



Better Medicine • Better Lives



INSURING YOUR LIFE'S WORK:

An Insider's Guide to Medical Professional
Liability Insurance (MPLI)



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INTRODUCTION



Whether you're a medical provider, practice leader, or health system administrator, you were probably drawn to health care because you're passionate about medicine and helping others — not necessarily insurance paperwork and legalese. Dealing with medical professional liability insurance (MPLI), also known as medical malpractice insurance, can seem complex or overwhelming. Even so, finding the right MPLI carrier is an immensely important step because having the right policy and partner is key to minimizing risk, responding to incidents when they do happen, and resolving claims as quickly and effectively as possible.

In this guide, we break down the details of MPLI to make it easier to understand and provide a road map for finding the right coverage.

THE PURPOSE OF MPLI AND WHY IT'S IMPORTANT

MPLI protects health care providers in the event of a claim or lawsuit.

While no one intends to have a claim filed against them, an adverse outcome can occur despite the best efforts of providers. It's essential to have the right MPLI policy in place so that your actions can be strongly defended if a claim does arise, as coverage serves to protect you and your practice, both financially and reputationally.

The main things that MPLI covers are defense attorney fees, court costs, and settlements or judgments, which entail compensation to a patient or patient's family for both economic (actual medical costs) and non-economic (pain and suffering) damages.

In many states, physicians and other providers are required by law to have MPLI, and many employment contracts with hospitals and other health care organizations require this as well.

While some providers assume they will never face a claim, consider this: One in three physicians has been sued by age 55, according to research by the [American Medical Association](#). A report by [Medscape](#) also showed that half of all physicians will be sued at least once in their career, with 42% of primary care providers and 56% of specialists being named in a malpractice lawsuit.

In addition, the time spent dealing with a claim and defending oneself can be extensive. According to a study by the Medical Professional Liability Association, the average time to resolve a claim is 4.6 years, with surgical specialty claims taking between four and five years, and primary care claims taking between five and six years.

Only a small portion of claims go to trial and end with a judgment against the physician or provider, but mounting a strong defense takes time, money, and legal expertise. Even one malpractice claim can have significant negative impacts on a provider's reputation, which are difficult to handle without a network of expert support. ■

USING MPLI PROACTIVELY AND RESPONSIVELY

Using MPLI to prevent and mitigate risk

While the first thing you probably think of when you hear MPLI is protection against malpractice claims, many carriers offer “proactive” benefits to help you navigate challenges and risks while preventing claims in the first place.

Taking advantage of proactive services maximizes your return on investment, because even if you never face a claim, you get useful expertise and support to improve your practice and/or career.

Some benefits to look for include:

- 24/7 on-call risk management that allows you to call for help with urgent questions and receive support from knowledgeable experts
- Risk management departments staffed by physicians, nurses, and other medical professionals who “have been there” and understand health care
- Communication and resolution programs that focus on preserving the patient-provider relationship and offer an alternative to traditional litigation
- Legal trainings aimed at educating providers and practice leaders on strategies for reducing litigation
- Direct access to expert attorneys and legal staff for support on complex health care topics
- Continuing education on emerging and timely topics in health care such as telehealth, difficult patient interactions, and working with advanced practice providers

- Access to downloadable resources, such as medical guidelines and consent forms, that assist you in your daily medical practice
- Regular communications, such as newsletters and guides designed to help you stay informed and manage risk
- Human resources training and support designed to minimize common sources of liability exposure, including harassment and issues of employment law

Such resources help insureds understand the medical, legal, and regulatory elements that impact the health care landscape. The more you can understand that combination of factors and your own role within it, the more you can reduce uncertainty and risk so you can focus on patient care.

USING MPLI TO PROTECT YOURSELF AFTER AN INCIDENT OR ONCE A CLAIM IS FILED

A claim of medical malpractice means that a plaintiff, usually a patient or a patient’s family, alleges that the patient was harmed by a provider due to negligence and the failure to meet the standard of care. If you’re notified that a claim has been made against you or your organization, or if you have reason to believe that an unexpected or adverse outcome has occurred and could lead to a claim, you should reach out to your MPLI carrier right away to initiate its claim review process.

To protect you against liability, the carrier will gather the relevant information about the incident and ask



you for details that will help assess the situation. While the process may vary from carrier to carrier, an initial assessment will take place and your carrier will provide recommendations on how to proceed.

In addition to helping you defend yourself and covering legal and court expenses, your MPLI carrier may offer resources that can help you during a claim, such as:

- Guidance about communicating with patients after an unexpected outcome
- Peer support to help you deal with the mental health stress of a lawsuit, which can be substantial
- Training with experienced attorneys to help you prepare for depositions and trials

- Mediation or reconciliation processes, which can make a resolution without a lawsuit more likely
- Public relations and communications support to protect your reputation and manage any media coverage

While no two carriers are alike, many offer a set of benefits that help you to prevent adverse outcomes and claims, and another set that protect you and your organization once a claim has been made. ■

TYPES OF POLICIES AND CARRIERS

Claims-made or occurrence? The two main types of MPLI policies and how they differ

There are two basic types of MPLI policies. Both are designed to offer comprehensive protection for providers and health care organizations, but their terms of coverage differ based on when an event or incident occurs and when it's reported.

With an **occurrence policy**, for an alleged incident to be covered it must have taken place during the active policy period – regardless of when the claim is reported. With a **claims-made policy**, which is most common for MPLI, for an alleged incident to be covered it must have taken place during the active policy period and been reported during the active policy period. Because claims-made policies only cover incidents that extend into the past up until the policy's retroactive date, you may need to consider having prior acts coverage. And since claims that arise after a claims-made policy ends would also not be covered, it is wise to have tail coverage upon cancellation.

Prior acts coverage provides coverage for unknown and unreported claims that occurred before the effective date of the policy.

Tail coverage provides coverage for claims made after a policy has expired or been cancelled. It can be purchased upon the expiration of a claims-made policy for continued coverage.

Claims-made policies typically have a lower initial premium that increases gradually over a period of four to five years until it is “mature.” After that, premiums typically change due to a change in risk classification, discounts, claims experience, or if the insurance carrier adjusts overall rates.

When deliberating over occurrence versus claims-made policies, talk with your carrier about your financial considerations and your specific situation to determine what coverage is the best option for your needs.

THE VARIOUS KINDS OF MPLI COMPANIES

MPLI is offered by various types of companies.

The primary types of MPLI carriers include:

- **Commercial carriers or publicly held companies**
These insurance companies are publicly traded and have stockholders.
- **Private companies**
These are not public, meaning that stakes in the company are not available to just anyone through the stock market, but ownership can be held by select individuals or groups.
- **Mutual insurance companies**
These carriers are owned by members or policyholders, who share in the profits and losses of the company.

HOW TO DECIDE WHICH TYPE OF CARRIER IS THE BEST FIT FOR YOU

One advantage of a private company or mutual insurance company is that it is beholden to its members, not to stockholders. Public companies are motivated not only by the best interests of their insureds, but also — and sometimes more markedly — by their shareholders' desire for profits. This can affect the services they offer and the choices they make, including decisions about settling rather than defending cases.

Another advantage of a private company is that it often has more boutique, personalized support than large public companies. Big national carriers tend to offer more of a do-it-yourself and one-size-fits-all approach, including an online-focused experience with general customer support, as opposed to experts who are available to take your call and provide knowledgeable advice and proactive education. ■



14 QUESTIONS TO ASK WHEN YOU'RE EVALUATING AN MPLI CARRIER

With the many types of carriers in the market, it can be overwhelming to know how to vet potential insurers. We recommend evaluating companies based on categories such as financial stability, credibility/ratings, flexibility, proactive benefits, and must-have policy components.

Whether your current policy is up for renewal or you're a new health care practitioner or organization seeking coverage, here are some questions to ask while considering carriers:

1) IS THE COMPANY FINANCIALLY STABLE?

Because a carrier's financial solvency is the foundation of its ability to protect you and cover your legal expenses should a claim arise, it's important to assess a carrier's financial position.

Two factors to consider include:

- **Surplus:** The surplus is a carrier's assets minus liabilities, otherwise known in business as the net worth of the company. A surplus determines a company's ability to assume risk and handle unexpected reductions in their reserves (reserves are financial funds set aside to pay for future claims).
- **Loss reserves:** The amount of money that is earmarked for indemnity payments and loss adjustment expenses for open claims.

2) IS THE CARRIER HIGHLY RATED BY AN INDEPENDENT ANALYST?

Independent analysts issue ratings for MPLI carriers based on the financial and operating strength of the

company. Checking MPLI company ratings is one relatively quick way that you can vet a prospective carrier. The top industry analyst is A.M. Best Company, and any carrier you select should have an A rating or higher.

3) HOW FLEXIBLE IS THE CARRIER IN BEING ABLE TO MEET YOUR NEEDS?

It's helpful to find a carrier that can grow and evolve with your practice or organization over time. For example, does it offer a variety of risk-sharing abilities based on the size and type of your organization? One hospital, for instance, may want to take on the first \$100,000 of a claim as a deductible to get a discount on its premium and create an incentive for the organization to avoid litigation. A large hospital system, however, may want to take on the first \$2 million as a self-insured retention (SIR) and manage its own claims. As groups grow, it can be helpful to have a carrier that is flexible enough to grow with them.

Other areas to look at when it comes to flexibility include a carrier's ability to accommodate geographic changes (e.g., expansion into other states), business changes such as mergers or new partnerships, or staff changes regarding which providers need to be covered under a policy.



4) CAN YOU TALK TO THE RIGHT PEOPLE AT THE RIGHT TIME?

It's helpful to know what kind of ongoing communication and advisory support a carrier offers. It's one thing to have a general phone number that directs you to a customer support representative. It's another to have experts with deep experience in medical situations and health care law whom you can speak to immediately in an urgent situation. Being able to reach a trusted expert and ask questions when you need assistance is important.

5) HOW DOES THE CARRIER DELIVER PERSONALIZED SUPPORT?

Since insuring your life's work is much more personal than insuring a car or other material item, it's helpful to learn about a carrier's experts and advisors. Would it offer thorough support such as specialty-specific knowledge, guidance on best practices, or practice reviews to identify unforeseen risks and ensure the right systems are in place to reinforce patient safety?

6) WHAT TYPES OF RISK MANAGEMENT AND PATIENT SAFETY SERVICES DO THEY PROVIDE?

All carriers focus on what to do after a claim is made. But what about the energy and outreach they dedicate to preventing claims? It benefits both carriers and insureds to take whatever risk mitigation actions they can to prevent costly claims in the first place. Make sure to find out what kinds of hands-on risk prevention efforts are provided.

7) ARE THE COMPANY'S LEADERS CONNECTED TO HEALTH CARE AND COMMITTED TO IMPROVING THE INDUSTRY?

Is the carrier run by leaders who know the insurance industry, the health care industry, or both? Because health care and the practice of medicine are complex, it pays to have a carrier that is deeply engaged in the field of medicine and whose leaders have direct experience in health care and insurance. One way to find out is to see if a carrier's board of directors, executive team, and advisors include medical providers across various specialties and people who have served as health care leaders.

Other efforts that may be relevant to you and your needs include any ways in which the company works to improve the industry through philanthropy, community engagement, or public policy. Does it, for instance, invest in local communities and give back in ways that support improvements in health care and/or public health? One way some carriers impact the industry is by participating in legislative advocacy to influence policy that will impact the field of medicine and how care is delivered.

8) WHAT DO YOUR COLLEAGUES HAVE TO SAY ABOUT THEIR CARRIER?

If you're wondering which carrier is best for you, talk to your colleagues. Which carriers do they use, and would they recommend them? Why or why not? Is the carrier endorsed by a local/state medical association? Sometimes the best way to find the right fit is to get recommendations from trusted peers and partners.

9) WHAT ARE THE CARRIER'S TRIAL STATISTICS?

When the carrier goes to trial, how many cases does it win and how many does it lose? This is a good gauge of effectiveness. If the carrier is reticent to provide an answer, that could be a red flag.

10) IS THERE A 24/7 HELPLINE STAFFED BY ACTUAL PHYSICIANS OR FORMER CLINICIANS?

It can be helpful to receive support from someone who has "been there" and knows what it's like to practice medicine. Some carriers have experienced clinicians staffing help lines, while others employ customer service representatives with little medical experience.

11) WHAT KIND OF CONTINUING MEDICAL EDUCATION DO THEY OFFER?

What are the topics offered? Do they customize education to meet your needs? Do they include clinical topics as well as legal and regulatory issues? Do they provide CME/CNE credits?

The right MPLI carrier will offer a variety of educational activities that are designed to support its insureds, promote patient safety, and address current challenges in health care.

12) APART FROM RISK MANAGEMENT, IS PRACTICE MANAGEMENT SUPPORT AVAILABLE?

What other resources are available to support business aspects of medicine or practice needs? Some carriers offer support for practice administrators, human resources training, or resources focused on physician well-being and staff culture, for example.

13) DO THEY PENALIZE INSURED FOR EARLY REPORTING OF AN INCIDENT?

Carriers should encourage early reporting to address claims immediately and determine the appropriate response. The earlier an incident is reported, the higher chance it can be resolved in a timely manner. Unfortunately, some carriers increase your rate if you report an incident proactively.

14) WHAT IS THE CARRIER'S APPROACH TO FINANCIAL STEWARDSHIP?

What are the carrier's underwriting guidelines and how does it invest in programs and support that benefit their insureds? It's important to understand the carrier's financial philosophy toward risk management, how it manages changes in the market, and ways in which it offers financial benefits for insureds who demonstrate a commitment to reducing claims. ■

MPLI POLICY MUST-HAVES

Consent-to-settle and a collaborative approach: This is an important clause because it requires the carrier to get written permission from the insured before making any settlement with a plaintiff. Without a “consent to settle” clause, the insurance company can make important decisions about settlements and take action without your permission. In addition, some policies have a “hammer clause,” which states that if an insured does not agree with a carrier’s recommendation to settle, the insured would then be responsible for any damages or costs above the amount the carrier believes the claim could have been settled for. Look for a carrier that collaborates with insureds to make decisions and makes sure they feel heard.

Cyber liability coverage: Cybercrime has become a constant and severe threat to health care organizations, with sensitive patient information vulnerable to data breaches and ransomware. Many MPLI policies now include some level of cyber liability coverage. Pay attention to the level of supplementary cyber liability coverage offered in each policy, because it’s important to get coverage that’s adequate for your level of risk (for instance, a large health system would have a higher risk for a broad data breach than a small office).

Legal defense coverage: This covers costs incurred when a provider is involved in the following types of situations: a complaint is filed with the state medical board, a hospital or other medical entity initiates peer review proceedings to investigate and assess an incident, a government investigation is brought as part of allegations that a provider violated the law, or disciplinary proceedings are launched by a state licensing authority or other government entity. Coverage should include all reasonable attorney fees and other fees, costs and expenses attributable to the

investigation, and defense or appeal of a claim or other legal or administrative dispute.

Free tail coverage in case of death, disability, or retirement: Tail coverage covers claims that are caused by an incident that occurred during a claims-made policy period, but that are reported after a policy has expired or been canceled. It’s helpful to have free tail coverage as part of your policy so that you are always covered.

Exclusions: This is a list of things that an insurance policy will not cover. MPLI policies typically have exclusions for incidents that are considered dishonest, fraudulent, or criminal, plus general exclusions for property damage and other risks not associated with providing health care. Make sure to know which claims or allegations will not be covered. One common exclusion, for instance, is settlements or judgments for claims of sexual abuse or misconduct.

Premium discounts and credits: Some carriers offer premium discounts or credits to providers for things like taking continuing education courses in risk management, belonging to certain professional associations, being claims-free, or being new-to-practice. Such discounts or credits could impact your ongoing premium cost so they are worth exploring and comparing when shopping around. ■

HOW YOUR MPLI PREMIUM IS DETERMINED

As with all forms of insurance, premiums are determined by a variety of factors, including:

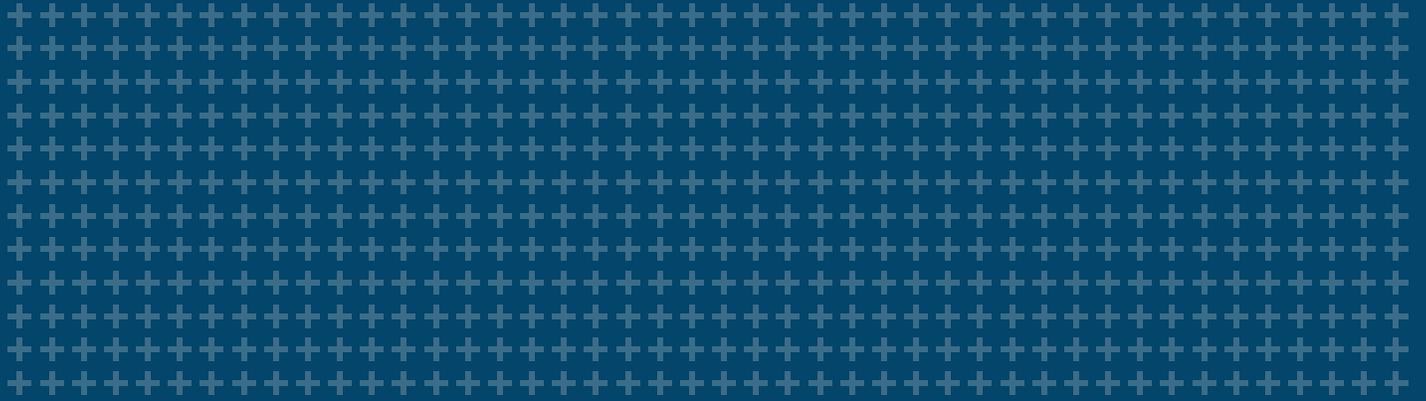
- **Policy type** (occurrence vs. claims-made)
- **Specialty classification:** This is the biggest factor that will determine your rate, since certain specialties such as surgery and obstetrics carry an increased level of risk compared to specialties such as pediatrics or general internal medicine.
- **Geographic location:** Insurance companies often evaluate claim experience based on geographical areas, since different areas have different claims, verdict, and settlement trends.
- **Limits of liability:** Limits of liability are the dollar amounts a policy provides coverage for; these include the maximum amount per incident and an aggregate amount for a policy period (generally one year). Increased limits of liability come with higher premiums.
- **Additional insureds:** Policies may provide coverage for advanced practice providers, other medical staff members, and multiple organizations.
- **Number of hours of active medical practice:** This is usually designated as a full-time or part-time employment status.
- **Merit rate:** Some MPLI carriers offer a reduction in premium if an insured has not had a claim filed against them for a certain period of time.
- **Surcharge:** The opposite of a merit rate, where an insured pays an additional cost if they exceed an expected threshold for claims reported against them during a certain period of time.
- **Dividends/Distributions:** Returns made to an insured when the MPLI carrier has a surplus.

- **Discounts:** There are a range of discounts that might apply to your premium and lower it, such as:
 - Group or practice size discount
 - New physician discount
 - Part-time practice discount
 - Risk management discount (often offered for participating in a company’s risk management program)
 - Deductibles or risk-sharing—Some MPLI carriers offer higher deductibles that reduce the amount of the premium paid

LEARN MORE ABOUT MPLI AND DISCOVER ADDITIONAL RESOURCES

MPLI can seem complex, but when you understand the policy elements to consider and make sure to ask the right questions to evaluate carriers, you can streamline the process and find the right partner to protect you and your practice.

At COPIC, we’re committed to providing valuable risk management education, tools, and resources. To learn more, visit our [website](#).



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