

DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-5

PROPERTY AND CASUALTY

Amended Regulation 5-1-8

CONCERNING CLAIMS-MADE INSURANCE POLICIES

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Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §10-1-109, C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to establish standards for the training of all persons engaged in the sale or consultation of claims-made policies in compliance with §10-4-419(2)(g) or in adjusting claims under such policies, and to provide minimum disclosure standards for claims-made insurance policies.

Section 3 Applicability

This regulation applies to casualty insurers writing policies on a claims-made basis. This regulation does not apply to persons engaged in the sale or consultation of surplus lines claims-made insurance policies or in adjusting claims under such policies.

Section 4 Definitions

- A. "Claims-made coverage" means an insurance policy that provides coverage only if a claim is made during the policy period or any applicable extended reporting period. A claim made during the policy period could be charged against a claims-made policy even if the injury or loss occurred many years prior to the policy period. If a claims-made policy has a retroactive date, an occurrence prior to that date is not covered.
- B. "Extended reporting period" means a period allowing for making claims after expiration of a claims-made policy. This is also known as a "tail".
- C. "Occurrence coverage" means an insurance policy that provides liability coverage only for injury or damage that occurs during the policy term, regardless of when the claim is actually made. A claim made in the current policy year could be charged against a prior policy year, or may not be covered, if it arises from an occurrence prior to the effective date.

- D. "Retroactive date" means the date on a claims-made policy which denotes the commencement date of coverage under the policy.

Section 5 Rules

A. Training/Education

1. The training and certification program shall be as follows:
 - a. Completion of a two-hour approved seminar devoted to claims-made policies and receipt of a certificate of completion; or
 - b. Completion of an approved self-study program of claims-made policies equivalent to two hours, upon the completion of which the participant executes a certificate of completion.
2. To qualify, a seminar or self-study program must address the following topics:
 - a. Differences between claims-made and occurrence policies;
 - b. Retroactive dates; and
 - c. Changing retroactive dates;
 - d. Extending reporting periods;
 - e. Coverage mechanism (trigger);
 - f. Aggregates; and
 - g. Legal defense cost provisions.
3. All persons or entities offering or planning to offer a claims-made training and certificate program shall first submit all program materials to the Colorado Division of Insurance for approval.
4. Only certificates issued to or executed by participants in approved seminars or self-study programs shall be acceptable.
5. All persons required to be certified, pursuant to §10-4-419(2)(g), C.R.S., shall keep in their permanent records the certificate of completion of the qualified claims-made program.
6. All persons required to be licensed pursuant to Part 2, Article 2 of Title 10, C.R.S., and who engage in the sale or consultation of claims-made policies must file a copy of a certificate of completion of a qualified program with the licensing section of the Colorado Division of Insurance.
7. The two-hour claims-made policy training may be counted toward the twenty-four hour continuing education requirement of insurance producers.

B. Disclosure Form

At the time of commencement of coverage either the insurer or the insurance producer shall execute a proof of delivery and acceptance of the disclosure form. The proof of delivery and acceptance shall be maintained in the insurer or producer file for at least two years beyond the term of the policy.

In connection with the sale of any claims-made policy, the insurer shall give to the insured a disclosure statement substantially in the following form:

**DISCLOSURE FORM
CLAIMS-MADE POLICY**

IMPORTANT NOTICE TO POLICYHOLDER

THIS DISCLOSURE FORM IS NOT YOUR POLICY. IT DESCRIBES SOME OF THE MAJOR FEATURES OF OUR CLAIMS-MADE POLICY FORM. READ YOUR POLICY CAREFULLY TO DETERMINE RIGHTS, DUTIES, AND WHAT IS AND IS NOT COVERED. ONLY THE PROVISIONS OF YOUR POLICY DETERMINE THE SCOPE OF YOUR INSURANCE PROTECTION.

YOUR POLICY

Your policy is a claims-made policy. It provides coverage only for injury or damage occurring after the policy retroactive date (if any) shown on your policy and the incident is reported to your insurer prior to the end of the policy period. Upon termination of your claims-made policy an extended reporting period option is available from your insurer.

There is no difference in the kind of injury or damage covered by occurrence or claims-made policies. Claims for damages may be assigned to different policy periods, depending on which type of policy you have.

If you make a claim under your claims-made policy, the claim must be a demand for damages by an injured party and does not have to be in writing. Under most circumstances, a claim is considered made when it is received and recorded by you or by us. Sometimes, a claim may be deemed made at an earlier time. This can happen when another claim for the same injury or damage has already been made, or when the claim is received and recorded during an extended reporting period.

PRINCIPAL BENEFITS

This policy provides for _____ (insert brief description of coverage) up to the maximum dollar limit specified in the policy.

The principal benefits and coverages are explained in detail in your claims-made policy. Please read it carefully and consult your insurance producer about any questions you might have.

EXCEPTIONS, REDUCTIONS AND LIMITATIONS

Your claims-made policy contains certain exceptions, reductions and limitations. Please read them carefully and consult your insurance producer about any questions you might have.

RENEWALS AND EXTENDED REPORTING PERIODS

Your claims-made policy has some unique features relating to renewal, extended reporting periods and coverage for events with long periods of potential liability exposure.

If there is a retroactive date in your policy, no event or occurrence prior to that date will be covered under the policy even if reported during the policy period. It is therefore important for you to be certain that there are no gaps in your insurance coverage. These gaps can occur in several ways. Among the most common are:

1. If you switch from an occurrence policy to a claims-made policy, the retroactive date in your claims-made policy should be no later than the expiration date of the occurrence policy.
2. When replacing a claims-made policy with a claims-made policy, you should consider the following:
 - a. The retroactive date in the replacement policy should extend far enough back in time to cover any events with long periods of liability exposure, or
 - b. If the retroactive date in the replacement policy does not extend far enough back in time to cover events with long periods of liability exposure, you should consider purchasing extended reporting period coverage under the old claims-made policy.
3. If you replace this claims-made policy with an occurrence policy, you may not have insurance coverage for a claim arising during the period of claims-made coverage unless you have purchased an extended reporting period under the claims-made policy. Extended reporting period coverage must be offered to you by law for at least one year after the expiration of the claims-made policy at a premium not to exceed 200% of your last policy premium.

CAREFULLY REVIEW YOUR POLICY REGARDING THE AVAILABLE EXTENDED REPORTING PERIOD COVERAGE, INCLUDING THE LENGTH OF COVERAGE, THE PRICE AND THE TIME PERIOD DURING WHICH YOU MUST PURCHASE OR ACCEPT ANY OFFER FOR EXTENDED REPORTING PERIOD COVERAGE.

Section 6 Severability

If any provision of this regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 7 Enforcement

Noncompliance with this regulation may result in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance, or other laws, which include the imposition of civil penalties, issuance of cease and desist orders, and/or suspensions or revocation of license, subject to the requirements of due process.

Section 8 Effective Date

This regulation is effective July 1, 2012.

Section 9 History

Originally issued as Regulation 86-4, effective November 1, 1986.
Re-codified as Regulation 5-1-8, effective June 1, 1992.
Amended, effective October 1, 1996.
Amended, effective September 1, 2003.
Amended Regulation 5-1-8 effective July 1, 2012.