

CYBER INSURANCE: QUESTIONS TO ASK YOUR BROKER

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GNYHA derived the following questions from a March 5 webinar we hosted called [Cyber Insurance and Where to Find It: Traditional v. Standalone Policies](#). Members can use the questions to evaluate cyber insurance policies for purchase or renewal. Lynda Bennett of Lowenstein Sandler, LLP, and Charles Bellingrath of ARC Excess & Surplus, LLC, presented the webinar, a recording of which is on the GNYHA website.

GENERAL TIPS

Coverage for cyber incidents can be found in both traditional and cyber insurance policies. GNYHA recommends that members ask their brokers to:

- prepare an analysis of all first-party and third-party coverages that may apply in such cases to determine where there are redundancies and gaps
- advise on the appropriate limits and sub-limits for different types of coverage based on the size and other features of the organization
- assist in preparing and convening the appropriate individuals to provide accurate information to the insurance company during the application process, to avoid future coverage denials

Questions for your Broker about Traditional Policies

- Do we have coverage for cyber incidents under policies such as Commercial General Liability (CGL), Crime, and Directors & Officers (D&O)?
- Have we done a crosswalk to ensure there are no gaps between the coverage under those policies and that afforded under our dedicated cyber insurance policy?
- If our traditional policies contain exclusions for loss of electronic data, do we have appropriate “carve-backs” for cyber incidents? If not, can we get them?
- Do our internal security and financial controls meet the requirements under the polic(ies)?
- Do we have adequate sub-limits for any cyber-related endorsements, such as losses due to social engineering, “crisis management” under D&O, or “employee privacy violations” under our Employment Practices Liability Insurance policy?
- Does our CGL policy cover publication of material that violates a person’s right of privacy?
- How broad is the D&O exclusion for cyber risks, assuming there is one?
- Do we have an exclusion under our D&O policy for “failure to investigate or secure adequate coverage”? If so, can we get it removed?
- Could there be coverage under our Crime policy for cyber, such as under a “computer fraud” rider?
- Is our Crime policy written on an “all-risk” or the more limited “named perils” basis?



GNYHA is a dynamic, constantly evolving center for health care advocacy and expertise, but our core mission—helping hospitals deliver the finest patient care in the most cost-effective way—never changes.

Questions for your Broker about Dedicated Cyber Policies

- Is the cyber policy primary to any other coverages that could be triggered under a traditional policy? If not, are we comfortable with the limits under the traditional policies?
- What free products and services are available from the insurance company, e.g., employee training, policy templates, risk analysis tools?
- Does the cyber policy include coverage of any of these services: breach coach, crisis communications, call center services, etc.?
- Do our internal security and financial controls meet the insurance company's requirements?
- What is the retention(s) and to which insuring agreements do they apply?
- Can we use our own preferred counsel and vendors under the policy or are we limited to the insurance company's designated consultants? If not, can we get our preferred consultants scheduled to the policy?
- Are "prior acts" covered?
- Are both "system failure" and "dependent system" failure covered?
- Does the policy cover ransomware payments?
- Does the policy require the company's consent before paying ransom, and if we do pay, how is it treated under any retention?
- Does the policy allow us to waive subrogation in contracts with third parties?
- Are losses caused by third-party vendors or providers covered?
- Is there a carve-back under the policy's war exclusion?
- What is the Bitcoin or cryptocurrency language, if any?