INSURANCE AND THE DIGITAL HEALTH REVOLUTION

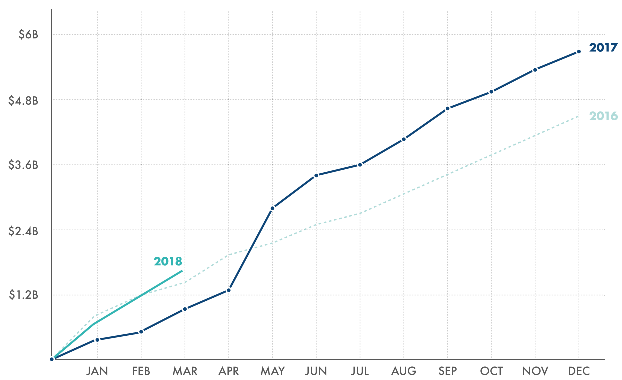
Timothy Boyce, US Healthcare Team Leader, CFC

Healthcare is about to change beyond recognition. A host of technologies are uniting to transform the way we treat patients and develop cures – from artificial intelligence to remote patient monitoring and interactive telemedicine services.

According to Rock Health, $1.6bn of funding flowed into the eHealth sector during the first quarter of 2018, exceeding comparable investment marks for the previous two years. The principle driver, deregulation. In the last twelve months we've seen the formation of the Chronic Care Act, which will pave the way for greater use of technology in healthcare, and the VETS Act which allows providers to treat veterans across state lines using telehealth. The next segment will be the Opioid Crisis Act, which promises to put an end to a crisis with the assistance of telemedicine, digital pills and analytics tools.

CUMULATIVE DIGITAL HEALTH VENTURE FUNDING

By month, 2016-Q1 2018



Source: Rock Health Funding Database
Note: Only include U.S deals >$2M; data through March 31, 2018

The FDA have also played a key role in the rise of digital healthcare. In their budget for 2019, Scott Gottlieb cited that 'we're seeking to advance a new paradigm in the regulation of digital health technology that I believe will allow us to grow this promising field more quickly'. This of course was in reference to their Pre-Cert Pilot Program, which will aim to look at the software and/or digital health technology developer, rather than primarily at the traditional medical product/device. Since then they've also approved a 'trackable' pill which is linked to a patch and a smartphone to detect medication compliance.

"WE'VE EVEN SEEN 450,000 WOMEN IN ENGLAND WHO WERE NOT INVITED FOR A ROUTINE BREAST CANCER SCREENING BECAUSE OF A 'COMPUTER ERROR'."

As the healthcare and technology sectors continue to intertwine, practitioners and companies operating in the digital health space will start to experience a wider range of risks. From misdiagnosis of medical conditions due to the distortion of x-ray images sent using store-and-forward technology, to incorrect readings of glucose monitors leading to patient harm. We've even seen 450,000 women in England who were not invited for a routine breast cancer screening because of a 'computer error'. The risks are present, real and getting harder to predict. A recent study cited that the FDA reported receiving information on 260 incidents with potential for patient harm, including 44 injuries and six deaths, all arising from technology-related healthcare incidents. It was also reported that almost 25% of 176,409 medication errors notified to US Pharmacopeia were technology-related.

So what does this mean for the insurability of practitioners and companies operating in eHealth? Well, in short it becomes problematic. Medical malpractice insurers are rightly concerned about the potential for patient harm arising from technology-related errors, not to mention the lack of credible data to nullify their concerns for it eroding their profit margin. As a result, their policy triggers have stayed eye-wateringly static despite the global rise of technology within healthcare. Technology E&O insurers will only extend to losses arising from 'technology activities' and are loathe to offer any form of bodily injury whether it's on a primary or contingent basis, and cyber insurers, quite simply, explicitly exclude all forms of bodily injury.

A dearth of affirmative coverage is therefore present in the insurance industry for traditional healthcare providers and digital health companies alike. This has already and will continue to lead to grey areas being present within insurance placements. The knock-on effect of this will be finger-pointing between three or more insurers over the proximate causation of the loss: was it a healthcare incident, technology error or cyber event? Absent any case law, and despite the litany of disclaimers, clients will then subsequently be required to pay three different deductibles and may even run the risk of having no coverage whatsoever. The debate will then intensify about who makes the ultimate decision on patient care, the technology or the traditional healthcare provider?

With these sentiments in mind, the insurance industry is on the cusp of a more modernized approach for healthcare providers. As the shift in healthcare delivery continues, it will become increasingly crucial for agents and wholesale brokers to advise their clients of these potential pitfalls in standard insurance policies, and to source bespoke insurance products tailored to meet clients' refreshed needs and demands.