



Emerging Management Liability Hurdles in Health Care

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Today's Panel



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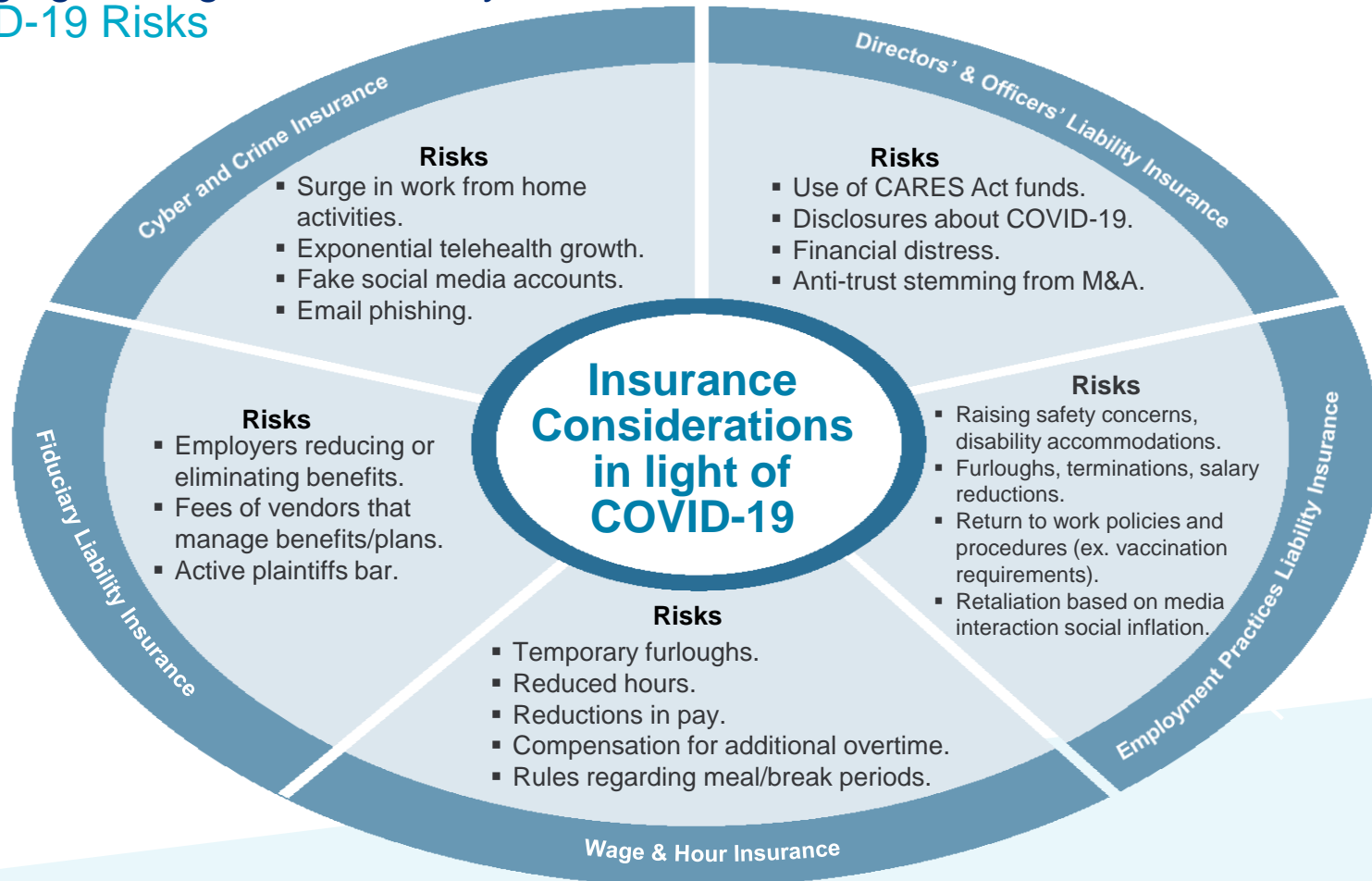
Emerging Management Liability Hurdles in Health Care

Discussion Topics

- Growing and emerging management liability risks.
- Steps to mitigate risk.
- Impact on the insurance market.

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COVID-19 Risks



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COVID-19 Claims Reported by Marsh (as of 9/22/20)

| Industry – All Coverages | Number of Claims |
|---------------------------------|-------------------------|
| Health Care | 2725 |
| Real Estate | 482 |
| Financial Institutions | 429 |
| Aviation & Aerospace | 327 |
| Entertainment | 2725 |

| Management Liability Coverages – All Industries | Number of Claims |
|--|-------------------------|
| All FINPRO | 258 |
| Employment Practices Liability | 48 |
| Directors & Officers Liability | 48 |
| Cyber Risk | 35 |
| Fiduciary Liability | 21 |
| Fidelity Bond (Crime Insurance) | 19 |

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COVID-19 D&O/EPL Claims

D&O

- Financial impact (breach of debt covenants, insolvency).
- Regulatory investigations claims stemming from receipt of government funds.
- Whistleblowers claims – False Claims Act.

EPL

- Wrongful termination.
- Retaliation.
- Discrimination – social unrest.
- Harassment – #metoo.
- Social inflation.



Risk mitigation tips

- Ensure employment procedures and practices apply the same to all.
- Document, document, document.
- Retain outside employment counsel if terminating an employee, considering a reduction in force, large furlough, and the like.
- Updated and relevant training.

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Fiduciary Claims – Excessive Fees Litigation

What is it?

- Allegations of breach of ERISA fiduciary duties.
 - Allowing vendors to charge fees without proper oversight.
 - Providing too few or too many plan choices.
 - Failing to evaluate vendor's cyber security.

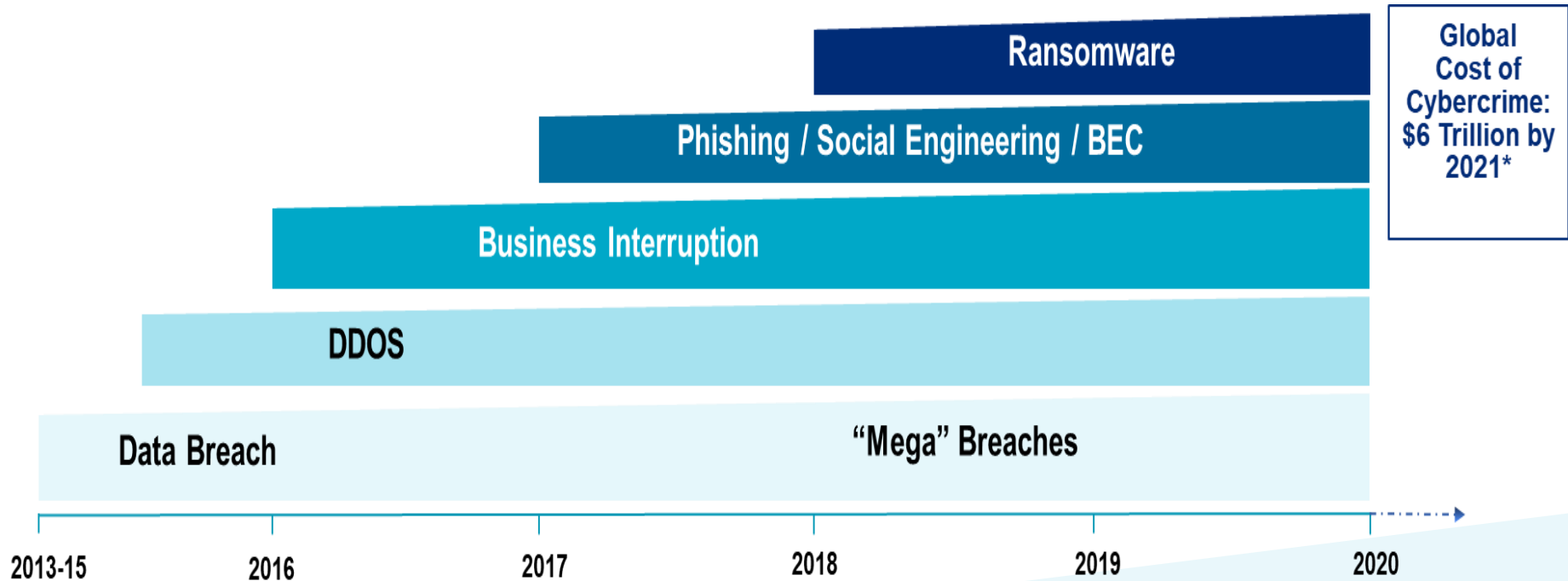


Risk mitigation tips

- Have outside ERISA counsel review your plans.
- Document due diligence regarding vendors and fees.
- Recent RFP on vendor fees.
- Benchmark vendor fees.

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Evolution of Cyber Risks



Sources: Gartner data on cybersecurity spending; 2019 Marsh Microsoft Global Cyber Risk Perception Survey for top threats.

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COVID-19 Cyber and Crime Claims

Cyber

- Ransomware, ransomware, ransomware.
- Network interruption.
- Data breach.
- Office for Civil Rights and/or state attorney general investigation and fines.
- Biometric Information Privacy Act (EPL too) and California Consumer Privacy Act.

Crime

- Social engineering fraud / business email compromise.



Risk mitigation tips

- Use a virtual private network.
- Require multi-factor authentication.
- Disable or turn off remote desktop protocol.
- Secure personal devices.
- Log and monitor access.
- Patch systems.
- Conduct security awareness training.
- More useful tips:
www.beazley.com/documents/TMB/Factsheets/beazley-bbr-ransomware-factsheet-us.pdf

Source:
https://www.beazley.com/news/2020/beazley_breach_insights_june_2020.html

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Telehealth

- Exponential increase in telehealth services during COVID-19.
- More connections, more data over the internet, more cyber risks.



Risk mitigation tips

- Establish a strong internal governance committee.
- Enhance network security infrastructure.
- Implement stringent authentication and network access protocols.
- Encrypt, encrypt, encrypt.
- Implement robust data management (identification, classification, vulnerability assessment, risk analysis, monitoring, blocking, encryption).
- Develop specific telehealth incident response plan.

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D&O/EPL Market Update



Pre- COVID-19

- Limited number of primary insurers.
- Median rate changes **+10%** to **+20%**.
- Sexual misconduct, #metoo, and opioid concerns and limitations.
- Regulatory risks.
- Antitrust concerns.



COVID-19 Impact

- New business moratoriums or significantly reduced appetite for certain sectors of health care.
- **15% to 25%+** median rate changes.
- Some carriers reducing primary limits: \$1m to \$3m for smaller risks; \$5m for larger risks.
- Increasing retentions.
 - High wage earners/physicians/medical providers.
 - Credentialing/provider selection.
 - Mass/class action.
 - Antitrust.
- Financially distressed companies will struggle to find coverage.

Emerging Management Liability Hurdles in Health Care Renewal Best Practices



- Start early.
- Deliver timely and complete underwriting submissions.
- Provide current financials - year-to-date, in addition to expiring audited financials.
- Conduct calls/video meetings, especially if facing challenging issues e.g., staff reductions, financial.
- Responses to questions about COVID-19 effects.



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