



The COVID-19 Pandemic, Professional Liability and Medical Malpractice

What you need to know

The unprecedented coronavirus (COVID-19) pandemic has impacted every major economy and industry and the local and global insurance market is no exception. The immediate challenges associated with the pandemic and the resultant economic downturn are likely to bring lasting effects to the insurance marketplace. Insurers are reviewing the coverage provided under their range of products and governments are introducing new laws which directly and indirectly impact risk and insurance. The situation is constantly evolving and Willis Towers Watson is collaborating globally to consider the insurance implications.

Organisations can be subject to contractual obligations that require them to provide professional services within a certain timeframe or agree to indemnify or hold third parties harmless from loss or liability arising from their performance or non-performance.

Disruptions caused by COVID-19 may result in an organisation being unable to fulfil contractual requirements giving rise to a claim for compensation, liquidated damages or other form of relief. Whilst most policies contain some form of Contractual Liability exclusion, often these clauses are softened or certain contracts exempted.

It is also worth considering if COVID-19 has brought about any changes to the organisation's professional services. If so, these should be advised to your insurance broker for discussion with the insurer.

Organisations that operate in the health or aged care sector are on the front line, providing direct treatment of individuals with COVID-19 or caring for those in our community who are most vulnerable. Any failure to take reasonable steps to prevent the spread of infection that results in bodily injury or death could give rise to an allegation of breach of duty against the organisation. It is essential for organisations to have an effective risk management framework that includes a robust business continuity plan and pandemic response plan to safeguard those in the organisation's care and avoid potential liability.

As a result of COVID-19, governments have recently announced significant additional funding and broader access to telehealth consultations for those in home isolation or quarantine.

Organisations should clarify with their insurance broker that telehealth consultations are specifically insured under their Professional Indemnity or Medical Malpractice policy, particularly if such services are being conducted for the first time in response to COVID-19.

What is typically covered?



compensatory damages and defence costs;

attendance at formal investigations or inquiries (such as coronial inquiries).

Some policies will provide cover for business crisis event scenarios which may include claims that could likely result in bodily injury arising from, for example, a disinfection incident.

What is not covered?

Common exclusions that may apply are:

- bodily injury (not applicable to Medical Malpractice policies);
- any punitive, aggravated or exemplary damages;
- contractual undertakings that extend your liability beyond the common law;
- fines or penalties; and
- wilful or reckless acts.

Under Professional Indemnity policies, the scope of the Bodily Injury exclusion is key. This clause may restrict or completely exclude claims that occur as a consequence of bodily injury (such as an illness or disease) in relation to the provision of professional services to a third party.

Medical Malpractice policies are purchased by individuals and organisations that provide some form of medical or allied health treatment to the public and are therefore not subject to Bodily Injury exclusions.

In addition, most policies will exclude doctors directly as insureds themselves, as these individuals generally hold their own cover directly with medical defence organisations.

A reminder about claims

With business changing rapidly in response to the COVID-19 crisis, it is worth remembering that this type of insurance is written on a “claims made and notified” basis.

This means an organisation must notify their insurer of any known claim or any circumstance that could give rise to a claim before the policy period expires. Once the policy has expired, no claims or circumstances can be notified under it.

Please contact your insurance broker for further guidance on how to notify a claim or a circumstance that could give rise to a claim.

For further information

The Willis Towers Watson FINEX team can assist in interpreting coverage and help you manage this risk within your organisation. Please get in touch with your broker or consultant for further information.

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