Avoiding Malpractice

Tips for Social Workers to Manage Risks

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A Tale of the Extended Reporting Period Tail

Extended Reporting Period (ERP), in connection with a professional liability insurance policy, also known as "tail coverage," is an option sometimes offered in a claims-made policy.

The keyword here is "Reporting Period" because that term drives the difference between a claims-made policy and an occurrence policy. Within the product market scope of Commercial General Liability Coverage, which includes professional liability as a product line, occurrence policy forms, and claims-made policy forms are the same. But the major difference is that the policy language determines how the claim is triggered when reported.

In recent years we have seen some insurance carriers eliminate claims-made professional liability policies coverage and only offer occurrence policies. They refer to these occurrence policies as "lifetime" coverage, which is a helpful reference and does advocate legitimate peace-of-mind for the insured.

We have also seen some carriers limit the ERP term to a maximum of 3 years, seven years, and ten years. Few insurance carriers offer continued optional ERP coverage beyond ten years, as the NASW Risk Retention Group provides.

While the premiums from occurrence policies are typically flat, they do not start low like claims-made policy premium rates, and they do not step up gradually during the first 3 to 6 years like a claims-made policy term. However, an occurrence policy offers the peace-of-mind of lifetime coverage and predictability.

In an occurrence policy, there is no question coverage continues for all claims incidents that transpired during the occurrence policy period, regardless of when the policy terminates or when reported. In other words, the risk is covered in the occurrence policy with no fees and no exceptions, provided the claim is a defined peril in the policy and occurs when the policy was active or in force.

Regardless of when the claim is reported, during the policy term, and even after the policy was terminated, if the injury or damage occurred during the occurrence policy period, which was when premiums were paid for insurance coverage, coverage still applies.

The occurrence policy form could be considered a “no brainer” because it is lifetime coverage for whatever claims happened when the policy was in effect.

Conversely, claims-made professional liability policies will leave the insured unprotected after policy termination if an Extended Reporting Period is not purchased. So why buy a claims-made professional liability policy?

It is merely a matter of premium cost in the early years. The difference in annual premium for first-year insurance coverage could be around $55 for a claims-made policy, which increases each year, versus possibly an average of $220 in annual premium for an occurrence policy depending on policy benefit limits and other elements.

Many policyholders buy an occurrence policy because the short-term savings in premium upfront from a claims-made policy is not worth the loss of peace-of-mind and insureds can avoid the confusion and limitations that exist from an ERP purchased after the termination of a claims-made policy.

Eventually, the claims-made premium rises to equal the occurrence premium after a few years. The claims-made policyholder should protect themselves against a coverage gap by purchasing an ERP at the termination of a claims-made policy, which may result in a single payment in advance equal to 300% of the annual premium.

Occasionally, policyholders forget to buy an ERP policy when they terminate their claims-made policy or elect not to buy an ERP, and that could lead to a financial burden because they have no insurance protection for the claims that arose during the original policy period. It is imperative to communicate with your insurance provider before you cancel your policy to make sure you cover yourself. Some policyholders may not pass the underwriting constraints to qualify for an ERP/tail coverage policy. Most carriers have underwriting requirements to be eligible for ERP because it is not guaranteed.

A further risk to the insured is that the vast majority of insurance carriers limit ERP terms to a maximum of 3-5 years. Buying an occurrence professional liability policy eliminates all of these uncertainties.

Additionally, you may come across what is called a “Mini Tail Period,” a “Midi Tail Period,” “BERP,” and a “SERP.” The Mini and Midi periods are two parts of the Basic Extended Reporting Period or BERP. The Mini tail period covers claims reported within 60 days of policy termination. This is a free coverage benefit in the NASW Risk Retention Group policy.

The Midi tail covers claims reported within five years of policy termination, provided that the claim incident is reported within 60 days of the coverage termination. The SERP is the actual ERP that extends the coverage for reporting of claim incidents that occurred during the claims-made policy period. Typically there are limits to the SERP terms; however, NASW members who are professional liability NASW Risk Retention Group policyholders receive an unlimited SERP term.

Think about the many foregoing extenuating circumstances before you make your choice.

Not all professional liability insurance policies cover patient records breaches, so read your policy carefully. The NASW RRG professional liability policy is the most comprehensive in the industry. The NASW RRG also offers a low-cost cyber liability policy that protects the practitioner against third-party information breach for which HIPAA holds the practitioner accountable.