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Medical Malpractice Trends

December 9, 2009

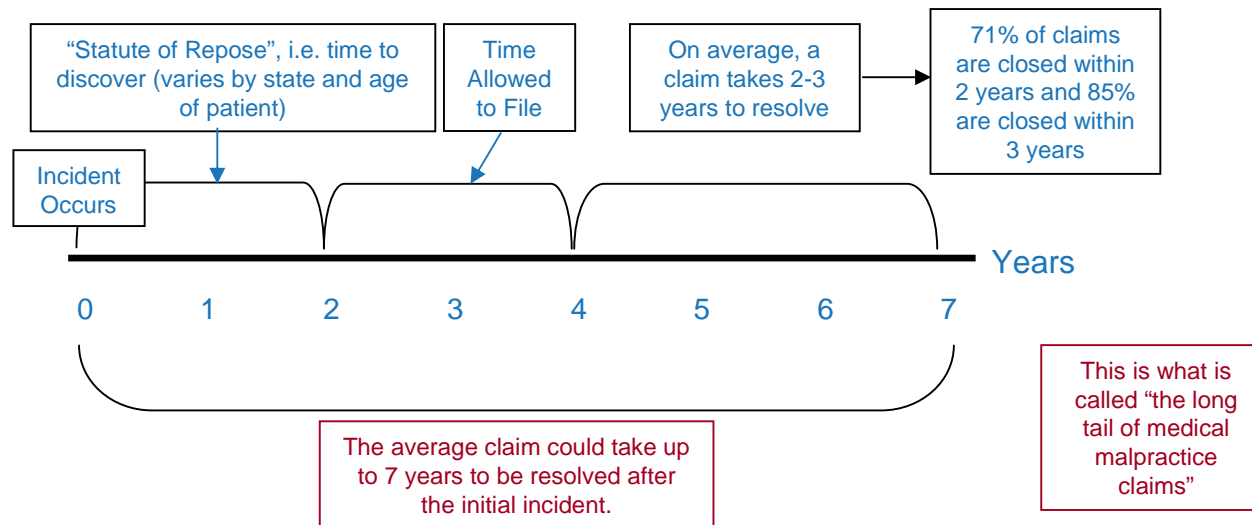
Bruce Whitmore, Healthcare Facilities Leader

Storm Clouds on the Horizon...

- ⚡ Downturns in the economy tend to trigger malpractice claims.
- ⚡ Unemployment, loss of health insurance, expiring COBRA, foreclosures and personal bankruptcies drive calls to plaintiff attorneys
- ⚡ Additional tort reform unlikely.
- ⚡ Existing tort reform under challenge.
- ⚡ The Wall Street meltdown has impacted many insurer's balance sheets

When will claim frequency likely increase?

- Your patient has a period of time to realize medical incident occurred and contact a plaintiff attorney.
- Plaintiff attorney may take 1 – 2 years to research and file suit.
- Suit is commonly filed 24 – 36 months after incident, depending on claim.
- As a result, increase in frequency may lag disruption by 18 – 24 months.



How might insurance companies react?



Re-underwrite their accounts, non-renewing or raising rates for certain types of businesses.



Reduce coverage or increase deductibles at renewal.



Increase pricing for certain venues.



Cease writing business in certain venues.



Stop writing malpractice insurance altogether.



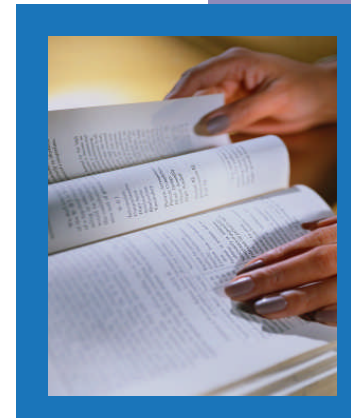
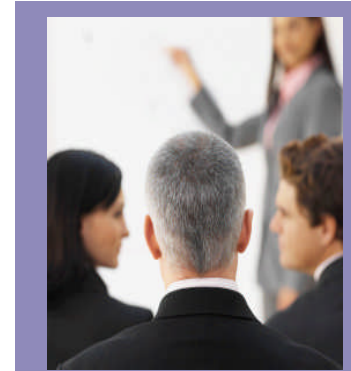
Insurer insolvencies could result.

You can reduce exposure to these problems

- Take advantage of risk management programs offered by your insurance company.
- Track medical incidents via a QA/QI program & take steps to avoid recurrences.
- Ensure your credentialing process screens out claims-prone physicians.
- Ensure your physicians maintain not only adequate insurance, but with *high quality insurers*.
- Audit your medical records for accurate, complete and *defensible* documentation.
- Be in a position to *prove* your quality.

Take Advantage of Your Insurer's Educational Programs

- Hotel based seminars
- Home study courses
- Online courses
- Live webinars



Picking the right insurer can be critical.

Financial ratings (A.M. Best) are important, but not everything.
Pick an insurer who demonstrates:

- A long-term commitment to medical malpractice insurance
- An understanding of malpractice case law *in your venue* that will affect your claims
- Knowledge of the ASC business model
- ASC & Surgery-specific risk management programs
- The financial strength to withstand an increase in claim frequency and/or severity

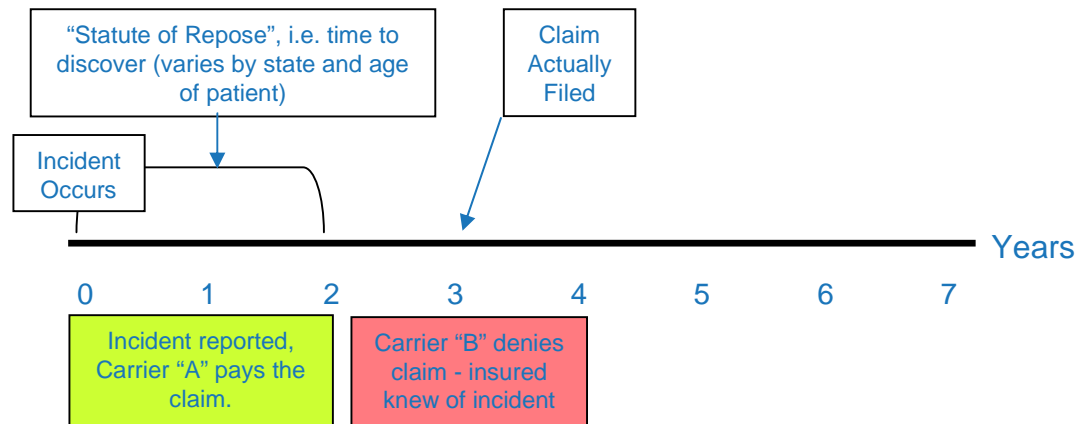
Key Coverages & Terms You Should Understand:

- Occurrence Form vs. Claims-Made
- Defense costs – Paid in addition to limits?
- Deductibles – inclusive of defense costs?
- Consent to Settle & Hammer Clause
- Coverage for Medical Directors
- Minimum premium earned at inception
- Claim Triggers – “Incident” vs. “Written Demand”

Incident Coverage Trigger

Coverage is triggered when you report a medical incident.

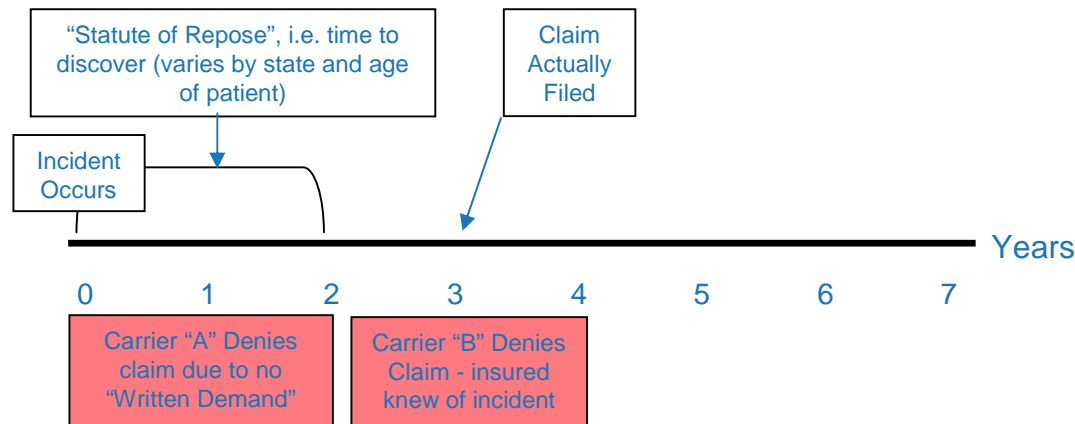
Example: A complication occurs during surgery resulting in additional medical costs and lost time from work. To be safe, you report the incident.



Claim costs mount. Defense costs and verdict paid on your behalf.

Written Demand Coverage Trigger

Coverage is not triggered until the insurer receives a written demand – Filing an incident report makes no difference.

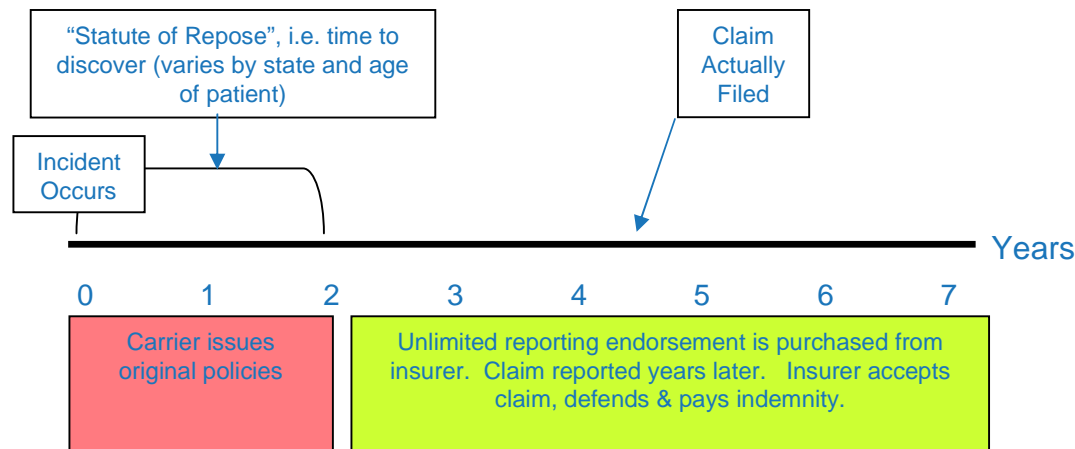


Claim costs mount. Defense costs and verdict not paid by insurance

Claims-Made Coverage – Unlimited Tail

Unlimited "Tail" coverage keeps the Claims-Made policy "open" for future reports of claims indefinitely.

Example: You decide to sell your surgery center 2 years from now.

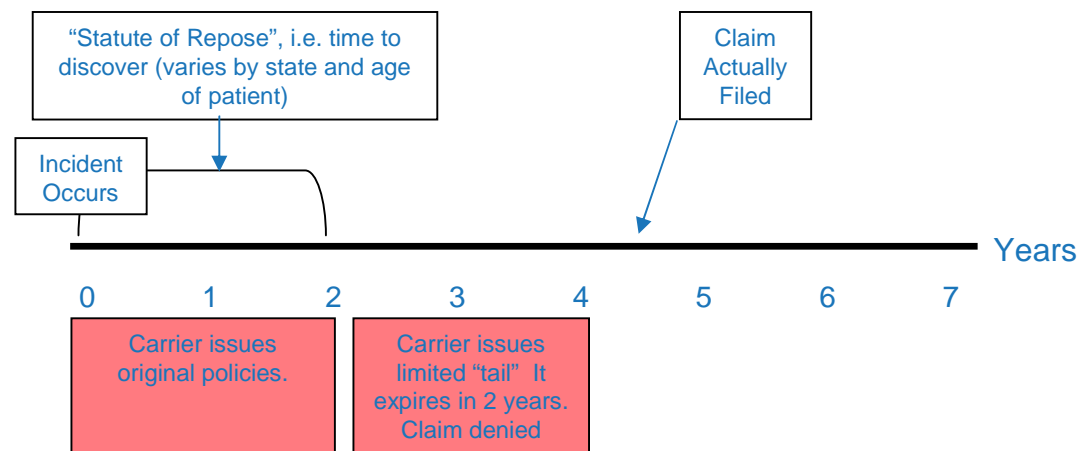


Claim costs mount. Defense costs and verdict paid on your behalf.

Claims-Made Coverage – Limited Tail

Limited "Tail" coverage keeps the Claims-Made policy "open" for future reports of claims for a limited time ~ 2-3 years.

Example: You decide to sell your surgery center 2 years from now.



Claim costs mount. Defense costs and verdict not paid by insurance

For Further Information...

Your current insurance broker is usually a good source of information or;

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Certificate of Participation

Name

Ambulatory Surgery Centers — 2 Key Topics: 1. Medical Malpractice Industry Trends and 2. Key ASC Business and Legal Trends – Webinar

Date