

# Understanding the Claims-Made Policy

**A critical concept any advisor must understand when dealing with medical professional liability is the claims-made policy. Vastly different from a traditional occurrence policy (i.e. homeowners, personal auto, business insurance), claims-made policies have three main components, which are critical to understand:**

1. The Retroactive Date (Prior Acts Coverage)
2. The Policy Period
3. Tail Provisions (Employment Contracts)

## Claims-Made Policy

The claims-made policy states that it will respond to any claims occurring after the retroactive date and presented to the carrier within the policy period. This is very different from an occurrence policy, which simply states that the carrier will respond to any claims occurring within the policy period. With an occurrence form there is no mention of a retroactive date or reporting timeframe. The occurrence form provides the insured with a far less complicated reporting window, however, the vast majority of medical professional policies are written on the claims-made form, so it is imperative that we understand its nuances.

## Price Maturity

Understanding the price structure of a medical professional liability policy will help to illustrate the cash nonimpact of various decisions a physician will make during his/her career. Medical malpractice policies are written for one-year terms and a typical claims-made policy is said to mature over a seven-year period. Therefore, a physician will pay roughly 25 percent of the mature base premium in year one, 40 percent in year two, 75 percent in year three, up until the seventh year when the physician premium is said to be mature and will equal 100 percent of the base premium. Tail coverage, on the other hand, can range anywhere from 150 percent to 250 percent of the expiring premium. As you can imagine, physicians who must purchase tail coverage will have a considerable cash-flow challenge ahead of them.

## Retroactive Date, Prior Acts and Policy Periods

In approximately 95 percent of the cases I handle, an



independent physician will never change their retroactive date. Even though physician may change carriers, this is the one date that should remain constant throughout his/her career. It is most likely the date when a physician finished his/her residency and started their own practice. Again, referring back to the first part of our definition, this is a very important date because the claims-made policy will only respond to claims occurring after the retroactive date. As physicians progress through their careers, even though annual policy periods will change, as long as the retroactive date remains constant, the physician will never see a gap in coverage. The period between the retroactive date and the beginning of the policy term is addressed via prior acts coverage.

If a physician was employed before going out on his/her own, the retroactive date will be determined by the physician's employment contract.

## Tail Coverage

As noted above, a claims-made policy will respond to claims

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## For More Information:

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occurring after the retroactive date and reported during the policy term. The way claims-made policies see constructed forces physicians to make decisions when terminating employment or retiring. With an occurrence form, a retiring physician would not have to worry about purchasing malpractice insurance once he/she retires. However, the claims-made policy requires the physician to purchase a policy that will provide an extended reporting period for claims that have occurred after the retroactive date, but have not yet been reported. Basically, tail coverage allows physicians to purchase one policy to cover any future claims. Given the latent nature of many medical misadventures, tail coverage is an essential concept to understand. One crucial

point here is that not all tail policies provide the same type of coverage. Some carriers may provide limited time frame for the reporting of claims or include other restrictions, so it is critical to review them carefully. As mentioned earlier, the cost of tail coverage policies can be expensive.

Most standard companies will provide very broad, unlimited retirement tail coverage to physicians at no charge, as long as they have been insured with them for the most recent five years and are 55 years of age. Because of this caveat, any physician who might be contemplating retirement should make any carrier changes only after serious consideration.

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