

PA MALPRACTICE INSURANCE: SORTING OUT THE OPTIONS.

Part 2 – Occurrence Policies

Jeffrey G. Nicholson, PhD, PA-C

Not all medical malpractice policies are the same. Understanding the difference between a “claims-made” policy and an “occurrence” policy may be difficult and there may be significant differences in coverage. In the last article, we examined claims-made policies. This article is focused on the so-called occurrence policy. In the next and final article, we will discuss whether a PA should have a separate policy from their supervising physician and make recommendations for the best type of coverage.

What is an “occurrence” policy? An occurrence policy covers you for actions that occurred while the policy was in effect, even if the policy has ended and you are no longer paying a premium. It does not matter if the policy term is over at the time a claim is reported. It can be thought of as a policy that never expires. This is the main difference between the claims-made policy covered in the article. So even if you cancel your policy, you would not have to purchase a separate tail policy since you are still covered for events that occurred while the policy was in effect.

Advantages of "Occurrence" Policies

The main advantage is that the policy responds to incidents arising from the coverage period - regardless of when those claims are reported, even years down the road.

No retroactive date or prior acts coverage is needed. The occurrence policy will cover you for previous employment in which you had a claims-made policy even after that policy has expired.

No tail policy coverage is needed because incidents that occurred during the policy period are covered no matter how much later in time they are reported.

Occurrence policies can be thought of as "money in the bank," in that you can go back to old policies, years after they have lapsed and put a claim against them for incidents that happened while they were in force. Old policies should never be thrown away. They should be kept in a place of safekeeping. If you had occurrence coverage in a prior PA job, you would do well to request a copy of the declarations page of that policy if it's still available.

You don't have to worry about canceling an occurrence policy when you take a new job with a different insurer. Coverage remains locked in for incidents occurring while the policy was in force, so long as the insurer is in business. In contrast, once a "claims-made" policy is cancelled, it is possible that purchasing insurance for past events of that policy period will become difficult, expensive or perhaps not even available.

Sometimes courts will find occurrences in successive policies if there is continuing harm. This can have the effect of accumulating limits over a period of years. In other words, the court may find that if you have successive occurrence policies, the insurer must cover the full limit of each policy period, not just one. With claims-made, only one limit applies - the one in force when the claim is actually made.

Disadvantages of "Occurrence" Policies

Occurrence coverage is more expensive than claims-made policies because the insured is pre-paying for tail costs whether the tail gets used or not.

Another disadvantage is that insurance companies who wrote occurrence policies in previous years may no longer be around. With claims-made policies, the insurer is much more likely to be around when a claim becomes payable. The length of time between an occurrence and resolution in court can be 10 or more years. An insurer in business 10 years ago may not be in business today. The only way to mitigate this risk with occurrence insurers is to change to a different one every few years so that you do not keep "all your eggs in one basket."

The limits on an occurrence policy are likely to be inadequate if a claim is made many years after a policy has expired. With claims-made it is easier to arrange a limit which is adequate for today's damages risk. For malpractice exposures written on an occurrence basis, it is important to arrange limits which are somewhat more than is necessary in order to meet tomorrow's exposures.

As mentioned in the last article, claims-made and occurrence policies are priced differently. Claims-made premiums tend to be lower at policy inception, and generally increase each year at renewal, reaching a premium level similar to that of an occurrence policy after approximately four years. Occurrence premiums are higher at policy inception than claims-made coverage because occurrence coverage estimates claims for many years in the future while claims-made coverage only addresses claims expected on a year-to-year basis.

For example, assume an insured is expected to have \$1000 in losses per year over a five year period. Given a 5% rate of inflation, premium pricing would be structured like so:

| | Claims-Made | Occurrence Pricing |
|--------|-------------|--------------------|
| Year 1 | \$450.00 | \$1000.00 |
| Year 2 | \$720.25 | \$1050.00 |
| Year 3 | \$900.86 | \$1100.00 |
| Year 4 | \$1050.40 | \$1150.00 |
| Year 5 | \$1150.67 | \$1210.00 |
| Tail | \$1440.58 | |

You can see that it takes approximately four years for the cost of the claims-made premium to equal that of the occurrence premium.

In the next and final article we will discuss whether PAs should obtain a policy separate from their supervising physicians or employers and we will make recommendations for the best policy coverage options. For more information on PA malpractice insurance, two 15 minute ReachMD radio show interviews with the author are available at <http://www.aapalm.org/Education.html>