

## New Directions in Care Bring Added Risk

PTs have always advocated general physical fitness for their patients. But that interest is becoming more focused, with increased emphasis on fitness programs for patients with chronic, disabling conditions and those at risk for such disorders. In fact, it was this evolving need that prompted the American Physical Therapy Association (APTA) to adopt the Physical Fitness for Special Populations (PFSP) initiative.<sup>1</sup> The APTA initiative was a response to a perceived national need, according to Lisa Culver, PT, DPT, MBA, associate director, APTA department of practice, who spearheads the new initiative. “It comes at a time of heightened awareness of the health risks of obesity, diabetes, and cardiovascular disease, and of the key role fitness plays in preventing or ameliorating these conditions.” Fitness services include interventions to improve cardiovascular and pulmonary endurance, muscle strength and flexibility, body composition, and relaxation. A fitness program, or the beginning components, can be delivered in a variety of settings: the intensive care unit, step-down unit within the hospital, the patient’s home, and—for long-term maintenance as the patient progresses—a health and fitness club.



### The liability risks

As with all physical therapy services and any health profession, the population being treated suggests specific liability risks and considerations. Bariatric patients, for example, may present safety issues in using exercise equipment such as a treadmill or stationary bicycle. Patients who are elderly may pose special safety risks as a consequence of osteoporosis, general frailty, and balance problems. Diabetic patients may

have problems following their medication and dietary regimens faithfully and are prone to foot ulcers.

How can PTs reduce the risk of working with patients like these? According to Kathleen Lewis, PT, JD, a physical therapist and attorney in Wichita, KS, the key is to “gear your treatment plan to the needs of the particular patient, rather than have a blanket, one-size-fits-all program. If you don’t do that, you are certainly going to increase your

liability risk.” Be aware, for example, that obese patients are at risk for diabetes and cardiac disease. As a result, you’ll need to ask for assessment data as part of your intake process. If the information isn’t available, ask the patient’s permission to consult with his or her healthcare provider or suggest a referral for testing. Take similar precautions with elderly patients. Don’t assume that

patients with diagnosed diabetes have their disease under good control. Again, ask permission to consult the patient’s healthcare provider. You may also want to team up with a nutritionist or a diabetes educator. Because foot ulcers can be a problem, make it a practice to inspect the patient’s feet and make sure he or she has appropriate footwear.

Be sure, too, that the fitness program you design is not only within your scope of practice, as defined by state law, but that it’s also within your scope of personal competence. This is a fundamental risk reduction strategy.<sup>2</sup> Therapists using aquatic exercises, for example, need to be well-trained in pool safety for themselves and their patients and should consider being certified in this specialty area. Lewis recommends that PTs do a self-assessment to explore the limits of their competence with regard to the individual

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**Endorsed by:** 

patient’s condition and therapies being offered.

In this new arena, as in any other, the tried and true precautions apply. Be familiar with your State Practice Act and comply with its provisions. Document your work carefully, at a level of detail based on the complexity of the patient’s condition and the intricacy of your plan of care. Be sure the services you provide address the five components of PT practice: examination, evaluation, diagnosis, prognosis, and intervention. And always stay current with your education. Above all, know what your professional liability insurance policy covers. Make sure the services you deliver are professional PT services, as defined by your practice act, and distinct from more general health/wellness/fitness-related services. You may want to look into additional fitness coverage options through HPSO (see “Did you Know...,” on page 2 and “Wearing two hats” on page 3).

Helping disabled or at-risk patients stay fit can be both especially challenging—and rewarding. Liability concerns are part of the picture, as they are in any new endeavor, but with proper attention, you can avoid the pitfalls and enjoy the rewards.

**REFERENCES**

1. American Physical Therapy Association. Physical fitness for special populations. [www.apta.org](http://www.apta.org) (Sept. 15, 2006).
2. Federation of State Boards of Physical Therapy. Continuing competence. [www.fsbpt.org/standards/competence.asp](http://www.fsbpt.org/standards/competence.asp) (Sept. 20, 2006).

# Did you know...

## ... HPSO is now offering professional liability insurance coverage to physician assistants and fitness professionals.

Physical therapists, counselors, pharmacists, and 70 other healthcare professions have long turned to HPSO to meet their professional liability insurance needs. Now HPSO has expanded these services to even more healthcare providers.

Fitness professionals—including certified strength and conditioning specialists; clinical exercise specialists; lifestyle and weight management consultants; swimming/tennis/golf instructors; yoga/pilates instructors; and group fitness/aerobic instructors—as well as physician assistants can now count on that same valuable malpractice protection of up to \$1 million each claim and up to \$3 million annual aggregate.\* Like you, they will receive coverages including:

... **24 Hour Coverage** on the job, off duty, or even if you change jobs.

... **License Protection\*\*** will reimburse you for your legal defense if you are

summoned to appear before a licensing or disciplinary board regarding your professional activities or conduct arising out of a covered license protection incident.

... **Defense Costs\*** covers all legal expenses incurred to settle covered claims against you—win or lose. This is in addition to your limits of liability.

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... **Defendant Expense Benefit\*** will reimburse you for lost wages and covered expenses related to your required appearance in court or defense proceedings resulting from a covered claim against you.

Refer your colleagues to HPSO. Tell them to visit us at [www.hpso.com](http://www.hpso.com). They can also call one of our service associates. Fitness professionals can call 888-273-4610, and physician assistants can call at 888-273-4686.

\*Please refer to your Certificate of Insurance for coverage and limits.

\*\*Does not apply to students.

## LESSONS FROM COURT

### Was this therapist negligent?

A 25-year-old woman suffered an anterior cruciate ligament tear as a result of a fall. After reconstructive surgery, she was evaluated at a hospital clinic and referred for physical therapy. At her first therapy session, she alleged, the physical therapist hyperflexed her injured knee, fracturing the bone plug and rupturing the graft. This maneuver created a new injury that required six surgeries, including two knee replacements. The plaintiff charged the physical therapist with negligence; the defendant said she was following the accepted standard of care. The jury found in favor of the plaintiff and awarded \$890,068 in damages.

Staff. (2006). *Medical Malpractice Verdicts, Settlements & Experts*, 15 (8), 26.

### Advice from the expert:

*PTs need to be cognizant of the type of surgery performed, tissue healing, and any protocols generated by their facility or the referring surgeon. Violating accepted protocols would generally be perceived as negligence.*

*That said, the standard of care remains what an ordinary, reasonable PT would do in a similar situation. In this case, the allegation of “hyperflexing” the knee would be a concern. Good risk management calls for the physical therapist to explain the intended intervention, get the patient’s agreement, and clearly document exactly what was done at each visit.*

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Send comments and questions c/o HPSO *Risk Advisor* at 159 East County Line Road, Hatboro, PA 19040-1218. Due to space limitations, all editorial sources and references may not be listed, but may be available on request.

#### SPECIAL THANKS TO:

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\* The risk management discount will be applied only to your individual professional liability insurance policy through HPSO at renewal. The discount cannot be combined with any other discount. Please note, this discount cannot be applied to our business owner policies at this time.

## Reducing your risk begins with hello

It should come as no surprise to know that patients and clients who perceive a provider as courteous, attentive, and having their best interests at heart are less likely to sue than patients and clients without these perceptions, especially if the outcome isn't exactly what they had hoped. Though the correlation between patient/client satisfaction and lawsuits is particularly well-documented for physicians, it can apply to all other healthcare professionals as well. With that in mind, you should consider the different ways you can improve your interactions with patients, noted James W. Saxton, a Lancaster, PA-based attorney and author of *The Satisfied Patient: A Guide to Preventing Malpractice Claims by Providing Excellent Customer Service*.

In healthcare, as in other fields, satisfaction begins with a first impression. "You need to invest in that first 10 seconds," Saxton said. Greet patients/clients by surname, unless they request otherwise. Look them in the eye, smile, "and treat them the way you

would want to be treated or the way you would want your parents to be treated." Before you begin working with a patient or client, take a few moments to explain what you are about to do and ask if he or she has any questions so you can assess the individual's comfort level and allay any concerns. Communicate clearly, using layman's terms, rather than clinical terminology. In addition, describe the treatment, any associated consequences, and how the patient can enhance its efficacy.

Throughout the visit, listen to concerns and expectations. Failed communication with patients or clients and their families is one of the most common causes of malpractice suits. "The importance of listening can't be overstated," Saxton said. He recommends that practitioners end the visit by asking, "Is there anything else I can do for you?" or "Can I answer any other questions?" Too often, he said, patients and clients feel that they were rushed. "Asking some type of open-ended question generally doesn't take more time and it sends patient satisfaction sky-high."

## Wearing two hats: Are you covered?

The typical working American changes careers between five and seven times during his or her lifetime, according to the National Career Development Association. Healthcare workers are no exception. In fact, a large number of healthcare professionals not only change jobs, but often they practice in more than one area simultaneously, carrying two active licenses. For example, a physical therapist may also work as a personal trainer at a gym, while an exercise physiologist might also be a licensed dietitian. If you're dually-licensed, adequate insurance is essential.

HPSO cautions that, as a rule, if you have a license in one field but are working in another that requires less training, your professional liability insurance coverage must match your license, not your current



job. Michael Liebowitz, president of the Risk and Insurance Management Society, agrees: "You always insure at the highest level. It's really that simple." Fortunately, HPSO will cover you for both professions with a single policy; your premium is based on the license with the higher level of risk.

If you have more than one credential and have questions about your coverage, call HPSO at 800-982-9491.

## Employed, self-employed, or LLC—Are you underinsured?

Theoretically, the difference between working for yourself and working for someone else is huge. In reality, many circumstances blur those lines. And being classified as employed, self-employed, or limited liability company (LLC) affects the kind of professional liability insurance you need.

If you draw a salary from an employer, your status is clear: You're an employee. If you practice on your own, your status also might seem obvious: You're self-employed. However, it's not as obvious if you perform professional services for one or several facilities as an independent contractor. What if you're employed during the day and provide services at another facility in the evening? Or, to add further confusion, if you incorporate yourself but are a single-person practice, are you still self-employed?

HPSO has a product to fit each of these classifications. If you work exclusively for a facility, a basic individual professional liability insurance policy for employed healthcare professionals suffices. If you perform professional services in a setting for 120 hours or more a year as a consultant, or you are an independent contractor, you need the comprehensive coverage of a self-employed policy. It protects all your professional services in the workplace, as well as services you offer to consulting clients.

But, let's say you establish a business, complete with a Federal Employer Identification Number. This can afford many privileges but may also open the door to risks for which you need to be protected. Even if you don't plan on hiring employees, you have created a new entity, and it's important to keep your assets and those of your business separate. If you are ever sued, you and your business can be named separately, so you need to make sure you are fully covered with a professional liability insurance policy for a small business.

If you are, or expect to be, practicing on your own, you may need to consider changing your HPSO policy. If you have any questions, e-mail us at [service@hpso.com](mailto:service@hpso.com) or call 800-982-9491.

# How to Avoid Profess

## Shield yourself from pitfalls

“Assessment and treatment errors are among the top causes of professional liability claims.”

**D**espite the best of intentions, every healthcare provider makes errors now and then. Fortunately, many prove harmless and go unnoticed by patients. Others, however, are not so innocuous and can trigger professional liability claims.

It's useful to know the errors that are most likely to prompt a professional liability claim so you can learn to avoid them. Here are some of the most common triggers, along with some advice on minimizing your risk.

### Top errors in healthcare

Assessment and treatment errors are among the top causes of professional liability claims. According to a recent report by CNA, the underwriter of your professional liability insurance policy, failure to properly assess patients are among the most severe (expensive) claims against physical therapists.<sup>1</sup> Failure to assess or treat patients' problems plague counselors, too, said Paul L. Nelson, executive director of the American Counseling Association (ACA) Insurance Trust. He also noted that 14% of the claims from 1997-2003 cited those allegations.

For PTs, treatment errors involving therapeutic exercises trigger lawsuits more than a third of the time.<sup>2</sup> “A patient may claim the therapist gave him an inappropriate exercise or too much exercise,” said Jonathan M. Cooperman, PT, DPT, MS, JD, president of the Ohio Physical Therapy Association. Failure to use safety equipment, like opting not to use a gait belt, also can lead to malpractice allegations if a fall occurs. So can burns. This type of injury may reflect failure to properly monitor patients—the second most common reason for professional liability claims against PTs.

Medication-related errors, another major cause of claims, can affect pharmacists in particular. A pharmacist, often faced with time constraints, may feel rushed to fill many prescriptions quickly and may provide the wrong dosage. He or she could give the right medication to the wrong patient or could even administer the wrong medication because of all the “look-alike, sound-alike” agents on the market today. Such errors generally account for around half of medication-based professional liability claims.<sup>3</sup>

Pharmacists can also face risk from a prescriber's mis-

takes. “Pharmacists have to make sure the medication ordered is appropriate for the patient,” said Michael D. Alfano, RPh, JD, a Philadelphia-based attorney. “A physician may prescribe a medication the patient is allergic to or request a dose that is outside the usual range. It's the pharmacist's duty to check with the prescriber if there's any doubt about a prescription.”



### Other causes of malpractice claims

Inappropriate relationships with patients can also land practitioners in court. And if there's proof that sexual misconduct was involved, chances are malpractice insurance won't come to the rescue. Most policies do not pay any damages connected to sexual misconduct and may not even provide for the client's defense. Counselors in particular should take heed, since sexual intimacy (real or perceived) is the top cause for claims against them, accounting for 17% of the claims reviewed by Paul Nelson of the ACA Insurance Trust. PTs, particularly those

# ional Liability Claims

specializing in women's health, also must make sure they keep relationships with patients strictly professional, said Cooperman, given that necessary contact could be interpreted as inappropriate touching.

Violating patient privacy is another liability hot button for all practitioners. (For an overview of the requirements imposed by the Health Insurance Portability and Accountability Act of 1996, read "Patient Privacy and HIPAA Hype," on page 4 of the 2003 *Risk Advisor* at [www.hpso.com/hipaa](http://www.hpso.com/hipaa).) Here, too, counselors should take extra care; breaching confidentiality, whether real or perceived, is the third most common reason for claims reported to the ACA Insurance Trust. For an example of such a case, see the November 2003 "Case of the Month" on the HPSO Web site at [www.hpso.com](http://www.hpso.com).

Many claims can also arise from inadequate communication with patients, in one form or another. For instance, failing to get informed consent is cited as a secondary claim in many professional liability actions. Dispensing medications to patients without offering to counsel them can put pharmacists at risk. And, as mentioned on page 3, if a patient is unhappy with your care, even seemingly small transgressions such as rushing the visit can increase the likelihood of a lawsuit.

## Know your duty and your limits

Since liability can arise when a healthcare practitioner violates the defined scope of practice, your first line of defense is to make sure you understand what you can and can't do according to the law as well as your practice act and other written guidelines.

Review your employer's requirements, limits, and procedures, as well as any imposed by your state. Also, be familiar with the code of ethics outlined by the professional organization for your field of practice. It's important, too, to keep current with evolving patient care protocols. Take continuing education classes, attend lectures, and read professional journals to stay abreast of

changes in your field of practice.

In addition, look for ways to improve patient communication. Ask patients plenty of questions, listen carefully to the answers, and do your best to ensure that they understand what you've said to them. These actions can decrease the chances that a patient will file a professional liability claim or even a complaint with a professional board or state agency that oversees standards of care.

Gayle Sullivan, RN, JD, an attorney from North Haven, CT, noted that "You don't even have to harm a patient to face professional discipline. Say a pharmacist makes a few dosage errors that do not result in any patient injury. If the state board learns of them from patients, it may investigate and take disciplinary action." For minor transgressions you may only have to pay a fine or take a continuing education course, but serious violations can result in suspension or revocation of your license.

As always, thorough documentation of each patient encounter is critical. Record your observations about the patient's status before, during, and after care; your treatments and the reasoning behind them; any comments or concerns the patient expressed; how you responded to those comments or concerns; and how the patient received any overall guidance or specific care instructions you gave. Detailed notes can go a long way toward protecting you if you're named in a lawsuit. They're proof of your efforts to meet the appropriate standard of care.

## What to expect if you're sued

You hope you will never find yourself at the center of a lawsuit, but if you do, you need to know how these suits typically unfold. First, the plaintiff's attorney files the complaint, and you're notified of the charges against you. Once this happens, you'll need to promptly notify your supervisor, your employer's risk manager, and HPSO. Never respond directly to the complaint or any other inquiries from the plaintiff's attorney; all communications should go

through the claims consultant and/or attorney assigned by CNA.

During the next stage, the discovery process, both sides collect information. You may have to answer questions in writing (interrogatories) or orally in an attorney's office (depositions) under oath and provide records or documents. The attorneys for both sides may subpoena witnesses to offer testimony or supply additional documents. They may also hire expert witnesses.

A pretrial hearing, which allows both sides to bring issues before the court, is next. The judge may set limits on the case or request clarification of certain points. Attempts to settle without a trial may follow, through court-ordered mediation or direct negotiations between the attorneys. If a settlement isn't reached, the case goes to trial, but it can sometimes take years for the case to be heard.

As you can imagine, a lawsuit is a grueling process, and the resulting damage to your reputation and personal assets can be devastating. Your best protection is to make sure you're adequately insured and to take steps to avoid the kinds of errors that invite claims in the first place.

## REFERENCES

1. CNA. Physical Therapy Claims Study. Available at [www.cna.com](http://www.cna.com). (Nov. 10, 2006)
2. Claims at a glance. *HPSO Risk Advisor*, Physical Therapy Edition, Winter 2001.
3. Claims at a glance. *HPSO Risk Advisor*, Pharmacist Edition, Winter 2001.

To learn more about obtaining informed consent, a common secondary issue in professional liability complaints, see the Web Flash in the newsletter section of [www.hpso.com/webflash2007](http://www.hpso.com/webflash2007)

# Thinking about Retiring or Taking a Leave of Absence?

The current workforce is aging and more healthcare professionals are considering retirement, while others may decide to take a leave from their careers to care for young children or aging parents. Still others decide to pursue a different career path that does not require their license. Nonetheless, many healthcare professionals want to keep their license active, especially after all the hard work they did to acquire it.

If you are thinking about retirement or decide to take a temporary leave of absence from your profession while maintaining an active license, you should also consider retaining your professional liability insurance policy. That's because you can still be sued as a licensed professional if you do any side work, volunteer, or even give advice to a friend, neighbor, or acquaintance.

The good news is that you will be entitled to a premium discount of 50%. In addition, your coverage is reduced to professional liability, license protection, and assault protection.\*

If you elect to take this option when renewing your policy, simply indicate "Retired/Leave of Absence Policy" on your premium invoice and return it with a check in the amount of your current premium minus a 50% discount to HPSO, 159 East County Line Road, Hatboro, PA 19040-1218. Or you can simply call HPSO at 800-982-9491; e-mail us at [service@hpso.com](mailto:service@hpso.com); or fax your requested change to 800-739-8818.

After we process the changes, we'll promptly send you a revised Certificate of Insurance.

\* Assault coverage is not available in Texas.

## MOVING?

Have you moved or are you planning to move? Did you change your e-mail address? Report your change of address or new e-mail address by calling HPSO at 800-982-9491, or writing to us at HPSO Risk Advisor, 159 E. County Line Road, Hatboro, PA 19040-1218, or e-mailing us at [service@hpso.com](mailto:service@hpso.com). You can also change your address online via the Virtual Customer Service Representative (VCSR) by logging on [www.hpso.com](http://www.hpso.com) and clicking the My Account button.

## Move Beyond That Mistake

Maybe you made a mistake that resulted in a patient's falling or receiving the wrong treatment. Even a lesser incident, such as giving a patient the wrong dosage of medication that caused no adverse effects, is still a mistake. Regardless of the severity, mistakes are stressful. They bring about concerns for patient well-being, as well as your own potential for liability.

If you make a mistake, your best option is to report it to your manager as soon as possible. Hiding the mistake will only increase your level of anxiety, as well as your chance of disciplinary action. It also can cause superiors and peers to think you are dishonest because you tried to hide something. Follow the procedures used by your facility and be prepared to answer questions about the incident clearly and concisely. It's also wise to inquire whether your institution has a confidential reporting system, or a no-blame policy, as recommended by the Institute of Medicine. Make

sure you comply with all state and federal requirements, as well as those of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). And notify HPSO at once, by filing an incident report online, by fax, or by mail, if you

think a claim may be brought against you. If the mistake resulted from a substandard setting within your facility, such as faulty equipment or short staffing, be proactive by taking steps to improve the situation. Start by notifying your supervisor, and continue moving up the chain of command, as necessary.

Making a mistake, even a minor one, can leave you doubting your abilities. Fortunately, you can take steps to regain your



confidence and help prevent future incidents. Stay up to date on your State Practice Act, take advantage of continuing education courses, read your professional journals, and make sure you're properly

trained on all new equipment and treatments, therapies, and medications. You can also reassure yourself by taking time to double-check your work.

If you find that you're still doubting yourself, consider jotting down a list of your positive qualities as a provider, and remember how often you help patients. Reporting mistakes can seem daunting but can ultimately improve patient care and reduce your risk of liability.

# What You Want To Know about Your Professional Liability Insurance

Most self-employed PTs assume that their professional liability insurance will cover all work-related lawsuits. But independent PTs often are asked to show proof of general liability insurance—for example, when they enter into a contractual arrangement for leasing or renting space; form an association with a practice group, clinic, agency, health club, or hospital; visit homes of clients; or use a booth at a community awareness event. Do you need to purchase separate general liability coverage in such situations?

Probably. Here's what you should keep in mind about your professional liability insurance policy through HPSO. If you are an individual, full-time, employed PT you have workplace liability coverage—which is similar to general liability insurance. The primary difference is that workplace liability coverage shares in the professional liability limit. Our general liability endorsement provides a separate limit of coverage.

Both types of insurance cover negligent acts and omissions that result in bodily injury or property damage that did not arise from the therapeutic relationship between you and the patient. In other words, both pay amounts for which you may become legally obligated because of injury or damage caused by an occurrence at the workplace—whether that workplace is your office, a facility where you provide services, or a patient's home. However, if you are self-employed and enter into a contractual arrangement for leasing or renting, use a booth at a community event, and/or go into patients' homes you may be required to have general liability to ensure you meet your contractual obligations.

Let's say a patient bumps into a piece of equipment while leaving your office and is hurt. Or, she trips and breaks her ankle. General liability coverage would compensate, subject to the limits of liability, in circumstances when a claim or lawsuit is filed

alleging bodily injury. General liability would also cover your defense costs.

The same principle applies if you break or damage something belonging to a patient. Perhaps you are in a patient's home providing services and you spill something on a valuable oriental rug. Your general liability coverage is intended to compensate for property damage and associated legal costs in a resulting claim or lawsuit, subject to applicable limits of liability.

When considering how much coverage you need, keep in mind that even though your workplace liability coverage may well serve the same function as general liability coverage, no one insurance formula fits all independent PTs, given the many venues in which you practice. Also, your practice may undergo frequent changes, so it's wise to consult HPSO and your accountant or lawyer to evaluate whether your current policy meets your needs. For more information call HPSO at 800-982-9491 with any questions.

**Pick a Direction. And Grow!**

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\* Business Skills in PT: Defining Your Business and Business Skills in PT: Strategic Marketing are not eligible for this discount.

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## PT CLAIMS STUDY

Physical therapists play a significant role in optimizing wellness, but if a patient is injured, you can become vulnerable to professional liability claims. For that reason, HPSO worked closely with our underwriter, CNA, to make a claim study available for our PT customers. This study examines key physical therapy liabilities and presents practical risk management strategies that can be incorporated into your clinical practice. Copies of the claim data study results are now available from CNA at [www.hpso.com/ptclaimstudy](http://www.hpso.com/ptclaimstudy) or by calling CNA directly at 888-600-4776.

## ARE YOU CONSULTING, TEACHING OR TRAINING, OR PROVIDING EXPERT TESTIMONY?

Your professional liability insurance policy provides coverage for medical incidents that result in injury or damage. But, for only \$25, you can add the Consulting Services Liability Endorsement to your policy so you are covered when you render advice or recommendations in your area of specialization in settings that do not involve direct patient care. To learn more about this coverage and how to add it to your professional liability insurance policy, go to [www.hpso.com/services](http://www.hpso.com/services). If you have any questions, please call our Customer Service Center at 800-982-9491, Monday-Friday, 8AM-6PM Eastern Time.

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