

MANAGED CARE ERRORS & OMISSIONS LIABILITY POLICY

**THIS IS A CLAIMS-MADE COVERAGE WITH DEFENSE EXPENSES INCLUDED IN THE LIMIT OF LIABILITY.
PLEASE READ ALL TERMS CAREFULLY.**

I. INSURING AGREEMENT

The Company will pay on behalf of the **Insured, Loss** for any **Claim** first made during the **Policy Period**, or if exercised, during the Extended Reporting Period or Run-Off Extended Reporting Period for a **Wrongful Act**.

II. DEFINITIONS

Wherever appearing in this **Liability Coverage**, the following words and phrases appearing in bold type have the meanings set forth in this section **II. DEFINITIONS**:

A. Antitrust Claim means any **Claim** based upon or arising out of any actual or alleged violation of any law, including any federal, state or local statute, rule, regulation or common law relating to antitrust, the prohibition of monopolies, activities in restraint of trade, unfair methods of competition or deceptive acts or practices in trade or commerce, including any actual or alleged violation of the Sherman Act, the Clayton Act, the Robinson-Patman Act, the Federal Trade Commission Act, the Hart-Scott Rodino Antitrust Improvements Act or any rule or regulation promulgated thereunder.

B. Claim means:

1. a written demand for monetary damages or non-monetary relief;
2. a civil proceeding commenced by service of a complaint or similar pleading;
3. a criminal proceeding commenced by a filing of charges;
4. a formal administrative or regulatory proceeding commenced by filing of a notice of charges, formal investigative order, service of summons, or similar document;
5. an external arbitration, mediation, or other alternative dispute resolution proceeding if the **Insured** is obligated to participate in such proceeding or if the **Insured** agrees to participate in such proceeding, with the Company's written consent, such consent not to be unreasonably withheld; or
6. a written request to toll or waive a statute of limitations relating to a potential civil or administrative proceeding,

against an **Insured** for a **Wrongful Act** committed or allegedly committed by or on behalf of an **Insured** or by any other person or entity for whose **Wrongful Acts** the **Insured** is legally responsible.

A **Claim** is deemed to be made on the earliest date that any **Executive Officer** first receives written notice of such **Claim**. However, if any **Insured Person** who is not an **Executive Officer** first receives written notice of a **Claim** during the **Policy Period**, but no **Executive Officer** receives written notice of

such **Claim** until after the **Policy Period** has expired, then such **Claim** will be deemed to have been made on the date such **Insured Person** first received written notice of the **Claim**.

- C. **Claim Services** means the submission, handling, investigation, payment or adjustment of claims for benefits or coverages under any workers' compensation plan, life insurance plan, short term or long term disability plan, or health care plan, including any consumer directed health care plan, behavioral health plan, prescription drug plan, dental plan or vision plan, but only if performed by or on behalf of an **Insured**.
- D. **Disease Management** means a coordinated system of preventative, diagnostic, and therapeutic measures intended to provide cost-effective, quality healthcare for a patient population who have or are at risk for a specific chronic illness or medical condition.
- E. **Employee** means a natural person whose labor or service is engaged by and directed by the **Insured Organization** and:
 - 1. who is on the payroll of the **Insured Organization**, including:
 - a. any in-house general counsel of the **Insured Organization**; and
 - b. any other full-time, part-time, temporary and seasonal workers;
 - 2. who is a volunteer; or
 - 3. whose services have been leased to the **Insured Organization**.

Independent contractors are not **Employees**. The status of an individual as an **Employee** will be determined as of the date of the **Wrongful Act**.

- F. **Executive Officer** means a member of the board of directors, officer, natural person partner, principal, risk manager, medical director, **LLC Manager**, in-house general counsel of the **Insured Organization** or a functional equivalent thereof.
- G. **Health Care Plan Consulting** means providing or rendering advice on, or comparisons of, eligibility requirements, processes or procedures for enrollment or changes in participant status, or coverage features, including terms, benefits or restrictions, of any workers' compensation plan, life insurance plan, short term or long term disability plan, or health care plan, including any consumer directed health care plan, behavioral health plan, prescription drug plan, dental plan or vision plan.
- H. **Insured** means the **Insured Persons** and the **Insured Organization**.
- I. **Insured Organization** means the **Named Insured**, any **Subsidiary**, and any such entity as debtor in possession, as such term is used in Chapter 11 of the United States of America Bankruptcy Code, as amended, or the equivalent of a debtor in possession under any applicable foreign law.
- J. **Insured Person** means any natural person who was, is, or becomes a member of the board of directors, member of the board of trustees, officer, **Employee**, medical director, member of, or provider of administrative support to, a review board or committee, partner, or **LLC Manager** of the **Insured Organization** for **Wrongful Acts** committed in the discharge of his or her duties as such. **Insured Person** also includes any natural person independent contractor who is under written contract with the **Named Insured** to provide credentialing, peer review, or **Utilization Review** to the **Named Insured**, but only if and to the extent the **Named Insured** provides indemnification to such natural person in the same manner as that provided to **Employees**.

In the event of the death, incapacity, or bankruptcy of an **Insured Person**, any **Claim** against the estate, heirs, legal representatives, or assigns of such **Insured Person** for a **Wrongful Act** of such **Insured Person** will be deemed to be a **Claim** against such **Insured Person**.

K. Loss means **Defense Expenses** and money which an **Insured** is legally obligated to pay as a result of a **Claim**, including settlements, judgments, compensatory damages, punitive or exemplary damages if insurable under the applicable law most favorable to the insurability of punitive or exemplary damages, prejudgment and postjudgment interest, and legal fees and expenses awarded pursuant to a court order or judgment. **Loss** does not include:

1. civil or criminal fines, sanctions, liquidated damages, payroll or other taxes, penalties, the multiplied portion of any multiplied damage award; provided that
 - (a) **Loss** will include civil fines and penalties imposed under Title II of the Health Insurance Portability and Accountability Act of 1996, amendments to such law, or regulations promulgated under such law concerning privacy of health information, and
 - (b) **Loss** will include civil fines and penalties and the multiplied portion of any multiplied damage award for **Antitrust Claims**, but only if insurable under the applicable law most favorable to the insurability of such fines, penalties and the multiplied portion of any multiplied damage award;
2. any return, withdrawal, restitution or reduction of professional fees, profits, or other charges, including fees, amounts, benefits or coverage owed under any contract, life insurance plan, short term or long term disability plan, health care plan or trust, insurance or workers' compensation policy or plan, including any consumer directed health care plan, behavioral health plan, prescription drug plan, dental plan or vision plan, or program of self-insurance;
3. amounts that constitute the cost of complying with any order for, grant of, or agreement to provide, injunctive or non-monetary relief;
4. any amount allocated to non-covered loss pursuant to section **III. CONDITIONS. P. ALLOCATION** of the Liability Coverage Terms and Conditions; or
5. damages or types of relief deemed uninsurable under applicable law.

L. Managed Care Activity means any of the following services or activities performed by or on behalf of the **Insured** for or under any workers' compensation plan, life insurance plan, short term or long term disability plan, or health care plan, including any consumer directed health care plan, behavioral health plan, prescription drug plan, dental plan or vision plan:

- 1) **Provider Selection**;
- 2) **Utilization Review**;
- 3) advertising, marketing, selling, enrollment, administration or management;
- 4) **Claim Services**;
- 5) establishing or maintaining health care provider networks;
- 6) reviewing, profiling or tiering quality or costs of, or providing quality assurance of, any provider of **Medical Services**;
- 7) design or implementation of benefit plans or financial incentive plans, including pay for performance programs, that compensate providers of **Medical Services**;

- 8) **Disease Management;**
- 9) **Health Care Plan Consulting;**
- 10) risk management services to any provider of **Medical Services;**
- 11) **Wellness Services;**
- 12) development or implementation of clinical guidelines, practice parameters or protocols; or
- 13) triage for payment of **Medical Services.**

M. Medical Information Protection means maintaining the confidentiality of information regarding **Medical Services** or information obtained in the provision of a **Managed Care Activity** and limiting the release or use of such information in conformance with requirements of law.

N. Medical Services means health care, medical care, or treatment, including medical, surgical, dental, ophthalmologic, optometric, podiatric, psychiatric, mental health, chiropractic, osteopathic, diagnostic imaging, nursing or other professional health care; the use, prescription, furnishing or dispensing of medications, drugs, blood, blood products, tissue or medical, surgical, dental, ophthalmologic, optometric or psychiatric supplies, equipment or appliances in connection with such care; the furnishing of food or beverages in connection with such care; counseling or other social services in connection with such care; and the handling of, or the performance of post-mortem examinations on, human bodies including autopsies and the harvesting of organs.

O. Provider Selection means evaluating, selecting, credentialing, contracting with or performing peer review of any provider of **Medical Services**, but only if performed by or on behalf of an **Insured**.

P. Sexual Activity means any conduct, physical acts, gestures or spoken or written words of a sexual nature, including sexual:

- 1. molestation,
- 2. assault,
- 3. battery,
- 4. abuse,
- 5. harassment, or
- 6. exploitation,

or any other sexual act, whether or not consensual.

Q. Subsidiary means:

- 1. any corporation, partnership, limited liability company, or other entity organized under the laws of any jurisdiction in which, on or before the Inception Date set forth in ITEM 2 in the Declarations, the **Named Insured** owns, directly or indirectly, more than 50% of the outstanding securities or voting rights representing the right to elect, appoint, or exercise a majority control over such entity's board of directors, board of trustees, board of managers, natural-person general partners, or functional equivalent; and
- 2. subject to the provisions set forth in section **III. CONDITIONS L. ACQUISITIONS** of the Liability Coverage Terms and Conditions, any entity that the **Insured Organization** acquires or forms during the **Policy Period** in which the **Named Insured** owns, directly or indirectly, more than 50% of the outstanding securities or voting rights representing the right to elect, appoint, or exercise a majority control over such entity's board of directors, board of trustees, board of managers, natural-person general partners, or a functional equivalent.

- R. **Utilization Review** means the process of evaluating the appropriateness, necessity or cost of **Medical Services** for purposes of determining whether payment or coverage for such **Medical Services** will be authorized or paid for, including prospective review of proposed payment or coverage for **Medical Services**, concurrent review of ongoing **Medical Services**, retrospective review of already rendered **Medical Services** or already incurred costs, **Disease Management**, and case management; under any workers' compensation plan, life insurance plan, short term or long term disability plan, or health care plan, including any consumer directed health care plan, behavioral health plan, prescription drug plan, dental plan or vision plan, but only if performed by or on behalf of an **Insured**.
- S. **Vicarious Liability** means liability attributed to any **Insured** for the acts of a person or entity other than an **Insured** via a theory of ostensible agency, apparent agency or respondeat superior.
- T. **Wellness Services** means health promotion activities or education, including participation at health fairs, administration of flu shots and cholesterol or blood pressure tests;
- U. **Workplace Responder Program** means any written program or procedure that the **Insured Organization** has established for responding to a medical emergency in the workplace.
- V. **Wrongful Act** means:
1. any actual or alleged act, error or omission in the performance of, or any failure to perform, a **Managed Care Activity**;
 2. any actual or alleged act, error or omission in the performance of, or any failure to perform, **Medical Information Protection** by any **Insured**;
 3. any actual or alleged act, error or omission in the performance of, or any failure to perform, emergency medical care by an **Insured Person** without receipt or expectation of remuneration pursuant to obligations under the **Insured Organization's Workplace Responder Program**, but only while such **Insured Person** is acting within the scope and capacity of the **Insured Person's** employment or duties for the **Insured Organization**; and
 4. any **Vicarious Liability** for:
 - a. the performance of, or any failure to perform:
 - i. a **Managed Care Activity**; or
 - ii. **Medical Information Protection**;
 - b. the rendering of, or failure to render, **Medical Services**; or
 - c. any actual or alleged **Sexual Activity**.

Wrongful Act does not include **Sexual Activity** or the rendering of or failure to render **Medical Services**, by the **Insured**.

III. EXCLUSIONS

A. EXCLUSIONS APPLICABLE TO ALL LOSS

1. The Company will not be liable for **Loss** for any **Claim** based upon or arising out of any damage to, destruction of, loss of, or loss of use of, any tangible property including damage to, destruction of, loss of, or loss of use of, tangible property that results from inadequate or insufficient protection from soil or ground water movement, soil subsidence, mold, toxic mold, spores, mildew, fungus, or wet or dry rot;

2. The Company will not be liable for **Loss** for any **Claim** based upon or arising out of any bodily injury, sickness, disease, or death of any employee of any **Insured** arising out of or in the course of employment by the **Insured**;
3. The Company will not be liable for **Loss** for any **Claim** based upon or arising out of any fact, circumstance, situation, event or **Wrongful Act** underlying or alleged in any prior or pending civil, criminal, administrative, or regulatory proceeding against any **Insured** as of the applicable Prior and Pending Proceeding Date set forth in ITEM 5 of the Declarations for this **Liability Coverage**.
4. The Company will not be liable for **Loss** for any **Claim** for any fact, circumstance, situation, or event that is or reasonably would be regarded as the basis for a claim about which any **Executive Officer** had knowledge prior to the applicable Continuity Date set forth in ITEM 5 of the Declarations for this **Liability Coverage**.
5. The Company will not be liable for **Loss** for any **Claim** based upon or arising out of any fact, circumstance, situation, event or **Wrongful Act** which, before the Inception Date set forth in ITEM 2 of the Declarations, was the subject of any notice of claim or potential claim given by or on behalf of any **Insured** under any policy of insurance of which this **Liability Coverage** is a direct renewal or replacement or which it succeeds in time.
6. The Company will not be liable for **Loss** for any **Claim** for any violation of responsibilities, duties or obligations under the Employee Retirement Income Security Act of 1974 (ERISA), including amendments thereto and regulations promulgated thereunder, or any similar or related federal, state, or local law or regulation; or for an **Insured's** failure or refusal to establish, contribute to, pay for, insure, maintain, provide benefits pursuant to, or enroll or maintain the enrollment of an **Employee** or dependent in, any employee benefit plan, fund, or program, including contracts or agreements which are not subject to the provisions of ERISA; provided this exclusion will only apply to any employee benefit plan, fund or program sponsored or maintained by the **Insured Organization** for the benefit of its **Employees** or other **Insured Persons**.
7. The Company will not be liable for **Loss** for any **Claim** which, in whole or in part, is brought by or on behalf of one or more security holders of the **Insured Organization** in their capacity as such, including one or more policyholders in their capacity as an equity owner of the **Insured Organization**.
8. The Company will not be liable for **Loss** for any **Claim** by, on behalf of, or in the name or right of, or for the benefit of, any **Insured**; provided that this exclusion will not apply to any **Claim** for **Provider Selection, Utilization Review** or **Claim Services** or to any **Claim** brought and maintained independently by an **Insured Person** in such **Insured Person's** capacity as a participant in a workers' compensation plan, life insurance plan, short term or long term disability plan, or health care plan, including any consumer directed health care plan, behavioral health plan, prescription drug plan, dental plan or vision plan administered or managed by the **Insured Organization**.
9. The Company will not be liable for **Loss** for any **Claim** based upon or arising out of any **Wrongful Act** by a **Subsidiary** or any related **Insured Person** occurring at any time during which such entity was not a **Subsidiary**.
10. The Company will not be liable for **Loss** for any **Claim** based upon or arising out of the liability of others assumed by an **Insured** under any contract or agreement, whether oral or written, except to the extent that the **Insured** would have been liable in the absence of such contract or agreement.

11. The Company will not be liable for **Loss** for any **Claim** based upon or arising out of any commingling of, or failure to segregate, funds or assets with dishonest intent by any **Insured**.
12. The Company will not be liable for **Loss** for any **Claim** for any actual or alleged act, error or omission by an **Insured** in the rendering of, or failure to render, **Medical Services**; provided that this exclusion will not apply to:
 - a. any portion of a **Claim** alleging, under statute, rule, regulation or common law tort, that the performance of any **Managed Care Activity** by an **Insured** constitutes the rendering of **Medical Services**; or
 - b. any portion of a **Claim** arising out of any act, error or omission in the performance of, or any failure to perform, emergency medical care by an **Insured Person** without receipt or expectation of remuneration pursuant to obligations under the **Insured Organization's Workplace Responder Program**, but only while such **Insured Person** is acting within the scope and capacity of the **Insured Person's** employment or duties for the **Insured Organization**.
13. The Company will not be liable for **Loss** for any **Claim** based upon or arising out of:
 - a. the design, manufacture, assembly, installation, modification or sale of any computer hardware, software or peripheral equipment or device, in whole or in part, by the **Insured** or by any entity owned by, controlled by or affiliated through any common ownership with the **Insured**;
 - b. any electronic funds transfer, automated bank transaction or automated securities quotation or transaction, including any authentication or other services ancillary thereto;
 - c. any breakdown or failure to perform, in whole or in part, of any computer hardware, software or peripheral equipment or device, including any breakdown, interruption or failure of any utility, telephone line, data transmission line or other infrastructure necessary for the operation of any computer hardware, software or peripheral equipment or device;
 - d. the analysis, design, development, programming or any other aspect of providing electronic data processing, computer time-sharing or computer back-up services or facilities to third parties, including the rendering of advice, training or opinions to third parties with respect to electronic data processing, computer time-sharing or computer back-up services or facilities or any aspect thereof; or
 - e. any introduction or alteration of any code, program or data causing any loss of access to or corruption or malfunction of any computer hardware, software, peripheral equipment or device or data, in whole or in part;

provided that this exclusion will not apply to any **Claim** for **Medical Information Protection, Provider Selection, Utilization Review** or **Claims Services** if performed by or on behalf of an **Insured**.

14. The Company will not be liable for **Loss** for any **Claim**:
 - a. based upon or arising out of the actual, alleged, or threatened discharge, dispersal, seepage, migration, release, or escape of any **Pollutant**;
 - b. based upon or arising out of any request, demand, order, or statutory or regulatory requirement that any **Insured** or others test for, monitor, clean up, remove, contain, treat,

detoxify or neutralize, or in any way respond to, or assess the effects of, any **Pollutant**;
or

c. brought by or on behalf of any governmental authority because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, or neutralizing, or in any way responding to, or assessing the effects of, any **Pollutant**.

15. The Company will not be liable for **Loss** for any **Claim** for any actual or alleged **Sexual Activity** by any **Insured**.

16. The Company will not be liable for **Loss** for any **Claim** by or on behalf of, or in the name or right of any entity:

- a. owned, operated or controlled by any **Insured**; or
- b. that owns, operates or controls any **Insured**.

B. EXCLUSIONS APPLICABLE TO LOSS, OTHER THAN DEFENSE EXPENSES

1. The Company will not be liable for **Loss**, other than **Defense Expenses**, for any **Claim** based upon or arising out of any **Insured**:

- a. committing any deliberately dishonest or fraudulent act or omission;
- b. committing any willful violation of any statute, rule, regulation or law; or
- c. gaining in fact any profit, remuneration, or advantage to which such **Insured** was not legally entitled;

provided that exclusion B.1.a. and B.1.b. will not apply:

- 1. unless a final judgment or other final adjudication establishes that such **Insured** committed such deliberately dishonest or fraudulent act or omission, or willful violation of statute, rule, regulation or law, or
- 2. to a **Claim** seeking damages based upon or arising out of allegations of bad faith, or both fraud and bad faith in the performance or rendering of, or failure to perform or render, **Claim Services**.

2. The Company will not be liable for **Loss**, other than **Defense Expenses**, for any **Claim** by or on behalf of any federal, state or local governmental, regulatory or administrative agency, whether such **Claim** is brought in the name of such agency or by or on behalf of such agency in the name of any other individual or entity; provided that this exclusion will not apply:

- a. to any **Antitrust Claim**;
- b. to any **Claim** based upon or arising out of a benefit dispute involving an individual enrollee in a Medicare, Medicaid, or other health plan sponsored by the federal government or any state government;
- c. to any **Claim** alleging a violation of Title II of the Health Insurance Portability and Accountability Act of 1996, amendments to such law, or regulations promulgated under such law concerning privacy of health information; or

- d. to any **Claim** based upon or arising out of any actual or alleged failure to render **Managed Care Activity** by any federal, state or local governmental, regulatory, or administrative agency when such agency is acting in its capacity as a sponsor of any workers' compensation plan, life insurance plan, short term or long term disability plan, or health care plan, including any consumer directed health care plan, prescription drug plan, dental plan or vision plan.

IV. SEVERABILITY OF EXCLUSIONS

No conduct of any **Insured Person** will be imputed to any other **Insured Person** to determine the application of any of the exclusions set forth in section **III. EXCLUSIONS**. Only the conduct or knowledge of an **Executive Officer** shall be imputed to the **Insured Organization** for purposes of applying Exclusion B.1 set forth in section **III. EXCLUSIONS, B. EXCLUSIONS APPLICABLE TO LOSS, OTHER THAN DEFENSE EXPENSES**.

V. CONDITIONS

A. LIMIT OF LIABILITY

This section **V. CONDITIONS A. LIMIT OF LIABILITY** supplements and does not replace section **III. CONDITIONS C. LIMITS OF LIABILITY** of the Liability Coverage Terms and Conditions.

The Company's maximum limit of liability for **Loss**, including **Defense Expenses**, for each **Claim** will not exceed the applicable limit of liability for each **Claim** set forth in ITEM 5 of the Declarations for this **Liability Coverage**, regardless of when payment is made and regardless of when an **Insured's** legal obligation with regard thereto arises or is established.

B. SETTLEMENT

The Company may, with the written consent of the **Insured**, make such settlement or compromise of any **Claim** as the Company deems expedient. In the event that the Company recommends an offer of settlement (a "Settlement Offer") of any **Claim** which is acceptable to the party bringing the **Claim**, and the **Insured** refuses to consent to such Settlement Offer, the **Insured** will be solely responsible for all **Defense Expenses** incurred or paid by the **Insured** after the date the **Insured** refused to consent to the Settlement Offer, and the **Insured** will also be responsible for all **Loss**, other than **Defense Expenses**, in excess of the Settlement Offer; provided that the Company's liability under this **Liability Coverage** for such **Claim** will not exceed the applicable limit of liability.

C. OTHER INSURANCE

This **Liability Coverage** applies as excess insurance over, and will not contribute with any other valid and collectible insurance available to the **Insured**, including any insurance under which there is a duty to defend, unless such insurance is written specifically excess of this **Liability Coverage** by reference in such other policy to the Policy Number of this **Liability Policy**. This **Liability Coverage** will not be subject to the terms of any other insurance.