Claims-made vs. occurrence malpractice coverage

The definitive guide to making the smartest coverage choice

aegis

Malpractice Solutions

*"What's the difference between **claims-made** and **occurrence** malpractice coverage?"*

Without a doubt, this is the No. 1 question we hear from our clients.

So if you're asking the same, you're not alone!

In this guide, we'll walk you through the differences between these two policy types and provide some real-life examples of when you might choose one over the other.

In the world of medical malpractice insurance, there are two types of policies that you can buy: claims-made and occurrence.

The name of the policy describes how the coverage is triggered.

Occurrence coverage

is triggered based on **when the incident actually occurred**.

Claims-made coverage

is triggered based on **when the claim is made against you**.

Occurrence coverage

How it works

An occurrence policy provides coverage for incidents that "occur" during the policy period, regardless of when the claim is made against the provider.

The policy will respond to claims that are reported even after the insurance has been terminated, provided the incident occurred while the coverage was in force.

For example, a doctor can buy an occurrence policy that starts on his first day of work. He'll continue that coverage and renew until he no longer needs it.

His occurrence policies will stay active and in force with the carrier, so if a claim is ever made against him for patients that he treated while he was insured, he'll still be able to access those policies — even after cancellation.

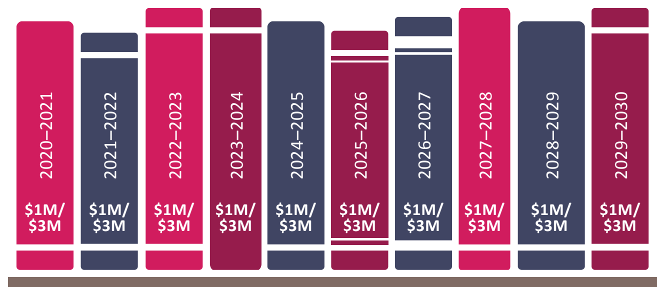
> Occurrence coverage triggers based on when the incident actually occurred — regardless of when the claim is filed.

Limits

An Occurrence policy provides a separate limit for each year the policy is in force. Limits reset every year so claims arising in one policy year don't affect other years' limits.

After 10 years on an occurrence policy, a provider with $1M/$3M limits would have 10x $1M/$3M in total coverage.

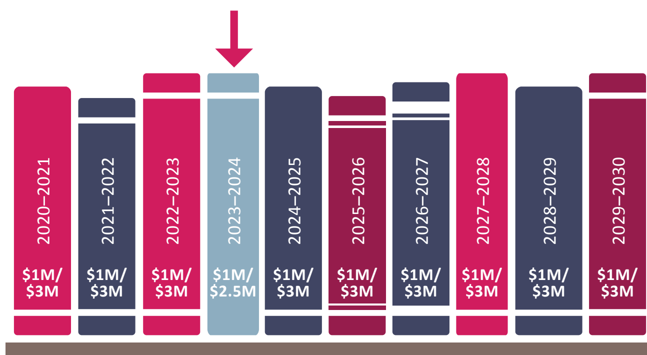
To visualize how the occurrence limits work, imagine a bookshelf filled with books.



For each year of coverage, you'll have a separate book. These books remain independent of one another and can be pulled off the shelf and used at any point in time. If you have a claim made against you for an incident that occurred on April 1, 2023, you'll simply take the 1/1/2023 to 1/1/2024 "book" (policy) off the shelf to access your coverage.

If a payment is made for that claim, you'll use the policy limits for that year to cover the amount (visualize ripping a page out of the book), and then put the

book back on the shelf. Let's assume the claim payment amount was $500,000. In that case, your 2023-2024 book now has $1,000,000/$2,500,000 limits available for future coverage. You still have your $1M per claim limit available, but your aggregate limit has been reduced by $500,000 from $3M to $2.5M. All of your other books remain untouched. Any paid claims are only taken out of the policy year in which the incident occurred. See below.



An occurrence policy has very robust coverage. The limits stack up year over year and you can access them down the road, as needed. Even if you end up switching carriers or moving to a claims-made policy type, the occurrence policies that you purchased will stay active and in force with the carrier that you purchased them from.

Pricing

Occurrence premiums are usually 5% to 10% more expensive than fully mature claims-made premiums.

The rates are generally flat year-over-year and there is no "stepping up" in rate, as we see in claims-made coverage.

Although the coverage is a bit more expensive on an annual basis, there is no tail insurance required upon cancellation, so the net cost is comparable to what you'd pay for a combination of claims-made and tail coverage.

Benefits of occurrence coverage

✓ **Flexibility**: Because the occurrence policy does not require tail insurance at the end, it allows providers to carry the insurance only when needed and then cancel with no strings attached.

✓ **Independent policy limits:** The independent policy limits provide robust coverage and great value for the premium dollars spent.

Disadvantages of occurrence coverage

× **Limited availability:** Occurrence coverage is not available in all states and some carriers do not offer it at all, which can make it harder to find and not as accessible as claims-made coverage.

× **Higher price point:** Another disadvantage of the occurrence policy is its higher price point. When compared to claims-made premiums (especially in the first few years) it is more expensive and often a burden for startup providers.

× **Non-transferable:** If you buy a policy with Carrier X, that carrier remains responsible for any claims made for incidents that

occurred during the time when they insured you. It's incredibly important that healthcare providers ONLY buy occurrence coverage from financially stable companies. If the insurer goes out of business, you would have to rely on your state's Guarantee Fund to cover you, which usually provides lower limits and less than desirable services/defense capabilities.

× **Limit adequacy:** Because each policy remains independent, if a provider changes their limits (higher or lower) the limits are only changed on a go-forward basis. You cannot go back and change your limits retroactively; therefore, it's incredibly important that healthcare providers carry appropriate policy limits each and every year.

Who is occurrence coverage best for?

Occurrence coverage is best for independent contractors, locums providers, or moonlighters who do not want the hassle of having to buy tail every time they end an employment assignment. It's also a good option for doctors who do telemedicine, since it offers them the ability to add/remove states without having to buy tail every time they make a change.

Occurrence coverage is also a good fit for any provider who wants flexibility in their coverage, prefers to have robust policy limits, and would rather pay a little more on an annual basis so they don't have to worry about tail at the end.

Claims-made coverage

How it works

A claims-made policy provides coverage when both the alleged incident and the claim happen during the policy period. Coverage extends every year the policy is renewed.

Once the claims-made policy is cancelled, you'll need to either:

- Continue the coverage with a new insurance company who is willing to pick up your prior exposure
- Obtain tail coverage, also called an ERP or extended reporting period

Tail insurance covers you into the future for any claims made against you for incidents that occurred back to the start date of coverage (your retroactive date). If tail insurance is *not* purchased, any future filed claims will not be covered – even if the incidents happened during the initial coverage period.

For example, a doctor can buy a claims-made policy that starts on his first day of work. The first date of coverage is called the RETROACTIVE DATE. He'll continue that coverage and renew it every year until the time comes when he needs to cancel.

Once the claims-made policy is cancelled, he's not done. A claims-made policy is really two policies in one.

You need to carry the insurance while actively practicing and then obtain tail. Your tail coverage will start on the cancellation date and extend your protection into the future for any claims that may be made later on for services rendered back to the retroactive date.

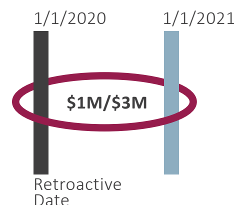
Again, claims-made coverage triggers based on when the claim is made against you – so you must have an active claims-made policy or tail coverage in place when a claim is filed in order to be covered.

Limits

Claims-made limits do not "stack" and stand independent of one another, like the occurrence limits do. Rather, they "stretch" to cover the policy period as it extends year after year. After 10 years on a claims-made policy with $1M/$3M limits, a provider would have $1M/$3M in total limits.

However, one advantage to the claims-made limit is that if the current level of coverage doesn't seem sufficient, the limit can be increased, and it will be retroactive to the inception of the coverage.

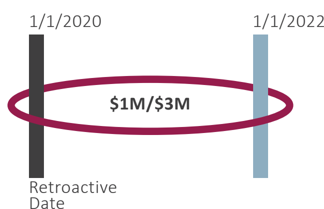
To visualize how claims-made limits work, imagine a pegboard and a long, stretchy rubber band.



On your first day of coverage — your retroactive or inception date — you'll drop your anchor peg into the peg board. Your rubber band wraps around that peg and stretches for your first year.

If you get a $1M/$3M policy, this means that you have $1M/$3M worth of coverage for any patients that you've treated from Jan. 1, 2020, to Jan. 1, 2021, assuming the claim is made against you in this same time period.

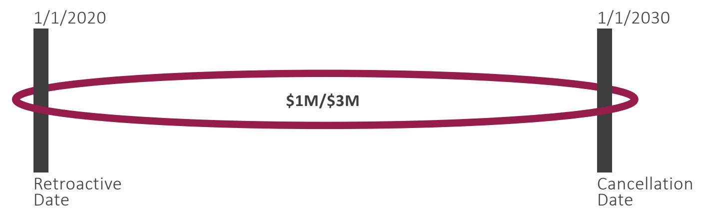
When you renew the policy for a second year, the band stretches a little bit further. Now you have $1M/$3M worth of coverage for any claims made against you from the retroactive date, Jan. 1, 2020, to Jan. 1, 2022, assuming the claim is made against you in this same time period.



This will continue every year you renew, stretching the rubber band further until you cancel.

Once you cancel, we'll drop another anchor peg in the board. This is the time when you must secure some form of tail insurance in order to continue being covered for any claims made against you for patients that you treated during these years.

If you don't get tail insurance, you're not covered.

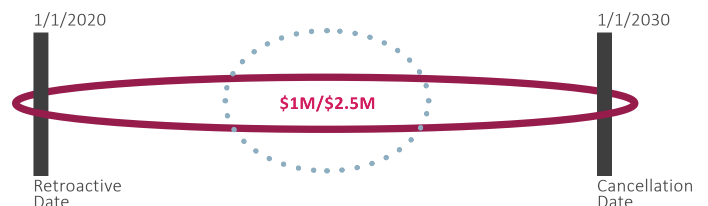


So again, claims-made coverage triggers based on when the claim is MADE against you. You must have insurance in place when the claim is made to be covered.

And policy limits, instead of stacking year over year like they do on an Occurrence policy, are stretched over the duration of the policy period. **You have one policy limit from retroactive date to cancellation date.**

If you have a claim made against you for an incident that occurred between your retroactive date and your cancellation date, the claims-made policy limits will be available for you to access for coverage.

If a payment is made, you'll use the total policy limit to cover the amount (visualize the rubber band getting a little thinner). Let's assume a claim payment of $500,000. In that case, your total limits of $1M/$3M have now been reduced to $1M/$2.5M for future coverage. **You still have your $1M per claim limit available, but your aggregate limit has been reduced by $500,000 from $3M to $2.5M.**



Tail insurance is a one-time purchase that costs up to twice the amount of your last insurance premium, and you must buy it within 30–60 days of cancelling your coverage.

Once you buy your tail insurance, the carrier will issue you an endorsement that shows your policy limits and the dates of coverage (retroactive date to cancellation date).

In most instances, doctors will either buy this on their own, or sometimes their group or employer will buy it for them. You can also earn free tail insurance in the event that you're completely retiring from the practice of medicine, or in the event of death or disability.

It is possible, however, for you to defer the purchase of tail.

Let's go back to our doctor that started his claims-made coverage on Jan. 1, 2020, and cancelled on Jan. 1, 2030. If this doctor wanted to switch insurance companies — because he got a better rate or relocated and found a new carrier — he could ask the new insurance carrier to pick up his prior acts back to Jan. 1, 2020.

If the carrier approves, they'll use his previous retroactive date and carry it forward onto their policy. They will be responsible for covering any claims beginning with the retroactive date.

When that policy ends, the doctor would either have to buy the tail or move to a new carrier.

Once you purchase a claims-made policy, the clock starts ticking and at some point, you will have to secure tail to cover that work.

So, even if a doctor only carries a claims-made policy for a year, he will have to secure tail in order to have coverage for any patients treated during that time.

> Many providers ask whether they can start on claims-made and switch to occurrence later. It's certainly possible to do this, but you'll still have to get tail for your claims-made policy before switching to occurrence.

Pricing

Claims-made premiums are less expensive than occurrence premiums.

The rate starts out very low (chances are low that there will be an incident and claim filed within the first year), but the premium "steps up" each year for approximately five years. After that, the claims-made premium is considered mature and will remain relatively flat.

Tail insurance is typically 1 ½ to 2 times the mature rate (unless you cancel coverage before the policy matures; in that instance, the tail rate is less).

Benefits of claims-made coverage

✓ **Lower price:** Claims-made premiums are much lower than the occurrence premiums, especially in the years leading up to maturity. On average, mature claims-made rates are 5%–10% less expensive than occurrence rates, but keep in mind that claims-made policies do require tail at the end.

✓ **Accessibility/portability:** Claims-made policies are the industry standard for malpractice insurance, so they are available with every carrier. It's fairly easy to switch companies and carry over your retroactive date, giving providers the ease of portability when they want to make a change.

✓ **Ability to flux limits:** If the current level of coverage isn't sufficient, the limit can be increased, retroactive to the inception date of coverage.

Disadvantages of claims-made coverage

× **Burden of tail insurance:** Tail insurance is the looming concern for most providers when they buy claims-made coverage:

- If you don't get it, it's as if you never had any insurance at all
- It's expensive — you can finance your premiums, and many carriers offer payment plans, but it is still pricey

× **Total amount of coverage:** The total amount of coverage with a claims-made policy is significantly less than the total amount of coverage offered by an occurrence policy. But as long as a provider carries appropriate policy limits, claims-made coverage usually provides adequate insurance protection.

Who is claims-made coverage best for?

Claims-made coverage is common for most employed providers.

Many group administrators prefer to have control over their start and end dates and want the "peace of mind" of closing out the risk with tail insurance after a provider leaves.

Because claims-made coverage is so much cheaper at the onset, it's also attractive to startup practices who are looking to manage their costs as they scale.

Solo practitioners who don't anticipate much change in their practice can save money with a claims-made policy and potentially also earn free tail insurance if they carry their policy until they retire.

Real-life examples of claims-made vs. occurrence premiums

An occurrence premium is a little more expensive on an annual basis, but the rate is stable.

You'll essentially pay the same price every year for the duration of your policy period — and you won't have to get tail insurance.

A claims-made premium starts low but goes up every year for about five years, until it reaches the "mature" price. Once it reaches the mature rate, you'll essentially pay the same premium every year after that.

Whereas the claims-made policy is a bit cheaper up front, and costs a little less each year, but you do have to buy tail at the end.

Here's what this would look like side-by-side:

Sample Premiums for a solo Plastic Surgeon in Springfield, MO

$1M/$3M Limits

	Occurrence	Claims-made
Year 1	$25,000	$7,000
Year 2	$25,000	$14,000
Year 3	$25,000	$18,.000
Year 4	$25,000	$20,000
Year 5	$25,000	$23,500
Year 6	$25,000	$23,500
Year 7	$25,000	$23,500
Year 8	$25,000	$23,500
Year 9	$25,000	$23,500
Year 10	$25,000	$23,500
Tail Insurance	$ -	$47,000
TOTAL	**$250,000**	**$247,000**

Sample Premiums for a solo Dermatologist in Palm Beach, FL

$500k/$1.5M Limits

	Occurrence	Claims-made
Year 1	$11,200	$4,700
Year 2	$11,200	$6,900
Year 3	$11,200	$7,000
Year 4	$11,200	$9,600
Year 5	$11,200	$10,300
Year 6	$11,200	$10,300
Year 7	$11,200	$10,300
Year 8	$11,200	$10,300
Year 9	$11,200	$10,300
Year 10	$11,200	$10,300
Tail Insurance	$ -	$20,600
TOTAL	**$112,000**	**$110,600**

If we do some quick math, you can see that the total cost of both coverage types after 10 years is similar.

In these two examples, the claims-made coverage ends up being slightly less in the long run – but not always.

Keep in mind that these are sample premiums.

Rates are different based on your specialty and area, but hopefully this helps you better understand how the rates work and what you can expect over the life of your policy.

Your premium may fluctuate year over year, based on the carrier's filings, changes to your practice, or other rating factors. For more information on what goes into calculating your rate, check out our other resources for more information.

Which policy type is right for you?

There is no right or wrong type of malpractice insurance to buy.

It depends on your unique practice situation, accessibility, and personal preference.

Some carriers offer only claims-made, and others offer both but may limit access to occurrence coverage to certain medical specialties or geographic areas.

Still not sure which policy type to pursue?

Contact Aegis Malpractice Solutions today for help understanding your coverage options and a custom proposal with quotes from the nation's top malpractice carriers.

Finding the right policy for your practice should be simple!

We'll help you get great coverage quickly, so you can get back to practicing good medicine.

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