

THIS ENDORSEMENT CHANGES YOUR POLICY—PLEASE READ IT CAREFULLY.

First Named Insured:
Policy Number:
Policy Period: To:
Endorsement Effective Date: Date Issued:

MEDIGUARD COVERAGE

NOTICES:

CLAIMS-MADE NOTICE: This Endorsement provides coverage on a claims-made basis and applies to *Covered Proceedings* made against an Insured provided the circumstances giving rise to the *Covered Proceeding* occurred after the *Retroactive Date* and before the end of the *Policy Period*, the Insured had no knowledge of such *Covered Proceeding* prior to the effective date of their first policy with **us**, and the *Covered Proceeding* is reported to **us** in writing during the *Policy Period* or the Extended Reporting Period (if applicable).

Section I: MediGuard Summary

a. Only the following persons or entities described below are Insureds under this Endorsement:

1. The *First Named Insured* as listed in the Declarations Page.
2. Each *Named Insured*.
3. An *Additional Insured*:
 - i. *Healthcare Professional* (other than a *Locum Tenens*); or
 - ii. *Employee, Volunteer, or Contracted Worker*, only if they are licensed, certified, or otherwise authorized to deliver healthcare.

This paragraph applies only if:

The *Named Insured* who employs or contracts with the *Additional Insured* agrees in writing to extend that *Named Insured's* coverage under this endorsement to such *Additional Insured*; and

Such person is an *Additional Insured*, both on the date the circumstances took place giving rise to the *Covered Proceeding* or *Covered Proceeding* was instituted, and the date the *Covered Proceeding* is first reported to us.

Any amount we pay on behalf of such *Additional Insured* will reduce the MediGuard Limits for the *Named Insured* who requested the extension of coverage.

4. A professional medical corporation owned solely by the *First Named Insured* or a *Named Insured*.

5. If a *Named Insured* is a partnership, professional medical corporation or professional association, any officer, director, partner, member, shareholder, or owner of the *Named Insured*, but only with respect to the performance of his or her duties as such on behalf of the *First Named Insured*.

b. Coverage Limits:

The Coverage Limits shown below are the most **we** will pay for *Claims Expenses* covered by this Endorsement, less any applicable Retention.

The Covered Proceeding Limit and Aggregate Limit below apply separately to each *Named Insured*.

Covered Proceeding Limit [\$]

Aggregate Limit [\$]

The Policy Aggregate Limit provided by this Endorsement is the maximum amount **we** will pay for all expenses incurred by all Insureds covered by this Endorsement.

Policy Aggregate Limit [\$]

Neither the inclusion of more than one Insured in a *Covered Proceeding* covered under this Endorsement, nor the commencing of *Covered Proceedings* by more than one person or entity, shall increase the Coverage Limits.

c. Retention

Per Covered Proceeding Retention [\$]

Section II: MediGuard Insuring Agreement

We will pay *Claims Expenses*, in excess of the Retention, on behalf of an Insured because of a *Covered Proceeding* commenced against the Insured provided:

1. The circumstances giving rise to the *Covered Proceeding* occurred after the *Retroactive Date* and before the end of the *Policy Period*;
2. The Insured had no knowledge of the *Covered Proceeding* prior to the *Effective Date* of their first Policy with **us**; and
3. The *Covered Proceeding* is reported in writing to **us** during the *Policy Period* or the Extended Reporting Period (if applicable).

Section III: Defense and Settlement

- a.** **We** shall have the right and duty to defend an Insured in a *Covered Proceeding* to which this endorsement applies. We have no right or duty to defend an Insured in a *Covered Proceeding* to which this endorsement does not apply. In any *Covered Proceeding* where **we** defend **you**, **we** will select legal counsel to defend **you**. **You** may also choose to have your own legal counsel, but **we** will not pay any fees or costs related to such counsel.

- b. With respect to any *Covered Proceeding* commenced against an Insured **we** will pay *Claims Expenses* incurred with **our** prior written consent. The Coverage Limit shall be reduced and may be completely exhausted by payment of *Claims Expenses*. *Claims Expenses* shall be applied against the Retention payable by the *First Named Insured*.
- c. **We** shall not be obligated to pay for or to undertake or continue a defense after the applicable Coverage Limit has been exhausted. Upon exhaustion of Coverage Limits by such payment, **we** shall have the right to withdraw from the further defense of any *Covered Proceeding* under this Endorsement by tendering control of said defense to the *First Named Insured*.

Subject to the Coverage Limit of this Endorsement, **we** shall reimburse an Insured for all reasonable expenses, other than loss of earnings, incurred at **our** request.

Section IV: Exclusions

The coverage under this Endorsement does not apply to:

- a. Any proceeding arising out of or resulting from any actual or alleged false, deceptive, or unfair trade practices;
- b. Any proceeding arising out of, or resulting from any related or continuing acts, errors, omissions, incidents or events, where the first such act, error, omission, incident, or event was committed or occurred prior to the *Retroactive Date*;
- c. Any proceeding arising out of or resulting from an Insured's activities as a medical director, owner, superintendent, executive officer, director, partner, trustee, agent, shareholder, manager or *Employee* of any enterprise that is not an Insured under this Policy;
- d. Any proceeding arising from the actual or alleged inaccurate, inadequate or incomplete description of the price of goods, products or services, cost guarantees, cost representations, or contract price estimates, the authenticity of any goods, products or services, or the failure of any goods or services to conform with any represented quality or performance;
- e. Any proceeding based upon or arising out of:
 - 1. any dishonest, fraudulent, criminal, intentional, or malicious act by any Insured; or
 - 2. any willful violation of any law, statute, ordinance, rule, or regulation by any Insured.

This exclusion shall not apply to any *Covered Proceeding* based on negligent conduct brought under any federal or state statute, regulation or rule.

For the purposes of determining the applicability of this exclusion, no wrongful act of any Insured shall be imputed to any other Insured.

- f. Any proceeding seeking damages or injunction relief for actual or alleged libel, slander, defamation, bodily injury, sickness, disease, death, false arrest, false imprisonment, assault, battery, mental anguish, emotional distress, invasion of privacy, or damage to or destruction of tangible property (including loss of use thereof).

- g. Any proceeding based upon an express or implied warranty or guarantee, or breach of contract in connection with any agreement to perform work for a fee.
- h. Any proceeding arising out of actual or alleged employment discrimination, termination or other wrongful employment acts in violation of any municipal, state or federal law, regulation, or ordinance.
- i. Any proceeding arising out of any actual or alleged injury, including but not limited to sickness, disease, or death to any *Employee* of any Insured arising out of and in the course of employment by the *First Named Insured*; or any obligation for which the *First Named Insured* in its capacity as an employer and/or its insurer may be held liable under any workers' compensation, unemployment compensation, disability benefits law, or any similar law.
- j. Any proceeding arising out of any actual or alleged violation of the Employment Retirement Income Security Act of 1974 and its amendments or any regulation or order issued pursuant thereto.
- k. Arising out of or relating to any liability assumed under any contract or agreement, whether written or oral, unless such liability would have attached to the Insured in the absence of such contract or agreement.
- l. Any proceeding for which any Insured has given notice to any *Government Entity*, insurer of any other policy, or self-insurance in force prior to the *Effective Date* of this Policy.
- m. Any proceeding based upon or arising out of any actual or alleged violation of any federal, state, or local anti-trust, restraint of trade, unfair competition, price fixing law, or any rules or regulations promulgated thereunder.
- n. Any *Covered Proceeding* of which the Insured had knowledge of prior to the *Effective Date* of such Insured's first policy with **us**.
- o. Any civil fine, penalty, sanction or interest imposed by a *Government Entity* resulting from a *Covered Proceeding*.
- p. Any proceeding that is a criminal proceeding.
- q. Any proceedings instituted by a *Government Entity* alleging one or more violations of the Americans with Disabilities Act of 1990, including any amendments, or similar federal, state or local law, for accessibility to a place of public accommodation, including your website(s) or construction of **your** premises.
- r. Any *Covered Proceeding Damages*.

Section V: Definitions

The following definitions apply solely with respect to coverage provided by this endorsement.

a. **Claims Expenses** means:

1. reasonable and necessary fees charged by an attorney designated pursuant to **Section III: Defense and Settlement** item a.;

2. all other legal costs and expenses resulting from the investigation, adjustment, defense and appeal of a *Covered Proceeding*, if incurred by **us**, or by an Insured with the prior written consent of **us**; and
3. the premium cost for appeal bonds for covered judgments or bonds to release property used to secure a legal obligation, if required in any *Covered Proceeding* against an Insured; provided **we** shall have no obligation to appeal or to obtain bonds.

Claims Expenses do not include any salary, overhead, or other charges or expenses of an Insured for any time spent in cooperating in the defense and investigation of any *Covered Proceeding* notified under this Endorsement, or costs to comply with any regulatory orders, settlements or judgments. In addition, *Claims Expenses* do not include any fees, costs, or expenses associated with the adoption and implementation of any corporate integrity agreement, compliance program, or similar provision regarding the operations of the Insured's business. Further, *Claims Expenses* do not include any civil fines, penalties, sanctions or interest.

- b. Commercial Payor** means any entity which arranges for payment or reimbursement of expenses on account of *Professional Services*, including the following types of entities:
1. any licensed insurance company which indemnifies policyholders against expenses incurred for *Professional Services*;
 2. any self-funded plan or any type of health plan where the risk for the cost of *Professional Services* is assumed, in whole or in part, by an employer rather than by a licensed insurance company or managed care organization; or
 3. any managed care organization, such as a health maintenance organization (“HMO”), preferred provider organization (“PPO”), point of service plan (“POS”), integrated delivery network (“IDN”), or any other type of entity which has all or some of the following characteristics:
 - i. negotiated discount arrangements with selected providers;
 - ii. explicit criteria for selection of providers;
 - iii. financial or program incentives or penalties to enrollees who do not use selected providers; and
 - iv. provider risk-sharing arrangements.
- c. Covered Proceeding** means any notice, inquiry, investigation, or request for information pertaining to the following:
1. Proceeding instituted by a state health care licensing board against an Insured.
 2. A professional review action against an Insured by the professional review body of a health care entity with which that Insured has full, unrestricted, and un-proctored clinical privileges or membership, which action is taken for the purpose of adversely affecting said clinical privileges or membership.

3. Proceeding instituted by a Quality Improvement Organization to impose sanctions on an Insured for failure to comply with program integrity mandates pursuant to Parts 1004 and 1005 of Title 42, Code of Federal Regulations, Chapter V.
4. Proceeding instituted by a state Department of Health Services or similar state agency, or the federal Department of Health and Human Services, alleging Medicare/Medicaid fraud and abuse by a *Named Insured*, or performance of medical services in excess of, or in violation of, guidelines for appropriate utilization of such services.
5. Proceeding instituted by a federal governmental agency alleging one or more violations of the privacy regulations of the Health Insurance Portability and Accountability Act (HIPAA).
6. Proceeding instituted by a state or federal governmental agency alleging one or more violations of the Emergency Medical Treatment and Active Labor Act (EMTALA).
7. Proceeding instituted by the Drug Enforcement Agency of the U.S. Government alleging improper use of prescription authority
8. Proceeding instituted by a *Commercial Payor*, or by or on behalf of a *Government Entity*, for presenting, or causing or allowing to be presented, by an Insured, any actual or alleged erroneous submission to a government health benefit payor or program or to a *Commercial Payor* from which a Insured seeks payment or reimbursement for *Professional Services* rendered by an Insured.
9. Proceeding instituted by or on behalf of a *Government Entity* alleging a negligent act, error, or omission by an Insured in violation of any federal, state, or local self-referral laws, or any rules or regulations promulgated thereunder.
10. Proceeding instituted by a state or federal governmental agency alleging one or more violations of the Americans with Disabilities Act of 1990, including any amendments, or similar federal, state or local law for refusal to provide *Professional Services* to a patient due to their disability.

All *Covered Proceedings* arising out of the same acts, errors, or omissions, or a series of related or continuing acts, errors, or omissions, shall be deemed to be a single *Covered Proceeding* made at the time the first of the related *Covered Proceedings* is reported to **us** in writing. Such related *Covered Proceedings* shall be subject to one Per Covered Proceeding Limit of the MediGuard coverage in effect at the time the first of the related *Covered Proceeding* is reported to **us**.

d. *Covered Proceeding Damages* means money other than *Claims Expenses*, including a monetary award, settlement; or judgment.

e. *Government Entity* means:

1. any department, agency, task force, or other organization created by any federal, state, or local law, executive order, ordinance, or rule;
2. any department, agency, task force, or other organization operated, funded or staffed, in whole or in part, by the federal or any state, county, or local government; or
3. any organization operating as a Medicare Integrity Program Contractor in accordance with 63

F.R. 1590 (March 20, 1998) and pursuant to section 1893 of the Social Security Act (42 U.S.C. § 1395ddd).

Section VI: General Rules

a. Retention

1. The Per Covered Proceeding Retention amount set forth above applies separately to each *Named Insured* for any incident, event or related incidents or events, giving rise to a *Covered Proceeding*.
2. Payment of the Retention is the responsibility of the *First Named Insured*. The Retention shall be satisfied by monetary payments by the *First Named Insured* of *Claims Expenses*. **We** may pay all or any part of the Retention to satisfy a *Covered Proceeding*. The *First Named Insured* agrees to reimburse us for all such Retention amounts paid by **us** within 30 days of **our** written request.
3. In the event that *Claims Expenses* arising out of a *Covered Proceeding* are subject to more than one Retention, all the applicable Retention amounts shall apply to such *Claims Expenses* and shall be due.
4. Satisfaction of the applicable Retention is a condition precedent to the payment by **us** of any amounts or providing of any services hereunder, and **we** shall be liable only for the amounts in excess of such Retention subject to **our** total liability not exceeding the Aggregate Limit set forth above. The *First Named Insured* shall make direct payments within the Retention to appropriate other parties designated by **us**.

b. Extended Reporting Period

1. If an Extended Reporting Period Endorsement is issued for an individual *Named Insured*, their Coverage Limit does not reinstate. If an Extended Reporting Period Endorsement is issued for the Policy, **your** MediGuard Aggregate Limit for this Endorsement will reinstate. The period for reporting a *Covered Proceeding* will be automatically extended for the duration of the Extended Reporting Period as specified in the Extended Reporting Period Endorsement; provided that the *Covered Proceeding* results from circumstances that took place after the *Retroactive Date* and prior to the end of the *Policy Period*.
2. Cancellation or termination, for any reason, of the Extended Reporting Period Endorsement automatically terminates the period for reporting a *Covered Proceeding*. If an Extended Reporting Period Endorsement is not issued for a *Named Insured*, then coverage for such *Named Insured* under this Endorsement terminates at the end of the *Policy Period*.

c. Notice of Covered Proceeding

1. If any *Covered Proceeding* is commenced against an Insured, the Insured shall forward immediately to **us** written notice of such *Covered Proceeding* together with every demand, notice, summons, or other process received by the Insured or the Insured's representative. In no event shall **we** be notified later than the end of the *Policy Period* or the end of the Extended Reporting Period (if applicable).

2. A *Covered Proceeding* shall be considered to be reported to **us** when written notice is first received by **us** of the *Covered Proceeding*.
3. All *Covered Proceedings* arising out of the same acts, errors, or omissions, or a series of related or continuing acts, errors, or omissions, shall be deemed to be a single *Covered Proceeding* made at the time the first of the related *Covered Proceedings* is reported to **us** in writing. Such related *Covered Proceedings* shall be subject to one Per Covered Proceeding Limit of the MediGuard coverage in effect at the time the first of the related *Covered Proceeding* is reported to **us**.

**ALL OTHER TERMS, CONDITIONS, AND LIMITATIONS
CONTAINED IN YOUR POLICY REMAIN THE SAME.**

SPECIMEN