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## PRACTICE GROUP: HEALTHCARE

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### INSURING AGAINST CONTAMINATION AND/OR POLLUTION IN HEALTHCARE

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A healthcare facility is a place that most of us think of as safe when we are sick or injured. However, recent news of a local hospital shutting down all of its operating rooms due to mold contamination<sup>1</sup> is a reminder that there are contamination and pollution risks associated with healthcare establishments. Furthermore, it's a concern that not only affects the health and wellbeing of patients, but could also have financial and reputational impacts on the organization itself, if not addressed properly.

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#### SOURCE OF POLLUTION

Most people associate healing with healthcare facilities. However, they are also a source of many contaminants and pollutants that can potentially harm patients, especially those who are highly vulnerable due to an illness or weakened immune system. Hospitals, for instance, are large buildings that are open 24 hours per day, 365 days per year, with many people entering and exiting daily. Energy-intensive activities and equipment, including sophisticated heating, cooling, and ventilation

systems; computing, medical, and laboratory machinery; sterilization, refrigeration, laundry, and food service, are used daily. Clinical care, which includes diagnostics and therapeutics, is the single largest factor contributing to healthcare pollution through waste generation, chemical usage, water consumption, and energy production. Healthcare waste can contain potentially harmful microorganisms that can infect hospital patients, health workers, and the general public. Other possible hazards may include drug-resistant pathogens that spread from health facilities into the environment.

#### ADVERSE EVENT – WOULD YOUR INSURANCE PROGRAM RESPOND?

Most commercial property and general liability insurance policies written for healthcare facilities contain pollution or contamination exclusions, or include very limited coverage. The definition of pollution or contaminants (which often include mold and other types of fungi) will vary by carrier.

Under a commercial property policy, coverage for contamination or pollution is typically limited to necessary clean up, only if produced by a covered cause of loss. If a portion of your facility has to be shut down due to the

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presence of mold or other substances that was not triggered by a covered cause of loss such as a fire, your policy would likely not respond to the claim for clean up or reimbursement of the revenue lost during the shutdown.

A general liability policy for a healthcare facility will typically include limited pollution coverage for claims made by a third party for bodily injury; however, coverage oftentimes is subject to a sublimit, and the definition of pollutant, mold, and other contaminants is often very narrow. Facilities may also have additional exposures, such as underground and above ground storage tanks, which need to be addressed.

**Environmental policies can address the exposure unique to the healthcare industry, help safeguard your business, and should be considered as part of your overall risk management plan.**

#### PROTECTING YOUR FACILITY

Having a plan of action in place prior to an adverse event, and understanding how your commercial insurance program factors into that plan, is critical for healthcare organizations. Discovering at the time of loss that you have very limited or no coverage can be devastating to an organization, as the cost of such claims can be significant.

Environmental insurance policies are one way to address the gaps that may be present in your existing insurance program. It is important to evaluate your existing insurance program, particularly the contamination and pollution exclusions in both the property and general liability policies, and consider the available risk management strategies to mitigate any potential risk. Environmental policies can provide coverage for all your facilities, including on-site cleanup of new and preexisting pollution conditions, coverage for business interruption resulting from pollution conditions, third-party claims for bodily injury, property damage, and cleanup costs arising from on-site or off-site pollution conditions. Coverage is also included for infectious agents, such as *Legionella pneumophila*, which causes Legionnaires' disease<sup>2</sup>. These policies will also cover image restoration expenses, which are expenses associated with restoring your public reputation and consumer confidence due to a loss. Additional coverage can also be included for transportation and storage tank exposures.

Environmental policies can address the exposures unique to the healthcare industry, help safeguard your business, and should be considered as part of your overall risk management plan. It is important to consult with an experienced risk management broker who understands the healthcare industry and can assist in developing a risk management plan for your business to address this risk.

#### Citations

1. Seattle Children's Hospital operating rooms shut down after fungus discovery, <https://www.kiro7.com/news/local/seattle-childrens-hospital-operating-rooms-shut-down-after-fungus-discovery/951161741>
2. Are You Prepared for a Legionnaires' Outbreak?, <https://www.psfinc.com/articles/prepared-legionnaires-outbreak/>

#### References for Further Reading

- The hidden harm of health care: air, water, and other pollution, <https://www.statnews.com/2018/09/25/pollution-health-care-harm/>
- Waste, <http://www.sustainabilityroadmap.org/topics/waste.shtml#XVWqruhKhaR>
- Environmental Impacts of the U.S. Health Care System and Effects on Public Health, <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0157014>
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