

**Blue Cross and Blue Shield of Illinois,
A Division of Health Care Service Corporation,
a Mutual Legal Reserve Company**

Standard Producer Commission Agreement

This Standard Producer Commission Agreement (the "Agreement") is made and entered into this _____ day of _____, _____ (the "Effective Date") by and between Health Care Service Corporation, a Mutual Legal Reserve Company (hereinafter referred to as "HCSC") and _____ (hereinafter referred to as "Producer").

This Agreement is established for the sole purpose of allowing the Producer access to HCSC insurance products as set forth in the "Group Markets Producer Agreement Compensation Schedule," which is attached and incorporated herein. The parties agree as follows:

I. Terms and Conditions

- A. **Independent Contractor** The Producer is an independent contractor and nothing in this Agreement will be construed to create any partnership, agency, or employment relationship of any kind between the Producer and HCSC.
- B. **Business Associate** The Producer acknowledges and agrees that (s)he is a "Business Associate" of HCSC as that term is defined by the Health Insurance Portability and Accountability Act and its implementing regulations (45 C.F.R. Parts 160-164) ("HIPAA"). Capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings set forth in HIPAA, which definitions are hereby incorporated by reference.
1. **Obligations and Activities of the Producer as Business Associate**
- (a) The Producer agrees to use or disclose Protected Health Information only as permitted or required by this Agreement or as required by law.
 - (b) The Producer agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
 - (c) The Producer agrees to mitigate, to the extent practicable, any harmful effect that is known or should be known to the Producer of a use or disclosure of Protected Health Information by the Producer in violation of the requirements of this Agreement.
 - (d) The Producer agrees to report to HCSC any use or disclosure of Protected Health Information not provided for by this Agreement of which (s)he becomes aware. The Producer will make the written report to HCSC not less than 3 business days after Producer learns of such unauthorized use or disclosure. The Producer's written report will at least (i) identify the nature of the unauthorized use or disclosure; (ii) identify the Protected Health Information used or disclosed; (iii) identify who made the unauthorized use or received the unauthorized disclosure; (iv) identify what the Producer has or will do to mitigate any deleterious effect of the unauthorized use or disclosure; (v) identify what corrective action the Producer has or will take to prevent future similar unauthorized use or disclosure, and (vi) provide such other information, including a written report, as reasonably requested by HCSC.

- (e) The Producer agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by the Producer on behalf of, HCSC agrees to the same restrictions and conditions that apply through this Agreement to Producer with respect to such information.
- (f) The Producer agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by the Producer on behalf of HCSC available to HCSC, or to the Secretary, in a time and manner as reasonably requested by HCSC or designated by the Secretary, for purposes of the Secretary determining HCSC's compliance with the Privacy Rule.
- (g) The Producer agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for HCSC to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.
- (h) The Producer agrees to provide to HCSC or an Individual, in time and manner as reasonably requested by HCSC, information collected in accordance with Section I. B. 1 (g) of this Agreement, to permit HCSC to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.
- (i) The Producer agrees to provide, at the request of HCSC, and in the time and manner as reasonably requested by HCSC, access to Protected Health Information, to either HCSC or, as directed by HCSC, to an Individual in order to meet the requirements under 45 CFR § 164.524.
- (j) The Producer agrees to make any amendments(s) to Protected Health Information that HCSC directs or agrees to pursuant to 45 CFR § 164.526 at the request of HCSC or an Individual, and in the time and manner mutually agreed to by the Producer and HCSC.
- (k) The Producer agrees to follow HCSC's privacy policies and procedures as HCSC may deem applicable to the Producer. HCSC shall make such privacy policies and procedures available for the Producer.

2. Permitted Use and Disclosures by Producer as Business Associate

The Producer may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, HCSC as specified in Section I. B. 2 (a) of this Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by HCSC or the minimum necessary policies and procedures of HCSC.

- (a) The following functions, activities or services by the Producer shall be considered to be performed for, or on behalf of, HCSC in the Producer's capacity as a Business Associate:

Enrollment, Disenrollment, and membership maintenance

- (b) Except as otherwise limited in this Agreement, the Producer may use Protected Health Information for the proper management and administration of the Producer or to carry out the legal responsibilities of the Producer.

- (c) Except as otherwise limited in this Agreement, the Producer may disclose Protected Health Information for the proper management and administration of the Producer, provided that disclosures are Required By Law, or the Producer obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Producer of any instances of which it is aware in which the confidentiality of the information has been breached.
- (d) Except as otherwise limited in the Agreement, the Producer may use Protected Health Information to provide Data Aggregation services to HCSC as permitted by 45 CFR §164.504(e)(2)(i)(B).
- (e) The Producer may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 §164.502(j)(1).

3. Obligations of HCSC

- (a) HCSC shall notify the Producer of any limitation(s) in its notice of privacy practices of HCSC in accordance 45 CFR § 164.520 to the extent that such limitation may affect the Producer's use or disclosure of Protected Health Information.
- (b) HCSC shall notify the Producer of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect the Producer's use or disclosure of Protected Health Information.
- (c) HCSC shall notify the Producer of any restriction to the use or disclosure of Protected Health Information that HCSC has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect the Producer's use or disclosure of Protected Health Information.

4. Permissible Requests by HCSC

HCSC shall not request the Producer to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by HCSC, unless otherwise noted in this Agreement.

- C. **Solicitation** The Producer shall make no solicitation for insurance unless all licenses and or appointments required by law have been obtained. Producer must maintain a valid producer's license with the State of Illinois at all times. Commissions will terminate if Producer fails to maintain a valid producer's license or shall fail to otherwise comply with the requisite State statues and/or regulations. Producers must submit upon request a facsimile of their license.
- D. **Rules and Regulations** The Producer agrees to abide by all HCSC rules and regulations. In doing so, the Producer agrees NOT to:
 - 1. Make any untrue statements or misrepresentations or omit any material fact concerning the insurance involved;
 - 2. Rebate or offer to rebate all or any part of the premium on a policy of insurance issued or to be issued by carriers named herein;
 - 3. Withhold any money or property of HCSC;

4. Induce or endeavor to induce any policyholder to discontinue the payment of premiums or to relinquish any policy.

Furthermore, the Producer shall use only sales literature, letters or advertising material furnished by HCSC or approved in writing by HCSC.

In addition, the Producer shall make no modification to any sales literature and advertising materials furnished by HCSC, including those provided by HCSC for use with electronic media. Prohibited changes include, but are not limited to, changes in content and format.

Also, the Producer shall not use any HCSC sales literature, letters or marketing material prior to the date Producer is authorized to do so by HCSC. This includes materials provided for use with electronic media.

Furthermore, when posting materials electronically on a website, the Producer is solely responsible for the accuracy of the information and documents presented on that website. HCSC reserves the right to audit Producer's website solely at HCSC's discretion.

- E. **Limits of Authority** The Producer has no authority to do or perform, and expressly agrees not to perform the following acts on behalf of HCSC or its agents: [1] incur any indebtedness or liability; [2] waive alter, modify or change any of the terms, rates, provisions or conditions of coverage; [3] modify or extend the amount or time of any premium payment due HCSC; [4] make, alter, or discharge contracts; [5] quote rates other than quoted by HCSC.
- F. **Indemnity** The Producer shall indemnify and hold harmless HCSC from any expenses, lawsuits, damages and attorney fees resulting from Producer's negligence, willful acts or omissions.

Further, the Producer will indemnify and hold harmless HCSC and any HCSC affiliate, trustee, officer, director, employee, volunteer, or agent from and against any claim, cause of action, liability, damage, cost or expense, including attorney's fees and court or proceeding costs, arising out of or in connection with any unauthorized use or disclosure of Protected Health Information or any failure in security measures affecting Protected Health Information or any other material breach of the terms of this Agreement by the Producer or any person or entity under the Producer's control. The Producer's obligation to indemnify HCSC will survive the expiration or termination of this Agreement. HCSC may, at its option, conduct the defense or settlement of any such action arising as described herein, and the Producer shall fully cooperate with such defense.

- G. **Compliance** The Producer shall comply in all respects with all applicable Federal and State laws and regulations. Further, the Producer shall pay all expenses in connection with Producer's business and comply with all laws, ordinances, and regulations relating thereto.
- H. **Collection of Premium** The Producer is only authorized to collect the initial premium. Premium collection made payable to HCSC in the form of an applicant's draft or money order is the only remittance allowed. Producer shall promptly report and remit to HCSC all premium collections without commingling such premiums.
- I. **Sub-Agents** The Producer may allow one or more Sub-Agents (SAs) access to those HCSC products which the Producer is allowed to access. On a periodic basis, as determined at the sole discretion of HCSC, the Producer shall furnish HCSC with the names and other such required information regarding the SAs.

The Producer retains the responsibility of recruiting, training, supervising, and disciplining all SAs appointed hereunder. The Producer shall exercise direction over the SAs to comply with HCSC standards, guidelines, and rules in all transactions of HCSC business. Furthermore, the Producer is responsible for the fidelity and honesty of the SAs and for funds collected and business done by or entrusted to the SAs.

The Producer acknowledges all the acts and failures to act of its SAs as the acts and failures to act of the Producer and assumes the responsibility therefore to HCSC. Any surety, fidelity, or indemnifying bond required by the Producer of the SA shall be for the benefit of HCSC first and thereafter for the benefit of the Producer. However, in no event shall HCSC's recourse against the Producer be conditioned on or in any manner delayed or impaired by the existence or non-existence, solvency or insolvency, enforcement or failure of such bond.

The Producer acknowledges the SA shall not have any claims against HCSC for Compensation or for any other matter arising out of this Agreement or arising out of the sale of the product.

J. Termination

1. Either party may terminate this Agreement by serving written notice of the intent to terminate. Such notice shall be personally delivered or mailed to the last known address of the other party. Any notice of the termination will be deemed given on the day mailed or personally delivered.

(a) *Termination without Cause* In the event this Agreement is terminated without cause, the terminating party shall provide notice at least 30 days prior to the termination date.

(b) *Termination for Cause* Due to material breach of Protected Health Information

Upon HCSC's knowledge of a material breach by the Producer, HCSC shall either:

(i) Provide an opportunity for the Producer to cure the breach or end the violation and terminate this Agreement if the Producer does not cure the breach or end the violation within the time specified by HCSC;

(ii) Immediately terminate this Agreement if the Producer has breached a material term of this Agreement and cure is not possible; or

(iii) If neither termination nor cure are feasible, HCSC shall report the violation to the Secretary.

(c) *Termination for Cause* Unrelated to material breach of Protected Health Information

This Agreement will be terminated if the Producer directly or indirectly:

(i) Commingles or misappropriates any money or other property belonging to HCSC;

(ii) Fails to deliver any policies issued and given to Producer for delivery;

(iii) Fails to deliver to HCSC any receipts or other property belonging to HCSC;

(iv) Violates any insurance law or regulation or violates any HCSC procedures;

(v) Commits any dishonest act in connection with the sale or solicitation of insurance products; or

(vi) Violates any terms of this Agreement.

(d) In the event this Agreement is terminated for cause, it shall be effective as of the day the notice is mailed and no further compensation is due the Producer under this Agreement.

(e) HCSC may give the Producer notice of termination for cause even after termination without cause or automatic termination.

(f) Except as provided in paragraph I. J. 1 (g) below of this section, upon termination of this Agreement, for any reason, the Producer shall return or destroy all Protected Health Information received from HCSC, or created or received by the Producer on behalf of HCSC. This provision shall also apply to Protected Health Information that is in the possession of sub-contractors or agents of the Producer. The Producer shall retain no copies of the Protected Health Information.

(g) In the event that the Producer determines that returning or destroying the Protected Health Information is infeasible, the Producer shall provide HCSC written notification of the conditions that make return or destruction infeasible. The Producer shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as the Producer maintains such Protected Health Information.

(h) HCSC shall provide an opportunity for the Producer to cure a non-material breach within the time specified by HCSC.

2. This Agreement will terminate automatically without notice upon the occurrence of any of the following: (a) sale of any part of the Producer's book of business or the assignment of compensation; (b) death of the Producer if Producer is a sole proprietor; (c) death of any partner if Producer is a partnership; (d) sale or dissolution of any of the shares of the corporation or disqualification to do business under applicable law if Producer is a corporation; or (e) revocation or termination of Producer's license in any applicable jurisdiction.

K. Reservation of Rights HCSC reserves the right, at its sole discretion, to revise, discontinue, withdraw or change any rates, policy form or forms or to retire from any territory(ies).

L. Governing Law This Agreement is governed in accordance with the laws of the state of Illinois.

M. Miscellaneous

1. *Regulatory References* A reference in this Agreement to a section in the Privacy Rule means the section as in effect or amended.

2. *Amendment* HCSC may at any time modify or amend one or more provisions of this Agreement. HCSC shall provide at least thirty (30) days prior written notice before these amendments become effective. These amendments will become effective on the date stated by HCSC unless the Producer, prior to the effective date of the amendments, has given notice to HCSC of the Producer's intent to terminate this Agreement. In such case, the proposed modification or amendment shall not be applicable to the Producer during the period prior to the termination date.
3. *Survival* The respective rights and obligations of the Producer and HCSC under sections I F. and I. J. 1 (f) and I. J. 1 (g) of this Agreement shall survive termination of this Agreement.
4. *Interpretation* Any ambiguity in this Agreement shall be resolved to permit HCSC to comply with the Privacy Rule.
5. *Response to Subpoenas* In the event that the Producer receives a subpoena or similar notice or request from any judicial, administrative, or other party arising out of or in connection with this Agreement, including but not limited to, any unauthorized use or disclosure of Protected Health Information or any failure of the Producer's security measures, the Producer shall promptly forward a copy of such subpoena, notice or request to HCSC and afford HCSC the opportunity to exercise any rights it may have under the law.
6. *Severability* The provisions of this Agreement shall be severable, and if any provisions of this Agreement shall be held or declared to be illegal, invalid, or unenforceable, the remainder of this Agreement shall continue in full force and effect as though such illegal, invalid, or unenforceable provision had not been contained.
7. *Representations and Warrants* The Producer hereby represents and warrants that neither the Producer nor its employees or Sub-Agents have been: (i) charged with a criminal offense involving government business, (ii) listed by a federal government agency as disbarred, (iii) proposed for disbarment or suspension, or (iv) otherwise excluded for federal program participation.

The Producer acknowledges and agrees that (s)he has a continuing obligation to notify HCSC in writing within seven (7) business days if any of the above-referenced representations change.

The Producer further acknowledges and agrees that any misrepresentation of its status as it pertains to government contracting shall be grounds for immediate termination of this Agreement at the sole discretion of HCSC.

The Producer further represents and warrants that (s)he has not been convicted of a felony, and that the Producer will report any future felony convictions to HCSC in writing within seven (7) business days, Any felony conviction entered against the Producer involving dishonesty or breach of trust shall be grounds for immediate termination of this Agreement at the sole discretion of HCSC.

II. Compensation

- A. Upon submission and acceptance of a completed and signed benefit program application which results in a policy being issued, along with correct paid premium, HCSC agrees to pay the Producer subject to the terms and conditions of this Agreement, the applicable

compensation as set forth in the "Group Markets Producer Agreement Compensation Schedule."

- B. HCSC reserves the right to unilaterally change the rate of compensation paid on any product(s) under this Agreement at any time. This Agreement applies only to premium received for those products specified in the Compensation Schedule and not any premium received by or on behalf of any subsidiary or affiliate.
- C. All compensation shall be computed as described in the Compensation Schedule and shall be based on paid Premium received by HCSC for the coverage furnished. Compensation is payable only so long as the Producer is the Producer of Record for the group, as recognized by both the group and HCSC.
- D. If any Group covered under this Agreement ceases coverage with HCSC, commissions will also terminate for the Producer. No commission will accrue for any employee under an individual conversion policy.
- E. Any indebtedness incurred by Producer to HCSC, arising at any time, will be offset by HCSC, at its sole discretion, against any monies due or which will become due to Producer.
- F. Payment of compensation will be delayed until the Producer is owed a minimum of \$50.
- G. HCSC will disclose to any group, upon request, the amount of commission and fees being paid to Producer [s] related to its' coverage. Producer agrees to cooperate with HCSC in the dissemination and accurate disclosure of this information.

III. Definitions

- A. Employer Group. The term "Employer Group" shall apply only to employer groups that have at minimum two (2) covered lives.
- B. Premium. The term "Premium" shall mean the annual amount paid to HCSC by the Employer group for health insurance coverage.
- C. Live(s). The term "Live(s)" shall mean an employee eligible for health insurance coverage under HCSC's Underwriting Guidelines.

IV. Producer of Record

- A. HCSC will not recognize retroactive transfer or appointments of a Producer of Record. Producer of Record letters or requests must be submitted on the Group's letterhead and signed by an authorized Group official. HCSC will not recognize as valid Producer of Record notices that do not meet this standard.

This Agreement constitutes the entire contract between the parties. Any and all prior representations, statements, or agreements between the parties are hereby superceded.

PRODUCER

Contracting as (check one):

Individual Partnership Corporation

Print Name on Producer License

Corporation Name

Address

City, State, ZIP

SSN or Tax ID Number

By:

Authorized Producer Signature

Title

Date

RECOMMENDED BY

Marketing Consultant

**HEALTH CARE SERVICE
CORPORATION, A MUTUAL
LEGAL RESERVE COMPANY,
CHICAGO, ILLINOIS**

HCSC Authorized Signature

Type or Print Name

Title

Date