

# Professional Liability Insurance – Claims Made vs Occurrence Form Policies?

**Not better, not worse, but..... Different**

By Pamela J. Van Cott, CPCU, Assistant Vice President, American Professional Agency, Inc.

At some time in their professional career, a counselor will usually look into purchasing an individual professional liability policy to defend them for claims brought by unhappy clients. As an addiction counselor, you will see that two different types of policy forms are offered: a Claims Made form and an Occurrence Form. Of course, wanting the best protection you can get, you will wonder, “Which form is best?” An agent only offering Claims Made coverage may say Claims Made coverage is the better form. The agent offering only an Occurrence Form coverage may feel the opposite.

When Claims Made form policies began appearing more regularly during the 1970s and 1980s, they were often compared unfavorably with the long-standing Occurrence Forms. Over time, the Claims Made product was improved and is now mainstream and better understood by the insurance industry and the public. With today’s enhanced policy forms and provisions, neither form is better or worse than the other on an overall basis. But they are “different” and it is important that professionals are aware of the differences. Most of the largest insurers of professional liability offer excellent

coverage regardless of the policy form and both forms are offered for one year terms. Both forms are accepted by state regulatory authorities, governmental agencies, employers, or clients that may require a counselor to have professional liability coverage.

The difference is apparent when it comes time to report a claim. An **Occurrence Form** policy will cover an incident that **occurs during the policy term**, regardless of how many years later a suit is actually brought, while a **Claims Made Form** policy will cover all claims **reported to the insurance company during the**



## Claims Made Form

### PROS

- **Less costly:** Claims Made premiums are less expensive than Occurrence Form premiums. The premium is lowest the first year the policy is issued and gradually increases over a 5- or 6-year period, then levels off. This works very well for the first few years of a counselor's career when money is tightest.
- **Greater flexibility:** If you have a Claims Made policy for 5 years with \$1/3 million limits, and you increase limits to \$2/4 million for the 6th year, all claims brought after your limits are increased will be covered at the higher \$2/4 million limits, even if the incident happened 3 or 4 years ago when the policy had lower limits.
- **Broader coverage for past incidents:** Generally, policies get broader in coverage over time, which means you will enjoy the benefits of your current broader coverage, even if the incident happened several years ago when coverage was more restrictive.
- **Less uncertainty regarding an insurance company's financial stability:** An insurance company may have been financially secure 5 years ago when a policy was first written, but less financially stable today. Claims Made policyholders are much less affected by the prospect of an insurance carrier becoming insolvent.

### CONS

- **Planning needed when coverage is no longer needed:** If you no longer choose to renew a Claims Made Form, you need to investigate with your insurance agent as to whether you will need to purchase an Extended Reporting Period endorsement. This endorsement is needed to cover incidents that are reported to the insurance company after the last Claims Made policy has expired.
- **Possible additional costs:** There may be an additional cost to purchase the Extended Reporting Period endorsement. Some insurance carriers do not charge an additional premium as long as certain conditions are met.
- **Group Policy provided by employer could cause potential lapse:** If you do not have your own coverage, but are relying on coverage provided by your employer's group Claims Made liability policy, you may not know if your employer has allowed the insurance to lapse or non-renew. With some Claims Made carriers, you may be able to purchase coverage to cover a potential gap in coverage due to this type of situation, but only if you are aware that a lapse has occurred. To protect against this happening, employees may decide to purchase their own individual coverage so they have more peace of mind of knowing they have their own policy and limits to protect them.

*The difference is apparent when it comes time to report a claim.*

*An Occurrence Form policy will cover an incident that occurs during the policy term, regardless of how many years later a suit is actually brought, while a Claims Made Form policy will cover all claims reported to the insurance company during the policy term, regardless of the incident date as long as the incident occurred after the first Claims Made policy was issued or the retroactive date of the policy.*

**policy term**, regardless of the incident date as long as the incident occurred after the first Claims Made policy was issued or the retroactive date of the policy.

So, if these two forms are just "different," what are the pros and cons of each form? Both forms continue to have advocates and detractors, but the difference often comes down to what is important to you, the purchaser of insurance.

### Why does the insurance industry even have two different policy forms?

The Occurrence Form for liability form had been part of the insurance landscape since the first forms of liability policies were offered in the United States in the early 1900s. The Occurrence form initially worked well because liability claims were more predictable in these early years. The insurance industry would establish liability rates based on the mathematical and statistical predictions of what future claim costs would be for a policy issued in a given year.

This ability to predict adequate rates for liability policies came to a crashing halt in the 1970s and 1980s

## Occurrence Form

### PROS

- **More familiar type of form:** Policyholders generally understand the principles of an Occurrence Form since their auto liability and home liability insurance is also on an Occurrence Form. The policy written for a given policy period will be there to protect you for future claims that may be brought against you as long as the incident occurred during the policy period.
- **Less planning:** No need to plan to purchase an Extended Reporting Period endorsement once you no longer need insurance coverage. These endorsements are not needed on Occurrence Form policies.

### CONS

- **Need to track:** Policyholders need to keep track of past Occurrence Form policies to know which policy period applies should a claim arise. This is very important if you have changed agents or insurance carriers one or more times over the years.
- **Cannot be endorsed after expiration:** After an Occurrence policy expires, it cannot be endorsed to give broader coverage or higher limits. The policy terms in effect at the time the incident occurs determines coverage that will apply.
- **More expensive:** Occurrence forms cost more for the first several years of coverage than a Claims Made form. The cost difference disappears gradually over time.
- **Insufficient limits:** A past policy may no longer have sufficient limits to pay for a claim made today. Awards and settlements always trend higher over time.
- **Insurance Company insolvency concerns:** An insurance carrier that covered a prior policy period may become insolvent. If the Insurance Company has filed bankruptcy, the policyholder would have to rely on state Guaranty Funds which usually provide lower limits and services.

when claims began arising from incidents that were reported many years after policies expired. The insurance companies discovered that certain industries had a “long tail,” meaning the time between when an incident occurred and when a claim is finally reported. With a long tail, it is much harder to predict whether a rate established today will be enough to pay for claims five, ten or even more years away. Pollution claims and professional liability claims are examples of claims that can have a very long tail. This situation caused a great upheaval in the insurance market place that caused Occurrence Form liability policy premiums to skyrocket for all industries. Therefore, the Claims Made Form was created to bring stability and predictability to the marketplace, especially for industries now identified as having a potential for delayed claim reporting.

### The American Professional Agency, Inc. (APA, Inc.) Advantage

As NAADAC’s new Program Administrator for Professional Liability for members, APA, Inc. has developed one of the best Claims Made

products in the industry. While the purchase of an Extended Reporting Period (ERP) form endorsement or “tail” endorsement seems to be the biggest reason insureds opt for an Occurrence form, in practicality, it rarely needs to be purchased. There is no need for APA, Inc. insureds to purchase Extended Reporting Period coverage if:

1. You renew the policy;
2. You buy another claims-made policy going forward from another insurer with the same retroactive date;
3. You have been in the APA program 10 years claims free (the “tail” or ERP is free);
4. You became permanently disabled or died (the ERP is free);
5. You permanently retire after age 55 and have been in the APA, Inc. Program five years.

Counselors who would like more information on either form can call their insurance agent or do their own research on the Internet. As there is vast amount of material on the Internet, some going back 20 years or more,

make sure to look at the more recent articles as they better reflect the difference of these two forms in today’s world.

APA, Inc.’s professional liability program provides coverage that is tailored to the unique exposures faced by addiction counselors. Coverage is also available for NAADAC members who are nationally certified Peer Recovery Support Specialists, Associates working under supervision, Clinical Supervisors, Corporate Entities, and Students. For more information, please call 1.800.421.6694 ext. 2312 to speak with an agent in our Addiction Counselors Department or visit [www.naadac.org/insurance](http://www.naadac.org/insurance).



*Pamela J. Van Cott, CPCU, is Assistant Vice President with the American Professional Agency, Inc. (APA, Inc.) and has 25 years of experience insuring professional liability, with a concentration in the addiction field. APA, Inc. has been a leading writer of professional liability for mental health and other professionals for 40 years. With over 100,000 insureds, APA, Inc. has been*

*endorsed or sponsored by many national and regional mental health associations, including NAADAC. In addition, APA, Inc. has experienced staff to provide risk management consultation services for policyholders.*

## New Program for Professional/Premises Liability Insurance for NAADAC Members



American Professional Agency, Inc.



Endorsed by



**FIRST YEAR POLICY COST FOR A FULL TIME ADDICTION PROFESSIONAL WITH LIMITS OF \$1,000,000/\$3,000,000 IS ONLY \$115.00!**

### To Apply for Coverage:

Download the application at [AmericanProfessional.com](http://AmericanProfessional.com) and:

- fax to (631) 691-2259 or
- scan and email to [mentalhealth@americanprofessional.com](mailto:mentalhealth@americanprofessional.com)

Caring representatives are available to discuss the available discounts and policy features.

**[www.AmericanProfessional.com](http://www.AmericanProfessional.com)  
(800) 421-6694 X-2312**