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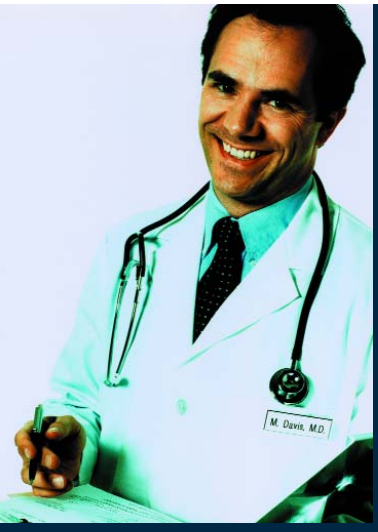

A Closer Look at Coverage Forms

Claims Made v. Occurrence

MLMIC

Medical Liability Mutual Insurance Company

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Types of Coverage

There are two forms of professional liability coverage available to physicians and surgeons: 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 available in amounts up to $1.3 million/$3.9 million (each person/annual aggregate) for physicians and surgeons.

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 reported to the company.

By way of example, let's consider a physician who had an occurrence policy in continuous force from July 2001 until July 2006, at which time he moved out of state and cancelled his policy. In 2008, a claim is brought against the physician for treatment he provided in 2004. Although the claim is brought two years after he cancelled his policy, the physician would be covered for the claim, because in 2004 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 reported 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 date 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 physician who had a claims made policy in force from July 2001 until July 2006, at which time he cancelled the policy. In 2008, a patient brings a claim against him for a treatment he provided in 2004. 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 physician would not be covered for this claim, unless he had reported the incident to his insurance company prior to cancellation, or within 60 days following the policy's cancellation or non-renewal. In order to be protected for claims reported from day 61 on, a Tail is required (see next page).

Optional Extended Reporting Period Endorsement (Tail)

MLMIC policyholders, who cancel or non-renew their claims made coverage, are automatically afforded the 60-day extension. However, to be protected indefinitely for claims reported anytime from day 61 on, the Extended Reporting Period Endorsement (Tail) is required. The Tail 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 cancelled.

The Tail provides additional limits of liability identical to those of the claims made policy for each 12-month period the Tail is in force.

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 insurer to which a doctor is going. A policyholder who transfers his/her claims made policy 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 with his/her prior carrier. 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 her coverage to MLMIC, she will begin her new policy at MLMIC's fourth year claims made rate, which reflects the years of risk MLMIC will assume. In turn, MLMIC assumes responsibility for any covered claims based on treatment rendered by Dr. Smith during her three years with company X, but which are reported while she 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 generally considered the benchmark for medical professional liability insurance in New York State. The premiums for medical professional liability coverage are principally determined by the insured's area of specialization and the geographic location of his/her primary practice. Other variables include the limits of coverage being obtained and past claims history.

As a rule, occurrence rates are subject to change effective at the beginning of each policy year, and these potential changes, whether increases or decreases, must be approved by the New York State Insurance Department.

Claims Made Coverage

Because it often happens, in medical malpractice, that there is a significant lag time between when a treatment was administered and the filing of a claim, claims made premiums, for the first few years, 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 8, when the risk presented approximates a mature risk. The premiums for claims made coverage are calculated as a percentage of the occurrence rates that are in effect at the time, and they are subject to change.

Coverage Year	% of Occurrence Rate
1	31%
2	64%
3	85%
4	94%
5	99%
6	102%
7	104%
8	105%

Limits of Liability

Both the occurrence and claims made forms of coverage have primary policy limits of liability available in amounts up to $1.3 million/$3.9 million (each person/annual aggregate) for physicians and surgeons. MLMIC also offers its physician and surgeon policyholders an excess layer of coverage for additional protection over the primary policy.

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 it 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 on in the same manner, by the eighth 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 occurrence and claims made will remain at 105% of the occurence rate from that point forward.

Costs related to MLMIC providing Automatic Extended Reporting Period Endorsement (Free Tail—*described below*) to qualified doctors must be factored into the claims made rates. The dollars for these assumed risks must come from somewhere and that 'somewhere' is the premium paid by doctors who have claims made coverage, who may in the future avail themselves of this coverage extension.

Purchasing a Tail

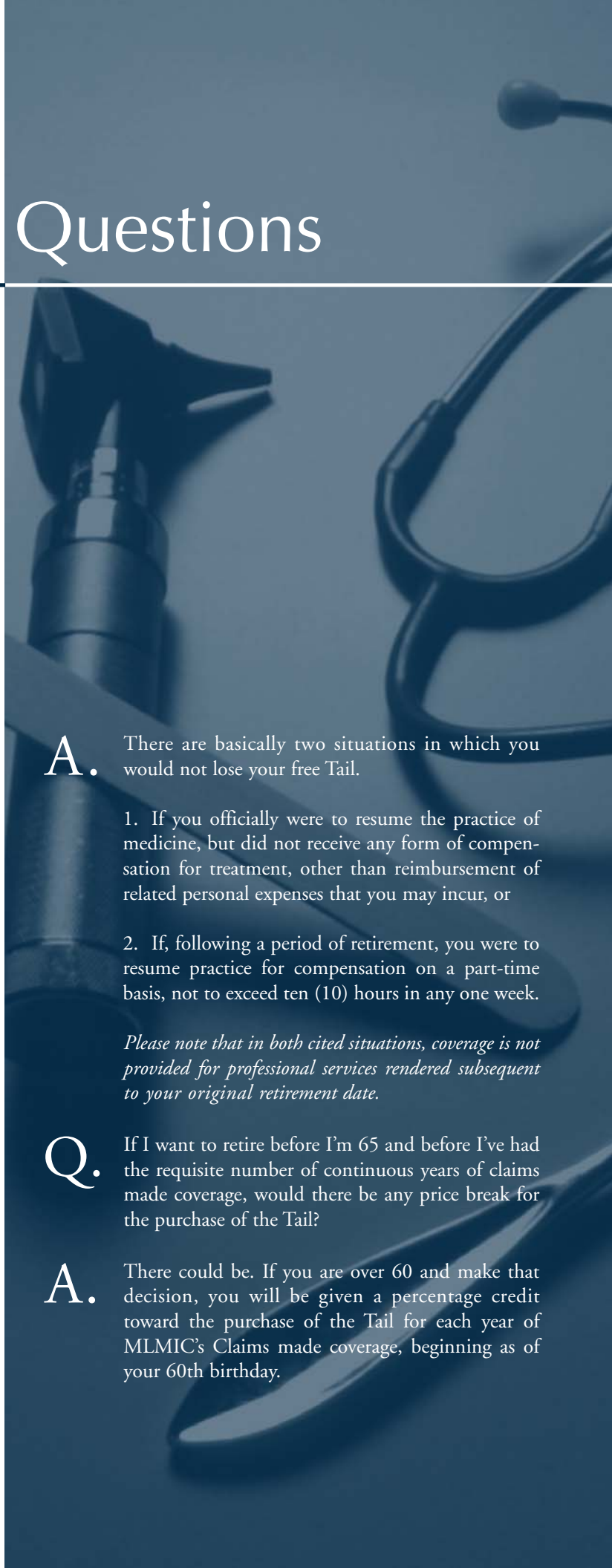
Like the claims made policy itself, the cost of the Tail is determined by geographic location and limits of liability, as well as by the number of years the claims made coverage was in continuous force. It makes sense… the further back in time the Tail must reach, the greater the liability assumed by the insurer and, therefore, the more expensive for the insured to purchase. The cost of the Tail is based on a percentage of the occurrence rate(s) in effect at the time of cancellation, taking into consideration adjustments for changes in classification, territory, and limits of liability during the coverage period.

Coverage Year	% of Occurrence Rate
1	74.8%
2	122.1%
3	146.4%
4	162.4%
5	173.3%
6	181.0%
7	186.7%
8+	190.6%

Free Tail Coverage

It should be noted that if any of the following conditions apply, MLMIC will waive the premium for Tail coverage: (1) in the event of the insured's death, permanent and total disability, or permanent and total retirement from the practice of medicine after he/she attains the age of 65 or older and has been insured on a claims made basis by an authorized insurer for 5 or more consecutive years; (2) after an insured attains the age of 55 or older, retires, and has been insured on a claims made basis by an authorized insurer for 10 or more consecutive years; or, (3) regardless of age, the insured retires and has maintained claims made coverage with an authorized insurer for at least 10 consecutive years, provided the last 5 consecutive years were through MLMIC.

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 the free Tail and decided, later on, to resume the practice of medicine 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 medicine, leaving you exposed for newly reported claims based on treatment you had provided when your claims made policy 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 medicine, but did not receive any form of compensation for treatment, other than reimbursement of related personal expenses that you may incur, or

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.

Please note that in both cited situations, coverage is not provided for professional services rendered subsequent to your original retirement date.

Q. If I want to retire before I'm 65 and before I've had the requisite number of continuous years of claims made coverage, would there be any price break for the purchase of the Tail?

A. There could be. If you are over 60 and make that decision, you will be given a percentage credit toward the purchase of the Tail for each year of MLMIC's Claims made coverage, beginning as of your 60th birthday.

This credit will start accruing on the following basis:

Years of MLMIC Coverage After 60th Birthday	% of Reduction in Cost of Tail
1	10%
2	20%
3	30%
4	40%

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 only 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. I heard a colleague say he needed to purchase "Required Extended Reporting Coverage." What is it and when is it needed?

A. Required Extended Reporting Coverage was mandated by the State of New York Insurance Department (the Insurance Department) in 1990 for certain claims made policyholders who change their: (1) specialty classification, (2) territory, or (3) practice from full-time to part-time, or vice versa.

By way of example, if you are a general surgeon with claims made coverage and want to cease performing surgery and be reclassified as a "General Practitioner, Exclusive of Surgery," your base premium would be reduced to reflect the lesser risk associated with this new classification. However, to be covered for any surgical claims for alleged malpractice that occurred prior to the change, but which are reported to MLMIC after the change in classification, you would need to obtain

Frequently Asked Questions

Required Extended Reporting Coverage. The premium amount for this coverage would automatically become a part of your new base premium for a period of seven years after the effective date of the change, with most of the cost being paid during the first two years. This accelerated method of payment tracks with the meaurement of risk from an actuarial perspective.

Q. In the past, claims made policyholders never had to pay any kind of Tail premium when changing from a higher-rated classification or territory to a lower-rated one. Why must they now? Also, would you please provide information about the associated costs and related exceptions.

A. The Insurance Department feels that it is actuarially necessary to pay a premium for the additional risk assumed. However, there are several exceptions by which a claims made physician would not have to pay for this coverage:

1. The Rate Table established by the Insurance Department for this coverage recognizes and gives credit to a claims made physician for every year that his/her policy has been in continuous effect. In other words, the longer a physician has been a claims made policyholder, the lower the premium for this coverage. In fact, once a physician begins the tenth consecutive year of claims made coverage, there would be no extra premium charged at all.

2. If you qualify for an Automatic Extended Reporting Period Endorsement (free Tail coverage related to death, disability, or retirement), or you purchase an Extended Reporting Period Endorsement prior to the end of the 7-year payment period, you are not required to make any further payments for this coverage.

3. If you are eligible for a free Tail, but choose, instead of retirement, to continue practicing in a lower-rated classification, there would be no charge for the Required Extended Reporting Coverage.

Q. Must all doctors working in a partnership, professional corporation, or 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 doctor previously insured by MLMIC who is now bare (without coverage), would his/her policy respond in a similar manner?

A. Yes. Our claims made policy affords protection related to your exposure as a doctor-defendant, in a manner identical to that described to the hospital administrator. In other words, MLMIC would be contractually obligated to defend and indemnify on behalf of the previously insured doctor, as if he/she had purchased Tail coverage. However, the doctor would be liable to MLIMC for any indemnity payment made and/or expenses paid on his/her behalf. Your own individual policy would, of course, respond on your behalf for your direct liability.

Insurance Policy Interpretation or Legal Advice

This brochure provides general educational information about our claims made and occurrence professional liability policy forms and is not a contract. Nothing contained in this brochure is intended to constitute coverage, and should not be construed as coverage or an interpretation of any policy provision or as legal advice on any subject matter. Therefore, you should not rely on the information provided herein as a policy interpretation or as legal advice on any subject matter for any purpose, and should always seek the legal advice of competent counsel. If there is a conflict between this brochure and the policy, the provisions of the policy will prevail.

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:

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