass.

Point your browser to:

<http://www.coastalins.org/news.html>

Then click

We'll do the rest.



The screenshot shows the Coastal Insurance website. The header includes the logo and "RISK RETENTION GROUP, INC.". A vertical navigation menu on the left lists: HOME, UNDERWRITING, CLAIMS, RISK MANAGEMENT, ALLIED HEALTH CARE, SPONSORSHIPS & TESTIMONIALS, APPLICATIONS & NEWS, PHYSICIAN CME, and CONTACTS. Below the menu is the tagline "More than insurance. A relationship." The main content area is divided into three columns: LINKS, APPLICATIONS, and NEWS. The LINKS column lists various industry associations and organizations. The APPLICATIONS column lists electronic forms for Individual Physician Apps, Hospital Apps, and Hospital Renewal Apps. The NEWS column features a "Compass" newsletter graphic and a list of recent news items, including "Have A Healthy Merry Christmas" (07 Dec 2011), "Anthrax Attack, US Government Agrees \$2.5 Million Payout, But Does Not Admit Fault" (29 Nov 2011), and "FDA Takes Legal Action Against Dietary Supplement" (28 Nov 2011). A red arrow points from the text "Then click" to the "Click Here to be notified of new editions of the Compass" link in the NEWS section.

No syncing required.

No management required.

In fact, no anything required.

iCloud does it all for you.

Cons

- You could be buying twice — Even if you've bought a CD from the store and uploaded to your iTunes library, these tunes won't be sent to iCloud. Paying \$25 a year to match those tracks may be small in the big scheme of things (especially if you've got thousands of ripped songs in your library), but fact is, you're still paying for some of those tracks twice.

- There's a time limit on your photos — iCloud will only store your photos for 30 days. I'm guessing you'll want to sync your photos with your Mac before then, but no word on if there will be a paid storage option for your pics.
- There's a photo limit for your device — iCloud will only store the last 1,000 photos from your mobile, but will still store your camera roll on board your device.
- It's not really a streaming service — iCloud is more of a syncing service that holds some of your data for you in storage, but it doesn't actually stream your tunes or photos from the cloud to any device. But I guess that's A-OK if you're an Apple fanatic — you'll have all of your data on any device at any time. What's so bad about that?

The pros definitely outweigh the cons. So, all in all, Apple has once again given us another innovation that we will no doubt be unable to live without.

Subpoenas Requesting Mental Health Records/ Substance Abuse Records

By: Cathy H. Coggin, R.N., J.D.
Senior Claims Attorney

There are basically two ways under Alabama Law that permits the release of mental health or substance abuse medical records: 1) by written HIPAA compliant consent from the patient or the patient's legal guardian, or the personal representative of a deceased patient, or 2) a **“specific” order from a judge in a court of competent jurisdiction authorizing the release.**

Recently we have had two different facilities receive a subpoena for the production of medical records on patients in their geri/psych units. Both times, the subpoenas had a “HIPAA Order in Civil Action” included and cover letters stating that a “court order” was attached. WARNING!!! A HIPAA order is an order signed by a judge in a civil case that allows the release or discussion of private health information of one of the parties in the lawsuit. This is done by most judges in Alabama to allow attorneys to obtain the private health information discovery needed to prosecute or defend their case and comply with HIPAA regulations.

However, and this is a big “HOWEVER”. A “HIPAA Order in a Civil Action” is NOT sufficient for the release of mental health records or substance abuse records. If you carefully

read the HIPAA order used by most judges in Alabama, it specifically states, *“Nothing in this Order permits disclosure of confidential communications made for the purposes of diagnosis or treatment of a patient’s mental or emotional condition, including alcohol or drug addiction, among the patient, the patient’s psychotherapist and persons who are participating in the diagnosis or treatment under the direction of the psychotherapist, including members of the patient’s family. . .”* The proper order should be from the judge presiding in the case and specifically stating that he/she is ordering the release of the mental health or substance abuse records to the opposing party.

Appropriately, the hospitals objected to the subpoenas and held out for a proper order from the judge. So, don't be fooled, stay vigilant and read all documents presented to you in regards to the release of any private health information. Make sure the subpoena you receive requesting the release of mental health or substance abuse records is accompanied by the “correct” type order from a judge. If you have any doubts, please contact us to review the documents before releasing the requested medical records.

Proposed Changes for NFPA's Life Safety Code®

By: Jack Posey, CHSP,
Vice President-Risk Management

During the summer months The Standards Council of the National Fire Protection Association met to approve the changes to the 2012 edition of NFPA 99: *Healthcare Facilities Code* and NFPA 101: *Life Safety Code*®.

The Centers for Medicare & Medicaid Services (CMS) does not automatically adopt these changes, but has indicated that it will review the changes for possible adoption. Stay tuned, this may take a couple of years.

The potential changes for NFPA 99 from The Standards Council include:

- A new chapter on healthcare security,
- Expansion of the chapter on emergency management,
- Elimination of the requirement for smoke evacuation in operating rooms,
- Allowing facilities to choose use of isolated power or ground-fault interrupters in operation rooms.

The Standards Council has also made some major suggestions. For example the 2012 edition of *The Life Safety Code*®:

- States that hospital corridors must have 5 feet of clear and free aisle space, not the 8 feet now required,
- Omits sprinkler heads in patient room closets of 6 square feet or less,
- Increases the size of sleeping room suites to 10,000 square feet,
- Allows ambulatory patients to be transported from inpatient to outpatient or business occupancies for diagnostic and treatment procedures.

Remember the process. Before CMS can recommend adoption of the 2012 editions of these documents to Congress, it must post its review of these codes in *The Federal Register* as a Notice of Proposed Rulemaking. That process alone may take up to 18 months.

As we stated earlier, stay tuned. We will keep you posted on any of the changes.

The Coming New Year

By: Melvin L. Capell

It is the Holiday Season. A time to celebrate Christmas, say good-bye to the outgoing year and welcome the new year. We at CIRRG and HWCF wish you a happy and glorious Holiday Season.

The new year (2012) approaches with opportunities, challenges and a lot of uncertainties. This is always the case. However, for the healthcare industry there is more uncertainty about the coming year than is normally the case. The general theme of speeches and articles about the future of healthcare is that government decisions and direction for healthcare are currently obscure.

Government has identified the availability and cost of healthcare as a key issue that must be addressed. However, there is not agreement by the various factions on how to resolve this issue. So, ambiguity dominates the current situation. Actions are being taken, but they do not present a clear view



of a comprehensive strategy. Some examples of these actions are a federal law that is being challenged by multiple states and a requirement for "Electronic Medical Records".

This is not a precursor of a catastrophe. America has faced challenges before and developed solutions that propelled the nation forward. This is the current challenge and we need to be part of the solution.

CIRRG and HWCF have been closely tied to the healthcare industry since their inception. This will continue to be the case. As such, CIRRG and HWCF approach the new year looking for ways that they can help the healthcare industry in developing solutions to the current challenges.

So, to each of you – Merry Christmas and a Happy, Successful New Year for all.

EMTALA May Apply to Preterm Miscarriages

Reprinted with permission from the Journal of Healthcare Risk Management 31:46-48. West, Esq., J.C. [2011] EMTALA May Apply to Preterm Miscarriages

FACTS:

Lorraine Morin was 16 weeks pregnant on July 1, 2007, when she called the emergency department [ED] at Eastern Maine Medical Center [EMMC] and asked them to page the obstetrician who was taking calls for Dr. Gilmore, her obstetrician. Dr. Grover called her back. Ms. Morin gave Dr. Grover a brief history of her present condition. She was having contractions. Dr. Grover told her that there was nothing he could do for her and that she should call Dr. Gilmore on Monday morning. He also told her to go to the ED at EMMC if she felt that it was necessary.

Ms. Morin went to the ED and arrived in the early morning hours. She was seen by Dr. Reinstein, who performed an ultrasound but did not perform a pelvic examination. He was unable to find a heartbeat. Dr. Grover then came into the examination room and performed a pelvic examination and a second ultrasound. He confirmed that the fetus was dead and that there was nothing they could do for her. He discharged her with instructions to follow up at the ED if she experienced excessive bleeding or other complications. He later testified that he thought that she would expel the fetal remains, but that it might take hours or days to do so. He did not think that the expulsion was imminent. Mr. Morin, the plaintiff's husband, asked about what they should do with the fetal remains. Dr. Reinstein told him to 'just dispose of it.'

Ms. Morin later testified that she was very upset and terrified at the prospect of possibly completing the delivery outside of a hospital. Ms. Morin returned home and, later that evening, delivered the fetal remains in her bathroom. She continued to experience bleeding overnight and she called Dr. Gilmore in the morning. Dr. Gilmore saw her in the office and scheduled a dilation and curettage [D&C] to remove the unexpelled fetal remains.

Ms. Morin brought suit under EMTALA. Ms. Morin sought compensatory and equitable relief. The jury found that EMMC had violated EMTALA. They awarded Ms. Morin \$50,000 in compensatory damages and \$150,000 in punitive damages. EMMC filed a motion for judgment as a matter of law and for a new trial, which is the subject of the present opinion.

ISSUES:

Does EMTALA cover pregnant women who are having contractions as part of a preterm miscarriage? Is Ms. Morin entitled to equitable relief that would preclude EMMC from treating other women in Ms. Morin's situation in the same way?

ANALYSIS:

EMMC argued that Ms. Morin was not in labor, since labor is the process of delivering a viable infant. Rather, she was expelling fetal remains, which is not covered by EMTALA. Ms. Morin argued that she was pregnant and that she was having contractions, which brings her condition under the ambit of EMTALA. The court noted that the statute uses the language "with respect to a pregnant woman who is having contractions" as part of the definition of an "emergency medical condition." The court held that Ms. Morin's condition constituted an emergency medical condition. It further held that the risk of excessive bleeding or hemorrhage [which all the experts agreed were risks in this situation] indicated that *the emergency medical condition was not stabilized on discharge*. Consequently, the court held that EMMC had violated EMTALA.

In sum, the court denied the motion for judgment as a matter of law and for a new trial.

RISK MANAGEMENT CONSIDERATIONS:

In Ms. Morin's case, the court held that the risk of hemorrhage was evidence that her emergency medical condition had not been stabilized, but Ms. Morin was not hemorrhaging at the time of discharge. Ms. Morin may not have had a condition that posed a threat to her health at the time of her discharge from the ED.

If this case is upheld on appeal, it may create a difficult situation for hospitals that provide obstetrical services. While the final outcome is not yet known, hospitals and obstetric providers should be interested in this case, as well as any subsequent effect on the standard of care, because it could *potentially impact* the way hospitals and providers respond to pregnant women in preterm labor.

One of the things that stand out in this case is that Ms. Morin obviously felt that she had been managed in a very cavalier and brusque manner. From the testimony that is recited in the decision, both she and her husband felt that their concerns were not taken seriously. While it may have been true that there was absolutely nothing that could have been done differently to change the outcome, had Ms. Morin perceived that the hospital staff members behaved in a more sensitive, caring, and comforting way and offered options, this case may well have never been brought.

Morin v. Eastern Maine Medical Center, No. 1:09-cv-00258-JAW [D. Me. March 25, 2011]

6th Annual Workers' Compensation Seminar ~ HUGE SUCCESS!!!

*T*he Healthcare Workers' Compensation Fund was proud to sponsor the 6th Annual Workers' Compensation Seminar on October 28, 2011. The conference was a huge success due to the participation of the HWCF Members. We had a very informative and useful program. Attendees received a wealth of information on many topics pertinent to workers' compensation programs in their own facilities. Thank you to all who attended.

We were very fortunate to have an outstanding slate of presenters who are foremost experts in their respective fields. The topics addressed current issues in workers' compensation in Alabama. For our members who were unable to attend, we have made the conference material available on our website, www.HWCF.net. The topics available are:

Presentation by Timothy P. Donahue, Esq.: *"Workers Compensation Case Law Update"*

Presentation by Deborah Lechner, PT, MS: *"Preventing Injuries Through Better Hiring"*

Presentation by Jason T. Randall, M.D.: *"Meniscal Tears and Treatment"*

Presentation by Fred L. Fohrell, Esq.: *"Appropriate Conduct in Response to Threatened or Actual Litigation"*

Physician Underwriting

Congratulations Sandra Campbell

Congratulations to our physician underwriter Sandra Campbell. Sandra has obtained the Associate in Underwriting designation. To obtain this designation Ms. Campbell had to first obtain the AINS designation. (The AINS required three insurance courses with three required tests.) She then had to successfully complete three additional AU courses.

Again, congratulations Sandra.

Business Interruption Insurance

Business interruption insurance can be as vital to your business survival as fire insurance. Most people never consider opening a business without buying insurance to coverage damage due to fire and windstorms. But, many business owners fail to think about how they would manage if a fire or other disaster damaged their business premises so that they were temporarily unusable. Business interruption coverage is not sold separately. It is added to a property insurance policy or included in a package policy.

A business that has to close down completely while the premises are being repaired may lose out to competitors. In healthcare particularly, retention of key employees must be considered. A quick resumption of business after a disaster is essential.

1. Business interruption insurance provides the following coverage's if your company has to vacate its premises due to disaster-related damage which was covered by your property policy, such as a fire.
 - A. It covers the profits you would have earned, based on your financial records had the disaster not occurred; and,
 - B. It covers operating expenses, like electricity, that continue even though business activities have come to a temporary halt.

2. Make sure the policy limits are sufficient to cover your company for more than a few days. After a major disaster, it can take more time than many people anticipate to get the business back on track. There is generally a 48-hour waiting period before business interruption coverage kicks in.
3. The price of the policy is related to the risk of a fire or other disaster damaging your premises. All other things being equal, the price would probably be higher for a restaurant than a real estate agency, for example, because of the great risk of fire. Also, a real estate agency can more easily operate out of another location.

Another aspect of business interruption insurance is Extra Expense Insurance. Extra Expense Insurance reimburses your company for a reasonable sum of money that it spends over and above normal operating expense to avoid having to shut down during the restoration period. Usually, extra expenses will be paid if they help to decrease business interruption costs. In some instance, extra expense insurance alone may provide sufficient coverage without the purchase of business interruption insurance.

If you would like to know more, please contact Malcolm Johnsey at mjohnsey@coastalins.org.

~HWCF Thanks You~

Thank you for your business and continued support. We wish you a prosperous 2012.

Wray Smith and Rachel Bigley
HWCF Underwriting

the *Compass*

P.O. Box 211359
Montgomery, AL 36121
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COASTAL INSURANCE RRG - *Thank You*

As we begin 2012, we want to thank you for your business. Coastal insures medical related businesses. Therefore, your interests and concerns are our interests and concerns.

Like you, the underwriting department continually searches for ways to meet the needs of our clients and be cost efficient. As you know, we usually email and snail mail renewal applications. The vast majority of our clients prefer email. **Unless we hear objections, for the 2013 renewals, we will email the applications and stop sending a paper copy.**

If you need services or insurance products that we are not supplying, please let us know. If the services that we are delivering can be delivered in a more helpful or efficacious manner, please let us know.

Thank you again for your business and we look forward to working with you in 2012.

Wray Smith, Underwriting
334-323-4116 Direct Number
wsmith@coastalins.org email

