

Is COVID covered by insurance?

The World Health Organisation announcement in March this year that the COVID-19 coronavirus outbreak would be classified as a pandemic has triggered governments worldwide into a flurry of action.

For many medical practices and doctors, the measures introduced to help slow the spread of the virus have meant a significant reduction to revenue and forced changes to their business model. Telehealth introduced, procedures cancelled, staff working from home (where practical), staff stood down and other impacts. These changes have introduced additional risks. While this article mainly focuses on insurance, it is important to take risk management action first, as in many cases, insurance is not the

answer – and at best will only respond to an insured risk, and not help mitigate/prevent it.

Over the past few months, we have fielded many questions from clients around how insurances may respond. Commonly, the question starts as:

“Do my practice insurances cover COVID19”

This is a broad, open-ended question and not a straight-forward answer, as it depends on what risks/policies the person is referring to and the particular insurances they have in place. The main risk management and insurance discussions we have had with practices are per the table on the next page.

BUSINESS INTERRUPTION INSURANCE

Many practices will (or should) hold Business Interruption (BI) insurance under a Business Package insurance policy. BI covers loss of revenue and additional costs incurred for a defined period (usually 12 months or more) where the insured entity is impacted by an insured event such as fire, storm, theft, or other physical event occurring at the premises. Most policies will also extend to cover other events such as a loss of public utilities and closure by government authority following certain events.

The question now being asked is whether Business Interruption insurance will cover a practice for losses incurred directly or indirectly COVID-19?

To be blunt, the answer will almost certainly be a no. While there may be a few exceptions to the above, given how insurance policies can vary

widely, generally Business Interruption insurance will not cover disruption caused by a pandemic.

This is for the simple fact that insurers (and their re-insurers) would never be able to hold the reserves of capital necessary to pay claims projected to be in the hundreds of billions or trillions of dollars - and a bankrupt insurance industry is of no use to anyone. This is also why war is excluded. So, to remove any doubt, insurers exclude cover for any disease that is notifiable under the Quarantine Act 1908 and or the Biosecurity Act 2015, which as of 2020, includes COVID-19.

Even where a practice is closed by order of public authority, exclusions such as this will exclude the claim:

Cover is extended for loss that results from an interruption of your business that is caused by:

a) any legal authority closing or evacuating all or part of the insured location as a result of:

1. the outbreak of an infectious or contagious human disease occurring within a 20-kilometre radius of your insured location, however there is no cover for highly pathogenic Avian Influenza or any disease declared to be a quarantinable disease under the Biosecurity Act 2015 (Cth) (as amended) irrespective of whether discovered at your insured location, or out-breaking elsewhere.

Insurance issues around COVID-19 are complex, as can be seen by this brief article. It's important to review your individual circumstances and your policies. Seeking advice from your insurer can be a good starting point, but remember – often you will be dealing with a call centre person whose duty is to the insurer – and not to you. So speak to an insurance broker/adviser who specialises in medical practices.

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The information provided in this article is of a general nature and does not take into account your objectives, financial situation or need. Please refer to the relevant Product Disclosure Statement before purchasing any insurance product.

RISK AREA	ISSUES	INSURANCE RESPONSE
Impact to revenue	Is the reduction in my revenue covered either because my practice is closed by the health authority, patients simply stop turning up or certain procedures are now banned?	Most likely no cover under Business Interruption insurance (see Business Interruption Insurance section for further details). But every policy is different so your individual circumstances and policy need to be reviewed.
I contract COVID19, or I am required to self-isolate	Does my Income Protection insurance cover me?	Contact your financial planner who should be managing your Income Protection and life insurances. We understand that good Income Protection policies will cover you for any illness and there are no specific exclusions around pandemics. No cover applies until a diagnosis is made and you have a doctor's certificate to say you are unfit for work - and then most policies have at least a 30-day waiting period. There are other issues to discuss with your planner such as life and TPD covers, what is within your superannuation, etc.
Occupational Health and Safety	What if a staff member contracts COVID19 at work?	Generally, Workers Compensation covers work-acquired illnesses from the date of diagnosis. Employers have a duty to take reasonable steps to provide a safe workplace. OH&S fines and other actions can be made against companies and owners/managers. A good Management Liability insurance policy will cover OH&S fines, legal expenses to defend/manage actions including Directors & Officers exposures. Also see https://www.worksafe.qld.gov.au/ and contact the AMA Queensland Workplace Relations team for employment related advice.
Employment / staffing	Due to a reduction in revenue we need to stand down staff, make redundancies, cease to give casuals hours	A number of insurances can respond to cover legal fees to defend an employment claim brought by a staff member. Management Liability will cover both the legal fees, and compensation awarded – but not where the compensation is an entitlement (e.g. if you are required to pay redundancy this is an employee entitlement and not covered by insurance). Contact the AMA Queensland Workplace Relations team for advice.
Medical Negligence or Public Liability	What if a patient contracts COVID19 while at our practice?	This could either be a medical negligence, or a public liability claim as it will depend on the circumstances. E.g. Legionnaires through the air-conditioning will generally be regarded as a public liability claim. Check your policy as some do exclude the transmission of a contagious disease. For example, one medical indemnity policy excludes “the transmission of a contagious disease or virus by you if you knew or should reasonably have known or suspected that you were carrying the disease or virus”
Telehealth – medical negligence	What if a patient alleges medical negligence against me/my practice following a telehealth consult?	The better medical indemnity policies (for the doctor and practice) will specifically cover telehealth consults. There may be some requirements such as limited to Australian-based telehealth consults and to follow certain protocols etc. Check your own policy as cover varies. Most of the medical indemnity insurers have also placed FAQs on their website advising what they intend to cover.
Medicare billings	We are introducing Telehealth. What if we bill incorrectly?	The better medical indemnity policies (for the doctor and practice) will cover the legal expenses to assist you with an audit, including telehealth. No policy will cover any amounts you need to repay to Medicare (including under the Medicare Shared Debt Recovery Scheme). So ensure your billing practices are compliant.
Privacy Risks	We've introduced telehealth and also some staff are working from home, dealing with patient health information. What if we breach patient privacy?	<p>Firstly, under the Privacy Act you need to take reasonable steps to protect patient privacy. The starting point should be a Privacy Impact Assessment (see https://www.oaic.gov.au/privacy/guidance-and-advice/guide-to-undertaking-privacy-impact-assessments/)</p> <p>Insurance-wise, a good cyber/privacy policy will cover the legal and expert costs to assist you with conducting a breach investigation and if it is a notifiable data breach then actioning that accordingly. Your medical indemnity may provide some cover for a patient civil claim, the privacy fine (which can be up to ~\$2million) and this depends again on your policy (some policies are much better than others, but regardless a separate cyber/privacy should be help at the practice level)</p>