

Malpractice Insurance: Bridging Your Gap

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With fewer and fewer malpractice insurers, more PAs than ever are switching insurance carriers as they are being cancelled by companies exiting the market. However, in switching from one insurer to another, you must take care that you do not create a permanent gap in your coverage where the new insurer does not fully pick up the exposure to lawsuits that the old policy ceases to cover. This is because there are two forms of insurance that contain very different terms of coverage. This makes it vitally important that you know which form you have and how it works. The two forms of insurance are **claims-made** and **occurrence**.

An occurrence policy covers you for claims made during and *after* the policy is in force (that is, forever), as long as the claims are due to malpractice occurring while the policy is in force. Occurrence is the simpler of the two forms. It works like this: if a professional liability incident occurs (hence, the name “occurrence”) during the period the policy is in force, the claim would be covered regardless of when the claim is made against you.

A claims-made policy only covers you for claims and lawsuits made against you while the policy is in force. If you are insured by an employer’s policy, you are most likely covered by a claims-made policy since most physicians and institutions have this type of coverage. You could say claims-made is like renting your coverage instead of permanently buying it. If you cancel or fail to renew your policy at its annual expiration date, your coverage stops. If you are sued just a day later (even though the suit is for alleged malpractice while the policy was in force), you are not covered for that action.

As indicated, a claims-made policy requires that claims must be made during the policy period. When the policy period expires, the coverage stops. However, in that event, the insurer must offer you (usually for only 30 days after coverage has ended) an Extending Reporting Period endorsement (an extra document that attaches to your policy). This endorsement, commonly referred to as a “tail”, allows additional time in which to report claims that occurred during the policy period. The insurer makes a charge for providing this endorsement.

It cannot be overstated that to cover your exposure to being sued after your policy expires, *you must buy a tail or its equivalent*. An equivalent is called “prior acts” coverage. Sometimes it is called “nose” coverage. When you terminate a claims-made policy with one insurer and do not buy a tail, you may be able to buy prior acts coverage from the insurer providing your replacement policy. One way to think of it is the old insurer’s tail is the new insurer’s nose (or prior acts).

Is a tail better than a nose? It depends. Nose coverage may be cheaper than tail coverage yet covers the same exposure to loss. You may prefer to have any claims arising from activities during your old policy period handled by your new insurer rather than the old one since you are no longer an on-going client.

However, a tail may be your only option. If your old policy does not insure you individually, as opposed to being insured on a group policy with your employer, you will not be eligible for prior acts coverage with the new insurer. The new insurer needs evidence that you have had your own specific policy.

What if you are insured by a claims-made employer’s policy and want to switch to an individual occurrence policy? You will not qualify for prior acts coverage, so a tail is the only option. If you haven’t already, obtain the employer’s agreement that coverage will be maintained for you and that the obligation to buy the tail survives the tenure of employment. Also, make sure the employer provides documentation that insurance has been purchased each year after termination of your employment. That way you’ll know what coverage you have and who is providing it. Unless your employer tails out the entire policy and provides evidence to you, you will need to follow up every year to assure that you are covered for any lawsuits that develop from your former employment. You will need to do this for each former employer.

The best time to deal with this issue is before you accept a new job. And the best solution is to get your employer's agreement to reimburse you for your own individual policy. That way you know it's there. It can follow you from job to job. If you buy occurrence coverage, you do not have to worry about a tail (nor does your employer). The AAPA-endorsed plan offers occurrence coverage and does have a prior acts option when switching from an individual claims-made policy.

Please note that any description of the AAPA-endorsed policy in this article is only a summary of certain terms and conditions of that policy. Refer to the actual policy for complete details of coverage and conditions. Coverage may vary depending on particular state requirements. For further information, you can reach AAPA Insurance Services at (toll-free) 877/356-2272.

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