



# provisions

## NATURAL DISASTERS & MPL IMPLICATIONS



## DISASTER MITIGATION TALKING POINTS

The lack of predictability and the potential long-term effects of a natural disaster can cripple an unprepared healthcare entity.

- 
 Provider groups reported an average of **4.2 weather-based interruptions annually**.<sup>\*</sup>
- 
 These events cost between **\$28k** and **\$22M** in facility damage or service interruptions.
- 
 Insureds can visit [ProAssurance.com/DisasterMitigation](https://ProAssurance.com/DisasterMitigation) for strategies and resources for improving patient safety and reducing liability risk in the event of a natural disaster.
- 
 In-depth advice regarding flood damage can be found in our [Knowledge Library](#).

<sup>\*</sup>63 groups were surveyed for a congressional report.

## A Word on Our Issue

### Responding When Disaster Strikes

**We're sorry to report that the theme for this month's issue was taken from our cancellation of the ProAssurance 2022 Leadership Elite meeting.** The Streamsong Resort sustained property damage as a result of Hurricane Ian and closed during the dates of the event.

Further, with the severity of damage across Florida, we felt it best to not further stress the state's infrastructure with an elective event. Our thoughts are with those impacted by Hurricane Ian as they begin to recover.

Hurricane season is an ongoing reality many in our coastal communities must manage on a regular basis. Occurrences such as Hurricane Ian's sudden increase to a nearly Category 5 hurricane are an unfortunate reminder of today's reality—natural disasters are increasing in both frequency and severity.

Natural disasters have a significant impact on our communities, particularly the healthcare providers we serve. In addition to lending their skills to caring for those caught up in the aftermath, the damage caused by storms, fires, and the like create liability concerns that must be managed.

ProAssurance is proud to serve our insureds, both in creating a disaster mitigation plan to prepare for potential loss and in managing the liability of the aftermath should disaster strike. And we thank you, our agency partners, for your efforts to check in with your clients and offer support in their time of need.

In this issue, we will outline resources to address the current damage associated with Hurricane Ian and more broad disaster mitigation strategies. Please feel encouraged to use these in your own preparation efforts as well as passing them to your clients should they require assistance.

<sup>\*</sup>See page 8 for further details.

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**ProVisions** is ProAssurance's monthly agent magazine. If you or your colleagues do not receive the digital version, email [AskMarketing@ProAssurance.com](mailto:AskMarketing@ProAssurance.com). Please include names and email addresses for everyone who would like to subscribe.

# Mitigation & Preparation

## WHAT TO DO BEFORE DISASTER STRIKES

The lack of predictability and the potential long-term effects of a natural disaster can cripple an unprepared healthcare entity. Proper emergency management preparation and mitigation can vastly decrease vulnerabilities during a natural disaster.

According to Lisa Van Duyn, Vice President of Risk Management, healthcare entities have gotten better at responding to disasters because of COVID, but a detailed plan is still essential.

“The pandemic really made us think about preparation and connectivity in ways we hadn’t before,” she said. “And that pivot toward telemedicine has certainly benefited patients and practitioners, but a detailed emergency management mitigation plan will help reduce the devastating impact a natural disaster can have on an entity as they strive to deliver safe patient care.

“It all comes down to preparation. Because once that hurricane is moving inland or that fire is raging outside your practice door, it’s too late. You need to know what you’re going to do before it happens.”

There are extensive resources available to healthcare entities for preparation. Below you’ll find strategies and resources for helping your clients improve patient safety and reduce liability risk in the event of a natural disaster, which can be integrated into a general emergency preparedness and management plan.

### MITIGATION

Natural disaster mitigation strategies are unique in that they focus on reducing the severity of the impact, instead of preventing the hazard. A [risk assessment](#) should provide the basis for [mitigation strategies](#) to improve readiness, response, and recovery.

### ACTION ITEMS:

- ☑ **Identify mitigation activities required by law**, accreditation by professional organizations (e.g., Joint Commission [Emergency Management Elements of Performance](#)), and participation in government programs [e.g., [Centers for Medicare and Medicaid services \(CMS\) Emergency preparedness rule](#)].
- ☑ Based on the risk assessment, **prioritize facility-specific mitigation measures**, such as redundancy of power, communications, and data management systems [e.g., obtaining uninterruptible power supplies (UPS) and emergency standby generators for critical equipment]; installing water-tight subbasement doors; reinforcing tornado/earthquake safe rooms; installing window film to prevent injuries from shattered glass.
  - › FEMA has various Hazard Mitigation Assistance grant programs, including benefits for [hospital power generators](#).
  - › Review insurance policies to determine whether they adequately cover potential losses.



## MITIGATION AND PREPAREDNESS RESOURCES AND TOOLKITS

[Emergency Preparedness Rule](#)—CMS

[Preparedness Planning for Your Business](#)

Ready.gov—Emergency Response Plan

[Hospital Preparedness Checklists and Tools](#)

ASPR’s Hospital Preparedness Program (HPP)

[Incident Action Plan](#)

California Hospital Association

[Hospital Evacuation](#)

California Hospital Association

[Hospital Repopulation After Evacuation](#)

California Hospital Association

[National Resource Guide for Disaster Preparedness](#) (PDF)

Conservation Center

[Hurricanes and Floods](#)

[Hurricane Risk Mitigation and Preparedness Checklist](#)

ProAssurance

[Tips about Medical Devices and Hurricane Disasters](#)—FDA

[Practice Preparation Checklist for Hurricane Season](#)—DAS Health

[Flood Preparedness and Response](#)

OSHA

[Water Disruption Best Practices](#)

California Hospital Association

[Hurricane Readiness Checklist](#)—DHS

[Ready Business Hurricane Toolkit](#) (PDF)—DHS

[Ready Business Inland Flooding Toolkit](#) (PDF)—DHS

[Public Health Emergency Resource for Professionals](#)—HHS

## PREPAREDNESS

Preparedness involves a continuous process of planning, training, testing, evaluating, and correcting to ensure the best disaster response and recovery possible. The cycle of preparedness begins with risk assessment and results in a plan. The plan should include training that helps ensure everyone knows their roles and responsibilities and can perform their designated duties in response to a disaster. Due to the nature of natural disasters, preparedness and mitigation strategies may overlap.

### ACTION ITEMS:

- ☑ **Conduct a risk assessment** [also referred to as a [hazard vulnerability analysis](#) (HVA)] to identify potential geographic vulnerabilities in practice locations. For example, geographic vulnerabilities include hurricanes in coastal areas, earthquakes on the west coast, and blizzards and ice storms in increasingly expanding areas across the United States.
- ☑ **Prepare for each vulnerability identified in the risk assessment.** For example, have plans, agreements, protocols, and policies in place for:
  - › [Patient evacuation](#) to another facility to continue care in the event of facility destruction, [patient transfer to an alternate care facility](#), or [sheltering in place](#).
  - › Increased staffing immediately after a natural disaster, for example, granting temporary privileges to clinicians.
  - › Alternative means of meeting essential building utility needs, for example, maintaining healthcare operations during [power outages](#), including [protecting refrigerated vaccines](#) and [maintaining water supply](#).
- ☑ **Create a crisis management team and designate a command center.**
- ☑ **Develop an effective emergency response plan**, which may include an [Emergency Operations Plan \(EOP\)](#) and a [Continuity of Operations Plan \(COOP\)](#), for Joint Commission accredited organizations.
- ☑ **Develop a business continuity plan.**
- ☑ **Develop and implement disaster preparedness training programs.**
  - › Plan, test, and simulate the most likely disaster scenarios that may occur.
  - › Review the results of simulations and facility response to identify opportunities for improvement.
- ☑ **Develop a plan for communication with stakeholders.**
  - › Maintain a contact list for the supplies, services, and community/state/federal resources that will be necessary during response and recovery.
  - › Include process for patient identification and family notification in an emergency.
  - › Appoint and train a spokesperson and backup spokesperson.
  - › Be prepared to use social media.

### BEYOND HURRICANES

The CDC has [a number of specific resources](#) on how to prepare for and manage dangerous natural events, including extreme **hot** and **cold** temperatures, wildfires, and earthquakes.

### WILDFIRES

[Wildfires](#)—CDC

[EXCHANGE Newsletter, Issue 10, 2020](#)

ASPR TRACIE

### EARTHQUAKES

[Earthquakes](#)—CDC

[Earthquake Preparedness for Community Clinics and Health Centers](#)

California Primary Care Association and National Association of Community Health Centers

[Earthquake Drills for Healthcare Organizations](#)

Great ShakeOut

.TXT

After developing a thorough mitigation and preparation plan, healthcare providers should then focus on their response and recovery plan. We have compiled resources and strategies on our [Natural Disaster Mitigation, Preparedness, Response, and Recovery](#) site.

Many of these resources can be used to ensure you are prepared as well. As you share this information with your clients, take a moment to ensure your office records will be safe during an adverse event and that you will still be able to service your insureds. The peace of mind that comes with preparation is well worth the time you put into it.



**Lisa Van Duyn**  
Vice President,  
Risk Management

# Hurricane Ian Information

Our thoughts are with all those who are affected by Hurricane Ian. As Florida residents begin to recover, ProAssurance is ready to provide information and assistance with any storm-related concerns. The storm has likely interrupted business, and we are committed to treating our insureds fairly with flexibility regarding payments, applications, and similar operations.

Frequent risk management questions following extreme weather include missing or damaged medical records, destruction of medications, notifying patients, and more. If your clients have questions, our Risk Consultants are available to help at **844-223-9648** or [RiskAdvisor@ProAssurance.com](mailto:RiskAdvisor@ProAssurance.com).

For other questions regarding professional liability policy issues, please refer your clients to the following:

**CLAIMS: 877-778-2524**

**COVERAGE: 800-252-3628**

**All Other Questions: 800-282-6242**

For NORCAL Group insureds, please call **844-466-7225**.

## DEPARTMENTS OF INSURANCE ORDERS/STATEMENTS

ProAssurance continually monitors communications from Departments of Insurance for directives related to professional liability coverage and our insureds. We will continue to monitor the situation and will post updates to our website.

The Florida Office of Insurance Regulation has issued an emergency order directing all insurance companies to provide support to insureds in Florida.

To comply with the order and ensure that our insureds are protected during this difficult time, ProAssurance is temporarily postponing all cancellations and non-renewals in Florida until November 28, 2022. We are also extending grace periods for premium payment and deadlines for submission of required information until November 28, 2022. With regard to claims reporting or documentation, it is suggested any new claim be reported as soon as you are reasonably able to do so in order to protect you from any statutory or other court-imposed deadlines.

## RESOURCES:

[State of Florida Division of Emergency Management](#)

[State of Florida Division of Emergency Management disaster planning](#)

## ASSISTANCE FOR THOSE IN NEED

We know the storm brought challenges in accessing food, water, and other essentials. There are numerous options to help—from volunteering time to local relief efforts, to giving financially or through donations to many worthy organizations, including a few listed below.

### The Red Cross:

You can [donate online, by mail, or via phone](#). The group is also asking for blood donors.

### Florida Disaster Fund:

The state's official private relief fund was "established to assist Florida's communities as they respond to and recover during times of emergency or disaster," according to its website. [Learn how you can help.](#)

### Volunteer Florida:

This state agency has [several volunteer positions available](#) to assist with Hurricane Ian recovery efforts, such as volunteering with the Red Cross or assisting with mental health services.

# Complete the Loss Prevention Seminar by Policy Renewal

*All activities must be completed within the policy term to be eligible for potential premium credit.*

One of the benefits of being a ProAssurance insured is the ability to save on annual policy premiums by participating in educational seminars at no additional cost. This year's physician loss prevention seminar, Back to Basics, analyzes the new risks that have emerged in recent years—and how to adjust protocols and procedures to keep physicians and their patients safe.

ProAssurance insureds who complete the virtual 2-hour seminar may be eligible for a premium credit up to 5% depending on the program through which they are insured and the state in which they practice.

## Don't Let Your Clients Miss the Deadline to Save

To be eligible for premium credits or discounts, seminars must be completed by the policy renewal date.

In addition to the annual physician loss prevention seminar, insureds also have access to a library of online seminars that may be completed for additional premium discounts. They can earn up to an additional 2% premium discount, to be applied at policy renewal. These offerings, including individual seminar details, can be found in the SSP under the seminars tab. Practice administration staff of ProAssurance-insured medical practices are also encouraged to participate. Practice administrators can learn about new trends in enhancing patient safety and reducing risk through the Risk Management Booster.

Thank you for helping your ProAssurance clients qualify for premium discounts. Contact your ProAssurance underwriter at 800-282-6242 if you have questions or visit [ProAssurance.com/Seminars](http://ProAssurance.com/Seminars) for answers to commonly asked questions. For information on CME credits, contact your Risk Management team at 844-223-9648. Please note that once an insured has completed an online program, it cannot be repeated for additional CME or premium discount.



## ProAssurance Welcomes LaTina Jensen

We are pleased to announce that LaTina Jensen, MBA, CIC, has joined ProAssurance as Senior Business Development Representative for the Midwest Region, effective September 12, 2022.

LaTina comes to us with more than 20 years of experience in the insurance industry. Most recently, she was with Keane Insurance Group as a Healthcare Practice Consultant. Prior to that role, she had extensive experience on the company side with Coverys as an account executive on the direct side of their business as well as claims and underwriting experience at MedPro, where she met and worked with ProAssurance team member Sean Holsworth. She earned her bachelor's degree in Business Management and Ethics from Indiana University and her MBA from Davenport University.

LaTina's primary responsibility will be our agent relationships in Illinois, Ohio, and Kentucky. Her extensive experience makes her a vital member of the ProAssurance team. You can reach her directly at **517-347-6212** or [LaTinaJensen@ProAssurance.com](mailto:LaTinaJensen@ProAssurance.com).

**Please join us in welcoming LaTina to ProAssurance and wishing her success in her new role.**



## Please Remove All References to NORCAL Mutual on Your Agency Websites

As part of the demutualization process, NORCAL Mutual was renamed NORCAL Insurance Company, or NORCAL—referred to as NORCAL or NORCAL Group in running text. To clarify that the organization is no longer a mutual, please update any references to NORCAL on your website.

If you need updated logos, flyers, or other sales materials, email [AskMarketing@ProAssurance.com](mailto:AskMarketing@ProAssurance.com).

# Meet Your Underwriter

ProAssurance underwriters are key resources for developing relationships with our agents to write profitable new business and retain existing policyholders. To help you get to know our staff, we will be selecting Regional Underwriters to feature each month.

## ELYSIA CHARLES Underwriter – Northeast Region



### How long have you been in the insurance industry? And how much of that has been with ProAssurance?

I've been in the insurance industry since 2013, right out of college, and started with NORCAL in October 2017 and came to ProAssurance after the acquisition.

### What do you enjoy most about your job?

I enjoy providing prompt service and responses to our agent partners and insureds. Communication is a very important aspect of my job, and it's one of my favorite parts of my position.

### What types of new business accounts do you write?

I work in multiple states, and the type of accounts I manage varies in each.

### Tell us about you.

I have two dogs, Bocephus and Jessie, and they are both eight years old. One of my favorite things is hanging at the river on summer days.

## CATHLEEN AVILES Associate Underwriter – West Region



### How long have you been in the insurance industry? And how much of that has been with ProAssurance?

I have been in the insurance industry for the past 19 years and joined ProAssurance six months ago.

### What do you enjoy most about your job?

I am enjoying learning a new line of business for me, and the team is supportive and full of good information and advice.

### What types of submissions would you like to see more of?

I'd like to see more family medicine and psychiatry submissions.

### Tell us about you.

I start with wool fiber and spin it into yarn for knitting and crocheting. There are two spinning wheels in my house: a modern upright from a Toronto wheel builder and a beautiful electric spinner from Washington.



## SHANTA BROWN Senior Underwriter – Southwest Region



### How long have you been in the insurance industry? And how much of that has been with ProAssurance?

I have spent 18 years in medical malpractice and joined ProAssurance as part of the NORCAL acquisition 18 months ago.

### What do you enjoy most about your job?

I enjoy that I am never bored with my work, and I enjoy the analytical aspect of underwriting.

### What types of new business accounts do you write?

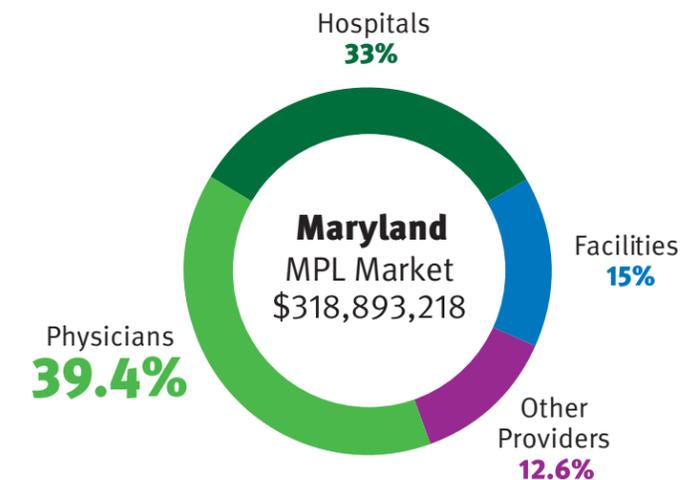
I write various types of individual and group policies with differing types of rating structures and exposures.

### Tell us about you.

I enjoy cooking, painting, hiking, gardening, and spending time with family and close friends.

## NORTHEAST REGION MPL State Profile Maryland

- PRA** New Business Paper
- 10** 2021 Rank in MPL Market
- 3** 2021 ProAssurance Industry Rank



### Tort Laws

- **Limits on damages for pain and suffering:** \$860k cap on non-economic damages with \$15k annual increase
  - › Md. Code Ann. Cts. & Jud. Proc. §3-2A-09 (2005)
- **Limits on contingent attorney fees:** Court approval if disputed
  - › Md. Code Ann. Cts. & Jud. Proc. §3-2A-07 (1986)
- **Reform of collateral source rule:** None
- **Periodic payment of future damages:** Discretionary
  - › Md. Code Ann. Cts. & Jud. Proc. §11-109 (1986)
- **Statute of limitations:** Earlier of 5 years from injury or 3 years from discovery
  - › Md. Code Ann. Cts. & Jud. Proc. §5-109 (1987)

### Abortion Law

In April, the Maryland legislature overrode Gov. Larry Hogan's (R) veto of a measure ([HB 937](#)) that expanded access to abortion care. The law allows nurse practitioners, midwives and physician assistants to perform abortions and establishes the Abortion Care Clinical Training Program, for which the governor must include \$3.5 million in the annual state budget. It also requires private health insurance plans to cover abortion care and eliminates administrative barriers to Medicaid coverage of abortion. The law went into effect in July.

### Prejudgment Interest

- **Tort actions rate:** Generally, because damages are unliquidated, interest is not allowed.
  - › *Taylor v. Wahby*, 314 A.2d 100 (Md. 1974)
- **Postjudgment Contract and Tort Actions Rate:** 10% per annum.
  - › Md. Code Ann. Cts. & Jud. Proc. §11-107
- **Accrual date:** The date of judgment
  - › Md. Rule 2-604

### Impactful Legislation

**SB 167**—Enacted 4/12/22. Goes into effect 10/1/22. This bill amends current statute to allow the Insurance Commissioner to require an insurer to fulfill policy obligations or pay a claim or an amount due under an insurance policy. It also authorizes the Commissioner to require payments that were previously inappropriately denied, under certain circumstances.

**SB 207**—Signed into law 4/21/22. Goes into effect 10/1/22. This enactment adopts the NAIC Data Security Model Law and requires insurers to establish a cybersecurity program and implement a cyber breach notification and investigation plan. It exempts HIPAA-compliant organizations from cybersecurity program and breach investigation requirements. Those entities must comply with breach notification requirements.

### One-Party or Two-Party State

Maryland's Wiretapping and Electronic Surveillance Act stipulates that it is a two-party consent state.

In this state, it is a criminal offense to tape-record a conversation without the consent of all involved parties. Md. Code Ann. Cts. & Jud. Proc. §10-402.

# News & Updates

Monthly updates from the  
Medical Professional Liability  
Insurance field

## Extreme weather derails healthcare delivery across the country, costing millions: report

A majority of health systems have experienced extreme weather events such as wildfires or hurricanes within the past five years, though just over a third say they've implemented a climate action or preparedness plan for any future weather-based disruptions, according to a congressional report. (Fierce Healthcare)

## California enacts COVID-19 misinformation law for physicians

California physicians who spread misinformation about COVID-19 and treatments for that disease could face penalties under a new law. Gov. Gavin Newsom signed Assembly Bill 2098, which designates "the dissemination of misinformation or disinformation related to the SARS-CoV-2 coronavirus, or 'COVID-19,' as unprofessional conduct." Physicians found doing so could face sanctions from the state's licensing boards and some news reports described the law as the first of its kind in the nation. (Medical Economics)

## How Google is tackling the opioid crisis in Ohio

Google is working with an addiction treatment center in Ohio as it tries to tackle the opioid crisis. The center enters patients' drug use history, along with their medical records, into a database to provide individualized treatment plans. (Beckers Hospital Review)

## North Carolina Supreme Court rules nurses can be held legally liable for medical mistakes

The North Carolina Supreme Court has ruled nurses can face legal charges for medical injuries, striking down a 90-year-old precedent. The ruling passed a 3-2 majority. Justice Tamara Barringer, a dissenting justice, said the court overreached in its opinion. (WNCT News)

## Leadership Elite Cancellation

*As part of our commitment to keeping you apprised of what is happening within the organization and the MPL industry, we'll be delivering much of the content planned for the live Leadership Elite meeting as webinars over the next several weeks.*

The benefit of the live format is that we are able to expand the audience to include all appointed agents and their agency staff working on ProAssurance accounts.

**Invitations, including the links to register for these events, will be sent via email.**

### ALL AGENT WEBINARS

**PRESENTER:** Mallory Early, Risk Management Manager  
**TOPIC:** Post-Roe MPL Implications  
**DATE:** Thursday, October 27  
**TIME:** 1 pm – 2 pm CT

**PRESENTER:** Bill Burns, MPLA  
**DATE:** Wednesday, November 2  
**TIME:** 1 pm – 2 pm CT



# NORCAL App Decommission

With NORCAL Group joining the ProAssurance family of companies, there have been ongoing efforts to combine and consolidate our business process to create a unified user experience for our insureds. As part of that effort, we will be transitioning users to MyACCOUNT and decommissioning the MyNORCAL app.

## DECOMMISSION TIMING

The Risk Management CME materials on the app will be available until November 1, 2022. Your clients may access and finish any CME activities using the app prior to the deadline. We suggest they delete the MyNORCAL app from their devices on or after 11/1/22.

Our August issue of Claims Rx is the last new item that will be uploaded to the app. However, your clients can continue to access the full library of NORCAL CME materials—as well as all new CME content for 2022—via their MyACCOUNT login at [norcal-group.com](https://norcal-group.com). The login credentials for the app are the same as your clients' online MyACCOUNT login.

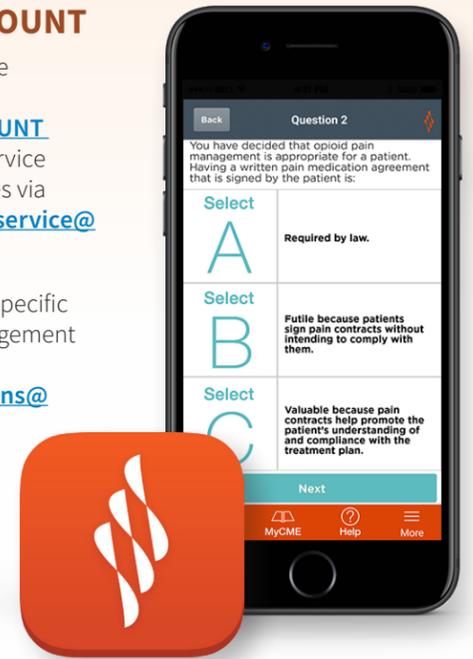
Records of all completed courses are maintained on our internal systems and are available via MyACCOUNT, so you and your clients do not need to take any additional action to record completed CME activities as the app is decommissioned.

## ACCESSING MYACCOUNT

If your clients need assistance logging in or navigating their account, our online [MyACCOUNT guide](#) can help. Customer service can also help with login issues via **844-4NORCAL** or [customerservice@norcal-group.com](mailto:customerservice@norcal-group.com).

If you have questions about specific CME activities, the Risk Management team is available to help at **855-882-3412** or [riskolutions@norcal-group.com](mailto:riskolutions@norcal-group.com).

We will continue to share updates as we finalize our CME calendar and educational opportunities for 2023.



## Policy Visibility Issue within the ProAssurance Secure Services Portal

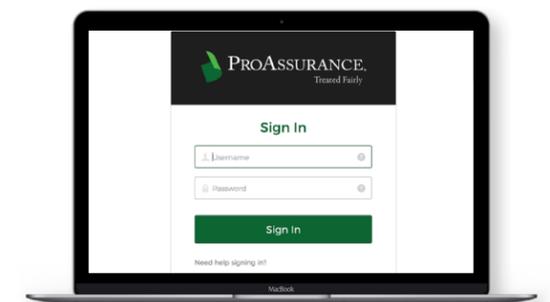
We are aware of an issue within the ProAssurance [Secure Services Portal](#) (SSP) where some users have reported limited or intermittent visibility to policy information and other data associated with their accounts.

We have identified the root cause to be related to a back-office systems change. Our Business Operations and Information Technology teams have made addressing the problem their highest priority. All issues are related to SSP users not being able to see some of their own client data; in no instance has data been inappropriately accessible to an unauthorized user.

If your account, or your clients' accounts, have been affected, please notify Web Support by email [WebSupport@ProAssurance.com](mailto:WebSupport@ProAssurance.com) or phone **205-439-7956**. Web Support is able to implement spot refreshes of individual SSP user accounts as a temporary solution until the issue's root cause is resolved.

We apologize for any inconvenience. An update around resolution of the issue will be posted in the Secure Services Portal.

We will continue to share updates as we finalize our CME calendar and educational opportunities for 2023.



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