Malpractice Insurance



A Guide for Doctors of Chiropractic

NCMIC
We Take Care of Our Own®

NCMIC

We Take Care of Our Own®

Malpractice Insurance

A Guide for Doctors of Chiropractic

Copyright ©2019 NCMIC Insurance Company, 14001 University Avenue, Clive, Iowa 50325-8258.

All rights reserved. No part of this book may be reproduced in any form or by any means, including photocopying, or utilized by any information storage and retrieval system without written permission from the copyright owner.

Choosing the Best Malpractice Insurance for You

Even the best doctors can be accused of making a mistake, can have a bad outcome, or be hit with an unwarranted allegation of malpractice. That's why choosing the right malpractice insurance is so important. Your policy protects your patients, your financial well-being and your reputation. In the unfortunate event of an injury, you'll want to ensure that your malpractice insurance is sufficient to compensate your patient and protect you and your practice.

In addition, being subject to a claim is stressful enough without having to wonder if your coverage is adequate or if you'll be defended effectively. That's why the time to understand your malpractice insurance coverage is before you need it.

So, when choosing a malpractice insurance policy, you should know answers to the following questions:

Choosing a Malpractice Insurance Policy

1. What does the policy cover?
2. How much coverage do I need?
3. What types of policies are available?
4. How does the policy's consent-to-settle feature work?
5. What is the company's expertise and involvement with the profession?
6. Is the company financially stable?
7. What does the policy cost?

What does the policy cover?

In the event of a lawsuit, you face a possible loss of business, time away from patients, a potentially damaged reputation in the community, not to mention the personal anguish experienced by you, your family and your office staff. To ensure you're properly protected, it's critical that you understand a policy's indemnity, legal defense and supplemental coverages.

Indemnity

One of the main purposes of malpractice insurance is to pay damages suffered by the plaintiff (patient). The amount of money paid to the plaintiff as the result of a settlement or award is called an indemnity payment. Payments for indemnity are available up to the limits of liability of your policy. (See the next section.)

Legal Defense

Your malpractice insurance company is responsible for providing you with a defense and paying for it. This is a significant part of your coverage because defending a chiropractic malpractice claim can easily cost tens, even hundreds, of thousands of dollars. Even if you've done nothing wrong, the cost to defend a claim can be significant. Clearly one of the biggest expenses for a malpractice insurer is providing a defense to the doctor.

How much coverage do I need?

Determining your level of coverage is an important part of your decision to protect your patients, practice and assets. You'll want to take into consideration the amount of money that may be needed by a patient who was inadvertently injured as a result of treatment, as well as sufficient coverage to protect your other patients, your practice and your financial future.



Policy Should Cover Defense Costs

At NCMIC, our policy pays unlimited defense costs in addition to jury awards or settlements. For example, if you have a $1 million policy limit on your malpractice coverage, you would be covered for up to $1 million per claim in jury awards or settlements, PLUS unlimited defense costs.

There are other factors, as well. Third-party payer contracts generally require you to carry malpractice insurance with certain limits of liability, so be sure to ask the provider relations department of any network in which you participate about their requirements. In addition, state statutes may require coverage minimums, and an employer may require similar policy limits for everyone in the office.

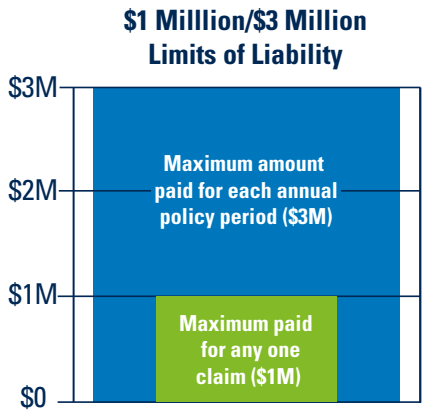
It's important to keep in mind that lower policy limits can affect the outcome of a case. Lawsuits are often a process of negotiation and compromise, and if your policy limits are inadequate to negotiate a settlement, they can become a barrier to reaching a successful outcome.

Moreover, low policy limits can also expose your personal assets if a judgment exceeds policy limits. Then, you are liable to pay the excess.

As you can see, the issue can be complex, so it is wise to consult with your accountant, lawyer or another business advisor to assist in determining how much coverage you need. Then, revisit your malpractice coverage annually to make sure you have adequate protection as your practice grows or changes.

In Figure 1, the inset section refers to the maximum amount your policy will pay for any one claim. The entire graph represents the maximum amount your policy will pay during each annual policy period.

Figure 1



What types of policies are available?

There are two basic types of malpractice insurance: occurrence and claims-made. Ideally, your malpractice insurance company should offer both occurrence and claims-made policies, so you can decide which is best for your individual circumstances.

It is important to understand that both types of policies have the same coverage and both will provide you with a defense. What differs between the two is how and when the coverage triggers.

An occurrence policy provides coverage against claims for alleged incidents that occur anytime during the policy period. Even if the policy has expired or been canceled, if the alleged incident occurred while the policy was in force, the coverage is there.

Why is this important? Most claims are filed relatively soon after the treatment or incident in question, but some lawsuits have been filed and successfully litigated for incidents that took place many years earlier. This is particularly relevant when minors are involved or when the alleged injury doesn't manifest itself until much later.

Claims-made coverage, on the other hand, provides coverage for claims that are made against you and reported in writing during the policy period or during an extended reporting period. Incidents that result in a claim must occur on or after the retroactive date of the policy and before the policy terminates.

NCMIC offers a variety of policy limit options, so you can choose the right levels to meet your specific needs and preferences.

Claims-made coverage is triggered when:

1) The alleged injury occurs on or after the policy's retro date.
2) A written claim is made and reported during the current policy period or within the term of the policy or any extended reporting period following the current policy period, generally 60 days following termination of the policy.

Occurrence vs. Claims-made Premiums

It is also important to understand the difference in premiums.

Occurrence policies offer a steady base premium. The base premium does not increase as the policy matures.

The claims-made policy offers a lower premium during early years of the policy. The premium steps up each year until reaching maturity in year five of the policy. While this saves some money in your early years of practice, potential coverage gaps can occur.

Figure 2 shows potential gaps in coverage when moving from one claims-made policy to another.

Avoiding Gaps in Coverage with Claims-made Coverage

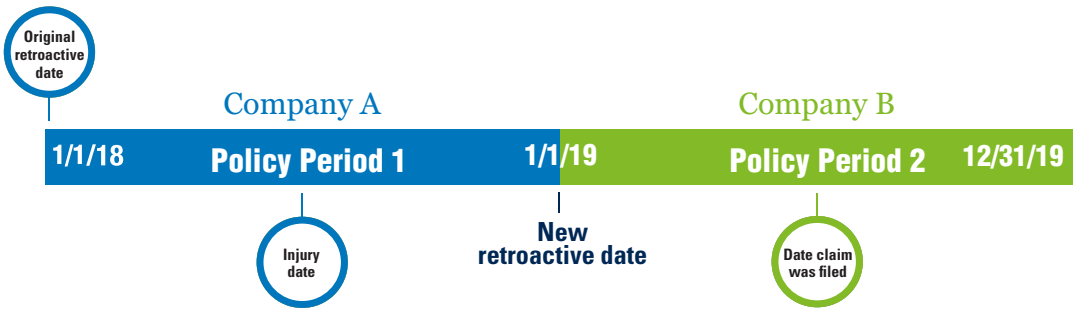
It is important to make sure that a gap in your malpractice coverage doesn't occur.

A gap in coverage can result in a number of ways. If the retroactive date (coverage date) of a claims-made policy changes, a gap in coverage may result. The timeline (Figure 2) shows what happened when a doctor switched from a claims-made policy with Company A (Policy Period 1) to a claims-made policy with Company B (Policy Period 2) and did not purchase tail coverage from Company A or prior acts coverage from Company B. This switch resulted in a change to the doctor's retro date. This same scenario would apply if the coverage was completely canceled.

As shown below, the injury occurred during Policy Period 1. Because the doctor changed coverage and did not purchase tail coverage from Company A or prior acts coverage from Company B, he/she has a new retro date.

Consequently, an injury that occurred 7/1/18 but was not submitted by the patient until 7/1/19 would not be covered by either Company A or Company B.

Figure 2



Because the D.C. did not purchase tail coverage or prior acts coverage, injuries occurring before 1/1 are not covered by Company B.

This gap represents a significant risk to the doctor and his/her patients. To avoid a gap in coverage when canceling your claims-made policy or switching insurance companies, you need to purchase either tail coverage from your former insurer or prior acts coverage from your prospective insurer. Without this additional coverage, there is no coverage for the entire period of time the previous policy was in place.

Typically, tail coverage must be purchased within a certain period of time following cancellation. It is a one-time purchase, does not expire and cannot be canceled by you or the insurance company that issues it. Generally, tail coverage may not be purchased if the policy was canceled for nonpayment of premium.

How does the policy's consent-to-settle feature work?

One of the most critical features of a malpractice insurance policy is whether it gives you the authority to settle—or not settle—a malpractice claim.

All policies name the party who is authorized to give consent to settle, but not all are created equal. The ideal consent to settle is one that can be authorized only by the insured (you).

However, some policies have clauses that limit a doctor's decision to settle or not. Two variations are:

Hammer or Modified Hammer Clauses

If the policy contains a Hammer Clause and during the claim the doctor refuses to consent to any settlement recommended by the insurance company, the doctor becomes personally responsible for any judgment in excess of the proposed settlement amount.

The insurance company may wish to settle for a number of reasons. For example, if there are poor medical records, unresolved conflicts between your testimony and others', or personal/professional problems that could influence a jury, settlement may be rigorously pursued by the insurance company. If the company believes you are unreasonably withholding your consent to settle, the company will invoke the hammer clause.

A settlement can save the insurance company money by shortening the litigation process, but it forces doctors to make some difficult decisions about whether to continue to fight and prove their innocence. Doctors must also consider the impact on their personal finances if they press on with the claim.

NCMIC provides tail coverage at no additional charge after 10 years of continuous coverage. When switching between companies or coverage types, NCMIC can help you to address coverage issues, identify gaps and suggest solutions for your protection. NCMIC also offers a true consent-to-settle clause. So, in the event of a malpractice allegation, NCMIC will support you every step of the way and will not settle a claim without your authorization. So, if you decide you want to pursue the case, you'll have your day in court. What's more, the NCMIC policy does not include arbitration or hammer clauses.*

**Not allowed by Maryland.*

Arbitration Clauses

Another clause found in some professional liability policies that affects the doctor's consent to settle is the arbitration clause. If an insurance company deems an offer to settle a claim or suit is proper and the doctor is withholding consent, the insurance company can hire an arbitrator to decide if the consent is being unreasonably withheld. Then, if the arbitrator decides the doctor is being unreasonable in withholding his or her consent, the insurance company can proceed to settle the case without the doctor's consent.

Because of its impact on your reputation and profession, it's important that you have a policy with a true consent-to-settle clause that gives you control regarding whether to settle.

On a related note, some insurance companies (not NCMIC) have doctors enter into arbitration agreements with their patients. This requires you to ask your patients to sign a form mandating that they submit to arbitration should they decide to pursue an allegation of malpractice.

Under this provision, any claim by the patient is presented to an arbitrator for review, and both you and the patient forfeit the right to pursue litigation. Arbitration is binding, so there is no appeals process.

What is the company's expertise and involvement with the profession?

When it comes to protecting your reputation, you don't want to take chances. It's vital to have a knowledgeable, experienced company that specializes in chiropractic fighting for you.

An experienced malpractice insurance company will know the latest chiropractic issues, chiropractic-specific cases and litigation strategies. In contrast, a doctor's defense may suffer if …

- Claims are outsourced to an outside insurance company.
- Neither the claims staff nor the D.C.'s defense attorney know much about chiropractic issues.
- There's a lack of respect for the chiropractic profession by the claims staff or the attorney.

What's more, it's important to ensure your malpractice company is invested in giving back to chiropractic rather than just benefiting from it. Look for companies that support chiropractic research and education programs, take an active role in state and national professional organizations, and understand the chiropractic issues facing the profession today.

Another important consideration is how the company supports the chiropractic colleges. Ask if the company has …

- Provided funding for research that enabled curriculum enhancements.
- Offered a business education training program for students through the colleges.
- Taught colleges, students and practitioners about malpractice and business risks.

Is the company financially stable?

It is critical that the insurance company you choose will be there for you over the long term.

One good way to check this is to assess a company's financial position, including their A.M. Best ratings. A.M. Best is an independent industry analyst that evaluates insurance companies' financial strength and operating performance.

Find out how long the company has been in business. More specifically, find out how long the company has been insuring chiropractors.

It is important to find out who owns the company. Is the company publicly traded so that shareholders, not policyholders, are the company's focus? Is it a mutual company owned by its policyholders? And who are those policyholders … chiropractors like you or medical doctors? Is it owned by a broker who places your policy with a company of his or her choosing, or are you working directly with the company that is providing coverage?

What does the policy cost?

When looking at price, there are several things to consider. It is important to look at the value you will receive for your premium dollar.

When it comes to protecting your reputation, you don't want to cut corners. Instead, you want the best malpractice insurance available. Moreover, it's important that you receive excellent service whether you're calling about a payment, policy details, a claim, or for advice about a troubling situation.

Protecting your good name

The value of your malpractice coverage becomes apparent if you become subject to a malpractice claim. Because the chiropractic profession is unique, it's important that your legal counsel and claims representatives understand chiropractic and are experienced in putting together a chiropractic defense. When your reputation is on the line, you want the best representation and coverage possible.

NCMIC Malpractice Insurance Plan Premium Discounts

NCMIC offers several premium discounts to D.C.s, including our new practitioner discounts, which just got even bigger and now include 5th year D.C.s!

Licensure Year	Discount
1st Year	**80%**
2nd Year	**60%**
3rd Year	**40%**
4th Year	**20%**
5th Year	**10%**

Additional Discounts	Discount
Claims-free Status	**3-20%**
Risk Management	**5%**
Part-time Status	Call for details

There is no substitute for value

It's important to look for experience defending chiropractors and in-depth expertise on the subject of chiropractic malpractice. The support of a professional claims staff means you may be able to receive guidance even before you face a claim. In addition, your coverage will provide a better value if it includes broad scope of practice coverage, a true consent-to-settle provision, and supplemental coverages such as professional discipline and other governmental proceedings at no additional charge.

Ongoing customer service support is vital

One of the things you're paying for in a malpractice policy is service. It can make your life easier to call one place whether you're calling about your policy, a claim or simply have general questions.

Valuable extras

At NCMIC, we also offer you value-added extras including:

- **Legal expertise**—NCMIC maintains a nationwide network of highly respected defense attorneys with years of experience in defending chiropractic malpractice cases. We host conferences for our attorneys where they hear from worldwide experts, learn about chiropractic research and exchange defense strategies.
- **Claims Advice Hotline**—Policyholders can call to confidentially discuss any concern or situation they're not sure how to handle.
- **Continuing education seminars and online content**—Doctors stay up to date on developments in chiropractic.
- ***Examiner* publication and monthly e-newletters**—Compelling cases studies and tips for avoiding malpractice allegations. View the current issue and subscribe by going to www.ncmic.com/examiner.

The NCMIC Malpractice Insurance Plan

Because NCMIC's Malpractice Plan was created by chiropractors for chiropractors, each benefit was designed with your needs as a D.C. in mind. Our motto, "We Take Care of Our Own," reflects our commitment to give you the first-rate, personalized service and protection you deserve. A variety of additional coverages are available, if allowed by your state, allowing you to customize your protection for the way you practice now and in the future.

NCMIC has maintained a rating of "A" (Excellent) from industry analyst A.M. Best. This is a significant accomplishment year after year.

Additionally, policyholders of NCMIC Insurance Company are members of National Chiropractic Mutual Holding Company. We are proud to have paid a premium dividend to policyholders every year since 1996 (though this is not guaranteed).

Coverages include:

- **$60,000 Audit and Legal Defense Endorsement available at no additional charge.** This endorsement includes defense coverage for State Disciplinary Proceedings, Civil Sexual Misconduct Allegations, Wrongful Billing and Related Proceedings for federal/state funded programs, including private health insurance company billing audits, HIPAA and Privacy Related Proceedings, and Quality Improvement Organization (QIO) Review.
- **Professional Entity Coverage with shared limits of liability at no additional charge.**[1] Protects the corporation, association or partnership from liability due to the negligent acts of employees. Separate limits of liability available for an extra charge.
- **Peer Review and Utilization Review.** Coverage for rendering an opinion on the adequacy, necessity or reasonableness of care furnished by another practitioner, based on a review of the patient's records without a physical examination. Coverage is also provided for review or evaluation of professional services rendered by a professional practitioner for the purposes of determining competency. Provides for payment of the reasonable legal fees and expenses of a lawyer and damages within limits of liability of $25,000 per incident and $50,000 per policy period. Does not have to relate to a malpractice action.
- **Dual License Coverage.** Doctors of Chiropractic who hold an additional license as a Naturopathic Doctor or Acupuncturist can be covered under the same policy for both licenses for a nominal additional premium. No additional premium is charged for Chiropractors who maintain a second license as a Physical Therapist[2] or Massage Therapist.

[1] Shared limits are not allowed by CT or KS.
[2] Dual license coverage for Physical Therapy is not available in MA.

NCMIC Supports Chiropractic

Back in 1946, NCMIC was formed by a group of chiropractors with the express purpose of offering malpractice insurance to D.C.s at a time when no one else would.

Today, we're just as dedicated to chiropractic. NCMIC has given more than $14.8 million in support of chiropractic research and education since 1995. NCMIC also offers business training and malpractice risk management seminars and resources to D.C.s as a complement to the education provided by the chiropractic colleges.

NCMIC's Malpractice Insurance Plan Discounts

NCMIC's Plan

Insurance Company

- Over 70 years of experience in chiropractic malpractice
- Supports and insures chiropractic colleges and universities across the U.S.
- Founded by Doctors of Chiropractic

Plan Features and Benefits

- True Consent-to-Settle feature*
- No arbitration clauses
- All legal fees paid outside policy limits
- $60,000 Audit and Legal Defense Endorsement at no additional charge†
- Claims-made and occurrence plans available

Premium Discounts

- 1st year D.C.s – 80%
- 2nd year D.C.s – 60%
- 3rd year D.C.s – 40%
- 4th year D.C.s – 20%
- 5th year D.C.s – 10%
- Claims-free Record – 3%-20%
- Risk Management – 5%
- Part-time Status – Call for details

Claims/Defense

- Claims staff with over 300 years of combined experience to guide you
- Over 500 expert defense attorneys in our nationwide network
- Hotline for questions regarding a potential claim or a delicate situation

Extras

- No membership fees
- Premium dividends paid every year since 1996‡
- FREE subscription to the *Examiner* risk management publication
- Underwriting, claims and service all handled in one place
- Interactive website with resources, tools, advice and more to help run your practice

* Consent to Settle is not allowed by MD. † Subject to underwriting approval. ‡ This is not a guaranteed benefit.

Additional Products and Services from NCMIC



With NCMIC, you have access to a wide array of financial products and insurance services designed with the needs of D.C.s in mind.

Auto and Homeowners Insurance

Business Insurance

Credit Card Processing

D.C. Long Term Disability Insurance Plan

MilesAway® Mastercard®

To learn more, call **1-800-769-2000, ext. 3344**
or visit **www.ncmic.com**

STAY CONNECTED

NCMIC
We Take Care of Our Own®

Policy terms and discounts may vary by state. The NCMIC Malpractice Insurance Plan is underwritten by NCMIC Insurance Company. In the states of Florida and New York, the NCMIC Malpractice Insurance Plan is issued by NCMIC Risk Retention Group, Inc. We Take Care of Our Own is a registered service mark of NCMIC Group, Inc. and NCMIC Risk Retention Group, Inc. A.M. Best ratings range from A++ to S. For more information, visit www.ambest.com. Starting into Practice is a registered trademark of NCMIC Group, Inc. MilesAway is a registered trademark of NCMIC Finance Corporation. Other trademarks listed are the property of their respective owners. MilesAway and Credit Card Processing are offered by NCMIC Finance Corporation.

Business Insurance and Auto/Homeowners Insurance are offered by NCMIC Insurance Services, a licensed insurance agency. Insurance coverage is underwritten by some of the nation's leading insurance carriers. CA license #0B84564. In NY: NCMIC Insurance Agency. In MI: NCMIC Insurance Services Agency, Inc.

Coverage under the D.C. Long Term Disability Insurance Plan is issued by The Prudential Insurance Company of America, Newark, NJ. This plan is sponsored by the National Business Association for Chiropractors (NBAC). NCMIC Insurance Services is the exclusive agent. ©2019 NCMIC NFL 3344-190101