Malpractice Insurance

Medical malpractice insurance is—to say the least—a complex and confusing issue. The subject can be especially intimidating to new physicians, those faced with purchasing a new policy, or anyone dealing with an incident or claim for the first time.

Malpractice Terms

Malpractice Insurance

A generic term used to refer to physicians’ professional liability insurance coverage. A malpractice policy provides protection against liability that a physician may incur as a result of the rendering of—or the failure to render—medical services. A typical malpractice policy will pay: (1) the costs of investigating any claims against an insured physician; (2) the costs of defending those claims; and (3) the indemnity cost of any legal settlement on behalf of—or court judgment against—the insured physician, up to the policy limits.

A physician’s professional liability policy may be extended to include coverage for his or her corporation (P.C.), as well as employees. Unless specifically endorsed, coverage is not extended to include physician assistants, nurse practitioners, nurse midwives, or CRNAs, and may not provide coverage for residents or locum tenens physicians. Most policies are written on either a claims-made or occurrence basis.

Occurrence Coverage

Occurrence malpractice policies cover a physician for incidents that occur while the policy is in effect, regardless of when the incident is reported to the insurer.

Claims-Made Coverage

Claims-made policies cover a physician for incidents that occur after the retroactive date and are reported to the insurer while the policy is in force.

Retroactive Date

For coverage under a claims-made policy to apply, the incident or claim must have occurred after the retroactive date of the policy. For most physicians, this retroactive date is the first date they purchased claims-made professional liability coverage. The retroactive date should remain the same as the policy is renewed.

Tail

A tail is also known as an extended reporting period (ERP). An ERP may need to be purchased if a physician ceases to practice due to retirement, disability, or death, or changes carriers and is unable to maintain their original retroactive date. The ERP essentially extends coverage to all claims that arise from care rendered during the policy period (and prior acts period, if applicable), to include those made during the reporting period. It is preferable to purchase an unlimited ERP. Some carriers may limit the ERP and only allow claims to be reported for a specific period (12 months, 36 months, etc.). The carrier will usually charge an additional premium for the ERP. In some cases, the carrier will provide a free tail to the physician upon disability, death, or retirement. To obtain the free tail, the physician generally needs to be insured by the same carrier for a minimum of five years.
Prior Acts Period

Under a claims-made policy, the prior acts period, also known as “nose” coverage, is the period of time between a physician’s retroactive date and the current policy period. If there is prior occurrence coverage, or this is the first claims-made policy that is being purchased, then there should be no nose exposure.

Umbrella Policy

In addition to a physician’s primary malpractice policy, some doctors also purchase umbrella policies. The limits for an umbrella policy apply on top (in excess) of the physician’s primary malpractice policy. For example, a primary policy may provide the physician with a limit of $1 million per claim. The umbrella policy may provide an additional limit of $2 million. If a $2.5 million claim occurs, the $1 million policy will pay its full limit of $1 million, and the umbrella policy will pay the remaining $1.5 million of the claim. Some umbrella policies have the same terms, conditions, and exclusions as the underlying primary policy. Other umbrella policies have their own separate terms, conditions, and exclusions.

What Does a Policy Typically Cover?

A malpractice policy usually provides coverage to the physician (and frequently his or her corporation and employees) for damages resulting from the rendering of, or failure to render, professional healthcare services. Many policies do not specifically define the term “professional healthcare services.”

Policies usually include any professional healthcare service immediately related to the care of patients including, but not limited to, the furnishing of food, beverages, medications, or appliances in connection with such services and the postmortem handling of human bodies. In addition, most policies also provide coverage to the physician for his or her activities as a member of a credentialing committee.

Some policies only provide coverage to the physician for the direct medical care of a patient. Such policies do not provide coverage for utilization review and case management-type activities. Coverage for these activities must be added to the policy by endorsement.

Common Questions

What Is the Typical Length of a Policy Period, and to What Do the Time Limits Refer?

Most malpractice policies have a 12-month policy period. A few carriers offer 6-month policy periods. All policies have limits of liability. This is the maximum amount an insurer will pay out for damages under the terms of the policy. The limits are generally offered on a per-claim (or per-occurrence) and annual aggregate basis. For example, a policy may have a $1 million per-claim limit with a $3 million annual aggregate limit. This is frequently stated as $1 million/$3 million. The most the policy will pay for any one claim is $1 million, and the most the policy will pay in any one year for all claims reported by that physician is $3 million.