



## Novel Coronavirus (COVID-19)

Health Law

Insurance Defence

July 2020

# COVID-19 Insurance and Healthcare Considerations

By Cody F. Dolgay

The Canadian health and long term care industries have been hit particularly hard by COVID-19. It would appear that this has not gone unnoticed by insurance underwriters.

We are now aware that at least two large national insurers have begun to implement dramatic changes to the policies that they underwrite for health care organizations and long term care facilities. Specifically, it appears that a “Contagious Disease Exclusion Endorsement” is being added to some policies upon renewal. This broad Endorsement purports to completely remove from coverage “any claim, action, occurrence, accident, loss, damage, injury, cost, expense, fee, charge, fine, penalty, or other amount” alleged to be caused directly or indirectly by a number of contagious diseases listed in the Endorsement. Unsurprisingly, this list includes COVID-19, but it also includes “any other strain, derivative, mutation, or variation” thereof, as well as other known diseases such as SARS and MERS.

The novelty of this Endorsement has resulted in a lack of clarity with respect to how it will be applied by insurers or Courts. However, there appears to be little doubt that it is being implemented to bring **all** liability claims related to COVID-19 out of coverage. This includes claims and lawsuits brought by a patient, resident, or visitor of a health or long term care facility, as well as any of their family members. For example, if a resident of a long term care home contracts COVID-19 as a result of alleged staff negligence during a policy period in which this Endorsement applies, any lawsuit brought by the resident and/or a family member with respect to this contraction may fall outside of liability coverage. Simply put, the long term care home could be facing the lawsuit on their own.

In anticipation of significant COVID-19 litigation, at least some insurers are clearly attempting to cut their losses, and limit exposure to any future risk that may arise as the pandemic unfolds. The extent to which all insurers apply this type of underwriting practice is currently unclear, however we recommend that our clients in the health and long term care industry ensure that their brokers advise them of any changes to coverage that their insurers are implementing upon renewal.

The **lawyers at Torkin Manes** can assist in identifying certain areas of exposure, so that the proper coverage questions are being raised with brokers. Whether or not alternative coverage is available or practical, we are able to assist in preparing and implementing waiver and indemnity agreements, in order to mitigate liability exposure. This extends to other public-facing for-profit and not-for-profit organizations, which may not be experiencing changes to their liability coverage, but which may nevertheless be attempting to re-open with an eye to reducing risk.

*For more information about dealing with COVID-19, please visit our COVID-19 Resource Center.*

## Author

**Cody F. Dolgay**  
Associate

**Tel:** 416 777 5444  
cdolgay@torkinmanes.com

The issues raised in this publication are for information purposes only. The comments contained in this document should not be relied upon to replace specific legal advice. Readers should contact professional advisors prior to acting on the basis of material contained herein.