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Industry Insights

Telemedicine, Telehealth, and Digital Health: Key Coverage Types

September 07, 2023

Once a reasonably niche industry category, virtual care – which encompasses telemedicine, telehealth, and digital health – has risen both in awareness and utility over the past several years. Spurred by a combination of COVID-19-driven necessity and increased availability of platforms and applications, virtual care is a growing field that is clearly here to stay. The unique combination of exposures presented by this industry calls for a unique coverage solution.

At Beazley, we look at telemedicine as having three distinct buckets of insureds or clients. We believe that it’s essential that a virtual care policy easily cover any risk that falls within the categories. The first two, Providers and Platform Hosts, have a direct or vicarious exposure for healthcare services, and the third is mainly a tech errors and omission (“E&O”) exposure.

The “providers” bucket includes practitioners offering services: doctors, nurses, psychologists, even tele-massage services. The “platform hosts” bucket typically covers a combination of providers and developers; usually, they're contracting with practitioners to provide services, and they use either their own platform or a predesigned platform to perform the services. The third bucket covers software and hardware developers, and these risks include developing hardware like monitors, pumps, detection devices and software platforms, programs, or even apps. Really, these are the tools that make telemedicine possible.

There are four main pillars of coverage that a digital health or telemedicine company in any of these three buckets needs to consider. The first is malpractice or professional liability to provide coverage for bodily injury to a patient due to a negligent act from a provider. This is applicable to any situation where a practitioner is providing medical

advice via a mobile platform, to protect both the entity and the provider should there be a claim for failure to diagnose, failure to treat, incorrect diagnosis, etc.

The next pillar is technology and media liability. This provides protection if the software or hardware causes an injury or a financial loss; if the technology fails and it causes an injury to the end patient, that could fall under this pillar of coverage. It also includes media liability, which is coverage for creating content and the potential risks of things like libel, slander, copyright, or patent infringement.

The third pillar is general liability, which is sometimes referred to as premises liability or slip and fall coverage. This provides protections for your premises and your daily operations, so if somebody is visiting your location and they fall or sustain an injury, that could fall under general liability. Usually this is required via a contract with your landlord or leasing company.

Cyber liability makes up the final pillar. Cyber provides businesses with a combination of coverage to help protect them from data breaches and other cyber security issues. This can provide coverage for fines and penalties associated with a cyber breach and credit monitoring notification costs, or for any users whose data has been compromised. It can also provide coverage should there be a bodily injury from a cyber breach. Hacking of electronic medical records or ransomware attacks also fall under a cyber policy. One unique note for virtual care insureds is that it's critical to confirm that bodily injury coverage is affirmatively provided under each coverage grant.

In addition to the four “must have” components listed above, there are two additional coverages that may be relevant: regulatory billing and employment practices liability (“EPL”).

With respect to regulatory coverage, insureds may be concerned about fraudulent billing allegations by the government, whether at the state or federal level. This also potentially may include coverage for FDA investigations; if you think about the various governmental agencies that may investigate any type of telehealth, this type of coverage is designed to provide insureds with defenses and potential coverage for fines and penalties around that. We've also seen some activity lately in terms of fraud or deceptive trade practices, and the FDA or FTC may take some interest in that along with the states’ attorneys general, and that's what this coverage is designed to protect from.

As for EPL coverage, differences with respect to telehealth have to do with licensure of providers that may be providing this type of care. The employment practices that may come into play include privacy concerns – as well as determining how insureds are monitoring and ensuring that employees are providing quality services and complying with policies and procedures.

Though the risks and coverage needs of telehealth may be unique, a dedicated and experienced virtual care insurance partner can help insureds to fully understand the scope of concerns and solutions. At Beazley, we welcome the opportunity to partner with brokers and insureds to provide the very best virtual care solution for each organization’s circumstances.

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