

ENVIRONMENTAL INSURANCE AND THE HEALTH CARE INDUSTRY

Health care facilities, from hospitals and medical centers to doctors' offices and nursing homes, face a troubling set of environmental exposures beyond the unavoidable presence of infectious agents, such as bacteria and viruses. Additional concerns typically include:

- On-site storage of hazardous chemicals
- Indoor air quality issues such as asbestos or *legionella*
- Medical waste management and contamination
- Industrial pollutants from current or past site use

Such risk factors are magnified at health care facilities because of the inevitably large concentration of people – many of whom are especially vulnerable because of their weakened physical conditions and suppressed immune systems.

While there is an obvious potential for civil actions for bodily injury, loss experience has shown that cleanup and decontamination exercises and even business interruption events have been major cost drivers. For example, state environmental regulators recently took action against a medical center in the Northeast for an airborne chemical release that forced the evacuation of multiple hospital buildings.

Most environmental exposures, meanwhile, are excluded from General Liability, Professional Liability and Property coverages.

What can be done? The answer is to develop a comprehensive environmental management plan and risk financing strategy. But first, health care facility managers must understand the nature of the exposures they face.

KEY HEALTH CARE EXPOSURES

INDOOR AIR QUALITY

Air quality contamination results from mold, fungi and other microbial matter. Pollutants can become inadvertently introduced into HVAC systems and then spread through the facility. Numerous cases of *legionella* infection in hospitals have been reported recently.

BIOLOGICAL AND CHEMICAL WASTE

Red bag and low level radioactive waste streams from hospitals can cause bodily injury or property damage if not handled effectively. Misclassification and subsequent improper disposal of waste can result in huge liabilities. Federal, state and local regulatory agencies rigorously monitor waste streams at hospitals and often order costly remediation for acute deficiencies and upgrades to control systems. Transportation of waste from hospitals presents additional pollution risks and public exposures.

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HAZARDOUS MATERIALS

Aboveground and underground storage tanks are frequently used at health care facilities to store fuels, solvents and lubricants for machinery. Leaks can cause on-site pollution or worse – offsite contamination resulting in third-party claims. Laboratory operations at hospitals store large quantities of hazardous chemicals and also contribute to waste transportation and disposal risks. Sterilization operations and laundries can require large quantities of hazardous solvents and industrial cleaners.

NON-OWNED DISPOSAL SITES (NODS)

Health care facilities dispose of waste at repositories that may have failed to meet regulatory standards or may become the subject of third-party litigation. Health care facilities that use NODS can be held liable for remediation costs or third-party losses. Even though the health care entity does not operate the site, it can be held liable for contamination at the site as a potentially responsible party under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), also known as the Superfund law.

INCINERATORS

The health care industry's incineration of millions of tons of medical waste each year is a significant cause of air pollution and is also a leading source of mercury pollution. This generates a potential for third-party suits.

CONSTRUCTION AND PROPERTY ACQUISITION

Renovations are typically performed in one part of a facility while other sections remain operational, which increases the risk of spreading contaminants. Actions to remediate or remove these contaminants significantly impact the ability to conduct operations and treat patients, resulting in significant business interruption expenses. For construction of new facilities on newly acquired property, the past uses of the property and potential pollution conditions on-site are a consideration. This is also a concern for bequeathed or trust properties.

CLAIM EXAMPLE

Unsafe levels of asbestos fibers were found recently in a large urban hospital during an extensive renovation project. Testing found levels at more than 40 times those considered safe on three floors of the hospital and in an outpatient building. A local law firm filed personal injury suits on behalf of seven workers at the hospital with settlement demands currently totaling \$25 million.

INSURANCE SOLUTIONS

Environmental insurance policies are readily available to address the risk exposures outlined above. It is important to evaluate existing insurance programs, paying particular attention to pollution exclusions in General Liability and Property programs, and then consider Environmental insurance policies to address any coverage gaps. Site-specific pollution liability policies routinely provide coverage for:

- All primary and ancillary facilities without the need to schedule individual locations
- On-site cleanup of new and preexisting pollution conditions
- Business interruption resulting from pollution conditions
- Sudden and gradual pollution conditions
- Third-party claims for bodily injury, property damage and cleanup costs arising from on-site or off-site pollution conditions
- Coverage for specific infectious agents such as *legionella*
- Defense of third-party claims up to the limit of the policy
- Transportation and NODS

In addition to routinely available coverage, customized programs are often attainable. Careful insurance buyers, working with knowledgeable professionals, are increasingly able to negotiate significant coverage enhancements that address a health care facility's individual history, operational risks and liability concerns.

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