

# THE DIGITAL HEALTHCARE TRANSFORMATION—ARE YOU INSURED FOR THE RISKS?



**Gallagher**

Insurance | Risk Management | Consulting



**Healthcare**

Hannah Haynes, CLCS  
Gallagher

Madalyn Young, CLCS  
Gallagher

Shana Lawlor  
2raze

## UNDERSTANDING THE DIGITAL HEALTHCARE INDUSTRY

During the COVID-19 pandemic, the healthcare industry underwent an extreme transformation. Digital healthcare, emerged as a disruptive force that is here to stay. The Food and Drug Administration (FDA) defines digital healthcare as mobile health (mHealth), health information technology (IT), wearable devices, telehealth, telemedicine and personalized medicine. According to Grand View Research, the global digital health market is expected to grow from USD175.6 billion in 2021 to USD1.5 trillion in 2030, expanding at a compound annual growth rate (CAGR) of 27.7% during that period.<sup>1</sup> If these statistics hold true, this growth suggests that digital health is the future of healthcare.

## CHALLENGES WITHIN THE DIGITAL HEALTH INDUSTRY

Digital health innovations have continuously evolved with new and improved ways to streamline and enhance the delivery of healthcare to patients. This evolution has enabled providers to address some of healthcare's ongoing issues of access, affordability and equity. However, the adoption of digital health technology also presents unique challenges for cybersecurity, privacy, regulation and care delivery including an increased risk of misdiagnosis. The risk management landscape has also become more difficult to navigate. Standard insurance policies are often outdated for emerging healthcare firms, lacking critical coverage such as bodily injury coverage, which is vital in this evolving industry.

## INSURANCE COVERAGES NECESSARY FOR DIGITAL HEALTH ORGANIZATIONS

The signature insurance coverages for digital health companies include professional liability, cyber liability, and technology errors and omissions liability. Technology errors and omissions, and cyber go hand in hand. While cyber insurance will protect against data breaches, and technology errors & omissions will protect if a client is harmed, there is often an exclusion for bodily injury which can lead to an uninsured exposure.

Many carriers have begun to see increasing claims within these core coverages — especially relating to bodily injury. Each insurance carrier may also have different definitions of bodily injury. Some carriers include mental anguish coverage for pain and suffering, while others only include coverage for damages, economic losses, medical expenses and legal costs in the event of a claim.

The importance of bodily injury coverage within a digital health organization becomes pertinent when practicing medicine virtually. Negligent acts that occur virtually can cause new and complicated claims. For instance, consider a scenario where healthcare software used for electronic health records experiences an outage during a patient encounter. Due to the provider's lack of access to the patient's medical chart, the provider prescribes medication, unaware of the patient's allergy to the prescribed drug. Tragically, this results in an allergic reaction and subsequent fatality.

## THE IMPORTANCE OF BODILY INJURY COVERAGE WITHIN CYBER AND TECHNOLOGY ERRORS & OMISSIONS COVERAGE

Technology Errors & Omissions (E&O) and cyber coverage have traditionally been used by the technology industry to safeguard against unique professional liability and cyber attack exposures. However, with the rapid growth of the digital health space, the traditional Cyber and Technology E&O insurance policies no longer provide the necessary coverage. Standard Technology E&O and Cyber policies typically lack bodily injury coverage, which has traditionally been excluded by insurance carriers. Bodily injury coverage has become crucial for digital health organizations to reduce the potential exposure and risk associated with platform failures that could result in patient injuries.

## CLAIMS DATA

CFC, a prominent insurer in the digital healthcare sector, recently released a report highlighting notable claims they have encountered over the last five years (2017–2022).<sup>2</sup> One such case involved the use of artificial intelligence in a skincare app specializing in the assessment of unusual moles. The app utilized AI to evaluate whether skin lesions captured by a smartphone camera are cancerous before recommending an in-person appointment. In a specific instance, the app incorrectly determined that a patient's lesion did not pose a risk, resulting in the patient not seeking a dermatology appointment. Unfortunately, the AI technology focused on the wrong area of the skin, leading to an erroneous diagnosis. As a result, the patient's skin cancer remained undetected for six months, significantly increasing the risk of bodily injury. This example underscores the potential for technology failures to cause severe harm. A typical Technology E&O policy would not cover such an incident, leaving the business at risk of significant expenses if claimed. Claims of this nature could result in multimillion-dollar payouts.

Beazley, another leading insurer in the digital healthcare industry, recently released their virtual care report. According to the report, a mere 36% of insured digital health companies have bodily injury coverage in relation to their cyber coverage, indicating that only about one-third of insured digital health companies possess sufficient protection. Additionally, the report states that 62% of digital health companies lack coverage for technology errors or omissions that may result in bodily injury; 69% of insureds don't have coverage for medical malpractice and 63% don't have coverage for bodily injury resulting from remote care. These statistics are indicative of the prevailing gaps in coverage within the industry.<sup>3</sup>

## THE SIGNIFICANCE OF OBTAINING ADEQUATE COVERAGE TO SECURE FUNDING

It is imperative for digital health organizations to maintain a comprehensive insurance program that helps mitigate unforeseen risks such as bodily injury, cyberthreats, and medical malpractice claims. A strong insurance program also signals to investors that a company is being proactive in managing its risks for the business and its customers and is prepared for unforeseen events.

Utilizing a broker who is knowledgeable about the industry minimizes both coverage gaps and negative impacts on operations. This, in turn, helps protect investors and improve the stability and resilience of the company. In the event of a loss, insurance can step in to provide the critical financial support necessary to help maintain business continuity until the business can resume normal operations.

## CONCLUSION

Digital healthcare providers face a multitude of complex risks, including operating in multiple states and locations, serving diverse patient populations and utilizing advanced technologies. Ensuring adequate coverage for these organizations, particularly concerning bodily injury, is critical. Digital health leaders, insurance brokers, carriers, and investors must shift their mindset away from leveraging traditional insurance coverage to a more personalized approach that encompasses understanding the intricacies of new technologies and their uses. Only then, will digital health companies gain comprehensive coverage that effectively mitigates the operational risk of this new industry, which is crucial for its long-term sustainability and growth.

### SOURCES:

<sup>1</sup><https://www.grandviewresearch.com/industry-analysis/digital-health-market>

<sup>2</sup><https://www.cfc.com/en-us/digital-healthcare-report-2022/>

<sup>3</sup><https://reports.beazley.com/2022/virtual-care/beazley-virtual-care-report-2022.pdf>

## Terms used throughout:

**Technology Errors and Omissions (Tech E&O):** A policy that provides protection to the insured in the case of any allegations of an act, error or omission in the rendering of technology services that causes damage to a third party.

**Cyber/Privacy Liability:** A policy that addresses the first- and third-party risks associated with e-business, the internet, networks, intellectual property and informational assets against breaches.

**Bodily Injury (BI):** Refers to any bodily harm, sickness or disease, including resulting death. Bodily injury plays a key role in Technology Errors & Omissions and Cyber Liability coverage.







**Hannah Haynes, CLCS**

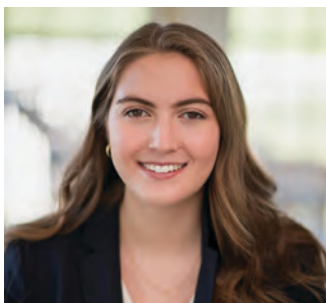
Producer Associate  
Healthcare Practice  
Digital Health and Telemedicine

## About the Authors

**Hannah** is a producer on the Digital Health and Telemedicine team. Hannah joined Gallagher in 2019, and holds her commercial lines coverage specialist designation. Since joining Gallagher, Hannah has been heavily involved with traditional and digital healthcare teams.

Hannah currently manages over half a million dollars in premium. She helps control complex insurance programs for various types of clients, including traditional and digital healthcare, reverse flow businesses and non-profits. Responsibilities to her clients include coverage analysis and recommendations, developing competitive underwriting submissions, negotiating with carriers, facilitating claims reviews to mitigate risks and producing analytic reports relating to the client's insurance limits and premium.

Hannah is currently a member of Nashville's Leadership Healthcare Council, the Healthcare Information and Management Systems Society (HIMMS) and serves as a board intern for the Nashville Angels non-profit. Hannah is a proud graduate of the University of Mississippi with a bachelor's degree in marketing and sales.



**Madalyn Young, CLCS**

Account Executive  
Healthcare Practice  
Digital Health and Telemedicine

**Madalyn** works as an account executive on the Digital Health and Telemedicine team at Gallagher. She joined Gallagher in 2021 and has earned the commercial lines coverage specialist designation. Throughout her tenure at Gallagher, Madalyn has managed intricate insurance programs for diverse digital healthcare and telemedicine clients. Presently, Madalyn is an active member of the Young Risk Professionals Washington, DC Chapter and holds the position of membership chair at Health Tech X, a Washington, DC based networking group for digital health companies.

Madalyn takes pride in graduating from the State University of New York College at Geneseo, where she obtained a bachelor's degree in economics and public health.



**Shana Lawlor**

Founder and Managing Partner  
2raze

**Shana** is the founder and managing partner of a venture capital firm named 2raze. She manages financial assets invested in 11 digital health companies collectively valued at \$300 million. She has worked as an entrepreneur and consultant in technology and healthcare for over 20 years, most recently, as the CEO of a digital health company that provided expecting and new parents with counseling and support. Shana is also the board president of Health Tech X, a new members-only community of healthcare leaders in the DMV. She was named "Trending 40 Power Woman in DC Tech" and serves as a startup advisor and mentor. She previously worked in healthcare and IT at Booz Allen Hamilton, Arthur Anderson and PricewaterhouseCoopers.



AJG.com The Gallagher Way. Since 1927.



The information contained herein is offered as insurance industry guidance and provided as an overview of current market risks and available coverages and is intended for discussion purposes only. This publication is not intended to offer legal advice or client-specific risk management advice. Any description of insurance coverages is not meant to interpret specific coverages that your company may already have in place or that may be generally available. General insurance descriptions contained herein do not include complete insurance policy definitions, terms, and/or conditions, and should not be relied on for coverage interpretation. Actual insurance policies must always be consulted for full coverage details and analysis. Gallagher publications may contain links to non-Gallagher websites that are created and controlled by other organizations. We claim no responsibility for the content of any linked website, or any link contained therein. The inclusion of any link does not imply endorsement by Gallagher, as we have no responsibility for information referenced in material owned and controlled by other parties. Gallagher strongly encourages you to review any separate terms of use and privacy policies governing use of these third party websites and resources. Insurance brokerage and related services provided by Arthur J. Gallagher Risk Management Services, LLC. (License Nos. 100292093 and/or OD69293).

© 2023 Arthur J. Gallagher & Co. | GGBUS45044