

## Ten Questions Midwives Should Ask When Looking For Professional Liability Insurance

### 1. What is professional liability insurance, and what types are available for midwives?

Professional liability insurance, commonly referred to as “malpractice” insurance, is a type of insurance policy that offers financial protection to a health care provider when an adverse outcome or lawsuit occurs. There are two main types of policies available for midwives: “occurrence” and “claims-made.”

**An occurrence policy** covers the midwife for life for any claim filed against her for an adverse event that occurred while she was practicing under that policy. Example: a midwife had an adverse birth outcome in the year 2000 while she was covered by occurrence policy “A.” Some time later, after changing jobs and insurance companies, the midwife is sued for the event that occurred in 2000. Insurance policy “A” will cover any expenses or losses that occur as a result of that lawsuit, even though the midwife is no longer covered by that occurrence policy.

**A claims-made policy** is one in which the midwife is covered for any lawsuits that are filed only while she is covered by that policy. Example: a midwife is covered by claims-made policy “B” during the year 2000 and has an adverse outcome. If she is sued later but still practicing under policy “B,” any expenses or losses that occur will be covered. However, if she changed insurance companies before the lawsuit was filed, she will not be covered for the expenses related to the 2000 adverse event unless she has purchased **tail coverage**.

Typically, occurrence coverage is more expensive than claims-made coverage because the insurance company assumes financial responsibility for a much longer period of time with occurrence coverage.

### 2. What is tail coverage, how does it work, and do I really need it?

Liability claims are often made long after the accident or event that caused the injury. Many liability policies are written on a claims-made basis, which means the insurer pays only claims that are received during the policy period. In that case, **tail coverage** is needed to protect against claims that have not been made before the end of the policy period. Example: a midwife is covered under claims-made policy B but then switches to another insurer, retires, or allows the policy to lapse, and a claim comes in six months later for an event that occurred while she was insured under policy B. In order to protect herself from this occurrence, the midwife will need to have purchased tail coverage some time before policy B ends.

Midwives should look for coverage with companies that offer unlimited duration tail coverage, rather than coverage which lasts only a few years after a policy is cancelled. The statute of limitations for bad outcomes at birth can exceed 21 years.

So, do midwives need to purchase tail coverage? The safest answer is “yes.” While there are no legal requirements to carry tail coverage, failure to do so may affect your future employment opportunities or personal finances. Some insurance companies may provide “**prior acts**” coverage.

### 3. What does “Prior Acts” coverage mean?

“Prior acts” coverage means that your new policy will cover past incidents/claims which were not previously reported under a prior insurance policy. It is less expensive to purchase prior acts from a new company than to buy a tail from the old company.

### 4. Does the policy offer free tail coverage at the time of my retirement, disability or death?

Some companies (for example, AIG) will offer free tail coverage under certain circumstances. A tail can be quite expensive, and is purchased on retirement, if you are unable to practice midwifery, or if the new policy does not offer prior acts coverage. The midwife’s policy should address who will pay for tail coverage when the policy ends.

### 5. How do I know if the insurance company is legitimate?

There are two indicators that midwives should consider when evaluating a professional liability insurer: the company’s rating, and how long it has been providing professional liability insurance to midwives.

- **Rating.** In the insurance industry, the A.M. Best Co. is the organization that assigns a rating to liability insurers on the basis of their ability to pay claims. These ratings are available to the public following a free registration on the A.M. Best website (<http://www.ambest.com/>). The top three rating classes are:
  - A++ and A+ Superior
  - A and A- Excellent
  - B++ and B+ Very Good

Most hospitals require that midwives purchase a policy with at least an Excellent rating although some will accept a “Very Good” rating. You should be wary of companies that are not rated by A. M. Best. It is unlikely that a company that qualifies for a good rating would decline to accept it.

- **Years insuring midwives.** Our experience has shown that companies newly enter the midwifery malpractice market attracted to the high premiums, but often abandon the market after three or four years when the companies begin to experience the types of claims that can develop from delivering babies. If companies do abandon the market, this can force midwives insured by those companies to purchase expensive tail insurance from departing companies, or to “go bare” (not carry insurance) for the period during which they were insured by these companies.

### 6. What will be covered under my malpractice insurance policy?

Generally, professional liability insurance policies provide coverage for actual or alleged errors, omissions, negligence, and breach of duty, misleading statements, and similar claims resulting from the performance or non-performance of professional services. Most policies cover both the defense costs (e.g. attorney fees, court costs) and settlements or judgments. Intentional wrongdoing is typically not covered.

## **7. What are “exclusions,” and could they exist in my malpractice policy?**

Exclusions are clinical practices or situations that your professional liability insurance company may choose not to cover, and these should be stated explicitly in the policy. For example, breech deliveries, out-of-hospital VBACs, and home births are sometimes excluded from coverage by liability insurers.

In addition, insurance companies can deny or cancel malpractice coverage under certain conditions; for example, a midwife with a history of high payouts from prior lawsuits, HIV-positive status, or a history of substance abuse.

## **8. Is there a deductible, and if so, how much per year could I have to pay out-of-pocket for claims?**

Some malpractice insurance companies may have a deductible similar to that of a health insurance deductible. It is wise to ask for this information before signing a professional liability policy agreement. The deductible may be structured as a business expense, or you may request that your employer pay the deductible,

## **9. If I change to a different insurance policy, how can I compare the new professional liability policy to my current policy to see how they are alike and how they differ?**

The most efficient way to compare this information is to ask the insurance company representative or broker to do this comparison for you.

## **9. What other questions should I ask when looking for professional liability insurance?**

- Does the insurer offer different rates or discount premiums based on where I practice or live? (Some companies will offer discounts for midwives practicing in rural areas.)
- If a lawsuit occurs, will the attorneys who will defend me have prior experience working with midwives? Will I be allowed to request different representation if I am not satisfied with the attorney who was chosen for me?
- If a lawsuit occurs, does the policy cover the costs of investigations, expert witnesses and payment for my earnings lost during this time?
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- Will the policy provide me with legal representation if I must appear before a licensing board in relation to the case?

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