

TAIL COVERAGE: WHAT YOU NEED TO KNOW



Most providers have heard of “tail coverage” (also referred to as “extended reporting period coverage”), but they may not know when and why they need it. Tail coverage applies to gaps in coverage when a provider’s medical liability insurance carrier changes. It protects against unknown claims that occurred when a previous policy was in effect, but these claims were not reported prior to the termination of the previous policy (and the provider now has a new insurance carrier).

WHEN DOES COPIC OFFER TAIL COVERAGE?

COPIC insureds with a claims-made policy and separate limits of liability can decide to purchase tail coverage within 60 days after the cancellation or non-renewal of their policy (there is an additional 30 days to actually purchase it). Unless different limits are requested, tail coverage limits of liability will be equal to those in the canceled or non-renewed policy.

HOW IS THE PREMIUM DETERMINED?

The premium is commensurate with the insured’s practice and period of time for which it covers. Generally, it is derived from the mature rate of the insured’s premium over the prior four-year period (if applicable).

WHEN DOES COPIC WAIVE TAIL PREMIUMS?

- ➔ If an insured with separate limits becomes permanently disabled or dies.
- ➔ In the event of bona fide retirement for those insured by COPIC with individual limits for the 12 consecutive months immediately preceding retirement and covered with individual limits for the four years before that with a professional liability carrier.

COPIC does not waive tail premium when insureds retire from their current practice and continue to practice for compensation in another capacity (e.g., locum tenens,

doing independent medical examinations, working with a university, etc.), even if current coverage is provided elsewhere.

We are happy to discuss policy options for physicians who have uncertainty about retirement. This includes the addition of part-time credits, reduction in the specialty covered, or suspension of the policy in lieu of cancellation.

WHAT IS THE DIFFERENCE BETWEEN TAIL COVERAGE AND PRIOR ACTS COVERAGE?

When changing insurance carriers, prior acts coverage is purchased from the new carrier, while tail coverage is purchased from the old carrier. Both are for unknown and unreported claims related to patient care that occurred before the old policy’s expiration date. If you purchase prior acts coverage, your policy will carry a retroactive date reflecting the period of time that it will cover. When you purchase tail coverage, it normally applies to the entire period you were insured by the carrier that you purchase it from.

DO ALLIED HEALTH PROFESSIONALS (AHPs) NEED TAIL COVERAGE?

AHPs sharing limits of liability with a professional corporation or physician are covered while acting within the scope of their assigned duties and do not have

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AND TOOLS

the option of tail coverage. Coverage would follow the professional corporation or physician as long as their coverage remains in effect or they purchase tail coverage.

Please note that all tail coverage is subject to policy terms and conditions. If you have additional questions, please contact your COPIC underwriter.

**NOW
AVAILABLE:**

INCREASED LIMITS ON CYBER LIABILITY AND COVERED PROCEEDINGS COVERAGE

COPIC policies include embedded coverage for cyber liability issues and covered proceedings. However, insureds should evaluate their coverage limits because there are situations where it makes sense to consider increased levels of coverage in these areas. For example, accounts that have larger numbers of patient records or employed providers typically carry more liability risk. **COPIC makes it easy to increase your level of coverage in these two areas:**

- ▶ Speak with a COPIC representative to determine what level of coverage makes sense for your particular situation.
- ▶ Competitive pricing options and the ability to buy these coverages separately or together.
- ▶ Increased levels are added to your existing COPIC policy instead of having to open a new, separate policy; this eliminates the administrative burden of managing multiple policies.

CYBER LIABILITY—WHAT DOES IT COVER?

- ▶ Unauthorized access to IT systems;
- ▶ Defense costs/fines associated with a data breach;
- ▶ Data breach response costs;
- ▶ Damage to network assets and interruption expenses;
- ▶ Cyber extortion (i.e., ransomware) and cyber terrorism;
- ▶ Fines and penalties levied by the Payment Card Industry Data Security Standards Council against merchants who are not compliant;
- ▶ Revenue loss directly resulting from an adverse media report and/or notification to customers of a security or privacy breach; or
- ▶ Claims alleging libel, slander, invasion of privacy, emotional distress, plagiarism, piracy, copyright or trademark infringement, and domain name infringement; includes invasion of privacy claims when responding to a social media review.

COVERED PROCEEDINGS—WHAT DOES IT COVER?

- ▶ Defense costs for disciplinary proceedings, governmental investigations, billing fraud and abuse investigations or peer review proceedings.
- ▶ “Defense costs” means all reasonable attorney fees and other fees/expenses attributable to the investigation, defense, or appeal of a claim or other legal or administrative dispute covered by your policy.

- ▶ Examples of situations covered include:

- ☒ State licensing authority (medical board) complaints alleging unprofessional conduct;
- ☒ Restriction, suspension or revocation of privileges;
- ☒ State or federal allegations of a HIPAA violation;
- ☒ A proceeding threatened or instituted by the U.S. Drug Enforcement Administration alleging a violation of state or federal law or regulation;
- ☒ A federal, state or private health benefit plan proceeding alleging performance of medical services in excess of or in violation of guidelines for appropriate utilization of such services;
- ☒ State or federal proceedings for violation of the Emergency Medical Treatment and Active Labor Act (EMTALA);
- ☒ A proceeding instituted by a state, federal or private health benefit plan alleging billing fraud and abuse; or
- ☒ A peer or professional review action instituted by a hospital or other health care entity for the purpose of adversely affecting clinical privileges or membership.

For more information, please contact your agent, your COPIC underwriter or call our Policyholder Maintenance Line at (720) 858-6176.

COPIC PARTNERS WITH ACCELERATOR PROGRAM TO SUPPORT HEALTH TECH STARTUPS

COPIC and Boomtown Accelerator have teamed up to form a startup accelerator to fund and train 20 early-stage patient safety and risk management startup companies over the next three years. The startups are focused on reducing medical errors and improving patient safety, quality of care, disease management, and transitions in care using tools such as software, devices, analytics, artificial intelligence and other tech applications.

Boomtown runs a competitive selection process for very early-stage (pre-commercialization) startups from all over the country to participate in the accelerator's twice annual, three-month program at its offices in Boulder, CO. Each

selected startup receives a robust training program that guides founders through core subject areas such as product development, financial modeling, working with investors, and presentation skills. The program also provides \$20,000 in funding. Health care specific topics include the shift to value-based care, data security and interoperability, regulatory strategy, intellectual property, and HIPAA compliance. Programming is supplemented with a network of subject matter expert mentors.

"We are confident this partnership with Boomtown will allow us to creatively explore options that have the potential to provide tremendous benefit to the medical community through innovation that can't be

found in traditional health care channels," said Ted J. Clarke, M.D., chairman and CEO of COPIC.

Know a startup that would be a good candidate for this program?

Qualified startups should refer to <https://boomtownaccelerator.com/apply/> to apply for the next program that begins August 27th. Boomtown reviews applications on a rolling basis. The earlier you apply, the better.

Providers that may be interested in serving as subject matter expert mentors or facilities that may be interested in serving as product testing sites are encouraged to contact Tom Base at:

tom@boomtownaccelerator.com

BOOMTOWN Patient Safety
Health Tech Accelerator



WEBSITE RESOURCE: MEDICAL GUIDELINES AND TOOLS

COPIC's newly redesigned website offers valuable resources in its Medical Tools and Guidelines section. Insureds can easily download and share the following items:

CLINICAL GUIDELINES

Key guidelines for medical procedures/specialties such as:

- Obstetrics guidelines
- Guideline for procedures such as laparoscopic cholecystectomy, laparoscopic fundoplication, and lumbar spine surgery
- Thrombosis risk assessment for medical and surgical patients

OPIOID RESOURCES

Current resources designed to help providers such as:

- CDC Guidelines for Prescribing Opioids for Chronic Pain
- Chronic Pain Management Tool Kit available from the Colorado School of Public Health

CONSENT FORMS

Consent forms that medical professionals can customize for situations such as:

- Administration of medication—Informed Consent
- Against Medical Advice—Informed Refusal
- Office Surgery/Procedure
- Opioids: Agreement for Long-Term Controlled Substance Therapy for Chronic Pain

HR RESOURCES LIBRARY

Useful HR resources such as:

- Commonly used HR forms
- Job descriptions
- Legal overviews on employment issues

HIPAA FORMS AND MATERIALS

Forms, checklists and other materials for HIPAA compliance such as:

- Notice of Privacy Practices
- Authorization to Use or Disclose Health Information
- Business Associate Agreement
- Request to Amend PHI Checklist

PRACTICE MANAGEMENT RESOURCES

Resources that cover common issues that practices face such as:

- Medical records
- Minors and risk
- Nonadherent patients
- Unsolicited diagnostic tests



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Did you miss a previous edition of COPIC newsletters?
Don't worry. A full archive of past newsletters
can be accessed on callcopic.com.

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Connect with COPIC  



THE LEGISLATIVE LANDSCAPE

LEGISLATIVE POLICY'S IMPACT ON THE PRACTICE OF MEDICINE

Colorado's legislative incumbents, those who have not completed their eight-year term limit, are off to make the case to their constituents about why they should return. For six of those incumbents, those efforts started during the June primaries, and there are almost a dozen others in open seats resulting in nearly 20 primary elections of 100 House and Senate seats.

Why does this matter? The winners in the general elections will go on to introduce, debate, and vote on policy that impacts the delivery of medicine.

During the 2018 legislative session, many health care related bills were taken up. A few of these bills passed and state departments are determining their implementation now. Below is a review of a few of these bills and what they mean to you.



SENATE BILL

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This bill limits initial prescriptions of opioids, for acute pain circumstances, to 7 days for patients that have not had an opioid prescription in 12 months from the prescribing practitioner; this practitioner may exercise discretion to include a second fill for a 7-day supply. The limits on initial prescribing do not apply, if, in the judgment of the practitioner, the patient:

- ➔ Has chronic pain that typically lasts longer than 90 days or past the time of normal healing as determined by the practitioner, or following transfer of care from another practitioner who prescribed an opioid to the patient;
- ➔ Has been diagnosed with cancer and is experiencing cancer-related pain;
- ➔ Is experiencing post-surgical pain that, because of the nature of the procedure, is expected to last longer than 14 days;
- ➔ Is undergoing palliative care or hospice care focused on providing the patient with relief from symptoms, pain, and stress resulting from a serious illness to improve quality of life.

The bill also requires prescribers to check the PDMP (Prescription Drug Monitoring Program) prior to prescribing the second fill (certain exemptions apply).

Additionally, the bill requires that findings from grant-funded studies conducted by the State Department of Health and Human Services be presented to the General Assembly. Health care provider scorecards will also be included in the findings presented. The Department will

forward the findings to the University of Colorado Health Sciences Center for research into substance use disorder prevention, treatment, and recovery support strategies and the Center will use the information to provide voluntary training for providers.



SENATE BILL

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This bill provides an exemption to a covenant not to compete for physicians treating patients with rare disorders. Physicians who are under a covenant not to compete after leaving a practice or contract, may disclose his or her continuing practice of medicine and new contact information to any patient with a rare disorder, or a successor organization, to whom the physician was providing consultation or treatment before termination of their agreement.

The rare disorder is defined in accordance with criteria defined by the National Organization for Rare Disorders, Inc. (NORD). The NORD database can be found at <https://rarediseases.org/>

As always, COPIC will continue to monitor legislative activities with our partners at the Colorado Medical Society and Colorado Hospital Association. To learn more about COPIC's legislative and policy engagement efforts, contact Beverly Razon, Vice President of Public Affairs, at (720) 858-6056 or brazon@copic.com.

For information on legislation or to find your candidate, visit us at www.callcopic.com and go to the Legislative Action Center link under the Resource Center section.



Colorado Health Professional Check

Colorado Health Professional Check is supported by the Healthcare Professions Profile Program (HPPP).

HPPP is an online database that

provides information about state licensed health care providers such as disciplinary actions, restrictions or suspensions, criminal convictions, business interests, and malpractice insurance settlements. This database is only as good as the information it contains, and health care providers play a key role by maintaining timely updates to their profiles.

A few key things to remember:

- ✓ Profiles must be updated within 30 days of any "reportable action."
- ✓ Information regarding employers, employer contracts, and business ownership interests may be updated annually.
- ✓ Only current and active affiliations must be listed.
- ✓ Restrictions/suspensions with another state must be added to a profile and reported to the respective Board or Program.
- ✓ Inactive licensees do not need to complete a profile.

Visit <https://www.colorado.gov/pacific/co-health-professional-check> for more information, or send an email to dora_dpo_hppp@state.co.us, or call (303) 894-5942.

8 PRACTICE 2018 ADMINISTRATOR 2 MEETINGS

Join us for our next practice administrator meeting to connect with other practice staff and learn about timely topics. The meetings are hosted at COPIC's Denver office from 11:30am-1pm (MDT) with lunch provided.

• TUESDAY, NOVEMBER 13

Ageism in the Workplace, presented by COPIC's HR Department



Can't make it in person?

Call and connect through our video conferencing services to watch and participate remotely. Please contact Diane Laff at (720) 858-6165 or dlaff@copic.com for more information.

NOMINATE A COLORADO PHYSICIAN FOR THE COPIC HUMANITARIAN AWARD

Do you know a Colorado physician who deserves to be recognized for going beyond the scope of practice to improve lives in his or her community? If so, please consider nominating him or her for our annual COPIC Humanitarian Award. **Nominations are being accepted through August 31, 2018.** The award provides a \$10,000 grant to be given to a Colorado health care-related nonprofit organization of the recipient's choice.

To nominate a physician, visit COPIC Medical Foundation at www.copicfoundation.org and select "COPIC Humanitarian Award," or email Kathy Brown at kbrown@copic.com.

HR RISKY PRACTICES SEMINAR

COPIC's Risky Practice program provides information and resources for individuals responsible for human resources (HR) management. This half-day program is intended to keep attendees informed of current HR practices and help reduce the risk of employment practice litigation.

Date: August 22, 2018

Time:

Registration and Breakfast at 7:30am;
Program is from 8am-12:30pm

Location:

Courtyard Marriott—Cherry Creek
1475 S. Colorado Blvd.
Denver, CO 80222

Registration deadline is 8/15.
To RSVP, please contact LaNee Reynolds at lreynolds@copic.com or (720) 858-6057. One physician per practice will receive 3 COPIC points for a person attending.



THE LEGISLATIVE LANDSCAPE

LEGISLATIVE POLICY'S IMPACT ON THE PRACTICE OF MEDICINE

Nebraska's incumbent senators, those who have not completed their eight-year term limit, are off to make the case about why they should return. There are 49 senate districts, 24 of which are up for reelection, and there were nearly a dozen primaries held in May.

Why does this matter? The winners of the general elections will go on to introduce, debate, and vote

on policy that impacts how medical providers deliver medicine.

During the last session, many health care related bills were taken up. A few of these bills passed and the state departments of jurisdiction are determining their implementation now. Below is a review of key bills and what they mean to providers.



LEGISLATIVE BILL 931

This bill prohibits medical practitioners from prescribing more than a seven-day supply of opiates for patients younger than 18 years of age for outpatient, acute conditions. Exceptions to the seven-day limitation can be made for chronic pain, cancer diagnosis, or palliative care. A practitioner may exceed the seven-day cap as long as he or she documents the patient's condition and records his or her professional finding that a non-opiate alternative was inappropriate to address the medical condition.

If the practitioner has not previously prescribed an opiate for the patient, the practitioner must discuss the risks associated with opiates and the reasons why the prescription is necessary with the patient and the patient's parent or guardian upon prescribing.

Specifically, practitioners are required to notify patients of addiction and overdose risks when prescribing opioids or other controlled substances listed in Schedule II of the Uniform Controlled Substances Act.

Practitioners are required to notify the patient when the substance is initially prescribed and again prior to the third prescription. Notation in the medical record that such discussion took place is not required. The bill also requires that individuals show photo identification when receiving dispensed opiates currently under Scheduled II, III, IV, or V of the Uniform Controlled Substances Act.



LEGISLATIVE BILL 788

This bill adds a requirement that physicians, physician assistants, nurse practitioners, nurse midwives, dentists, podiatrists, and veterinarians who prescribe controlled substances earn at least three hours of continuing education biennially regarding prescribing opiates. The education may include, but is not limited to, education regarding prescribing and administering opiates, the risks and indicators regarding development of addiction to opiates, and emergency opiate situations. One-half hour of the three hours of education must cover the Prescription Drug Monitoring Program (PDMP). The half-hour PDMP requirement can be satisfied by watching the PDMP video on the Nebraska Department of Health and Human Services' website at <http://dhhs.ne.gov/publichealth/PDMP/Pages/PhysicianEducation.aspx>



LEGISLATIVE BILL 104

This bill established the Health Care Surrogacy Act, which allows a surrogate to make a health care decision for a patient who is an adult or emancipated minor if the patient has been determined by the primary physician to lack capacity and no agent or guardian has been appointed. Under the Act, an adult or emancipated minor may designate any individual to act as a surrogate by personally informing the supervising health care provider. If no surrogate has been designated and there is no power of attorney for health care, the following individuals may act as a surrogate if they are reasonably available at the time the health care decision is to be made on behalf of the patient:

- The individual's spouse unless legally separated or pending divorce, annulment, or legal separation.



Legislative Bills 931 and 788 became effective July 19, 2018, and sunset on January 1, 2029.

LEGISLATIVE LANDSCAPE (FROM PAGE 1)

- A child of the individual who is an adult or emancipated minor.
- A brother or sister of the individual who is an adult or emancipated minor.

The primary health care provider may require a person claiming to act as surrogate to provide a written declaration under penalty of perjury to establish that person's authority to act as surrogate. If there are multiple parties claiming authority, the provider shall seek consensus on the decisions for care and may seek the assistance of other providers to help facilitate meetings

with the parties to come to a consensus. If there is no one reasonably available to act as surrogate, the provider may take actions or decline to take actions determined to be appropriate and in the best interest of the patient.

As always, COPIC will continue to monitor ongoing legislative activities and work with our partners at the Nebraska Medical Association. To learn more about COPIC's legislative and policy engagement efforts, contact Beverly Razon, Vice President of Public Affairs, at (720) 858-6000 or brazon@copic.com.

WHAT YOU THOUGHT OF THE 2018 Symposium

It was another successful year at the Symposium and we want to thank everyone who attended. As in previous years, we survey attendees for feedback and the following are some highlights about what we learned this year:

71% of those surveyed said
"I gained new strategies/skills/information
that I will apply to my area of practice"

"It makes you realize that mistakes are made, but what you do after they are made makes a huge difference in the outcome for the patient."

"I have started paying more attention to the amount of narcotic prescriptions that are given to patients."

Top barriers to implementing changes:

42% Lack of time/staff/resources to implement changes

41% Breaking old habits

35% Increasing workload/fatigue

33% Patient adherence

98% said
"The level of detail was appropriate for me and my scope of practice."

"It gave me very specific examples of bad practices vs. good practices and how much the slightest thing can have such a profound impact."



COPIC **+1** POINTS

COPIC Points Discount Increases to 10%

Effective 7/1/2018, the premium discount for physicians insured under our MPLI policy form, who meet the requirements of our COPIC Points program, will increase to 10% (it was 5%). We will be issuing an endorsement with an effective date of 7/1/2018, to all existing policies to reflect this change.

SAVE THE
DATE 

2019 Symposium

The 2019 Patient Safety and Risk Management Symposium will take place April 25 & 26, 2019. Be sure to mark your calendar so you can arrange to attend this valuable event.