

Home Care Agencies Vs. Communicable Disease Exclusion

How Covid is impacting Home Care agencies from a Professional Liability perspective

Covid not only continues to affect our daily lives, but it has altered the insurance landscape for the foreseeable future in how insurance companies respond to virus-related claims. Prior to the Covid outbreak, most insurance carriers did not have an exclusion for Communicable Disease on their policies. However, starting in 2021, it has become standard practice for many insurance carriers to include this type of exclusion not only for General Liability, but under the Professional Liability coverage as well. For industries such as home care with front line essential workers, this can have a significant impact. Here's how a typical exclusion reads:

This insurance does not apply to:

Communicable Disease

"Bodily injury" or "property damage" arising out of the actual or alleged transmission of a communicable disease.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the:

- 1. Supervising, hiring, employing, training or monitoring of others that may be infected with and spread a communicable disease;**
- 2. Testing for a communicable disease;**
- 3. Failure to prevent the spread of the disease; or**
- 4. Failure to report the disease to authorities.**

Essentially, this exclusion eliminates all coverage under Professional Liability if a client (3rd party) contends that they contracted Covid from their caregiver. In contrast, if a policy does not contain this exclusion, the carrier has the duty to indemnify and defend the home care agency against Covid-related claims brought by a client. Considering that most clients are elderly patients who are extremely susceptible to the effects of the virus, this could be a huge uninsured liability exposure for home care agencies.

Most carriers have not been willing or able to remove these exclusions for home care agencies. So, what's the fix? After 9/11 Terrorism Coverage (TRIA) was introduced for organizations to buy-back coverage for acts of terror. Similarly, there are some carriers who are willing to provide some type of buy-back coverage for Communicable Disease, but at a hefty cost. Other carriers are taking advantage of the opportunity to gain market access in the home care space and including the coverage for qualified agencies at no additional cost.

If you have any additional questions or concerns regarding your insurance carriers response to Covid-related claims and potential solutions, please feel free to contact me and our dedicated Odell Studner - Home Care Practice Group would be happy to assist.

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