

A Closer Look at Coverage Forms

# Claims Made vs. Occurrence



No one knows New York  
better than MLMIC.



# MLMIC has New York dentists covered.

## Types of Coverage

There are two forms of professional liability coverage available to dentists: claims made and occurrence. When these two types of policies are kept in continual force, the coverage they afford is basically identical. However, their principal differences lie in the protection they provide after they are cancelled and their pricing structure.

Both types of coverage have primary policy limits of liability for dentists available in amounts up to \$2 million/\$6 million.

## The Occurrence Form of Coverage

The occurrence form of coverage protects a policyholder for alleged acts of malpractice that occur while the policy is in force, no matter when a claim is brought against the policyholder by, or on behalf of, a patient.

By way of example, let's consider a dentist who had an occurrence policy in continuous force from July 2010 until July 2015, at which time he moved out of state and cancelled his policy. In 2017, a claim is brought against the dentist for treatment he provided in 2012. Although the claim is brought two years after he cancelled his policy, the dentist would be covered for the claim, because in 2012 his occurrence policy had been in force.

## The Claims Made Form of Coverage

The claims made form of coverage protects a policyholder for alleged acts of malpractice, which both occur and are reported to the policyholder's insurance company during the time the policy is in continuous force, or within 60 days following the policy's cancellation or non-renewal. (Note: This basic extension of the reporting period gives policyholders an extra 60 days beyond their cancellation or non-renewal in which to report claims based on incidents that occurred when the claims made policy was in force.)

By way of example, let's consider a dentist who had a claims made policy in force from July 2010 until July 2015, at which time she cancelled the policy. In 2017, a patient brings a claim against her for treatment she provided in 2012. In this instance, even though the incident occurred during the time the claims made policy had been in force, because the claim was brought two years after the policy's cancellation, the dentist would not be covered for this claim, unless she had reported the incident to her insurance company prior to cancellation, or within 60 days following the policy's cancellation. In order to

be protected for claims reported from day 61 on, Extended Reporting Endorsement (Tail) Coverage is required.

## Extended Reporting Endorsement (Tail) Coverage

MLMIC policyholders who cancel or non-renew their claims made coverage are automatically afforded the 60-day reporting extension. However, to be protected indefinitely for claims reported anytime from day 61 on, they are strongly advised to purchase Extended Reporting Endorsement (Tail) Coverage, which indefinitely extends the time during which claims may be reported to MLMIC. When a Tail is purchased, it goes into effect on the 61st day after termination of the claims made policy. It covers policyholders for claims arising from treatment rendered between the date the claims made coverage began (the Retroactive Date) and its cancellation (or Non-Renewal) date, but which are reported after the policy has been canceled.

The Tail provides a separate limit of liability identical to that of the terminated claims made policy.

## Prior Acts (Nose) Coverage

Rather than having to buy the Tail from their previous insurer, qualified policyholders who wish to transfer, uninterrupted, their claims made coverage from another New York State licensed insurer to MLMIC may instead obtain Prior Acts (Nose) Coverage. Like Tail coverage, Nose coverage provides protection for claims reported after the cancellation of a policyholder's prior claims made policy. However, unlike Tail coverage, which can be very expensive to purchase, Nose coverage requires no initial expenditure and may be obtained through the new insurer. A policyholder who transfers his/her claims made coverage to MLMIC will simply begin paying premiums for the new policy at the claims made rate commensurate with the length of time his/her former policy had been in effect. Please note, it is extremely important for policyholders to report any incident(s) or event(s) that may or will result in a claim against them to their prior insurance carrier before obtaining Prior Acts Coverage.

For example, if Dr. Smith has had claims made insurance with company X for three continuous years and wishes to transfer his coverage to MLMIC, he will begin his new policy at MLMIC's fourth year claims made rate, which reflects the years of risk MLMIC needs to assume. In turn, MLMIC assumes responsibility for any covered claims based on treatment rendered by Dr. Smith during his three years with company X, but which are reported while he is insured by MLMIC, subject to the terms and conditions of MLMIC's policy.

## Comparing Coverage Costs

### Occurrence Coverage

Premium rates for occurrence coverage are derived from the mature claims made rate. At the present time, they are approximately 5% more than the mature claims made rate for each limit in the respective rating territories.

### Limits of Liability

Both the occurrence and claims made forms of coverage have primary policy limits of liability available to dentists in amounts up to \$2 million/\$6 million.

## Claims Made Coverage

Premium rates for claims made coverage are generally considered the benchmark for dental professional liability insurance in New York State. Claims made premiums are principally determined by the geographic location of the dentist's primary practice. Other variables include the limits of coverage being obtained and any prior claims history.

In dental or medical malpractice there is often a significant lag time between when a treatment was administered and the filing of a claim. Therefore, for the first few years, claims made premiums are relatively low when compared to the rates for occurrence policies. However, claims made premiums increase rapidly on an annual basis, until they level off in year 6, when the risk presented approximates a mature risk.

The reason for the annual rise in premium is simple. The longer a policyholder maintains a claims made policy in continuous force, the further back in time MLMIC's responsibility must reach to protect him/her. In other words, for the first claims made policy year, MLMIC is responsible only for claims reported in that first year that are related to professional services rendered during that year.

In the second year, MLMIC is responsible for claims reported during that year which resulted from professional services performed in the first and second years. In the third year, MLMIC has the responsibility for claims reported in the third year, which grew out of professional services rendered in the first, second, and third years. By the fourth year, when MLMIC is responsible for claims reported in year four for the services rendered in that year, as well as in the preceding three years, the likelihood of a claim has grown considerably from year one.

Continuing in the same manner, by the sixth year most claims resulting from professional services rendered in the earlier years would already have been reported. Therefore, the liability risk is then considered to be 'mature,' and the relationship between the claims made and occurrence rates remain the same from that point onward.

## Purchasing a Tail

Like the claims made policy itself, the cost of the Tail is determined by geographic location and limits of liability, as

well as by the number of years the claims made coverage was in continuous force. It makes sense...the further back in time the Tail must reach, the greater the liability assumed by the insurer and, therefore, the more expensive for the insured to purchase. The cost of the Tail is based on a percentage of the mature claims made rate which was in effect at the time of cancellation or non-renewal, taking into consideration adjustments for changes in classification, territory and limits of liability during the coverage period.

## Free Tail Coverage

It should be noted that MLMIC will waive the premium for Tail coverage in the event of the insured's death, permanent disability, or permanent and total retirement from the practice of dentistry after he/she attains the age of 55 or older and has been insured on a claims made basis by an authorized insurer for 5 or more consecutive years.



## Frequently Asked Questions

- Q. If I were to cancel my claims made policy, how much time would I have to decide about purchasing a Tail?
- A. Once you cancel your policy, MLMIC will send you information regarding the cost and payment schedule for your Tail. You have 60 days following the effective cancellation date to contact MLMIC with your decision.
- Q. What would happen if I qualified for and received a free Tail and decided, later on, to resume the practice of dentistry on a full or part-time basis... would that decision affect my free Tail?
- A. It most certainly could. If that were to happen, except in certain limited situations, your free Tail coverage would end on the date you resumed practicing dentistry, leaving you exposed for newly reported claims based on treatment you had provided when your claims made policy was in force. If you are considering doing this, you should immediately contact an underwriter at MLMIC and apply for coverage.
- Q. What are the "limited situations" you refer to in the previous question?
- A. There are basically two situations in which you would not lose your free Tail:
1. If you officially were to resume the practice of dentistry, but did not receive any form of compensation for treatment (pro bono), other than reimbursement of related personal expenses that you may incur, or

## Frequently Asked Questions *continued*

2. If following a period of retirement, you were to resume practice for compensation on a part-time basis, not to exceed ten (10) hours in any one week.
- In the event of 1. or 2. above, you should immediately contact an underwriter at MLMIC and apply for coverage.
- Q. Why do you stress “continuous coverage” when referring to protection under claims made policies?
- A. If there is an interruption or gap in claims made coverage you could be left unprotected because the contractual requisites of a claim both occurring and being reported while your coverage was in continuous force may not be met. These circumstances create the need for Tail coverage every time there is an interruption in coverage.
- Q. Does this mean that if I cancelled my claims made coverage, did not carry any insurance for a brief period (even for one day), and later secured a new claims made policy with MLMIC, my new policy would not cover my prior activities?
- A. Yes. Your professional activities prior to the effective date of the new claims made policy could only be covered under Tail provisions of the previous claims made policy.
- Q. Must all doctors working in a professional partnership, professional corporation, or professional association have the same form of coverage?
- A. No. The occurrence and claims made coverage forms may co-exist.
- Q. I am a hospital administrator and have concerns about the claims made form of coverage. What if a doctor who is affiliated with our hospital cancels his/her claims made policy with MLMIC, does not purchase a Tail, and does not obtain Prior Acts coverage from the successor insurer; then, he/she is named in a suit along with the hospital? How can the hospital protect itself against assuming that doctor’s incurred liability?
- A. If the incident occurred while the doctor’s claims made coverage was in effect, subject to the terms of the policy, MLMIC would defend and indemnify on behalf of the doctor as if he/she had purchased Tail coverage. In turn, the doctor would be liable to MLMIC for any indemnity payment made and/or expenses paid on his/her behalf. The hospital (or its insurer) would, of course, be responsible for its own individual liability.
- Q. As a doctor, I have the same concern expressed by the hospital administrator in the preceding question. If I am a co-defendant with a dentist who was previously insured by MLMIC but is now bare (that is, without coverage), would his/her policy respond in a similar manner?
- A. No. If the co-defendant dentist had not purchased Tail coverage, MLMIC would not defend and indemnify on his/her behalf. In this type of situation, you, (the other insured co-defendant doctor) would face an increased exposure, because the “Tail-less” doctor is uninsured for that claim or any future claims.

If you have any questions that we haven’t covered in this brochure, please contact any of the MLMIC offices and ask to speak with an underwriter: 800-ASK-MLMIC (1-800-275-6564)



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