



Malpractice 101



What is malpractice?

Deviation from standard of care that results in patient injury or death, due to professional services rendered or that should have been rendered to the patient.

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What is malpractice **insurance?**

It's what protects you if someone files a lawsuit against you.

Lawsuits are a reality of practicing medicine, but the right malpractice insurance can help keep you safe.

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Three Things to Consider

when choosing malpractice insurance:

Coverage

Risk Support

Claims Defense

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Let's Start with Coverage

(AKA your insurance policy)

Coverage

Risk Support

Claims Defense

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Coverage Basics

Policy Types

Policy Limits

Consent to Settle

Carrier Selection

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Policy Types

You (should) have two options

Occurrence

Claims-made

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Occurrence

You're covered by your policy from when the treatment **occurred**

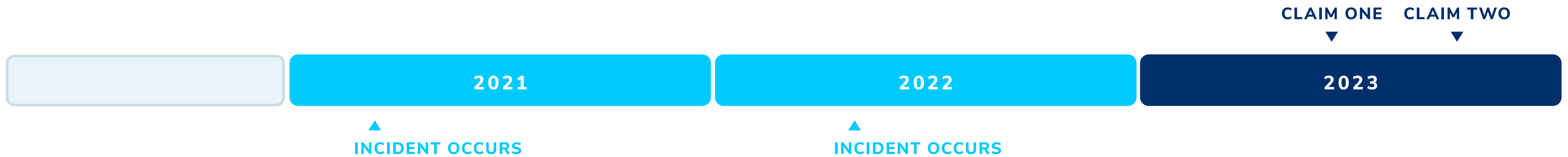
Claims-made

You're covered by your policy from when the **claim is made**

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For example:



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Occurrence

2021 Occurrence policy covers the claim.

2022 Occurrence policy covers the claim.

CLAIM ONE

CLAIM TWO

OCCURRENCE

2021

2022

2023

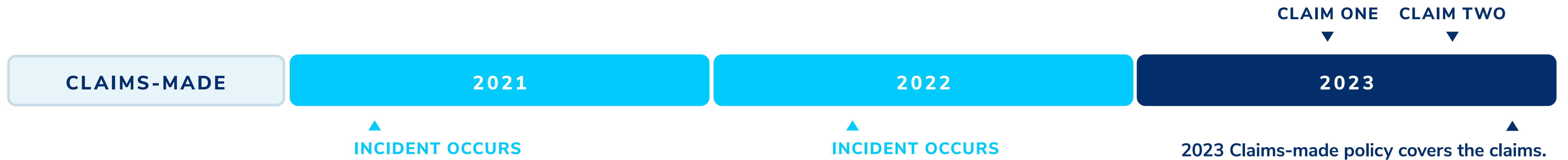
INCIDENT OCCURS

INCIDENT OCCURS

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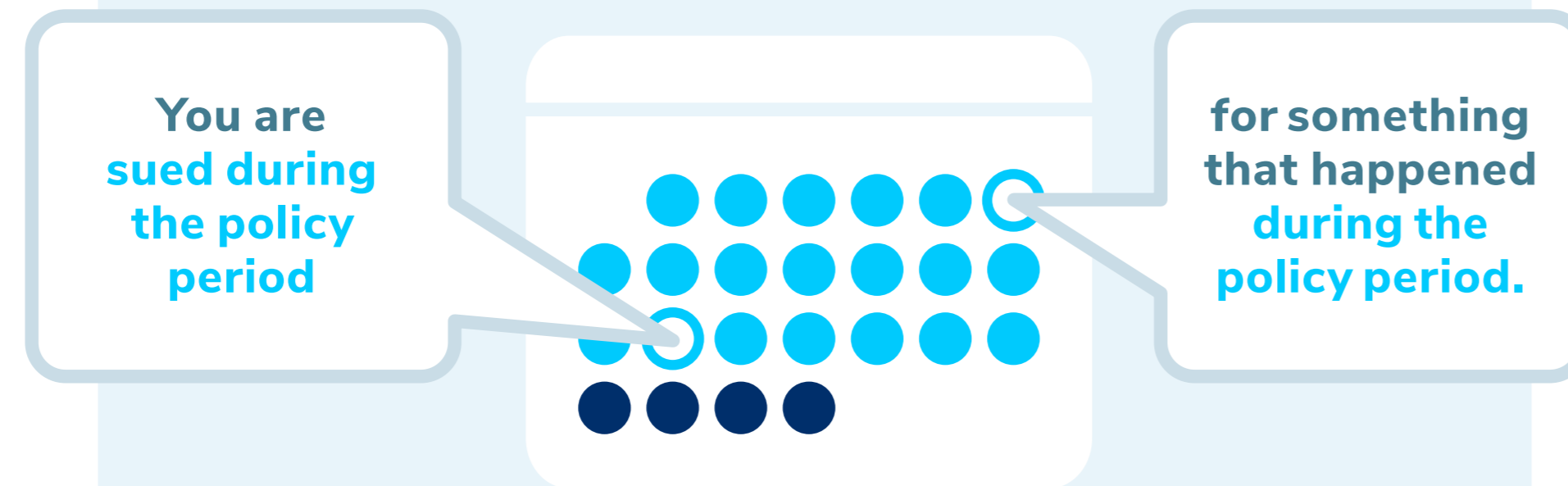
Claims-made



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Policy Types

You have Occurrence Coverage



You have Claims-made Coverage

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Policy Types

You have Occurrence Coverage

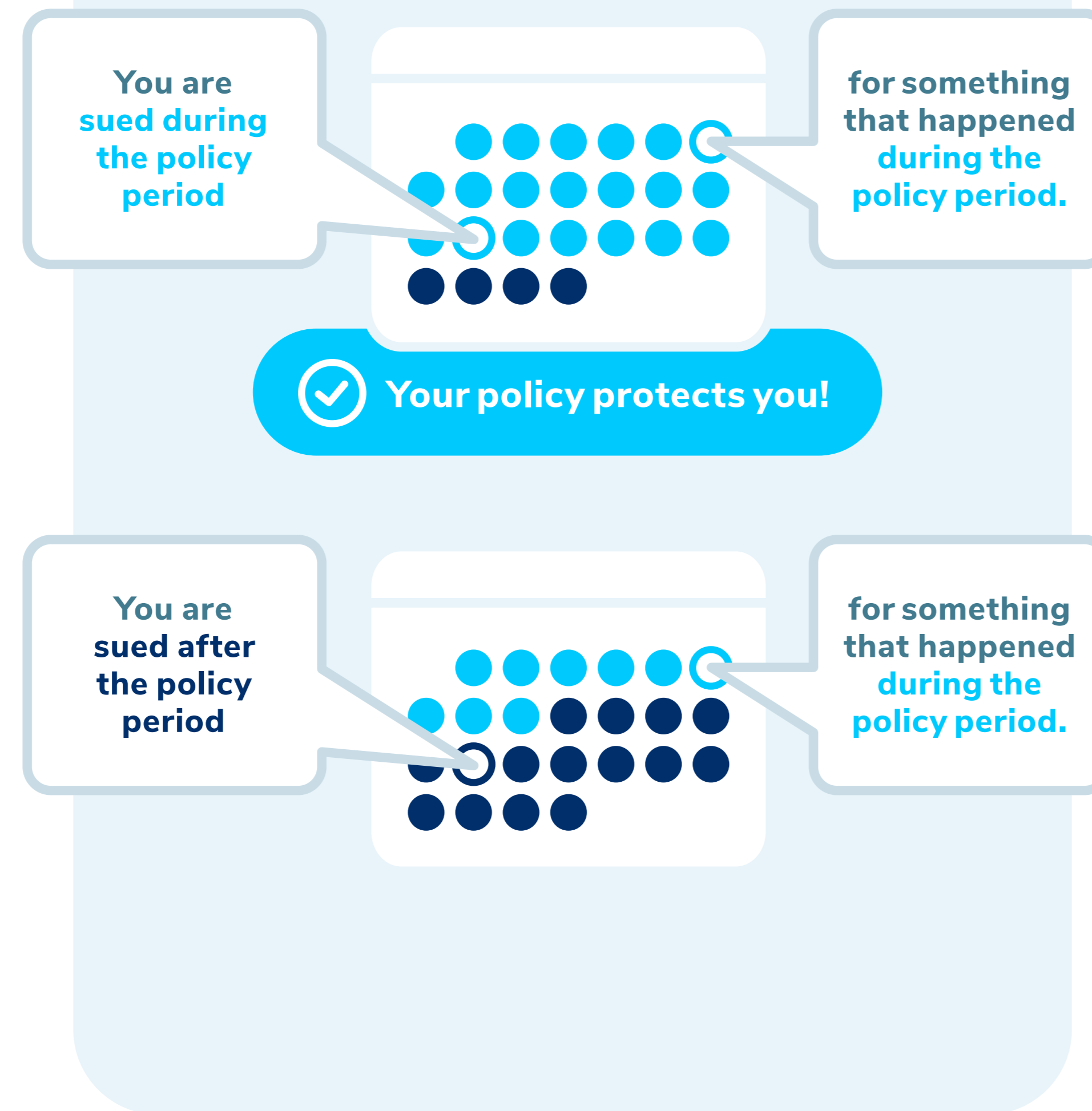


You have Claims-made Coverage

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Policy Types

You have Occurrence Coverage



You have Claims-made Coverage

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Policy Types

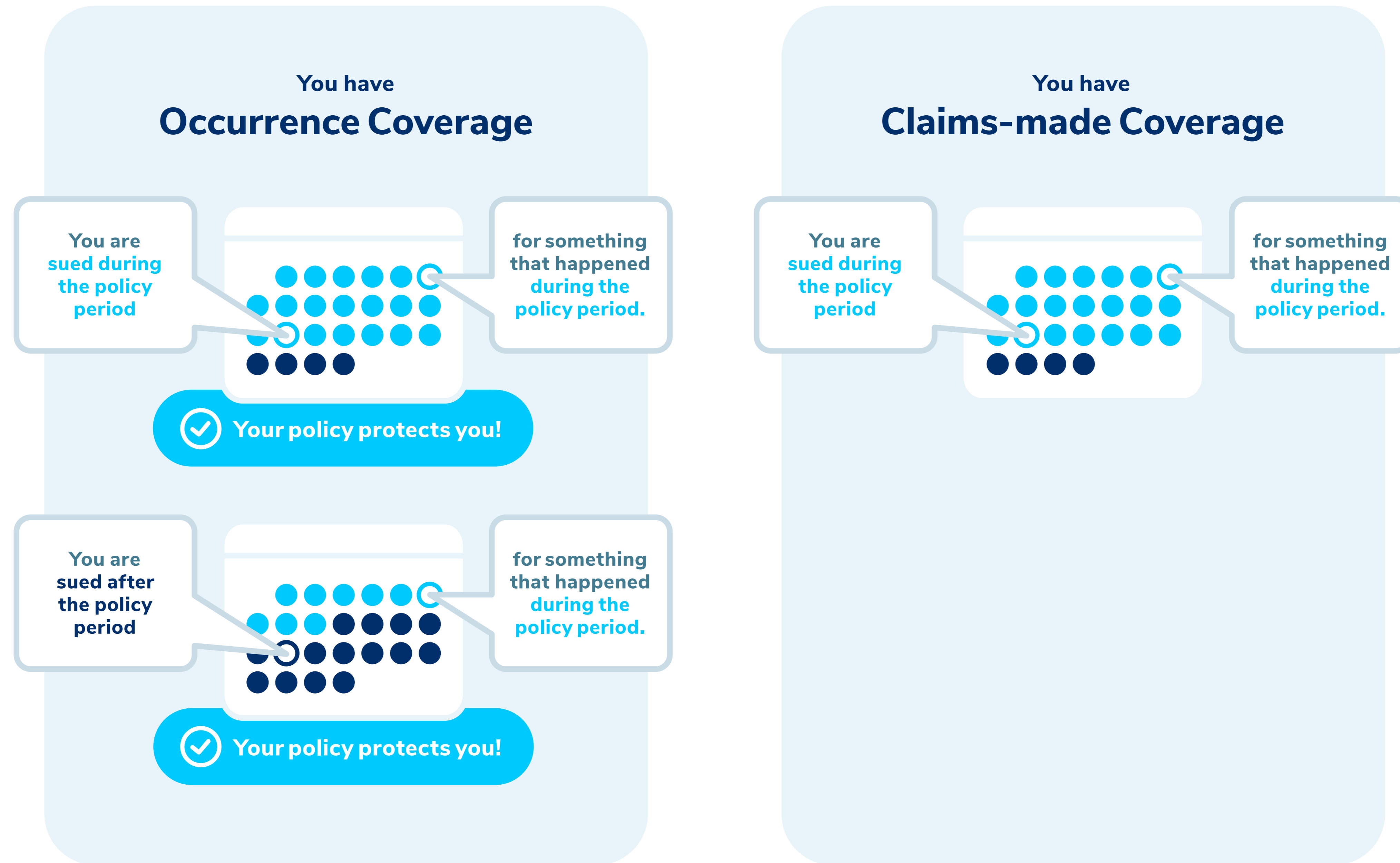
You have Occurrence Coverage



You have Claims-made Coverage

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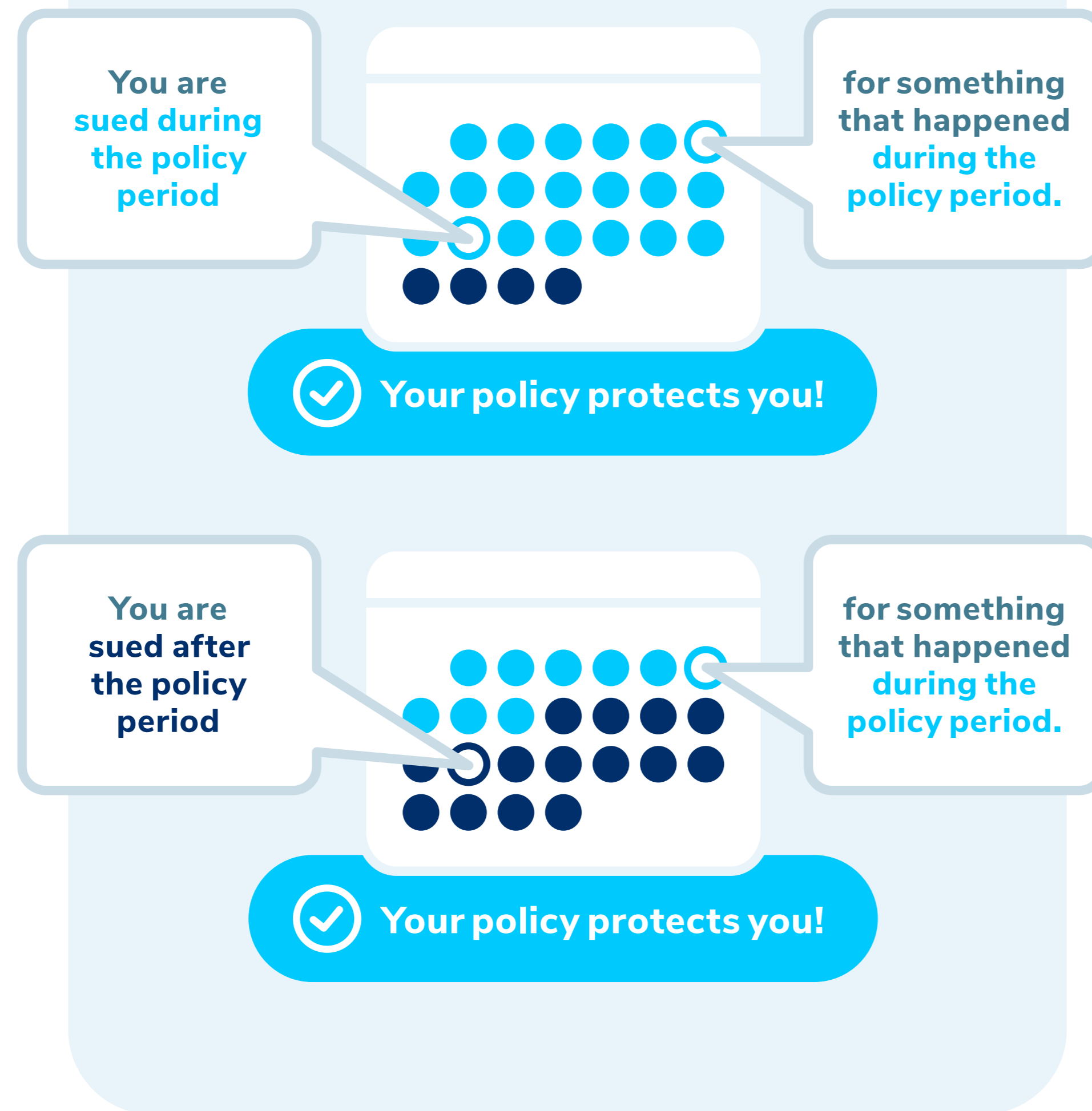
Policy Types



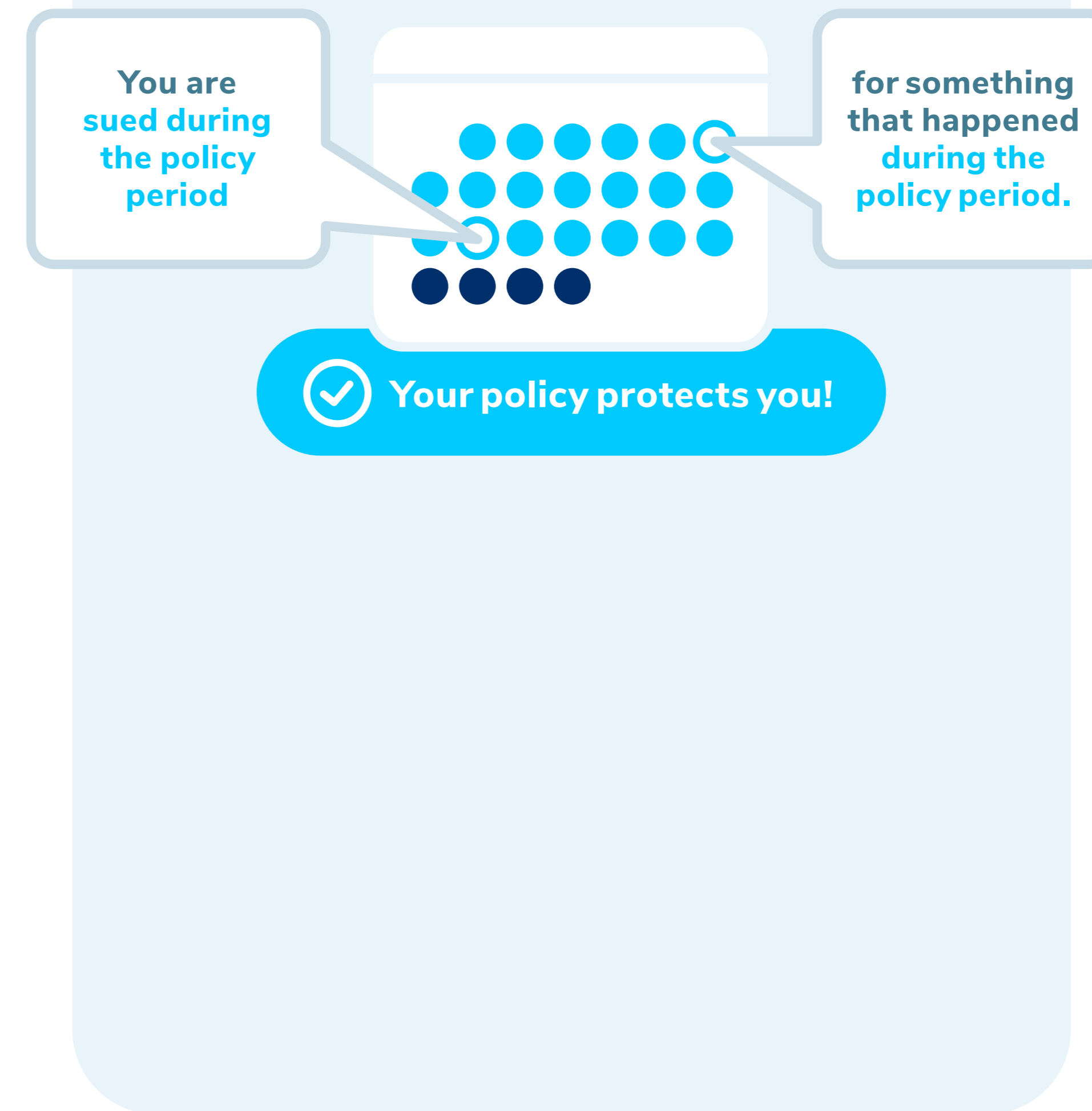
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Policy Types

You have Occurrence Coverage

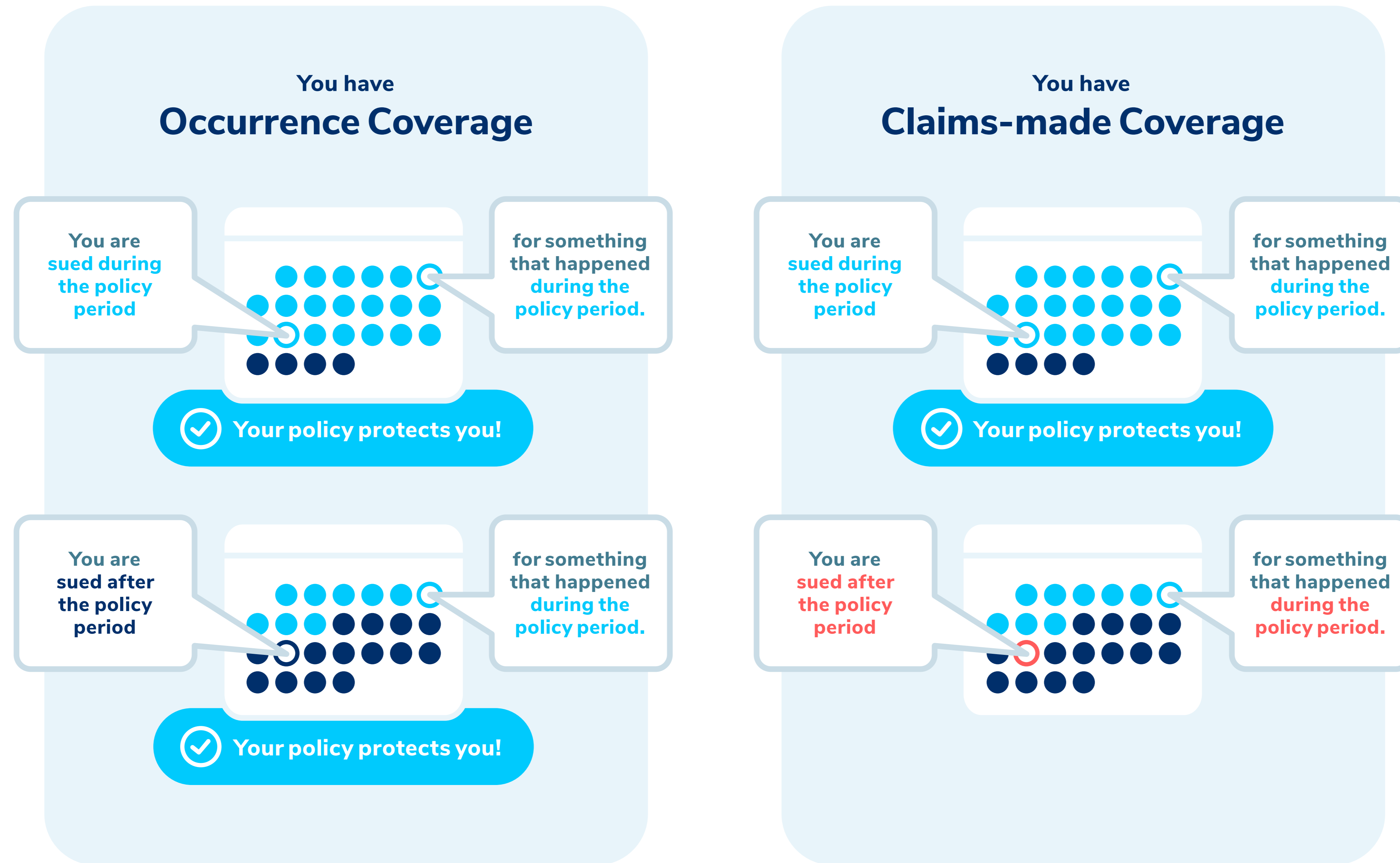


You have Claims-made Coverage



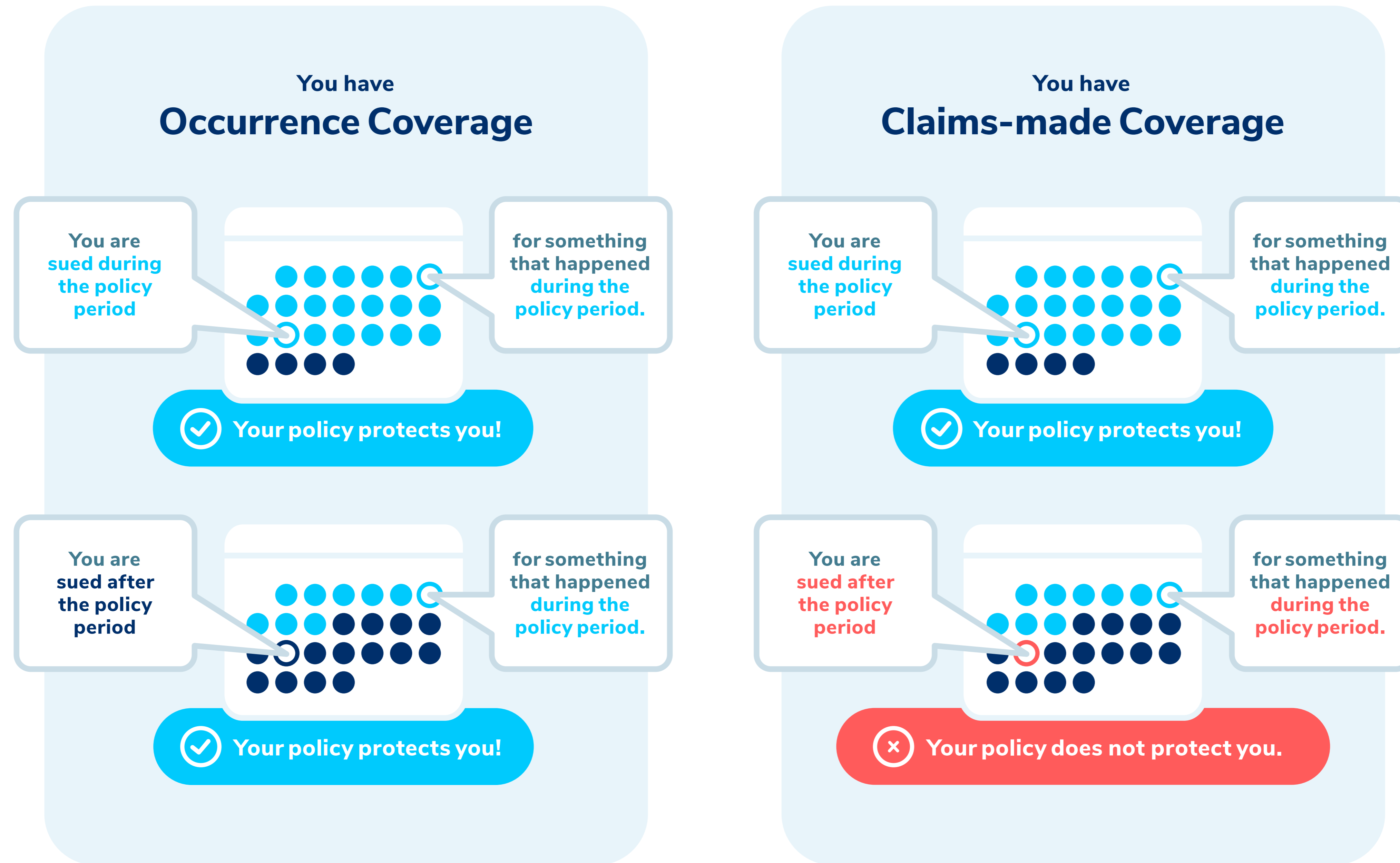
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Policy Types



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Policy Types



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Tail Coverage

Coverage you buy to cover the “tail”
of risk left behind after a Claims-made policy ends.

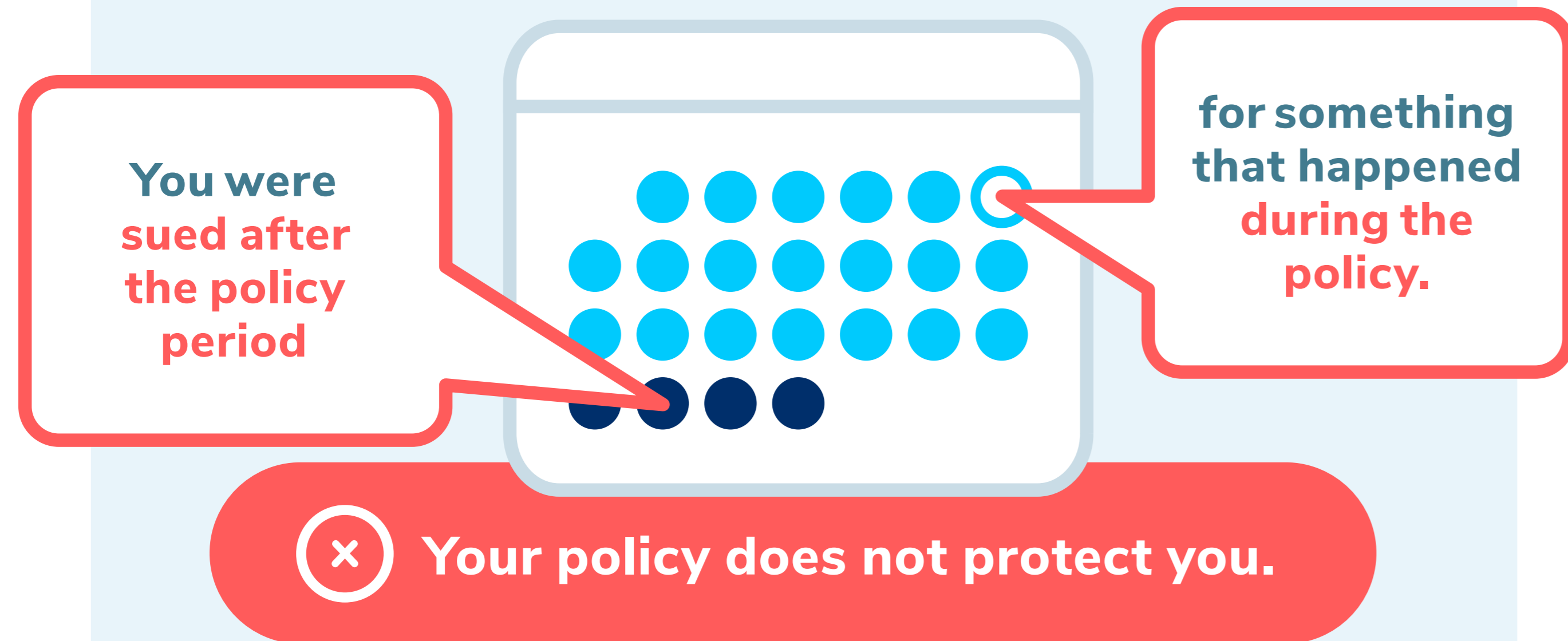
Not needed for an Occurrence policy, since that policy never expires.

Also called an **Extended Reporting Endorsement**.

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Tail Coverage

Claims-made Coverage without tail



Claims-made Coverage with tail



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Tail Coverage

Very expensive (~2x the cost of your base premium) and payment is typically due in full within 30-60 days of policy cancellation.

NO TAIL = NO COVERAGE

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Tail Coverage

- › Dr. Jones had been practicing for 15 years under a Claims-made policy
- › The office manager was responsible for paying the office's bills
- › The office expanded and needed to relocate. In the midst of moving offices, the malpractice insurance bills were being sent to the old location and were not being payed
- › Due to lack of payment, the malpractice insurance company canceled the coverage and sent a quote for tail coverage
- › The office manager was not familiar with tail coverage and, therefore, did not address the offer from the carrier
- › The due date to pay for the tail quickly passed, and no tail coverage was provided.

NO TAIL = NO COVERAGE

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Occurrence

No need for tail coverage

Can be cheaper in the long-run

Not offered by all insurers

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Policy Limits

The maximum your insurance company will pay on your behalf in the event of a claim or incident

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Two Numbers



Per Claim / Annual Aggregate

- \$1M / \$3M
- \$2M / \$4M
- \$3M / \$5M
- \$4M / \$6M
- \$5M / \$7M

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Two Numbers Per Claim / Annual Aggregate



35
YR TOTAL
\$1M/\$3M

Occurrence

Limits available to you after 35 years of purchasing Occurrence coverage. Subject to any payments of claims.

Claims-made

Limits available to you after 35 years of purchasing Claims-made coverage. Subject to any payments of claims.

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Consent to Settle Clause

When faced with a malpractice claim, you have two options: settle (pay the demand) or fight the claim legally (which could include a trial). This is the part of the policy that decides if you have the right to refuse to settle a claim.

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What does it mean to “settle” a claim?

Settling a claim can include:

Payment to patient / plaintiff

Reported in NPDB

Mark on your record

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Common Consent Exceptions

- › Unreasonable or Full Consent
- › Board Approval
- › Binding Arbitration
- › No Longer Insured with Company
- › Cannot be Located
- › License Suspended
- › Deceased or Incompetent
- › Hammer Clause



If any of these are in your policy, you do not have a pure consent to settle provision.

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Malpractice Insurance Carrier

- › The company that underwrites the insurance policy
- › Responds to claims filed against you
- › The name on the piece of paper

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**When looking at coverage,
you also have to look at the insurance carrier.**

**Why? They are the ones behind the policy.
If they are not good, it is likely your coverage is not either.**

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Employer or Group Coverage

If someone is choosing or recommending coverage for you, be sure to ask the following before signing:

- › What policy type are you getting?
- › If Claims-made, who is responsible for the tail cost?
- › What happens if the practice is sold?
- › Why does this practice choose to work with the carrier?
- › What's included (or NOT included) in the policy coverage?
- › Would you pick this carrier for yourself if given the choice?

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New Physician Leaves Group

- ▶ A new Physician goes to work for a large group right out of school. She accepts the offer presented to her, which includes a “free” Claims-made malpractice insurance policy.
- ▶ After two years the new Physician has the opportunity to open her own private practice and puts in her notice to the group. As a result, her group malpractice policy is canceled and she is told she needs to buy tail coverage.
- ▶ Confused, as she thought she was getting free malpractice coverage as part of the offer, she contacts an attorney who reviews the contract and explains to her that the group was only responsible for the coverage during her employment — securing coverage for future claims (tail) would be her responsibility financially.

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You Need Help to Practice Safely

That's where risk support comes in

Coverage

Risk Support

Claims Defense

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What is **risk management**?

Short answer: prevention of malpractice claims.

Your insurance carrier should offer resources to help you do just that.

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Some **Risk Resources** to Look for:

- › Experienced consultants that can offer real time help
- › CE courses and webinars
- › Practical tools like consent forms, assessments, etc.
- › Credits for taking certified risk management courses and practicing safely (AKA no claims)

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Risk Management Can Help with:

- › Dealing with a difficult event
 - › Disgruntled patients
 - › Medical records management
 - › Referral to a specialist
 - › Noncompliant patients
 - › EHR implementation
 - › Refunds and billing
 - › Infection control
 - › Social media
- ...and so much more!**

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Negative Online Review

- › A Physician rendered care for a patient referred to him by their family doctor
- › Based on interactions at the appointment, the Physician assumed the patient was satisfied with the treatment
- › However, a few days later the patient left a negative online review of her experience
- › To defend himself, the Physician responded to the review and in doing so disclosed protected health information including the patient's name
- › The patient then reported the Physician to the medical board for a clear HIPAA violation

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You Buy Insurance to Protect Against Claims

The right insurance company should be an expert

Coverage

Risk Support

Claims Defense

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Now Trending in **Malpractice Claims**

- › Clinical Judgement
- › Communication failure (suboptimal communication among physicians or between physician/patient)
- › Diagnostic error (wrong diagnosis, failure/delay, misdiagnosis, narrow diagnostic focus)
- › Inadequate patient assessment
- › Failure to appreciate/reconcile relevant signs/symptoms/test results
- › Insufficient/lack of documentation about clinical findings
- › Failure/delay in performing recommended diagnostic test

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Why should you care about **claims defense**?

The average healthcare professional will be sued once in their career, and most never see it coming. Plus, not all insurers defend claims the same way — you do not want to find out in the courtroom that you made the wrong choice.

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A Successful Claims Defense

It happens when an insurance company has:

- › A clear understanding of medicine
- › A grasp of technical and clinical concepts
- › Access to qualified expert witnesses
- › Expert knowledge of healthcare law
- › Financial resources to be aggressive
- › Ability to defend the patient care in question

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Policy Types
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Consent to Settle
Carrier Selection
Risk Management
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