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EDUCATIONAL RESOURCES

Underinsured and Exposed? Liability Mistakes Costing Home-Based Care Providers

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Objective

- Discuss the **essential insurance coverages** every home-based care provider should have in place, including:
  - General Liability
  - Professional Liability (Malpractice/Errors & Omissions)
  - Employment Practices Liability
  - Automobile
  - Cyber
  - Workers' Compensation

- We'll focus on understanding coverage types, appropriate limits, common gaps in protection, and claims scenarios/outcomes

General Liability Insurance

- **What it is:**
  - Protects your organization from claims related to bodily injury, property damage, or personal injury that occur during day-to-day operations — outside of direct patient care.

- **Why it's needed:**
  - Care is delivered in patients' homes, where accidents can happen
  - Covers common risks like slips, trips, falls, or property damage caused by staff
  - Helps protect against costly lawsuits, legal fees, and settlements
  - Often required by contracts, landlords, or referral partners

What to Look for in your current General Liability policies

- Adequate Limits
- Who is considered an “Insured”
- Premises and Off-Premises Coverage

What to Look for in your current General Liability policies

- Property Damage Protection
- Personal and Advertising Injury
- Common Exclusions and Limitations

What to Look for in your current General Liability policies

- Defense Costs
- Contractual Requirements

Claims Scenarios and Outcomes- General Liability

Scenario 1: Fall During Patient Assistance

Scenario:
A home care aide assists a patient from a wheelchair and the aide *loses balance*, causing the patient to fall and break a femur.

Outcome:
The provider settled for **$193,000** to compensate for medical costs and suffering.

Why this matters: Falls during non-medical assistance are a common general liability exposure for home care workers.

Source #1-Dinzizulu Law Group LTD

Scenario 2: Slip and Fall on Premises

Scenario:
A visiting family member trips over the oxygen cord, fracturing her wrist, and sues the agency for medical expenses and lost wages.

Outcome:
The carrier paid **$5,000** for medical bills

Why this matters: Your policy's **medical expense coverage** is vital, as it handles the costs of treatment and prevents a minor incident from escalating into a major financial liability.

Source #2: Florida All Risk

Scenario 3: Property Damage

Scenario:
In the midst of their duties, a caregiver forgot to turn off the kitchen sink, which overflowed, damaging the client's unit and four others.

Outcome:
Resulted in a **$3,700** settlement.

Why this matters: Your policy covers both **repair and replacement costs**, allowing you to resolve the situation with your client without bearing the full financial burden

Source #3- Lockton Affinity Home Care

Additional Claim Areas

- **Breaking Valuables:** A caregiver accidentally knocks over an antique vase while dusting or bumps into a display cabinet.
- **Furniture and Fixture Damage:** A wheelchair scratches a hardwood floor, or a cleaning solution damages a dining room table.
- **Spills and Liquid Damage:** A spilled glass of juice ruins an expensive rug
- **Invasion of Privacy:** Accidentally sharing confidential client information or taking photos in a client's home without permission.

Source:: Florida All Risk

Professional Liability

- **Malpractice**
  - Bodily injury or death resulting from medical negligence or errors in patient care, such as medication mistakes or injuries
- **Errors and Omissions:**
  - Financial losses stemming from professional mistakes, negligence, or failure to perform services

Both are forms of professional liability

Malpractice Insurance

- **What it is:**
  - Malpractice insurance is a specialized form of professional liability insurance that protects healthcare professionals and organizations when a patient alleges that care fell below accepted standards and caused harm through negligence, error, or omission.
    - *Malpractice insurance pays for defense costs, settlements, and judgments related to these claims.*

- **Why it's needed:**
  - Healthcare delivered in home environments carries clinical risk every time care is provided.
  - Malpractice claims arise from alleged errors, negligent clinical decisions, or unsafe practices — not covered by general liability.
  - Even *unfounded claims* can incur high legal defense costs and reputational damage.
  - Some states or referral partners may require malpractice coverage for providers to operate.

What to Look for in your current Malpractice policies

- Coverage Limits
- Scope of Covered Services
- Claims-made vs. Occurrence
- Defense Costs
- Exclusions or Limitations

Claims Scenarios & Outcomes- Malpractice

Scenario 1: Fall During Patient Assistance

Scenario:
A home health nurse administers the wrong dosage of a prescribed medication, and the patient experiences complications.

Outcome:
Insurer provides **legal defense and settlement negotiation**. Settlement typically paid to patient or family to resolve harm claims. Costs often include legal fees plus settlement amount.

- *Why this matters:* Medication administration errors are among the most frequent triggers of malpractice claims.

Scenario 2: Failure to Monitor/Documentation Omission

Scenario:
A caregiver fails to notice or document a patient's deteriorating condition that later requires emergency intervention.

Outcome:
Claim alleges breach of standard care; insurance covers **defense costs** and negotiated damages..

- *Why this matters:* Documentation and assessment oversights are key drivers in malpractice claims.

Scenario 3: Miscommunication/Informed Consent Issue

Scenario:
A patient claims they were not fully informed of the risks associated with a care procedure or intervention.

Outcome:
Malpractice coverage may respond to allegations and provide legal defense, potentially including settlement.

- *Why this matters:* Miscommunication — especially around risk and consent — is a common element in malpractice litigation.

Malpractice takeaways

- Covers *negligence, clinical errors, and breaches of standard care*
- Pays for *defense costs, settlements & judgments*
- Critical in *home-based healthcare where clinical decisions carry real risk*
- Helps protect *financial and reputational security* of your organization
- Proper Risk Management Techniques should be followed

Errors & Omissions

- **What it is:**
  - Errors & Omissions Insurance (sometimes called E&O or *professional liability* in business contexts) protects an organization or professional when a client alleges mistakes, negligence, or failure to deliver a promised service that results in financial loss — even if the claim is groundless.
  - In essence, *E&O covers financial harm alleged to result from your services, advice, or performance errors*.

- **Why it's needed:**
  - Providers often give services, advice, or assessments that families and referral partners rely on — and alleged missteps can lead to claims of financial harm or losses.
  - Mistakes — such as miscommunication, documentation oversight, scheduling failures, or perceived unmet expectations- can lead to disputes and lawsuits.
  - Even *non-clinical errors* (not covered by malpractice insurance) can be costly and damage reputation. Having E&O helps pay for defense, settlements, and judgments associated with alleged service errors.

What E&O Typically Covers

- Negligence
- Errors or mistakes in service delivery
- Omissions
- Misrepresentation or inaccurate advice that causes client loss.
- Failure to deliver agreed services (even if unintentional).

What E&O typically pays for

- Attorney fees and court costs
- Settlements or judgements
- Defense expenses related to covered claims
- Misrepresentation or inaccurate advice that causes client loss.
- Failure to deliver agreed services (even if unintentional).

What E&O typically does *not* cover

- Bodily Injury or Property Damage
- Criminal, fraudulent, or malicious acts
- Employee Injury

Claims Scenarios & Outcomes- E&O

Scenario 1: Missed Appointment Leads to Financial Harm

Scenario:
A home health aide repeatedly *missed scheduled visits* to a client. The family claims financial losses for alternative care.

Claim:
Client sues for breach of promised service delivery and financial damages.

How E&O Responds:
Policy covers **defense costs and settlement** negotiations to resolve the claim.

- *Why this matters:* Failure to meet agreed terms damages trust and can lead to costly litigation.

Scenario 2: Communication/Documentation Error

Scenario:
A scheduler mixed up care instructions, resulting in unnecessary private duty hours that the client had to pay out of pocket.

Claim:

Client alleges negligence in care coordination and seeks reimbursement plus damages.

How E&O Responds:
E&O covers **legal defense and settlement** up to policy limits.

- *Why this matters:* Even administrative errors can cause financial harm and claims.

Scenario 3: Care Planning Misunderstanding

Scenario:
A care plan was communicated inaccurately to a family, leading them to hire additional (and costly) services unnecessarily.

Claim:
Family sues for financial loss due to *inaccurate advice/service misunderstanding*.

How E&O Responds:
Policy pays for **defense expenses and negotiated settlement**.

- *Why this matters:* Perceived professional missteps, even when not clinical, can trigger claims.

E&O takeaways

- Covers financial harm claims, defense costs, settlements, and judgments
- Essential for service-based organizations and professionals
- Complements malpractice and general liability to give comprehensive risk protection

Employment Practices Liability

- **What it is:**
  - Employment Practices Liability Insurance (EPLI) protects an organization against claims made by employees, former employees, or future employees alleging wrongful employment practices.
  - These claims typically arise from how employees are hired, managed, disciplined, or terminated, rather than from patient care or operations.
  - Can also include Third Party Liability extending coverage to non-employees

- **Why it's needed:**
  - The workforce is large, decentralized, and highly regulated
  - High turnover increases exposure to termination and retaliation claims
  - Providers rely heavily on part-time, hourly, and field-based staff
  - Supervisors often manage remotely, increasing communication and documentation risks
  - Wage and Hour disputes are common due to:
    - Overtime
    - Missed breaks
    - Travel time between patient homes

What EPLI Typically Covers

- Wrongful Termination
- Discrimination
- Harassment
- Retaliation
- Failure to Hire/Promote
- Wrongful Discipline
- Wage and Hour Violations
- Workplace Torts

What Costs EPLI Typically Covers

- Attorney Fees and Legal Defense Costs
- Settlements and Judgements
- Mediation or Arbitration Costs

EPLI Trends

- Increasing Limits
- High Costs
- Significant Exposure
- Rising Claim Numbers
- Third Party Liability

Claims Scenarios and Outcomes- EPLI

Scenario 1: Discrimination

Scenario:
A 65-year-old nurse is terminated and alleges age discrimination, claiming they were replaced by a younger, lower-paid caregiver despite a clean performance record.

Claim:
Employee alleges wrongful termination and discrimination.

Why EPLI matters:
Defense costs alone can be significant, even if the employer acted appropriately.

Scenario 2: Harassment

Scenario:
An employee alleges inappropriate comments or behavior by a field supervisor during home visits or check-ins.

Claim:
Harassment, hostile work environment, and failure to act by management.

Why EPLI matters:
EPLI can provide coverage for **defense and settlement** tied to supervisory conduct.

Scenario 3: Retaliation Claim

Scenario:
A home health aide is fired shortly after reporting safety violations and improper medication handling (whistleblowing).

Claim:
Employee alleges retaliation for engaging in protected activity.

Why EPLI matters:
Retaliation claims are among the **fastest-growing employment lawsuits**.

Scenario 4: Wage and Hour Claim

Scenario:
Caregivers claim unpaid overtime, missed meal breaks, or unpaid travel time between patient homes.

Claim:
Employees allege wage and hour violations.

Why EPLI matters:
Some EPLI policies offer a sublimit for **defense coverage** (even if wage damages themselves are excluded).

EPLI takeaways

- Helps manage legal costs, settlements, and reputational risk
- Especially critical for labor-intensive, high-turnover healthcare organizations
- Can include coverage for Third Party/Non-Employment allegations of harassment and discrimination
- Compliments General Liability and Malpractice/E&O to round out risk protection

Automobile

- **What it is:**
  - Commercial Automobile Insurance provides coverage for vehicles owned, leased, or used for business purposes, including:
    - Liability for Bodily Injury and Property Damage
    - Physical Damage to the owned vehicle itself (Comprehensive and Collision coverage)
- **Why it's needed:**
  - Many HH / HSP / HC providers drive between multiple client homes daily
  - Vehicles may transport:
    - Staff
    - Medical supplies or equipment
    - Patients (non-ambulatory transport may require additional coverage)
  - Accidents can involve third-party injury, property damage, or patient injury, creating exposure beyond standard liability
  - Agencies face state or contract requirements for proof of business automobile insurance

What Business Automobile Coverage Typically Includes

- Liability Coverage:
  - Bodily Injury
  - Property Damage
  - Legal Defense and Settlements
- Physical Damage Coverage:
  - Comprehensive
  - Collision
- Optional / Add-On Coverages:
  - Hired and Non-Owned Auto Coverage (employees using personal vehicles for work)
  - Medical Payments / Personal Injury Protection
  - Uninsured / Underinsured Motorist coverage
  - Rental Reimbursement

Standard General Liability **does not cover vehicle incidents**, so Business Automobile fills this critical gap.

Claims Scenarios and Outcomes- Business Automobile Policies (BAP)

Scenario 1: Vehicle Collision While En Route to Patient

Scenario:
Company van collides with a third-party vehicle on the way to a home visit.

Claim:
Third-party driver files for injuries and property damage.

Why BAP matters:
Policy covers legal defense and settlement, protecting the business's assets.

Scenario 2: Employee Driving Personal Vehicle for Work

Scenario:
Home care aide uses personal vehicle, runs a red light, and causes a multi-vehicle collision.

Claim:
A home health agency can be held legally responsible for damages caused by an employee acting on the agency's behalf, even if the employee is driving their own car.

Why BAP matters :
Business Auto policy with proper endorsement provides coverage for agency.

Scenario 3: Passenger Injury

Scenario:
An employee is transporting a patient to a medical appointment when they are involved in a motor vehicle accident.

Claim:

Medical payments coverage or liability coverage addresses **injury claims** and associated legal costs.

Why BAP matters :
Business Auto policy with proper endorsement covers the claims.

Business Auto Policy Takeaways:

- Covers liability, physical damage, and can have optional add-on coverages
- Offers protection for vehicles, drivers, passengers, and third parties
- Essential for mobile healthcare organizations with staff traveling between multiple homes
- Hied and Non-Owned Coverage is essential coverage

Cyber Liability Coverage

- **What it is:**
  - Cyber Liability Insurance protects an organization from financial losses resulting from cyber incidents, including:
    - Data breaches exposing patient or employee personal information
    - Cyberattacks such as ransomware, malware, or phishing
    - Network security failures, system downtime, or IT service interruptions
    - It can cover legal fees, regulatory fines, notification costs, and remediation expenses.

  ****Important**: General Liability, Malpractice/E&O policies typically **do not cover cyber risks**.

- **Why it's needed:**
  - HH/HSP/HC providers handle large volumes of protected health information (PHI).
  - HIPAA and other privacy regulations impose strict penalties for breaches.
  - Cyberattacks, lost laptops, or stolen devices can lead to significant financial and reputational loss.
  - Remote work and electronic health records (EHRs) increase exposure.
  - Even small breaches can trigger notification, credit monitoring, and legal defense costs.

What Cyber Liability Typically Covers

- Data Breach Response
- Cyber Extortion / Ransomware
- Business Interruption
- Network Security Liability
- Incident Response Services

- Exclusions to look out for:
  - Intentional acts or fraud by the organization
  - Bodily injury (covered under other policies)
  - Contractual obligations not covered unless specifically endorsed

Claims Scenarios & Outcomes- Cyber Liability

Scenario 1: Lost or Stolen Laptop

Scenario:
A nurse's laptop containing patient records is stolen from a car.

Claim:

Breach of PHI reported; HIPAA notification, legal, and credit monitoring costs arise.

Why Cyber Liability matters:
Cyber insurance covers notification costs, forensic investigation, and legal fees

Scenario 2: Ransomware Attack

Scenario:
Malware locks the provider's EHR system, preventing access to patient records.

Claim:
Business interruption, data recovery, and potential ransom payment required.

Outcome:
Policy covers IT remediation, downtime losses, and legal guidance.

Scenario 3: Email Phishing/Data Breach

Scenario:
Employee opens phishing email; attackers access sensitive patient data.

Claim:
Notification to affected patients, regulatory inquiry, and defense costs.

Outcome:
Cyber liability insurance pays for **investigations, legal counsel, and notification costs**.

Cyber Liability Takeaways:

- Common Covered Expenses
  - Forensics & Legal: Investigating the breach source and managing legal compliance.
  - Ransomware & Extortion: Negotiating and paying ransoms, if applicable.
  - Business Interruption: Recovering lost revenue while systems are down.
  - Regulatory Fines & Penalties: Fines from government bodies due to data breaches.
  - Reputation Management: Costs for public relations to restore company reputation

Workers' Compensation

- **Why it matters in home-based care:**

  - Workers' Compensation is a critical safeguard for home-based care organizations, protecting both caregivers and agency owners when work-related injuries or illnesses occur. In an industry where staff work independently in clients' homes and face daily physical and environmental risks, the right workers' comp coverage helps ensure continuity of care, financial stability, and regulatory compliance.

  - Choosing the right insurance carrier isn't just about cost—it's about having a partner that understands the unique risks of in-home care and supports your workforce when it matters most.

Workers' Compensation Covers:

- Medical Costs
- Lost Wages
- Rehabilitation Costs
- Death Benefits

- For job-related illness or injury

- Workers' compensation is a "no-fault" system, meaning the employee does not need to prove the employer was negligent to receive benefits,

Workers' Compensation Covers:

- Workers' compensation is a "no-fault" system, meaning the employee does not need to prove the employer was negligent to receive benefits
  - Compulsory in most states and Washington DC
  - 4 Monopolistic States (North Dakota, Ohio, Wyoming, Washington)
  - Some states have employee count minimum (Wisconsin 3 employees or more)
  - Optional/Opt-in States (Texas)
  - Benefits vary by state

Workers' Compensation Takeaways:

- Caregivers face higher-than-average risk for injuries such as falls, lifting strains, and exposure incidents
- Not all carriers understand the complexities of home-based care—experience in the industry matters
- The right carrier can help improve safety programs, control claim costs, and support long-term workforce stability

- Things to look out for in your current program:
  - Misclassification of workers (employees vs. independent contractors) can lead to claim issues and audit concerns
  - Timely reporting, accident investigation, and return to work programs are vital to control premium costs

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Thank you

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