

# EDUCATIONAL INSTITUTION LIABILITY INSURANCE (COVID EXCLUSION) GUIDELINES

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## PURPOSE

The purpose of this document is to provide guidance to Toronto Region Hospitals related to those Educational Institutions that have COVID-19 and/or Communicable Disease exclusions in their General and Professional Liability Insurance Policy to ensure Hospitals are able to make informed decisions locally, as well as ensure learners are able to complete hospital-based placements as components of their professional programs.

## BACKGROUND

As per Affiliation Agreements, Educational Institutions are responsible for carrying the primary insurance for learners participating in hospital-based placements, ensuring the following coverage:

- Workplace Safety & Insurance Board (WSIB) coverage for claims provided by Ministry of Training, Colleges & Universities (MTCU). WSIB covers work-related injury or illness, and in the context of COVID-19, would respond should a learner contract COVID-19 through work-related contact to COVID-19.
- Minimum General Liability and Professional Liability Insurance, which often includes incidental medical practice insurance (amount identified within Affiliation Agreements).

## COVID-19/Communicable Disease Exclusions in Insurance

Educational Institutions continue to maintain general liability and professional liability insurance per Affiliation Agreements. However, in the course of policy renewal processes, and arising from COVID-19's impact on the insurance industry, some Educational Institutions have indicated that their new liability policies include an explicit exclusion for COVID-related claims, and in some cases, broadly exclude communicable diseases. To date, this has primarily impacted various Colleges within the Colleges Ontario\* Consortium.

## Liability Waivers Requested by Colleges

As a risk mitigation strategy, some Educational Institutions are requesting Hospitals sign an additional waiver and/or indemnification (whereby the Hospital is to indemnify the Educational Institution for COVID-19 related claims, and beyond). To sign such a waiver/indemnification would effectively amend the liability framework under existing Affiliation Agreements. Additionally, some Educational Institutions are requesting learners sign an informed consent form, waiving claims against the school. Healthcare Insurance Reciprocal of Canada (HIROC) recommends that Hospitals not sign liability waivers related to this issue.

## Hospital Risks Associated

The risk does not pertain to learners contracting COVID-19 as they are covered by WSIB which covers work-related injuries. Rather, the risk pertains to third parties (e.g., patients, visitors) contracting COVID-19 where such illness could be traced back to a learner from an Educational Institution whose insurance policy had an exclusion of COVID-related claims and/or communicable diseases.

While the present Affiliation Agreements contain an indemnification in favour of the Hospital by the Education Institution for such claims, in this circumstance the Educational Institution would not have insurance coverage to backfill such indemnification, and would need to cover costs directly. If the Educational Institution is unable to cover these costs, the Hospital may be exposed to such damages.

Claims for learner liability are uncommon, and the risk to Hospitals for negligence claims made (e.g., by patients) against learners in the context of COVID-19 is minimal.

\*Algonquin, Cambrian, Canadore, Centennial, College Boreal, Conestoga, Confederation College, Durham College, Fanshawe, Fleming College, George Brown College, Georgian, Humber, La Cite, Lambton, Loyalist, Mohawk, Niagara College Canada, Northern College, Sault College, Seneca College, Sheridan, St Clair College, St Lawrence College.

## **RECOMMENDED APPROACH**

### **1. Liability Waivers**

Hospitals should not sign liability waivers or amendments to Affiliation Agreements requested by Educational Institutions. The Educational Institutions would remain contractually obligated to indemnify the hospitals as per the existing indemnification and insurance clause in Affiliation Agreements.

### **2. Learner Placements**

Hospitals should continue to allow learners to participate in hospital-based placements under the terms of existing Affiliation Agreements and as appropriate during the COVID-19 pandemic. Hospitals should ensure that appropriate orientation and training is available to learners to ensure understanding of the risks involved in participating in hospital-based placements during the COVID-19 pandemic, and the changes in practice during the COVID-19 pandemic (e.g., pre-entry to practice curriculum, enhanced Hospital orientations and PPE training).

### **3. Supporting Education Partners**

Where appropriate, Hospitals should make a concerted effort to support Educational Institutions in minimizing impact on the learners and the health system (e.g., support Educational Institutions in advocacy with government, support alternative insurance options for Educational Institutions, etc.). The emerging Toronto COVID-19 Hospital Education Table (T-HET) should monitor this issue and explore opportunities to support Educational Institutions.

## **CONTRIBUTORS**

Members of the Toronto Region COVID-19 CEO Table, Toronto Academic Health Science Network (TAHSN), Toronto COVID-19 Hospital Education Table (T-HET), Healthcare Insurance Reciprocal of Canada (HIROC).