

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

Standard Consumer and Group Markets Producer Agreement

This Consumer and Group Markets Producer Agreement (“the Agreement”) is made and entered into this _____ day of _____, 20__ (the “Effective Date”) by and between Health Care Service Corporation, A Mutual Legal Reserve Company (“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 “Consumer Markets Producer Agreement Compensation Schedule,” and the “Group Markets Producer 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” or “Privacy Rule” or Security Rule” or “Electronic Transactions Rule”). 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 Business Associate agrees to use or disclose Protected Health Information only as permitted or required by this Agreement or as required by law.
- (b) Business Associate agrees to use appropriate safeguards and security measures to prevent Use or Disclosure of Protected Health Information other than as provided for by this Agreement. Effective April 20, 2005, Business Associate agrees to implement administrative, technical, and physical measures that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information.
- (c) The Business Associate 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 Business Associate 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 Business Associate will make the written report to HCSC within a time mutually agreed to by the parties after Business Associate learns of such unauthorized Use or Disclosure. The Business Associate’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) Business Associate agrees to report to HCSC any successful (i) unauthorized access, Use, Disclosure, modification, or destruction of Electronic Protected Health Information or (ii) interference with Business Associate's system operations in Business Associate's information systems of which Business Associate becomes aware. Business Associate will make such report to HCSC's Information Security Office within a reasonable time after Business Associate learns of any successful security incidents. To avoid unnecessary burden on either party, Business Associate will only be required to report, upon the HCSC's request, the attempted, but unsuccessful, unauthorized access, Use, Disclosure, modification, or destruction of the HCSC's Electronic Protected Health Information or interference with system operations in Business Associate's information systems that involve HCSC's Protected Health Information of which the Business Associate becomes aware; provided that HCSC's request shall be made no more often than is reasonable based upon the relevant facts, circumstances and industry practices.
- (f) The Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by the Business Associate on behalf of HCSC, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- (g) The Business Associate 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 Business Associate on behalf of HCSC available to HCSC, or to the Secretary, in a time and manner mutually agreed to by the Business Associate and HCSC or designated by the Secretary, for purposes of the Secretary determining HCSC's compliance with the Privacy Rule.
- (h) The Business Associate 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.
- (i) The Business Associate agrees to provide to HCSC or an Individual, in time and manner mutually acceptable to the Business Associate and HCSC, information collected in accordance with Section I. B. 1 (h) 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.
- (j) The Business Associate agrees to provide, at the request of HCSC, and in the time and manner mutually agreed to by the Business Associate and 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.
- (k) The Business Associate 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 Business Associate and HCSC. When HCSC grants an Individual's request for amendment, HCSC shall provide a copy of the amendment to the Business Associate.
- (l) The Business Associate agrees to follow HCSC's privacy and security policies and procedures as HCSC may deem applicable to the Business Associate. HCSC shall make such privacy and security policies and procedures available for the Business Associate.

2. **Permitted Use and Disclosures by Producer as Business Associate**

The Business Associate 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 Business Associate 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 Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- (c) Except as otherwise limited in this Agreement, the Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that Disclosures are Required By Law, or Business Associate 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 Business Associate 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 Business Associate 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 Business Associate 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 Business Associate of any limitations in its notice of privacy practices of HCSC in accordance 45 CFR § 164.520 to the extent that such limitation may affect the Business Associate's Use or disclosure of Protected Health Information.
- (b) HCSC shall notify the Business Associate 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 Business Associate's Use or Disclosure of Protected Health Information.
- (c) HCSC shall notify the Business Associate 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 Business Associate's Use or Disclosure of Protected Health Information.

4. **Permissible Requests by HCSC**

HCSC shall not request the Business Associate 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, including a valid State of Illinois Producers license, and or appointments required by law have been obtained. Commissions will terminate if Producer fails to maintain a valid Illinois 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;
 - 5) Use the HCSC name, corporate service marks or trade marks or any derivation of these names or marks without the prior written consent of HCSC.

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 from Producer's negligence, willful acts or any other breach of the terms of this Agreement or unauthorized or illegal act, misrepresentation and/or omission by the Producer or any person or entity under the Producer's control. This 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 Business Associate's Obligations related to Protected Health Information described in Section I.B(1) through I.B.(4) above.

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

(i) Provide an opportunity for the Business Associate 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 Business Associate has breached a material term of this Agreement and cure is not possible; or

(iii) If neither termination nor cure is 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 Business Associate 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 Business Associate 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 Business Associate under this Agreement.

(e) HCSC may give the Business Associate 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 Business Associate shall return or destroy all Protected Health Information received from HCSC, or created or received by the Business Associate 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 Business Associate. The Business Associate shall retain no copies of the Protected Health Information.

(g) In the event that the Business Associate determines that returning or destroying the Protected Health Information is infeasible, the Business Associate shall provide HCSC written notification of the conditions that make return or destruction infeasible. The Business Associate 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 Business Associate maintains such Protected Health Information.

(h) HCSC shall provide an opportunity for the Business Associate 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 Business Associate's book of business or the assignment of compensation; (b) death of the Business Associates if Business Associate is a sole proprietor; (c) death of any partner if Business Associate is a partnership; (d) sale or dissolution of any of the shares of the corporation or disqualification to do business under applicable law if Business Associate is a corporation; or (e) revocation or termination of Business Associate'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* The Producer and HCSC agree to take such action as is necessary to amend this Agreement from time to time as is necessary for HCSC to comply with the requirements of the Privacy and Security Rules and the Health Insurance Portability and Accountability Act of 1996, Pub.L.No. 104-191.

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 under sections 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 and Security 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 certifies that neither the Producer nor its employees have been: (i) charged with a criminal offense in connection with obtaining, attempting to obtain, or performing of a public (Federal, state or local) contract or subcontract, (ii) listed by a federal governmental agency as debarred, (iii) proposed for debarment or suspension or otherwise excluded from federal program participation, (iv) been convicted of or had a civil judgment rendered against them regarding dishonesty or breach of trust, including but not limited to, the commission of a fraud including mail fraud or false representations, violation of a fiduciary relationship, violation of Federal or state antitrust statutes, securities offenses, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; or (v) within a three (3) year period preceding the date of this Agreement, had one or more public transactions (federal, state or local) terminated for cause or default.

The Producer acknowledges and agrees that it 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 or any change in its status at any time during the term of this Agreement may 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 application which results in a policy being issued, along with correct paid premium, HCSC agrees to pay the Producer compensation as set forth in the "Consumer 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. Consumer Markets Compensation
1. Compensation shall be deemed to consist of two parts: commission and service fees. All compensation shall be computed as described in the Compensation Schedule and payable only so long as the Producer is the Producer of Record.
 2. No compensation is due Producer for any application rejected by HCSC and HCSC may reject any application at its sole discretion. Nor is Producer entitled to compensation attributable to premiums returned by HCSC upon cancellation of coverage, whether or not such compensation has been paid. In the event such compensation has been paid, the Producer shall make the appropriate refund. Furthermore, in the event a policy is rescinded, Producer shall refund to HCSC all compensation paid on that policy.
 3. Compensation will terminate for the Producer when any individual insured by a product that is covered by this Agreement ceases coverage with HCSC.
 4. Direct Deposit is required for monthly distribution of commissions. **If commissions are paid by check, distribution will be made quarterly.**
 5. Payment of compensation will be delayed until the Producer is owed a minimum of \$50.
 6. All compensation will terminate upon the death of the Producer (Producer).

7. Producer of Record

- a. HCSC will not recognize retroactive transfer or appointment of a Producer as a Producer (Agent) of Record.
- b. Under 65 Subscribers. When an existing member wishes to change his/her Producer (Agent) of Record, the member must request the pre-populated Producer Business Transfer form from Hallmark. The member completes signs and notarizes the Producer Business Transfer form and return as directed. Change requests not submitted in this manner will not be accepted.
- c. Over 65 Subscribers. When an existing member wishes to change his/her Producer (Agent) the member must submit a written request to Consumer Markets for review and approval/disapproval at Consumer Markets discretion under the Consumer Markets guidelines.

D. Group Markets Commission

8. 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.
9. 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.

10. 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 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.

11. Producer of Record

- a. HCSC will not recognize retroactive transfer or appointment of a Producers appointment as a Producer of Record. Producer of Record letters or requests must be submitted on the Group's letterhead and signed by and authorized Group Official. HCSC will not recognize as valid Producer of Record notices that do not meet this standard.
- b. 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.
- c. HCSC will disclose to any individual, 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.

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

Phone Number

SSN or Tax ID Number

e-Mail Address

By:

Authorized Producer Signature

Title

Date

RECOMMENDED BY

Marketing Consultant

Group Marketing Services, Inc. 406/326
General Agent

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

HCSC Authorized Signature

Type or Print Name

Title

Date