Choosing the Best Chiropractic Coverage 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 coverage 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 the 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 coverage 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 limits of liability in 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

Because NCMIC’s Malpractice Insurance 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 kind of protection you deserve.
One practice some insurance companies employ is to 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.

Arbitration is less expensive for the insurance company because the doctor gives up the option to go to court. The doctor may more likely be found at least partially at fault because the arbitration process typically favors compromise. Further, some states do not uphold arbitration agreements for insurance policies because they bar the constitutional right to a jury trial.

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.

NCMIC does not believe arbitration agreements are in the best interest of our policyholders or their patients. Our coverage never requires doctors to enter into these agreements with their patients.

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.

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.

Malpractice insurance policies offer a wide range of limits for both single claims and total claims per year, known as single claim limits and aggregate limits. 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.

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.

In other words, if an act or omission allegedly causing an injury occurs today, then the occurrence policy that's in effect today would cover you against a malpractice claim, regardless of when that claim is made.

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 against claims for alleged incidents that both occur and are reported during the policy period. The first day claims-made coverage begins is called the retroactive date, or “retro” date.

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**
Along with understanding the difference in the coverage triggers of occurrence and claims-made policies, it is important to understand the difference in the 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, and you need to work closely with your insurance company at the time of cancellation to ensure all potential gaps are identified.

Figure 2 on the following page maps 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 above, 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 has a new retro date. Consequently,
Because the D.C. did not purchase tail coverage or prior acts coverage, injuries occurring before 1/1 are not covered by Company B.

Figure 2

<table>
<thead>
<tr>
<th>Company A</th>
<th>Company B</th>
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<tr>
<td>1/1</td>
<td>1/1</td>
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<tr>
<td>Policy Period 1</td>
<td>Policy Period 2</td>
</tr>
<tr>
<td>Original retroactive date</td>
<td>Effective date</td>
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<tr>
<td>Injury date</td>
<td>New retroactive date</td>
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</table>

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

an injury that occurred 7/1/10 but was not submitted by the patient until 7/1/11 would not be covered by either Company A or Company B.

This gap represents a significant risk to the doctor and his/her patients. To avoid a gap in coverage when canceling your 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.

When purchasing tail coverage, you need to understand the terms of its coverage. 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 non-payment 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), period.

NCMIC provides tail coverage at no additional charge after 10 years of continuous coverage. When switching from another company to NCMIC or when switching from one type of NCMIC coverage to another, we will work with you to make sure that all coverage issues are addressed, gaps are identified and solutions are suggested for your protection. Don’t cancel any coverage without checking with us first.
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 in the case, unresolved conflicts between your testimony and others’, or personal/professional problems that could influence a jury if disclosed at trial, 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.

**Arbitration Clauses.** Another clause found in 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—not the insurance company—control regarding whether to settle.

**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, litigation strategies, and so on. 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 enables curriculum enhancements.
- Offered a business education training program for students through the colleges.
- Expanded risk management education and materials to teach colleges, students and practitioners about malpractice 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. Their ratings range from A++ to S.*

**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 $12.9 million to 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.

We also support chiropractic associations and colleges by providing speakers free of charge and offering premium discounts to our policyholders who attend qualifying programs. In short, NCMIC is committed to the chiropractic profession, continually fostering growth and advancement through investment and collaboration.
NCMIC has a firm commitment to chiropractic, writing malpractice insurance for chiropractors practicing all 50 states, plus Puerto Rico, the Virgin Islands and Guam.

NCMIC has continued to retain an A.M. Best rating of “A” (Excellent). This is a significant accomplishment considering that many insurance and financial institutions have had difficulty maintaining their ratings.

Additionally, policyholders of NCMIC are members of National Chiropractic Mutual Holding Company, owned by its chiropractic policyholders. As further evidence of our financial stability and commitment to our policyholders, we have offered a premium dividend every year since 1996 (though this is not guaranteed).

With Doctors of Chiropractic actively involved throughout many areas of the company, we understand chiropractic, the challenges you face each day and the issues involved with malpractice allegations. In short, we ARE the chiropractic malpractice experts.

* A.M. Best ratings range from A++ to S. For more information, visit www.ambest.com

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 policy dollar.

When it comes to protecting your reputation, you don’t want to cut corners. It’s vital to have a knowledgeable, experienced company fighting for you. 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
### NCMIC’s Malpractice Insurance Plan Discounts

<table>
<thead>
<tr>
<th>Discount Category</th>
<th>First Year License</th>
<th>Second Year License</th>
<th>Third Year License</th>
<th>Fourth Year License</th>
<th>Risk Management</th>
<th>Claims-free Discount</th>
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<tbody>
<tr>
<td><strong>1st Year License</strong></td>
<td><strong>75%</strong></td>
<td><strong>40%</strong></td>
<td><strong>25%</strong></td>
<td><strong>15%</strong></td>
<td><strong>5%</strong></td>
<td><strong>3% to 20%</strong></td>
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<tr>
<td>D.C.s licensed for the first time within 18 months of graduation who sign up for NCMIC coverage within 1 year of their original licensure date.</td>
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<td>D.C.s licensed within 30 months of graduation who sign up for NCMIC coverage within 2 years of their original licensure date.</td>
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<td>D.C.s licensed within 42 months of graduation who sign up for NCMIC coverage within 3 years of their original licensure date.</td>
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<tr>
<td>D.C.s licensed within 54 months of graduation who sign up for NCMIC coverage within 4 years of their original licensure date.</td>
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<td>D.C.s who complete NCMIC-approved risk management seminars. The discount will apply for 3 years.</td>
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<td>D.C.s covered by NCMIC for at least 3 consecutive years who have not had a claim filed against them. (Also available to D.C.s who have been claims free with another carrier.)</td>
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Policyholder discounts may be different in N.Y. and N.J.; please call for details. Part-time discount available, call for details.

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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.

**There is no substitute for experience.** 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.

**On-going 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.

Some companies outsource their services to large medical organizations, meaning you don’t get the expert, personalized service you deserve. Instead, look for a company that puts an emphasis on treating policyholders with the utmost respect.

Another helpful feature is the ability to go online to manage your policy. It is nice to...
be able to make payments, access forms and get the information you need when it’s convenient for you.

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 strategies on defending D.C.s.

• **Claims Advice Hotline**—Policyholders can call to confidentially discuss any concern or situation they’re not sure how to handle.

• **Continuing education seminars and monographs**—Keep doctors up to date on developments in chiropractic.

• **Examiner**—Quarterly publication with compelling cases studies and tips avoiding malpractice allegations. Not yet a policyholder? You can view the current issue by going to www.ncmic.com/riskmanagement/examiner-publication.

The NCMIC Malpractice Insurance Plan ... For the way you practice now

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. Coverages include:

• **$25,000 Supplemental Legal Defense Endorsement available at no additional charge.** This

- **Chiropractic Entity Coverage** with Shared Limits of Liability at no additional charge. 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.

- **An additional $5,000 in Professional Discipline Coverage** for each incident (up to $10,000 each policy period) to pay your defense costs for appearances before a state licensing board in addition to the Supplemental Legal Defense coverage.

- **Dual License Coverage for D.C.s** who hold an additional license as a naturopathic physician, acupuncturist, massage therapist or physical therapist. Doctors of Chiropractic who hold an additional license as a naturopathic physician or acupuncturist can now 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 or massage therapist.

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1 Coverage for civil sexual misconduct allegations is different in NY. The state of NY only allows vicarious liability coverage for civil sexual misconduct allegations committed by others for whom you are responsible.

2 Shared limits are not allowed by CT or KS.

3 Dual license coverage for Physical Therapy is not available in MA.
Comprehensive List of NCMIC’s Benefits and Features

**Company**
- 65+ 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
- $25,000 Supplemental Legal Defense Endorsement at no additional charge**
- An additional $5,000 for state disciplinary proceedings

**Premium discounts**
- For new practitioners
- For claims-free record
- For part-time status
- For risk management

**Claims**
- Claims-made and occurrence plans available
- Expert defense attorneys and claims staff who specialize in healthcare malpractice
- 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 risk management magazine
- Underwriting, claims and service handled in one place—no outside broker or outside call center
- Online educational resources available for risk management and business training

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* Consent to Settle is not allowed by MD.  
** Subject to underwriting approval.  
*** This is not a guaranteed benefit.
In addition to NCMIC’s Malpractice Insurance Plan, the NCMIC family of companies is proud to offer or make available the following products and services. Each one is geared to your unique needs as a D.C.

Other NCMIC Products and Services

Financial Products
- Credit Card Processing
- MilesAway® MasterCard®

Insurance Services and Plans
- Auto and Homeowners Protection
- Business Owners’ Insurance
- General Liability
- D.C. Long Term Disability Insurance*
- Workers’ Compensation Insurance
- Employment Practices Liability Insurance (EPLI)

For more information regarding these offerings or NCMIC’s Malpractice Insurance Plan, call 1-800-769-2000, ext. 3344.

The NCMIC Malpractice Insurance Plan is offered through NCMIC Insurance Company. In the states of Florida and New York, the NCMIC Malpractice Plan is issued by NCMIC Risk Retention Group, Inc. Auto and Homeowners, Business Owners’ and General Liability Insurance are underwritten through partnerships with some of the industry’s leading insurance carriers. NCMIC Insurance Services is a licensed insurance agency (CA license #0B84564). Credit Card processing and MilesAway credit card are offered through NCMIC Finance Corporation. MilesAway is a registered service mark of NCMIC Finance Corporation. MasterCard is a registered trademark of MasterCard International.

* Coverage under the D.C. Long Term Disability Insurance Plan is issued by The Prudential Insurance Company of America, 751 Broad Street, Newark, NJ 07102-3777. The contract holder for the D.C. Long Term Disability Insurance Plan is the National Business Association for Chiropractors (NBAC). NCMIC Insurance Services is the exclusive agent.