



## **Did Hurricane Irene Destroy Your Medical Records? Let MBS help...**

Last weeks hurricane caused major devastation up and down the east coast. So much has been destroyed and many of our clients have been calling to inquire ***how to handle their lost and damaged property***. One thing that is a top worry with many of our Physicians is the destruction of medical records that they have incurred.

*So at MBS we pooled our resources and figured out the best ways to deal with this situation with as little repercussions as possible. Below is the list that we have put together:*

1. The physicians must ***be careful about how they dispose of any destroyed/unsalvageable records***. They cannot simply put them on the curb to be taken away due to HIPAA laws.
2. If possible, ***a patient's chart should be recreated*** through other means with the current date of recreation.
3. If records were damaged but salvageable - ***reasonable efforts should be made to preserve them***. There are companies that specialize in document remediation. If a company is retained to assist in document remediation - the physician should make sure he obtains a "business associate" agreement under HIPAA.
4. With charts that have been completely destroyed – ***Physicians should make sure the new chart reflects that the patient's history is uncertain due to the inability to obtain information post-flood***, which occurred on such and such date. The chart should also reflect reasonable efforts that were undertaken to obtain a reliable history - new history forms - discussions with patient/family members, etc.
5. We know that many health insurance carriers require an attestation form to be completed, signed and dated as soon as possible after the discovery of the loss of the record. ***We recommend that the physician call MBS to see what their health insurance carrier will require***. The attestation forms generally require the person signing the form to attest to partial or complete destruction. Please see the attached sample form that the physician might want to use but again - each health insurance carrier might require one.



6. The physician should report to their General Liability/Property insurance carrier as well. ***They should save documentation of a letter from the property insurance carrier/inspection verifying the flood.*** This will be important to prevent claims of spoliation - as it will evidence that there was no intentional act to destroy the records. This should be done because intentional acts of destruction (spoliation claim) are not covered under the professional liability policy.
7. We also recommend that physicians take it a step further and ***notify all patients whose charts were destroyed and that it was a result of the flooding*** - then send each patient a history form to complete / insurance form, etc. Keep a copy of the letter sent to the patient in the new chart.

Just a reminder - going forward all medical records should be kept off of basement floors and stored safely.

If you have any other questions or need further clarifications please call our toll free number **1 (800) 347-3417** and a member of our customer service team will be happy to assist you. Or visit our website at [www.MBSInsure.com](http://www.MBSInsure.com)

\*\*\* Please note that these are only our recommendations and should not be construed as legal advice...MBS recommends that Physicians also consult with their personal counsel to determine if there are any further things necessary to do. \*\*\*

Thank you,

A handwritten signature in black ink that reads 'Michael Berud 'Saba'. The signature is written in a cursive, flowing style.

President & CEO