

# HEALTH CARE PROFESSIONAL LIABILITY POLICY PROFESSIONAL LEGAL DEFENSE COVERAGE PART OB/GYN RPG FORM

## I. DEFINITIONS

Terms appearing in **bold face print** shall have the meanings given in the Definitions section of the **policy**. In addition:

**Appointed counsel** means the attorney or firm of attorneys that, in **our** sole discretion, is either (1) appointed by **us** in writing, or (2) appointed by a **covered insured** with **our** prior written approval, to defend a **covered insured** in any **covered investigation**.

**Audit expenses** means fees and expenses of an accountant or other consultant engaged by a **covered insured** in connection with any **covered audit**. **Audit expenses** does not include any taxes, penalties or other expenses incurred by a **covered insured**.

**Covered audit** means any audit or review of billing or medical records undertaken by a **covered insured** in response to (1) an investigation or proceeding commenced by any federal or state agency alleging violation by any **covered insured** of Medicare or Medicaid laws, rules or regulations relating to reimbursement for medical services; or (2) an investigation or proceeding commenced by a commercial payer alleging fraudulent billings by a **covered insured** seeking reimbursement for **professional services** rendered by a **covered insured**.

**Covered insured** means any **insured physician** or **insured organization**.

**Covered investigation** means any one or more of the following:

- A. An investigation or proceeding commenced by the governmental or regulatory agency charged with determining whether the **covered insured** participated in the improper transfer of a patient ("dumping"), in violation of the Consolidated Omnibus Budget Reconciliation Act of 1986, as amended ("COBRA/EMTALA").
- B. An investigation or proceeding commenced by the governmental or regulatory agency charged with the enforcement of compliance with laws regulating Medicare or Medicaid (or other federal or state health care program offered as an alternative to Medicare or Medicaid), to determine whether the **covered insured** provided **professional services** improperly to a patient covered by Medicare or Medicaid (or other federal or state health care program offered as an alternative to Medicare or Medicaid).
- C. An investigation or proceeding commenced by a **utilization and quality control peer review organization**, but only at the level of such investigation or proceeding in which sanctions may be imposed on the **covered insured**.
- D. An investigation or proceeding commenced by the governmental or regulatory agency charged with the enforcement of compliance with regulations pertaining to the Clinical Laboratory Improvement Amendments of 1988 ("CLIA"), whether or not the **covered insured** was in violation of such regulations.
- E. An investigation or proceeding commenced by the governmental or regulatory agency charged with the enforcement of compliance with regulations pertaining to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") or the Omnibus Budget Reconciliation Act of 1990 ("OBRA '90") including all OBRA Acts updating OBRA '90, whether or not the **covered insured** was in violation of such regulations.
- F. An investigation or proceeding commenced by the governmental or regulatory agency charged with the enforcement of compliance with the Occupational Safety and Health Administration ("OSHA") regulations pertaining to bloodborne pathogens, whether or not the **covered insured** was in violation of such regulations.
- G. A subpoena or request received by the **covered insured**, requiring the **covered insured** to testify in a trial or deposition, or to provide other discovery, other than as an expert witness, in connection with a legal proceeding (1) arising out of a **professional incident**, but (2) in which the **covered insured** is not a party.

- H. A claim or investigation instituted by a patient of the **covered insured** alleging sexual misconduct or harassment by the **covered insured** in the course of providing **professional services** to such patient.
- I. A claim or investigation instituted by a patient of the **covered insured** alleging errors or omissions by the **covered insured** in billing statements for **professional services** rendered to such patient.
- J. A disciplinary proceeding initiated by a licensure commission, board of ethics or similar professional body, which accuses a **covered insured** of, or investigates an accusation that a **covered insured** engaged in, improper or unprofessional conduct in the course of such **covered insured's** medical practice.
- K. An investigation or proceeding commenced by any federal or state agency alleging violation by any **covered insured** of Medicare or Medicaid laws, rules or regulations relating to reimbursement for medical services.
- L. An investigation or proceeding commenced by a commercial payer alleging fraudulent billings by a **covered insured** seeking reimbursement for **professional services** rendered by a **covered insured**.
- M. An investigation or proceeding commenced by a hospital or its medical staff for the purpose of revocation, non-renewal, termination, suspension, modification or restriction of an insured's staff privileges or for the purpose of peer review or credentialing

**Criminal prosecution** means any governmental action seeking enforcement of criminal laws, including offenses for which conviction could result in imprisonment.

**Fines and penalties** means administrative fines and penalties a **covered insured** is legally obligated to pay as a result of an adjudication by an administrative tribunal or court, or a settlement agreement to which **we** have given our prior consent, arising out of a **covered investigation**.

**Legal expenses** means the normal, reasonable and customary charges of the **appointed counsel** in defending a **covered insured** in any **covered investigation**, including reasonable out-of-pocket charges incurred by such **appointed counsel**. **Legal expenses** does not include damages, fines, judgments or penalties that may be assessed in any **covered investigation** or paid in any settlement thereof, or expenses incurred in the defense of any **criminal prosecution**.

**Utilization and quality control peer review organization** means a utilization and quality control peer review organization under contract with the U. S. Department of Health and Human Services to review the professional activities of physicians and other health care practitioners and providers under the federal Social Security Act, as amended, while acting within the scope of its duties under such contract.

## II. INSURING AGREEMENT

**We** will pay on behalf of any **covered insured** the **legal expenses** and **finances and penalties** incurred by such **covered insured** in the course of a **covered investigation**, provided that:

- A. the incident giving rise to the **covered investigation** occurs after the **retroactive date** applicable to such **covered insured** and prior to the termination of the **policy**;
- B. the **covered insured** first receives written notice of the commencement of the **covered investigation** within the **policy period**; and
- C. the **covered investigation** is first **reported** during the **policy period**.

**We** will pay on behalf of any **covered insured** the **audit expenses** incurred by such **covered insured** in the course of a **covered audit**, provided that:

- A. the acts or omissions of the **covered insured** giving rise to the **covered audit** occurred after the **retroactive date** applicable to such **covered insured** and prior to the termination of the **policy**;
- B. formal written notice of the investigation or proceeding to which the **covered audit** relates is first received by the **covered insured** during the **policy period**; and
- C. such investigation or proceeding is first **reported** during the **policy period**.

**We** will pay **legal expenses** contemplated herein (1) directly to **appointed counsel** if **we** elect to appoint such counsel or (2) to the **covered insured** upon presentation of **appointed counsel's** invoices and evidence of payment by the **covered insured** if **we** elect to reimburse costs of **appointed counsel** selected by the **covered insured**.

### III. PERSONS INSURED

Only **covered insureds** are insured under this Coverage Part.

### IV. LIMIT OF LIABILITY

The limit of liability specified in the **Coverage Summary** as "Each Covered Investigation" is the total of **our** liability to each **covered insured** for **legal expenses** or **audit expenses** resulting from any one **covered investigation**. The limit of liability specified in the **Coverage Summary** as "Each Policy Period" is the total limit of **our** liability to all **covered insureds** for **legal expenses** or **audit expenses** resulting from all **covered investigations** which are first **reported** during the **policy period**. We will pay, in addition to the applicable limit of liability for **legal expenses** and **audit expenses**, **finances and penalties** incurred by a **covered insured** in the course of a **covered investigation**, subject to an overall policy aggregate limit of liability of \$50,000. This \$50,000 limit of liability is the total limit of **our** liability to all **covered insureds** for **finances and penalties** resulting from all **covered investigations** which are first **reported** during the **policy period**.

### V. REPORTING ENDORSEMENT PROVISIONS

If a **Reporting Endorsement** is issued for a **covered insured**, the period for **reporting covered investigations** under this Coverage Part shall be automatically extended for the duration of the **Reporting Endorsement**, but only for the **reporting** of **covered investigations** which are otherwise covered hereunder. Termination or cancellation of the **Reporting Endorsement** shall automatically terminate the period for **reporting covered investigations** under this Coverage Part.

### VI. DEDUCTIBLE

Coverage for the **covered investigations** described in Items H through M of the definition of **covered investigation** is subject to a deductible of One Thousand Dollars (\$1,000). For each such **covered investigation**, each **covered insured** shall be required to pay **legal expenses** in an amount equal to the deductible before **our** obligation to pay **legal expenses** arises, and **our** limit of liability will be reduced by the amount of the deductible. In addition, for each **covered audit**, each **covered insured** shall be required to pay **audit expenses** in an amount equal to the deductible before **our** obligation to pay **audit expenses** arises, and **our** limit of liability will be reduced by the amount of the deductible. The **policyholder** shall pay the deductible within thirty (30) days after written demand. The **policyholder** agrees to pay all costs, including attorneys' fees and court costs, incurred by **us** in collecting any deductible.