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“Stairs, Noses, and Tails:” FAQ’s regarding Claims Made Policies for Physicians

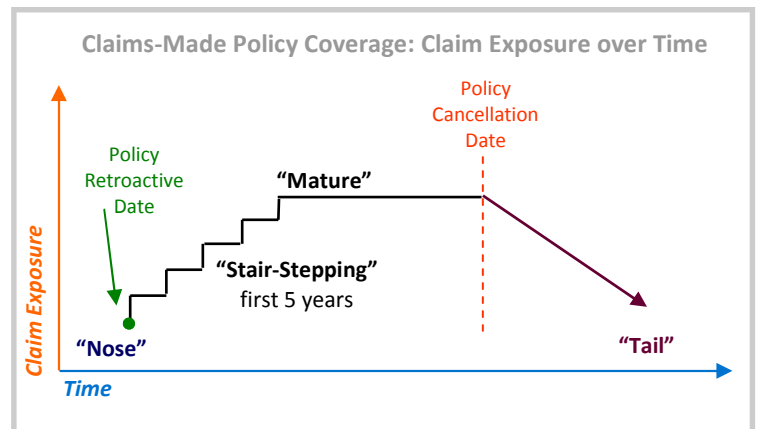
There are two primary forms of professional liability insurance available to physicians and surgeons: *Claims Made* and *Occurrence*. Both types of policies provide appropriate, quality protection against allegations of malpractice; however, *almost* every carrier offering professional liability coverage for physicians or surgeons in Georgia only offer it on a **Claims Made** basis. Physicians and practice managers frequently have questions about the policy form, usually regarding **pricing structure (stair-stepping)** or the **protection afforded after the policy is cancelled (nose or tail coverage)**. The following explanation and illustration will help clarify the most FAQs related to a Claims Made policy.

Coverage and Limits

A Claims Made policy protects the policyholder against claims **reported while the policy is in force**, as long as the incident took place on or after the initial, or **Retroactive**, date of coverage. The limits of liability in effect when the claim is made are the limits that apply toward any settlement or judgment. Claims Made coverage permits the policyholder to adjust coverage limits, giving the insured the ability to keep pace with the current claim and legal climate.

Premiums

Claims Made premiums are based on the *potential* for a claim against a policyholder. Since the risk of a claim being filed during the *first* year of a policy is small, the **premium for the first claims made year is relatively low**. As the length of time the policyholder is covered under a policy increases, the potential for a claim also increases; thus the annual *premium increases* to reflect expanding liability. This **stair-stepping of premium** continues for five years when the coverage is said to be “mature,” and the premium is no longer modified. At that point, assuming there are no rate increases/decreases or changes in policy coverage, the premium remains the same year after year until the policy cancels. At this time, either a Prior Acts (Nose) coverage *or* an Extended Reporting Endorsement (Tail) coverage must be purchased to continue to afford protection.

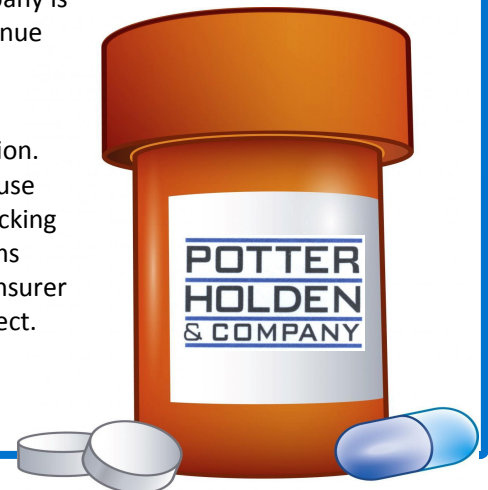


Cancellations or Non-Renewals

Doctors frequently receive claims many years after the act has occurred and after a policy is no longer in force. When a Claims Made policy is cancelled or non-renewed, there is a need to clarify which company is responsible for claims that are reported later. A policyholder has two options to continue coverage in order to remain protected.

1. One option is to obtain **Prior Acts (Nose) coverage** on a *new* Claims Made policy. Often physicians who are moving coverage from one carrier to another select this option. A “nose” makes purchasing “tail” coverage unnecessary because the new carrier will use the same Retroactive Date the policyholder maintained on the previous policy. By picking up the policyholder's Prior Acts, the new carrier agrees to provide protection for claims reported after the cancellation of the *prior* or cancelled policy. This leaves the old insurer responsible only for claims that were actually reported while the old policy was in effect.

(more, reverse)



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For physicians today, the prior acts coverage approach is the most common option. It helps to eliminate some disputes about which insurer is responsible for a claim, and encourages the early reporting of all claims. Generally, (*almost always*), the charge for prior acts coverage on a *new policy* is less expensive than purchasing tail coverage from the *old carrier*. However, there are some situations in which prior acts coverage is not available, so it is critical to work with your agent when switching from one claims-made policy to another to ensure you are properly covered.

2. The second option is to purchase an **Extended Reporting Endorsement (Tail)** in order to be protected for any future claims. This Extended Reporting Period (ERP), also known as an extended “discovery” provision, gives the insured the right to present claims to the insurer that are discovered after cancellation of the policy. Commonly referred to as a “tail,” providing coverage at the *end* of an expiring policy, it provides coverage identical to that of the expiring Claims Made policy and covers policyholders for claims arising between the date the Claims Made policy began (the Retroactive Date) and its cancellation or non-renewal, but which are reported after the policy has been cancelled.

The length of an extended reporting period can vary by carrier, and it may be prudent to purchase a longer ERP if it is available within the terms of a policy. The charge for a tail option varies from 75 to 100 percent of the expiring policy's premium per year of coverage, depending on the individual insurer, and can be as high as 200 percent. Some (although not all) insurers provide a tail at no cost in the event that an insured physician dies, becomes permanently disabled, or retires at a particular age.

Whether nose or tail coverage is best for you is sometimes contingent on your claims history, as well, so it is important to speak to your agent when considering moving coverage or cancelling a policy to discuss your options.

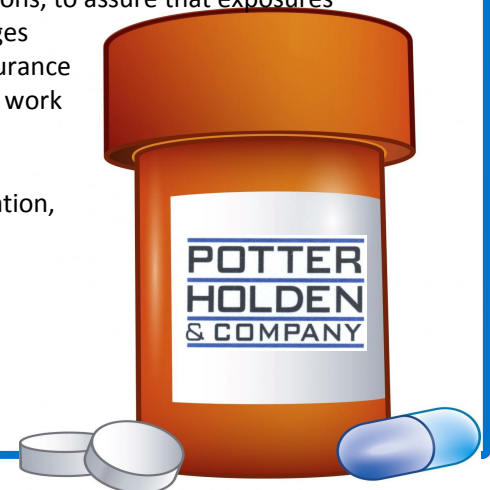
Important Considerations

One advantage of a Claims Made policy is that the only insurance carrier you should be concerned with is your current carrier as all claims brought are handled by the existing Claims Made policy, regardless of when the incident occurred, pursuant to the Retroactive Date. In addition, Claims Made offers greater flexibility allowing you to increase your limits or buy new coverage that may not have been available when the policy started. Since the policy in force at the time the claim is made is the one that responds, you receive the benefit of the enhanced coverage.

However, the scope of coverage afforded by various physicians’ professional liability carriers in Georgia can vary significantly. Therefore, it is important to examine and compare the individual policy provisions, to assure that exposures particular to a given physician are covered, and, if not, to negotiate appropriate changes that will do so. Working with an independent agent, who has access to a range of insurance carriers offering coverage, and who specializes in the unique needs of physicians, will work to your advantage when making these important decisions.

This topic can be complex, so if you have questions, or wish to receive further information, please don’t hesitate to contact an agent at Potter-Holden at 770-399-6760.


Potter Holden, MD



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