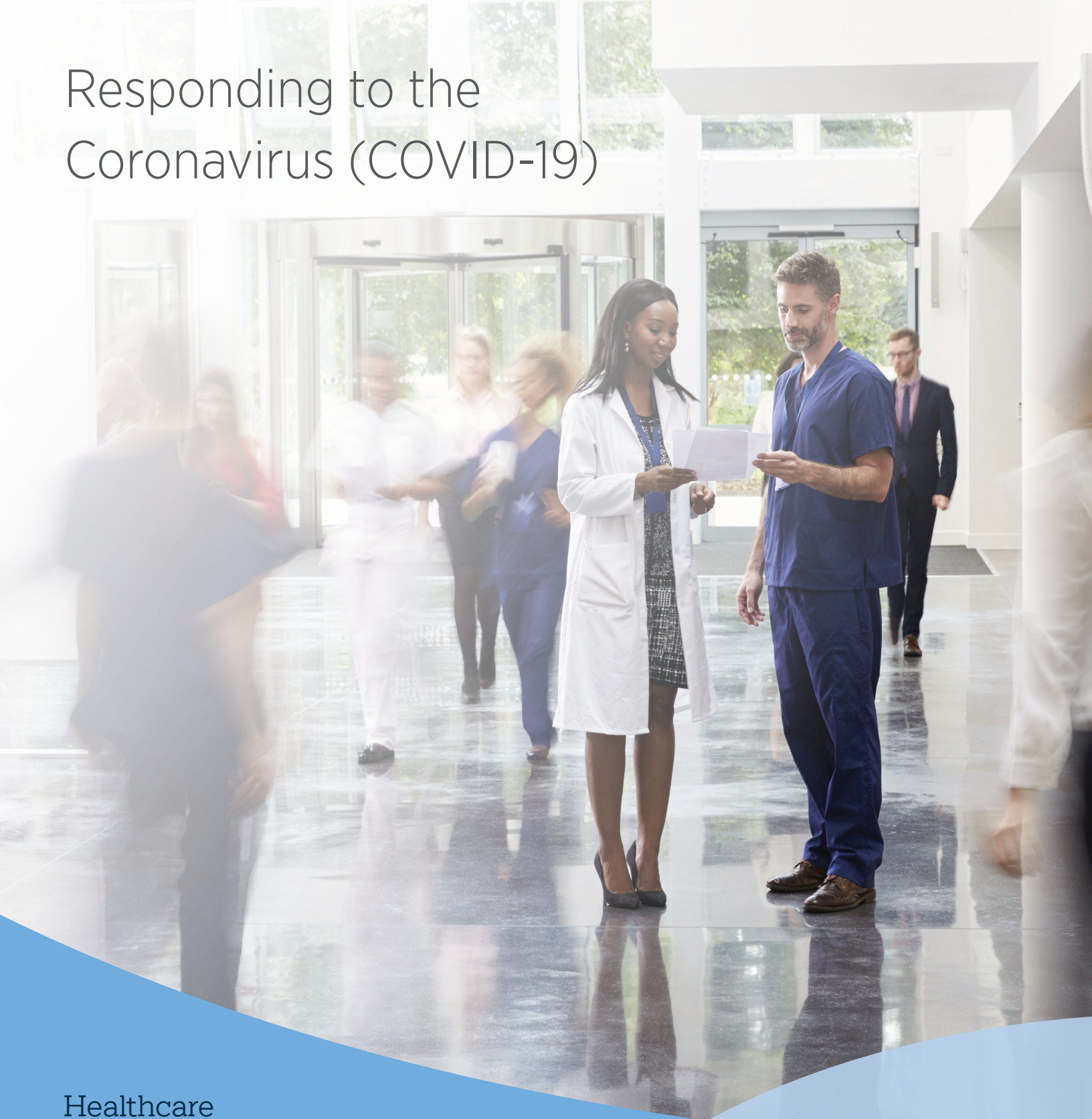


Responding to the Coronavirus (COVID-19)



Healthcare

3/20/2020



Gallagher

Insurance | Risk Management | Consulting



Gallagher Report: Responding to the Coronavirus

As the number of news headlines about the coronavirus (COVID-19) continue to increase, so has concern over its potential to affect employee welfare, disrupt global supply chains and slow business operations. Gallagher's experts are here to support you in the development and implementation of risk management policies and procedures during a pandemic.

In case of an increased threat in the U.S., the CDC is operationalizing its protection and preparedness plans in communities across the country. As a business leader, you too should take added measures to review key insurance policies and business continuity plans.

INSURANCE POLICIES THAT MAY RESPOND

While specific policies for business loss due to a pandemic are uncommon, you should check with your insurance broker immediately to confirm what key coverages will be provided in a specific event.

WORKERS' COMPENSATION POLICY

Compensability for workers' compensation will truly come down to whether the disease/illness is considered occupational. In order for it to be compensable, the disease would have to be contracted during the course of employment and due to conditions specific to the employees' work. Various statutory intricacies will also come into play depending on the particular state where your business operates. For example, healthcare workers, who find themselves interacting with ill people, are more likely to have workers' compensation compensability.

GENERAL LIABILITY INSURANCE

General liability policies provide coverage for injury to persons (other than your employees) and damage to property of a third party for which you are legally liable. Liability for such injury or damage involving COVID-19 or a similar health emergency will arise chiefly out of a failure to protect others and their property against exposure to infection. Many general liability policies have exclusions that could preclude coverage for this kind of infection. Careful examination of the policy's coverage terms, conditions and exclusions will be necessary to determine if such a limitation applies to you. Additionally, umbrella and/or excess liability policies may contain a communicable disease exclusion.

PROPERTY/BUSINESS INTERRUPTION

Standard property policies require that physical loss or damage to covered property by an insured peril occur for coverage to trigger. Contamination of property at an insured's location may constitute physical loss or damage, but policy exclusions for pathogenic organisms, viruses, and disease- or illness-causing agents may restrict or exclude coverage. For business interruption coverage to trigger, the loss or damage must generally occur on the insured's premise. Business interruption extensions such as contingent business income, ingress/egress, loss of attraction and denial of access are subject to the same coverage parameters outlined above, although not necessarily occurring at an insured location.

Limited available coverage for communicable or infectious disease is offered on some property forms. This coverage is likely sublimited and narrow in its coverage scope, especially outside of an insured location. Covered costs include cleanup, removal and disposal of contaminated property. Any business interruption extension will likely not apply to locations that are not owned or operated by the insured.

ENVIRONMENTAL INSURANCE

In addition to the property policy, consideration should be given to the environmental liability policy.

Currently environmental liability policy forms do not identify COVID-19 as a pollutant and do not specifically exclude it by name. Some policies, however, do contain communicable disease exclusions that preclude coverage when a disease is transmitted by personal contact. However, they do not exclude transmission of the disease caused by the environment within the insured site.

If a pollution event has taken place or a pollution condition exists, coverage may apply in cases of negligence or strict liability. In turn, negligence can be the failure to prevent the spread of the disease on your premises, or the coverage may be triggered by strict liability as the result of a pollution event that has taken place or a pollution condition under environmental laws.

MANAGEMENT LIABILITY

Management liability insurance is being evaluated on a case-by-case basis as the COVID-19 threat is monitored. Many companies have made disclosures that COVID-19 has caused disruptions in production, staffing and sales. Accordingly, we may begin seeing COVID-19-related D&O claims, specifically securities class actions by shareholders to the extent that these disclosures cause a stock drop.* Such disclosures may also bring about derivative action litigation, whereby plaintiff shareholders sue on behalf of the company against the directors and officers alleging that executive mismanagement of the situation cost the company significant revenues.

It remains to be seen whether employment practices liability policies are impacted. Employees impacted by quarantine and unable to work may be seeking accommodations or leaves of absence. It is unclear whether quarantine gives rise to obligations under the FMLA or ADA.

TRAVEL ACCIDENT POLICY

The [U.S. Department of State](#) has increased the level of risk for travel to certain countries and continues to update its advisories as they monitor the threat. Some countries have instituted preventive measures for travelers who want to visit their countries, are requiring medical clearance before a traveler is permitted to enter the country, or are instituting other measures, including health quarantines.

As of early February, carriers and underwriters are no longer including the threat of coronavirus as a covered trigger for evacuation, cancellation and interruption benefits. Even the cancel-for-any-reason policies available in the market have excluded the coronavirus from their covered triggers. These policies will only cover a traveler who actually contracts the virus. Therefore, it is critical that you discuss this with your risk management team to determine the potential threat before you or your employees decide to travel.

Travel assistance services are still available 24-7 for travelers around globe to assist in booking passage home at the traveler's expense.

*This does not apply to nonprofit organizations.



CYBER INSURANCE

Unfortunately, hospital systems and other healthcare providers are already established targets for cybercriminals. The COVID-19 situation has shown a marked increase in social engineering attacks, as criminals try to take advantage of the circumstances through phishing campaigns that impersonate government authorities, fundraising activities and HR.

As the COVID-19 situation continues to develop, employees across the nation—including those involved in the healthcare industry—will alter the ways in which they work, including increasing working from home and the use of other remote electronic access. Further, regulations may change in response to the situation—for example, already the Office for Civil Rights (OCR) has announced that it will permit physicians to communicate with patients using remote technologies that are not fully compliant with HIPAA requirements (and will suspend penalties to telehealth provided for any reason). This is helpful in allowing providers greater flexibility, but does require providers to extend the reach of their cybersecurity measures and recognize the potential for hackers to take advantage of potentially less secure methods of communicating with patients. These changes are not lost on cybercriminals, who will undoubtedly look to exploit the situation. Therefore, enhanced cyber vigilance is encouraged at this time, including reinforcing cybersecurity and making sure employees are reminded of best practices.

Suspected cyber incidents should immediately be reported to the institution's cyber insurance providers.

Gallagher's article "Data and Network Security Risks Relating to the Coronavirus Outbreak and Response" particularly highlights risk management measures in response to cybersecurity risks arising from a sudden increase in your remote workforce. You can access this article [here](#).

ACTIONS YOU CAN TAKE NOW

Gallagher's National Risk Control team advises you on five key ways your organization can prepare for a pandemic and help ensure the safety of your employees.

1. Review your business continuity plan and determine alternative business plans.

Check your business continuity and pandemic procedures to ensure your organization is prepared if your employees become ill. Your continuity plan should include the measures you will take if an employee is impacted and how to accommodate employees who don't feel safe working in a communal space, or whose home life may be impacted if schools or childcare centers are closed. It should also include a plan to address any employee who is at risk of infection while traveling in quarantined areas.

Identify critical people, processes and technologies that have the biggest negative impact on your business, and create recovery strategies to minimize any disruption. This could include outsourcing, allowing more flexible teleworking options or developing commuting alternatives for your employees if public transportation is not available. Work with your supply chain partners to ensure you have a backup plan should there be a breakdown along the line. This may involve increasing inventory levels of high-volume products or services.

2. Communicate with your employees, vendors, partners and customers.

Share information and official updates from organizations like the WHO or the CDC with your employees so they understand the potential threats. Encourage them to speak up if they start to develop symptoms and reassure them that self-reporting is safe. Ask them to quarantine themselves if they have been to areas where the virus has been reported.



3. Educate your employees.

Be transparent with internal and external stakeholders about how you're handling the pandemic at the workplace. Educate your employees on your continuity plans and procedures so they know what to expect if your company is impacted. Issue travel advisories and make sure they understand the resources available to protect them. Ongoing communication about the pandemic will help your employees feel informed and safe.

4. Maintain the patient care environment.

As healthcare organizations prepare for the potential arrival of COVID-19 patients, it is important that organizations pause and conduct quick assessments of engineering controls and staff education. These assessments ensure that the organizations' engineered systems and staff are reminded of the internal controls built into their facilities to ensure the safety of staff and patients. These assessments should include the following.

- Are you current and in compliance with facilities engineering policies? Are all policies defining testing, preventative maintenance and inspection for pressure relationships, air exchange rates, and filtration efficiencies complete, thus ensuring that all dedicated rooms are effectively balanced and air pressure relationships are verified?
- Is negative air monitored daily in isolation rooms or as required by policy?
- Are all logs documenting (monthly, daily, quarterly) preventative maintenance, testing and inspections of air balancing and testing up to date?

- Provide a brief in-service for all clinicians entering isolation rooms addressing negative air monitoring instruments at each room's entrance or anteroom. Ensure that clinicians understand what actions they need to take to ensure the safety of themselves and others in the event of a pressure change or loss while staff works to restore the system.

5. Contact your local hospitals and officials.

Most every hospital in your area has a dedicated emergency preparedness coordinator, committee and plan that has been activated to varying degrees. Reach out to those facilities when in need of resources and materials, or to coordinate an area or community response. Monitor and utilize resource networks, like the American Society for Healthcare Risk Managers Exchange or the American Society for Health Care Engineering for documents and shared tools.

Other resources include:

- [CDC's Planning Guidance and Checklists for nonpharmaceutical interventions](#)
- [CDC's Get Your Workplace Ready for Pandemic Flu guide](#)
- [CDC's COVID-19 FAQ for Diagnostic Tools and Virus](#)

WHAT THIS MEANS FOR YOUR BUSINESS

The healthcare industry is at the forefront of the COVID-19 situation, facing a unique and augmented set of risk exposures.

COVID-19 is likely to generate claims across several lines of business. As with other pandemics, we anticipate losses, particularly group health and travel policies, as well as event cancellation coverage. There may be additional potential exposure—in employment practices liability or workers' compensation—for hospital or healthcare workers who are infected in the course of their employment.

In this type of outbreak, healthcare organizations are unique as an industry sector, in part because there is the potential for exposure that healthcare providers encounter where the provider contracts the virus from a patient or even the potential that an infected healthcare provider spreads the disease to patients. We anticipate potential allegations may arise if patients are impacted where they allege negligence against the organization or the provider.

For example, the following are some of the allegations that may arise stemming from COVID-19 against healthcare organizations and providers:

- Misdiagnoses or delayed diagnoses leading to progression of the virus
- Failure to protect or sterilize the facility
- Failure to quarantine infected patients in a timely manner that may lead to the spread of the virus to other patients

While this list is not exhaustive, and creative plaintiff attorneys may structure the lawsuits and complaints in the broadest terms against the healthcare organization and provider, we strongly advise you to speak with your Gallagher advisor to review the terms of your medical professional liability and general liability policies to determine how coverage will apply.

Whether a policy responds to such circumstances and allegations depends on the particular policy wording, so, as always, a starting point for analysis is to carefully check that wording when considering coverage arising from allegations related to COVID-19 or similar types of infectious diseases.

This is an evolving risk that Gallagher continues to monitor through the CDC and the [WHO](https://www.who.int). Please visit ajg.com/us/pandemic-preparedness for the latest information or contact:

Steve Kahl

Senior Managing Director
Healthcare Practice
303.889.2624
steve_kahl@ajg.com

Beth Burger

Managing Director
Healthcare Practice
713.935.8802
beth_berger@ajg.com

Gallagher provides insurance, risk management and consultation services for our clients in response to both known and unknown risk exposures. When providing analysis and recommendations regarding potential insurance coverage, potential claims and/or operational strategy in response to national emergencies (including health crises), we do so from an insurance/risk management perspective, and offer broad information about risk mitigation, loss control strategy and potential claim exposures. We have prepared this commentary and other news alerts for general informational purposes only and the material is not intended to be, nor should it be interpreted as, legal or client-specific risk management advice. General insurance descriptions contained herein do not include complete insurance policy definitions, terms and/or conditions, and should not be relied on for coverage interpretation. The information may not include current governmental or insurance developments, is provided without knowledge of the individual recipient's industry or specific business or coverage circumstances, and in no way reflects or promises to provide insurance coverage outcomes that only insurance carriers control.

Gallagher publications may contain links to non-Gallagher websites that are created and controlled by other organizations. We claim no responsibility for the content of any linked website, or any link contained therein. The inclusion of any link does not imply endorsement by Gallagher, as we have no responsibility for information referenced in material owned and controlled by other parties. Gallagher strongly encourages you to review any separate terms of use and privacy policies governing use of these third party websites and resources.

Insurance brokerage and related services to be provided by Arthur J. Gallagher Risk Management Services, Inc. (License No. OD69293) and/or its affiliate Arthur J. Gallagher & Co. Insurance Brokers of California, Inc. (License No. 0726293).

