

STATE INDEMNITY GUIDANCE: **IT CYBER-ATTACK ON THE HEALTH AND SOCIAL CARE SECTOR (FROM 14 MAY 2021)**

Introduction

The purpose of this document is to provide State indemnity, incident reporting and risk management guidance, under the Clinical Indemnity Scheme (CIS) and General Indemnity Scheme (GIS), to doctors, nurses, midwives and allied healthcare professionals, following the IT cyber-attack on the health and social care sector from 14 May 2021.

The State Claims Agency (SCA) recognises the enormous impact of the recent IT cyber-attack on the provision of health and social care services and clinical care within the HSE and the related risks. In this situation, the SCA provides the following advice:

a) State indemnity

The SCA recognises that in many situations, health and social care professionals will be providing care in challenging situations, relying on paper-based systems, hand-written results, without access to patients' and service users' healthcare records and previous test results, and with limited access to diagnostic tests.

For the avoidance of any doubt, please note that doctors, nurses, midwives and allied healthcare professionals in the various specialties, who are obliged to practice without the usual back up of essential systems, clinical imaging and other diagnostic-related results to assist in their assessment and treatment of patients, are fully covered by the CIS in relation to their ongoing clinical decision-making, in the absence of such clinical supports.

In the event that doctors, nurses, midwives and allied healthcare professionals are requested to care for public patients who have been transferred to a private hospital or facility, whether for diagnostic or treatment reasons, such categories of healthcare persons will continue to be covered by the CIS.

The SCA acknowledges and understands that health and social care professionals are acting in the best

interests of patients and service users in respect of their on-going care of those patients and service users in the absence of essential systems and supports.

The SCA also confirms that all other activities, including non-clinical care and all health and social care support services provided by the health and social care sector, including those relating to the safety of staff and members of the public, are covered by GIS. This includes claims for personal injury by persons, should such be made, where such persons allege that a data breach, should such happen, caused the person trauma or psychological sequelae.

b) Incident reporting

The SCA understands that currently many services have no or limited access to IT systems. The National Incident Management System (NIMS) has not been affected. However, as a precaution, it has been necessary to suspend NIMS access to the HSE and the voluntary health and social care sector to minimise any associated risk.

The statutory obligation to report incidents will be fulfilled by recording incidents on paper National Incident Report Forms (NIRFs). All completed NIRFs should be retained for inputting on NIMS at a later date.

c) Risk management advice

- The SCA advises that health and social care professionals, if and where possible, should document in the healthcare record, or temporary healthcare record, the limitations to the care being delivered, or clinical decisions being made, as a consequence of the IT cyber-attack.
- Where relevant and appropriate, health and social care professionals should communicate to patients and service users that their ability to provide care is being limited by the circumstances described above, and such



communications should be documented in the healthcare record.

- We advise that formal risk assessments should be undertaken to include, but not limited to, provision of services, effective means of patient identification in the absence of medical record numbers, and storage and management of temporary healthcare records.
- The use of alternative IT-based communication channels should be risk assessed, including ensuring that any alternative mechanisms are as secure as possible and GDPR compliant.

d) How can I contact the SCA?

If unable to do so by email, contact can be made with your Clinical Risk Advisor or Enterprise Risk Manager by phone to discuss any significant clinical or other risk issues of concern or any significant clinical or non-clinical incidents. Likewise your Claims Manager can be contacted by phone to discuss any issues relating to claims management.

You can contact us at +353 1 238 4900 or email stateclaims@ntma.ie.