



Types of Medical Malpractice Insurance Policies

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This is the first in a series of informational Fact Sheets issued by the American Academy of Actuaries¹ Medical Malpractice Insurance Subcommittee for use by actuaries and the public. Additional Fact Sheets will follow on a variety of medical malpractice insurance-related topics.

Occurrence Policies provide coverage for insured events occurring during the policy period, regardless of the length of time that passes before the insurance company is notified of the claim. This is generally considered the broadest form of coverage. It is also usually the riskiest for the insurer and the most expensive for the policyholder. In fact, occurrence policies often are not offered for medical malpractice policies because claims may be reported years after the underlying policy has expired. Particularly in the years just after the policy period, it is difficult for insurers to estimate the eventual number and cost of those claims.

Claims-Made Policies provide coverage for insured events occurring on or after the specified policy's retroactive date; when the insured events are *reported* during the policy period. If the retroactive date is the beginning of the policy period, the policy is relatively inexpensive and is called "first-year" claims-made. However, as the number of years from the retroactive date increases, the policy "matures," and the premiums increase each year using "step factors" until reaching the mature level, which is about five to eight years after the policy's retroactive date. Once the mature level is reached, the premium approaches the occurrence premium. Claims-made policies are the most widely available form of medical malpractice coverage today.

Claims-made coverage can vary between insurance carriers, depending primarily on the definition of a reported claim. Frequently used coverage triggers generally range from including notice of potential claims to restricting coverage to only those initiated by a third party with a demand for money. This difference in coverage triggers can create a gap in coverage when an insured moves from one carrier to another.

To illustrate the differences among the various policies, consider, as an example, a medical accident that happened on July 1, 2002. The treating physician became aware that there was a possible claim on July 1, 2004, and notified the insurer then, but a lawsuit was not filed until July 1, 2008. This claim would be covered by:

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1. An occurrence policy covering 2002—even though the insurer would not be aware of the claim until at least 2004, and possibly not until 2008 or later; or
2. A claims-made policy covering 2004, provided the policy covers potential claim notices and provided the policy's retroactive date is no later than July 1, 2002; or
3. A claims-made policy covering 2008, provided that the policy defines claims as those initiated by a third party with a demand for money, and provided that the policy's retroactive date is no later than July 1, 2002.

At the expiration of an insured's final claims-made policy, it is necessary to obtain coverage for any latent, as-yet unreported claims that may exist as a result of past medical incidents. This coverage closes the gap between claims-made and occurrence coverage. In many cases, these claims can be covered by purchasing **Extended Reporting Period (ERP or Tail) Coverage** from the insurer at the time of policy expiration. If the insured will continue practicing and is only changing insurers, it might also be possible to obtain **Prior Acts (Nose) Coverage** from a subsequent insurer. For policies issued to individual providers such as physicians or dentists, if the coverage terminates due to death, disability, or qualified retirement, ERP coverage is typically issued by the expiring insurer at no additional charge.

Modified Occurrence Policies combine aspects of claims-made and occurrence policies. Coverage is provided on a claims-made basis with an included ERP. The ERP generally applies for a limited time after expiration of the last policy issued. This is typically a period of seven years. At the end of the included ERP, the insured may then be given the option of buying an unlimited ERP.