

INSURANCE IMPACTS OF COVID-19 ON THE HEALTHCARE AND SENIOR LIVING INDUSTRY

CONTACT

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Courtesy of AmWINS Group, Inc.

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The healthcare industry is arguably one of the most vulnerable industries to be impacted by the coronavirus (COVID-19). With more than 138,000 confirmed cases and 2,000 deaths in the United States [as of March 29](#), hospitals and other healthcare agencies, such as senior care facilities, have and will continue to face many unique challenges during this pandemic.

On February 4, The U.S. Department of Health and Human Services issued a [declaration](#) pursuant to the federal Public Readiness and Emergency Preparedness Act (PREP Act). In summary, the declaration was issued “to provide liability immunity for activities related to medical countermeasures against COVID-19.” While the scope of this declaration is subject to interpretation, it does not appear to broadly and definitively grant healthcare providers immunity from professional liability, and its application will depend on the individual facts and circumstances of each case. Therefore, proper insurance coverage and risk mitigation strategies should be maintained for insureds in the healthcare industry.

EMERGING AND CHANGING EXPOSURES

As the healthcare landscape evolves quickly to keep pace with the spread of the virus, resources are becoming strained and new exposures have emerged for many providers.

In general, we are seeing most healthcare markets be flexible in adapting and creating endorsements to address emerging exposures. **However, it's important to note that each carrier's response varies and is often exercised on a case-by-case basis.** To ensure necessary coverage is in place, retailers should consult their policy wording or their underwriter if any of the following exposures are present in their account. They also should review the specific carrier's reporting requirements for each.

Below are some of the main exposures in the healthcare and senior care space that have been impacted or have newly developed as a result of the COVID-19 pandemic.

Reduction in Staff

Typical exposures that are routinely seen in hospitals, nursing homes and other provider locations are being exacerbated by short staffing or overworked staff to cover shortages as caregivers suspected of having infection stay home. This can negatively impact the quality of care and lead to resident injuries at nursing homes or misdiagnoses in hospitals. We anticipate this exposure leading to an increase in claims of negligence and medical malpractice.

Re-Instating Retired or Inactive Healthcare Staff

To combat shortages in staffing, some states are asking former practicing physicians and nurses [to rejoin the healthcare workforce](#). Carriers are reviewing these additions on a case-by-case basis, but individuals will need to (re)apply for coverage to be considered. Many carriers are not viewing temporary practice in response to COVID-19 as a breach of permanent retirement provisions.

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Volunteers

While healthcare agencies have a regular volunteer base, many healthy citizens also want to donate their time to help fight the virus. Volunteers will have coverage if they are already on the policy, and if not, they will need to apply for coverage. In addition, there may be protection afforded to individuals under [Good Samaritan laws](#) in certain states.

Temporary Hospital Spaces

To keep up with anticipated patient demand, temporary hospital spaces are being erected across the country. Coverage may still be afforded if the temporary space is in a state in which the insured healthcare professionals are licensed to practice. While the [White House Coronavirus Taskforce](#) announced on March 18 that the Department of Health and Human Services issued a regulation to permit doctors to practice across state lines, carriers' position remains the same.

Telemedicine

With the [lifting of certain restrictions](#) required for Medicare reimbursement combined with [state actions](#), telemedicine is being used now more than ever to limit non-essential in-person interaction between patients and providers. Like temporary hospital spaces, coverage generally remains in place as long as services are conducted in the state in which the doctor is authorized or licensed to practice.

Childcare Services Offered to Staff

With many schools and daycare centers closed, healthcare and senior-care facilities are adding childcare services to enable their staff to be at work. This offering increases an insured's GL exposure as well as its exposure to COVID-19 as more people enter the building. The increased foot traffic can offset the restrictions facilities are putting in place on the number of visitors allowed into the building. Some carriers are extending GL coverage on CGL policies to cover temporary daycare services for children of staff members; however, the proximity of the children to sick patients, number of children in classrooms and adherence to other CDC guidelines are factors underwriters will consider.

Postponement of Non-Urgent Visits, Procedures and Surgeries

At the [recommendation of the CDC](#), hospitals and healthcare providers have been asked to postpone all non-urgent visits, procedures and surgeries to preserve staff, personal protective equipment and patient care supplies; ensure staff and patient safety; and expand available hospital capacity during the COVID-19 pandemic.

Practices that perform mainly elective or non-urgent surgeries will see a decrease in their exposure and revenue. For the duration of the pandemic, they may not need the same levels of coverage at the cost previously in place. Carriers are offering exposure-basis relief as well as policy and payment extensions on a case-by-case basis. Payment is not an issue for nursing homes at this point because the bulk of a facility's revenue comes from Medicare and Medicaid, which remains unchanged.

HEALTHCARE MARKET CONDITIONS AND ADDITIONAL CARRIER RESPONSE

In addition to the emerging and changing exposures discussed, we are seeing the healthcare market respond to the COVID-19 pandemic in the following ways.

Capacity

While overall capacity in the healthcare market does not appear to be an issue, many carriers are being selective about what new business and renewals they are willing to write. Some carriers are not even quoting new business for the next four to six weeks.

Pricing

Pricing in the healthcare segment, in general, continues to rise. However, this is driven by previous losses and market conditions prior to COVID-19. It's important for retailers to provide their clients with context of market conditions prior to the outbreak and remind them that most carriers are exercising flexibility on a case-by-case basis with regard to endorsements, payment terms and extensions during this time.

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Retailers can help position their insureds to potentially receive favorable coverage rates and terms by recommending the creation of a COVID-19 Preparedness Plan and Response document. This document should show the facility's plan for COVID-19 as it relates to residents, visitors and staff. It should also provide details about facility disinfection and cleaning, resident and staff COVID-19 safety education, and essential supplies available in the event of a lockdown (cleaning, disinfecting, medical, food, laundry, etc.) The document should be proactively provided to underwriters in advance of being asked in an application to show that the facility is engaged and proactive in mitigating this risk.

Exclusions

Most healthcare and senior-care policies do not have communicable-disease exclusions. However, there are a few carriers that have developed communicable-disease exclusion endorsements and are using them on a case-by-case basis.

Supplemental Applications

For nursing home accounts, most carriers have developed and are requiring the completion of an infection-control protocol application. The application asks questions about the facility's infection-control standards and measures for preventing the transfer of infection from staff to resident and between residents. Most applications also ask about testing for COVID-19, what the facility does if someone tests positive and if there are any residents that currently have COVID-19.

RISK CONTROL AND MITIGATION TIPS

To limit the spread of the virus and ensure a quick response and containment in the event of an outbreak on premises, our specialists recommend insureds implement the following risk-control and mitigation tips.

- Follow CDC guidelines to the very last detail.
- Document everything in great detail regarding how CDC guidelines are being followed and all steps are being taken to protect patients and/or residents and stop infection. If an infection does occur at a facility, this detailed documentation will put the facility in the best possible position to defend against litigation.
- Create a COVID-19 task force that meets daily to discuss all issues pertaining to the virus and protection from it.
- Make sure all staff are updated on emergency plans should an outbreak of the virus occur at the facility.
- Promptly review and share any risk-control or educational materials provided by the carrier.
- Tips specific to senior-care facilities include:
 - Communicate regularly with staff, residents and resident family members so they feel included and aware of everything the facility is doing to mitigate risk.
 - Avoid communal activities and dining.
 - Upgrade to hospital-level cleaning and disinfection supplies.

GETTING THE BEST RESULTS FOR HEALTHCARE CLIENTS

As the healthcare industry remains on the front lines of battling the COVID-19 pandemic, staying abreast of the changing landscape and how the insurance market is adapting is critical to ensure new exposures are covered and renewals are successfully placed.

We advise retailers to begin talking to their insureds well in advance of renewals to communicate what is happening in the marketplace, discuss specific exposures and identify any financial issues as early as possible. Additionally, agents should regularly consult with their specialty wholesale broker and carrier partners to obtain updated market information and understand how it relates to their clients' unique circumstances.

Like many of us, underwriters are facing many challenges as they adapt to the new normal of working remotely while managing the volume of submissions and questions. Therefore, it is more important than ever to have a full and complete submission in order to get the best consideration from an underwriter. Submissions that are lacking information or received in piecemeal will quickly go to the bottom of the pile or simply be declined.

During this pandemic, AmWINS is working closely with our carrier partners to understand any changes in operations and protocols, advocate for flexible payment terms, exposure-basis relief and policy extensions when possible; and ensure as little disruption as possible with regards to servicing, claims, binders, endorsements and renewals. We will keep our clients advised of any market changes, renewal challenges and regulatory proposals that may impact our business. If you have specific questions, please contact your AmWINS broker for assistance.

