

Ebola: Insurance and Risk Considerations for Health Care Providers

Recent cases of medical professionals in the US contracting Ebola present a stark reminder of the danger that infectious diseases pose to health care providers and their employees. Treating Ebola and other infectious diseases puts the industry on the front line for employee safety, environmental exposure, reputational damage, and business disruption, all of which can carry considerable financial costs. Providers cannot fully remove such risks, but they can take steps to limit their effects.

INSURANCE COVERAGE

Even within an organization that has a thorough understanding of pre-loss measures, it is possible that an accident, a breach in procedures, or other event could cause an employee to contract Ebola. The risk also exists for on-site contamination, or for the government to require a facility to close. It is important to understand potential insurance coverage issues beforehand.

WORKERS' COMPENSATION

If a health care worker contracts Ebola during the course of employment, workers' compensation insurance would likely provide coverage for costs related to treatment of the illness, lost wages, and, in a worst-case scenario, death benefits. Such an event could be expensive: Full isolation protocols, for example, can cost \$1,000 per hour. Long-term complications from Ebola could require kidney dialysis and other treatments. In addition, local and state public health officials using Centers for Disease Control and Prevention (CDC) guidelines — rather than the employer and its insurer — will likely dictate dispensation of medication and other treatments.

An insured employee may choose to file suit against an employer for negligence rather than collecting statutory workers' compensation benefits, in which case employers' liability insurance could apply. But an employers' liability policy typically includes a limit per accident, disease per employee, and disease per policy limit. If an underlying primary employers' liability policy is properly scheduled to

an umbrella and excess insurance policy, it should provide additional protection to insureds.

Workers' compensation insurance generally provides coverage for injuries or illnesses sustained during the course of work in the US. For workers overseas, additional protection may be secured through foreign voluntary workers' compensation insurance policies, which can be customized to provide coverage for endemic diseases. At least one insurer, however, is currently considering the addition of an absolute exclusion for the Ebola virus to its foreign voluntary workers' compensation policy.

To provide medical coverage to employees outside of the scope of work — for example, contracting Ebola or other infectious diseases while volunteering in other countries — health care organizations may wish to purchase additional travel accident and disability policies for certain employees.

BUSINESS INTERRUPTION

Infection control procedures could cause providers to shut down or restrict access to all or part of their facilities in the event of an actual or suspected case of Ebola, or due to potential contamination after treating a patient. The resulting disruption of normal operations could lead to reduced admissions and a loss of revenue.

But property and business interruption (BI) policies are typically triggered only in the event of direct physical damage to or loss of an insured's property as a result of a covered peril. Most health care organizations' policies also contain communicable disease contamination sublimits that require an order of an authorized governmental agency prohibiting access as a result of a law or ordinance regulating the actual — not suspected — presence of a communicable disease. This means that without special provisions — for example, manuscripted wording to broaden coverage — health care providers' property insurance and BI policies would likely not be triggered based solely on the presence of Ebola.

Organizations may be able to purchase specialty BI policies that provide coverage for interruptions due to a pandemic without a physical damage trigger. These policies would

typically respond in the event of a facilities closure due to an act or order issued by a government authority, and can be customized to address different pandemic levels. The availability of such coverage, however, is limited, and policies often have restrictions that could limit recovery — for example, they may have relatively small limits and a 48-hour waiting period before coverage is triggered.

ENVIRONMENTAL LIABILITY

Environmental insurance policies may provide some coverage, depending on specific terms and conditions. For example, a health care provider may be able to recoup lost income from a contamination incident under a pollution legal liability (PLL) policy. A PLL policy could be triggered following an environmental release or contamination and a written order by the CDC or other government agency to clean up a facility and/or transfer patients. PLL policies sometimes contain specific language related to infectious disease, and also may have coinsurance, sublimits, and other terms and conditions that could limit recovery.

More broadly, a PLL policy can provide coverage for the cleanup, storage, transport, and disposal of medical waste. Although PLL policies vary, medical waste, viruses, and bacteria are sometimes included in a policy's definition of a "pollution condition." Many PLL policies also include provisions for emergency response costs.

DIRECTORS AND OFFICERS LIABILITY

An Ebola infection of an employee or an employee's family member could have lasting effects on a hospital or other health care provider's reputation and revenue streams. An employer could face allegations that an infection resulted from failure to follow CDC or other protocols, failure to implement proper training, or other failure to safeguard employees' wellbeing. A high-profile incident could also lead to adverse publicity and could negatively affect patient admission rates. For publicly traded organizations, these events could lead to a drop in stock prices and allegations that investors were deceived. For privately held organizations, these events could lead to accusations from financial donors, business partners, employees, and others that management did not properly safeguard the reputation and assets of the organization.

A directors and officers liability policy will generally provide protection against such D&O mismanagement lawsuits. D&O coverage would typically apply even if a hospital or other provider failed to follow CDC or other protocols, unless such alleged misconduct is proven by a court to have been intentional, criminal, or fraudulent.

PREVENTIVE MEASURES

Exposure to viruses and bacteria are daily concerns for workers in hospitals or other health care environments that work with patients or infectious materials. The risk exists not only for doctors and nurses, but for assistants, technicians, laboratory personnel, students, and non-caregivers, such as maintenance workers.

The first line of defense for medical professionals is to follow the Centers for Disease Control and Prevention (CDC) infection control protocols, which have been adopted by most local and state health departments. Other sources of guidance include those published by independent organizations such as The Joint Commission. The CDC's recommendations for treating patients who are known or suspected to have Ebola include, but are not limited to, the following:

- Using single patient isolation rooms and maintaining logs of everyone who enters.
- Ensuring that everyone who enters a patient's room wears personal protective equipment (PPE), including gloves, gowns, eye protection, and facemasks. Additional equipment may be required in certain situations.
- Using dedicated — preferably disposable — medical equipment to treat such patients.
- Limiting the use of needles and other sharp instruments.
- Avoiding aerosol generating procedures for known or suspected Ebola patients.

The CDC also recommends that health care professionals perform hand hygiene frequently, including before and after all contact with patients or potentially infectious material, and before putting on or removing PPE, including gloves. Because the virus can be spread while donning or doffing PPE, the CDC recommends a "buddy system" in which a health care professional is closely watched by a colleague while putting on and removing equipment.

Health care providers should review their infectious waste protocols, and ensure that waste is disposed of in accordance with local, state, and federal laws. Waste related to Ebola treatment should be sanitized through an autoclave or other means before being transported, or incinerated — all with strict adherence to applicable local, state, and federal regulations. Medical equipment should also be properly sanitized and/or disposed of.

Lastly, health care providers should closely monitor anyone in their organization that may have been exposed to Ebola. Workers with exposures to blood and bodily fluids from patients either diagnosed with or suspected of having Ebola should immediately wash affected skin surfaces and contact a supervisor for access to post-exposure management services. A professional who exhibits symptoms including fever, weakness or muscle pains, vomiting, and diarrhea after exposure to an Ebola patient should immediately seek medical help, and their employer should notify local and state health departments.

The above measures are not an exhaustive list. For more information, please refer to "Additional Resources" on page 4 of this briefing.

GENERAL LIABILITY

General liability policies protect the insured against liability to third parties. In this context, an Ebola outbreak presents several issues. While the burden of proof could be difficult to meet, an individual may allege that the insured — in this case, a hospital or other health care provider — is responsible for his or her infection. It is also possible for a health care worker to transmit Ebola to a spouse or other family member. In such an instance, an employer's general liability policy may extend coverage to the employee's family member, but an insurer could instead argue that the illness should be covered under an employers' liability policy.

Ebola could spread to third parties, who could potentially be infected either at a health care facility or off-site through contact with an infected health care worker. Such a third party could allege that person-to-person contact with an infected individual was foreseeable, or that the organization failed to present a safe environment for business invitees. The duty to defend under the general liability policy would likely respond, depending as always on the allegations of the claim and the policy wording.

Certain exclusions might impact liability coverage. An insurer may contend that transmission of Ebola due to failure to take proper precautions could be considered an "expected bodily injury" for purposes of the expected or intended exclusion. Similarly, if a member of an employee's family is infected, the employers' liability exclusion in a general liability policy might be raised as a defense by an insurer; if that defense prevails, it should mean that a workers' compensation/employers liability policy would respond.

Organizations should also not rule out a possible assertion by an insurer of the pollution exclusion. Although the pollution exclusion is commonly associated with industrial pollution, it may be argued that the Ebola virus is a contaminant or irritant and that its dispersal caused bodily injury.

EMPLOYER STOP-LOSS

Many health care workers' family members are covered under employer-sponsored medical plans. If an Ebola infection were to spread from an employee to a covered family member, medical expenses would likely be covered under the employer-sponsored plan. If the employer has purchased a stop-loss insurance policy, it may apply if expenses exceed the policy's deductible.

CRISIS MANAGEMENT

In addition to delivering care to its patients, a health care provider has an obligation to ensure the health and safety of its medical staff and other employees, their families, and the community in which it operates. Given the difficulty of treating Ebola-infected patients, legitimate concerns about the potential spread of the virus, and the spotlight providers will find themselves under while treating patients, providers may wish to consider engaging their crisis management and response teams as a preemptive step.

Health care providers should make any necessary updates to infection control procedures based on new CDC and other health authority requirements for the treatment of Ebola patients. At the same time, they should review their crisis management and pandemic response plans to determine if additional preparatory steps are needed. This may entail modifying the composition of crisis management and other response teams so that membership and plans of action broadly represent the range of perspectives and issues to be addressed within and outside the organization during an event. The roles and responsibilities of team members should be clearly defined so that there is an understanding throughout the organization of who will take what actions, how any inquiries from employees, patients, families, government officials, the public, and the media are to be handled, and who the provider's designated spokesperson or spokespeople are, especially in relation to health authorities.

Providers should update employees and provide continual training and review of pandemic response plans and heightened infection control protocols. In particular, it is essential to review protocols for donning and doffing PPE and for waste disposal. This is especially true for any facilities in the vicinity of major airports servicing West Africa; or that are (or may be) designated as treatment centers for Ebola patients. Taking such actions may also help to mitigate compliance-related penalties and reduce D&O exposures.

From an employee and community communications and education standpoint, timely and proactive messaging that is aligned with CDC, state, local, and other authorities is important. Whether directly involved in patient care or not, employees need to be aware of the measures to treat potentially infected patients and ensure their safety and that of all others in the hospital or provider environs. Organizations may also consider:

- ▶ Developing additional protocols for medical professionals who are treating Ebola patients.

- ▶ Communicating to the families of employees to educate and reassure them of the steps being taken to protect their loved ones on the job and when they return home.
- ▶ Developing protocols for communications with and support for families, and the communities where they reside, if exposure beyond a patient occurs.

CLAIMS CONSIDERATIONS

Before any potential Ebola-related loss occurs, health care organizations should develop claim management plans that establish clear roles and responsibilities for personnel inside and outside of the organization. This personnel should include insurers' claims representatives, brokers, and any other insurance advisors who can assist with a claim.

To plan for the worst-case scenario that management offices become inaccessible because of a contamination event, government order, or other factor, organizations should ensure that insurance policies, contact lists, financial and property records, and other key records are accessible in hard copy and electronic formats via alternative location sources.

In the event of a loss related to Ebola, organizations should begin to gather data for a potential claim filing. Organizations should capture potential loss information and other costs, including those related to medical treatment of employees and cleanup of contaminated surfaces. Businesses should also record photographic and/or video evidence of any environmental contamination, and document any government orders in the event of a partial or full shutdown.

PROTECTING PEOPLE AND OPERATIONS

As the front line of defense against the spread of infectious disease, health care organizations cannot fully eliminate the threats from Ebola. Diligent risk management can help protect employees from illness. Insurance coverage — depending on policy language and event specifics — may provide some protection from the financial and operational risks of treating the disease.

For more information, contact your Marsh representative.

ADDITIONAL RESOURCES

This paper has examined a range of insurance and risk issues for health care providers related to Ebola, but is not intended to be an exhaustive treatment. Providers should refer to additional guidance available via public health agencies and other institutions, including:

- [The Centers for Disease Control and Prevention.](#)
- [The World Health Organization.](#)
- [The National Institutes for Health.](#)
- [The Joint Commission.](#)

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