



Claims-Paid vs. Claims-Made: Who Cares?

Executive Summary

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CLAIMS-PAID VERSUS CLAIMS-MADE: WHO CARES?

Claims-paid vs. claims-made may sound like so much insurance industry gibberish. But this seemingly subtle distinction could end up costing you a lot of money, and handcuff you to a carrier whose decisions and rate changes may not be in your best interest.

MADE VERSUS PAID: EYES WIDE OPEN

Before you buy or renew medical-professional liability coverage, be sure you understand the distinction between claims-paid and claims-made type coverage, and the type of carrier organization that is underwriting it. There are trade-offs with each type that can significantly impact your mobility, cost and freedom to control your own legal destiny.

This executive summary is designed to give you a basic working knowledge of claims-paid vs. claims-made coverage so you can ask the right questions when coverage renewal or decision time rolls around. We recommend you always include a qualified broker to advise and guide you through the nuances of coverage provisions. Buying directly from carriers or providers may sound appealing, but they may not always have your objective best interest at heart. A third-party expert advisor is a smart addition to this crucial professional purchase decision.

DIFFERENT DEFINITIONS

In simple terms, the difference between these two coverage types hinges on the point in time when the insurer is responsible for paying a claim. With claims-paid coverage, the insurer will only cover claims for active policies with that insurer at the time payment of the claim is paid—*claims-paid for short*. In other words, you must remain with the same insurer from the time the claim is first reported through final resolution or payment.

Claims-made, on the other hand, covers the physician from the time the claim is first reported (made), regardless of where coverage

resides at the time the claim is settled or paid – claims-made for short. The physician is free to switch carriers without worrying about exposure on unsettled claims.

TRADEOFFS AND NEGATIVE IMPACTS

Historically, the appeal of claims-paid coverage has been aggressive pricing offered by many coverage providers. There are a variety of inherent reasons why this is possible with claims-paid, but nowadays, compelling pricing is available for both types of coverage.

On the downside, claims-paid coverage typically includes features that can severely impact a physician negatively with regard to changing carriers, avoiding locked-in rate changes, and exposure to retroactive risks. Here's a summary of each of these potential drawbacks:

- **Claims-Paid Handcuffs.** A physician/group who has an open claim (or in some cases, the possibility of a claim being filed) cannot voluntarily leave the insurer until the claim is closed. If they move to another carrier, they take the claim with them and must pay for all loss and defense costs out of their own pocket. These cases can last many months, effectively handcuffing the physician to the insurer.
- **No-Shopping Zone.** During the time period the claim is open, the physician/group is subject to any pricing changes that may be made by the insurer, given that coverage must be maintained until the claim is resolved. If rates go up, the physician is unable to consider other, lower-priced offers.

- **Expensive “Tail.”** In addition, claims-paid policies usually have restrictive claims triggers, under which a claim is not considered formally made until a summons and complaint is received. As a result, policyholders changing from claims-paid coverage to claims-made coverage might find it difficult to obtain retroactive (prior acts) coverage from the new carrier. These physicians will most likely have to purchase expensive “tail” insurance to cover claims that might arise from earlier time periods.
- **Claim Outcome Control.** The final decision concerning whether and how to settle a claims-paid claim is usually made by a committee within the insurer. The physician has very little say in the decision itself, yet must live with the outcome of that decision.

AN EXAMPLE

The doctor was covered on a claims-paid policy. He was a hospital-based infectious disease specialist who treated a patient with a mitral-valve prolapse. Another physician later discharged the patient. A professional liability claim was subsequently filed, and despite the fact that the physician was convinced that his treatment met the standard of care, and the literature backed him up, the case was settled by his insurance provider—a trust in this case—without his consent.

From that point forward, the doctor had to live with the consequences of this decision. For example, every web reference to him showed he had a malpractice settlement. Additionally, he couldn’t move to a different insurance provider while the claim was pending because of the claims-paid restrictions. He had to stay with the current provider until the case was resolved. He had no choice once the claim occurred.

KNOW WHO IS COVERING YOU

Claims-paid coverage is typically offered by organizations known in the industry as alternative risk providers. These groups are not true insurance companies, but are usually

structured as trusts of risk retention groups (RRGs).

The challenge in evaluating these organizations is transparency of information regarding their financial strength and security. They are not regulated and rated like mainstream insurance carriers, which makes it more challenging to ensure you are choosing a provider with the strength and staying power required to cover potential liabilities for many years into the future. For example, checking an insurance company’s rating, say A+, gives you a quick, reliable way of judging its financial strength. Unfortunately, no such metric is available for trusts and RRGs.

Before making a long-term commitment for claims-paid coverage with a non-insurance-company-type entity, do your homework to ensure it is stable and financially strong enough to be there for you in the future. Many companies have come and gone in the cycles of ups and downs in the insurance industry.

CONCLUSION

Claims-paid vs. claims-made may seem like a small technical difference when considering medical-professional insurance coverage. But this one small distinction can mean a world of difference to a doctor who may face a future claim, or who may wish to have the freedom and mobility to choose the best carrier, price and policy coverage without restrictions or expensive tail coverage requirements. It pays to do your homework, clearly understand the coverage restrictions, and have the assurance that your provider has financial staying power. Be sure you are looking deeper than a low premium offer in order to clearly understand all the implications.

At the end of the day, as a specialist it’s always advisable to consult other specialists with difficult cases. Your local independent broker can provide the expertise to navigate the many options and potential pitfalls of claims-paid and claims-made professional liability coverage.

ABOUT THE AUTHOR

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Ms. Farrell's leadership and management experience includes training and growing teams of medical-professional liability professionals and operations departments with a variety of major insurance carriers. Her ability to work strategically with brokers and underwriters has proven to be especially effective in growing business in an unpredictable medical malpractice marketplace. Before joining MGIS, she served as vice president of sales at NORCAL Insurance Company, vice president of NAS Insurance Services, and held various underwriting and claims management roles for The Doctors Company. In addition, Ms. Farrell is an experienced medical-professional liability broker, underwriting consultant, and operations consultant.

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ABOUT MGIS

MGIS is the nation's leading provider of insurance products and services specifically for physicians. For more than 43 years the company has provided specialized group disability insurance, medical-professional liability insurance, and practice improvement ancillary products and services to more than 10,000 physician groups, 900,000 group members, and 300,000 physicians nationwide. The MGIS group disability policies are backed by Sun Life Financial, one of the largest and highest-rated insurance companies in North America. The MGIS medical-professional liability insurance policies are backed by Freedom Specialty Insurance Company, a Nationwide® Company, rated A+ (Superior) by A.M. Best.

With a rich tradition of service excellence, MGIS works exclusively through local brokers and benefit advisors to provide the ultimate in personalized, physician-focused insurance services.

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