

This endorsement, effective at 12:01 AM

forms a part of

Policy number

Issued to:

By:

9/99 AMENDATORY ENDORSEMENT

In consideration of the premium charged, it is hereby understood and agreed that the policy is amended as follows:

1. SETTLEMENT CLAUSE DELETED

In Clause 2. "DEFENSE AGREEMENT," the third paragraph of Section (c) "GENERAL PROVISIONS" is deleted in its entirety and replaced by the following:

The Insureds shall give the Insurer full cooperation and such information as the Insurer may reasonably require. The Insurer may make any settlement of any Claim it deems expedient with respect to any Insured subject to such Insured's written consent.

2. "CLAIM" AMENDED TO INCLUDE INFORMAL AGENCY INVESTIGATIONS

In Clause 3. "DEFINITIONS," the definition of "Claim" is amended by adding the following paragraph to the end thereof:

(4) a fact-finding investigation by the U.S. Department of Labor, the Pension Benefit Guaranty Corporation or similar governmental agency which is located outside of the United States.

3. VOLUNTARY COMPLIANCE LOSS, HIPAA PENALTIES, 502(c) PENALTIES, INVESTMENT LOSS CHARACTERIZED AS "BENEFITS," AND PUNITIVE DAMAGES

(a) Clause 1. "INSURING AGREEMENT" is deleted in its entirety and replaced with the following:

1. INSURING AGREEMENTS

(a) Solely with respect to Claims first made against an Insured during the Policy Period or the Discovery Period (if applicable) and reported to the Insurer pursuant to the terms of this policy, this policy shall pay the Loss of each and every Insured arising from a Claim against an Insured for any actual or alleged Wrongful Act by any such Insured (or by any employee for whom such Insured is legally responsible).

(b) Solely with respect to CAP Penalties and Delinquent Filer Penalties assessed against an Insured, and Voluntary Fiduciary Correction Loss incurred by an Insured, during the Policy Period or the Discovery Period (if applicable) and reported to the Insurer pursuant to the terms of this policy, this policy shall:

xxxxx (m/yy)

- (i) pay the CAP Penalties and Delinquent Filer Penalties; and
- (ii) reimburse the Voluntary Fiduciary Correction Loss,

of each and every Insured, subject to the Voluntary Compliance Loss Sublimit of Liability, provided that the Insured shall select a Panel Counsel Firm as provided in Clause 9 of the policy.

The payment of any Voluntary Compliance Loss under this policy shall not waive any of the Insurer's rights under this policy or at law, including in the event that a Voluntary Compliance Loss results in a Claim.

(b) In Clause 3, "Definitions," the definition of "Loss" is deleted in its entirety and replaced with the following:

(k) "Loss" means damages, judgments (including pre/post-judgment interest on a covered judgment), settlements and Defense Costs; however, Loss shall not include:

(1) civil or criminal fines or penalties imposed by law, except:

- (i) to the extent set forth in Insuring Agreement 1(b) for Voluntary Compliance Loss,
- (ii) HIPAA Penalties, subject to the HIPAA Penalties Sublimit of Liability set forth under Clause 6 "LIMIT OF LIABILITY (FOR ALL LOSS – INCLUDING DEFENSE COSTS)" of this policy,
- (iii) 502(c) Penalties, subject to the 502(c) Sublimit of Liability set forth under Clause 6 "LIMIT OF LIABILITY (FOR ALL LOSS – INCLUDING DEFENSE COSTS)" of this policy,
- (iv) UK Fines and Penalties,
- (v) the five per cent or less civil penalty imposed upon an Insured under Section 502(i) of ERISA, and
- (vi) the 20 per cent or less penalty imposed upon an Insured under Section 502(l) of ERISA, with respect to covered settlements or judgments;

(2) taxes or tax penalties;

(3) any amount for which an Insured is not financially liable or which is without legal recourse to an the Insured;

(4) Benefits, or that portion of any settlement or award in an amount equal to such Benefits, unless and to the extent that recovery of such Benefits is based upon a covered Wrongful Act and is payable as a personal obligation of a Natural Person Insured; provided however, that Loss shall include a monetary award in, or fund for settling, a Claim against any Insured to the extent it alleges a loss to a Plan and/or loss in the actual accounts of participants in a Plan by reason of a change in value of the investments held by that Plan, regardless of whether the amounts sought in such Claim have been characterized by plaintiffs as "benefits" or held by a court to be "benefits"; or

(5) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.

Defense Costs shall be provided for items specifically excluded from Loss pursuant to subparagraphs (1) through (5) above of this Definition, subject to the other terms, conditions and exclusions of this policy.

Where permitted by law, Loss shall specifically include (subject to the policy's other terms, conditions and exclusions, including, but not limited to, exclusions (a) and (b), punitive or exemplary damages or the multiplied portion of multiplied damages imposed upon any Insured. The enforceability of this paragraph shall be governed by such applicable law which most favors coverage for punitive, exemplary and multiple damages.

(c) In Clause 3, "Definitions," the following definitions are inserted at the end thereof:

- (aa) "502(c) Penalties" means civil fines and penalties imposed on an Insured under Section 502(c) of ERISA.
- (bb) "Consulting Fees" means fees charged by a third party actuary, benefits consultant or accountant resulting solely from the correction of an actual or potential Breach of Fiduciary Duty, but excluding any fees, costs or expenses associated with: (i) a Plan audit; or (ii) identifying, finding or assessing such Breach of Fiduciary Duty.
- (cc) "Delinquent Filer Penalties" means penalties assessed by the U.S. Department of Labor or the IRS under a Delinquent Filer Voluntary Compliance Program for inadvertent failure to file Form 5500, provided that the failure to file such Form 5500 occurred during the Policy Period (or during the policy period of a policy issued by the Insurer of which this policy is a continuous renewal).
- (dd) "UK Fines and Penalties" means civil fines and penalties assessed against an Insured by either the Pensions Ombudsman appointed by the Secretary of State for Social Services in the United Kingdom or by the Pensions Regulator in the United Kingdom or any successor body thereto, subject to the other terms, conditions and exclusions of the policy.
- (ee) "HIPAA Penalties" means civil money penalties imposed upon an Insured for violation of the privacy provisions of the Health Insurance Portability and Accountability Act of 1996 and any amendments thereto.
- (ff) "Voluntary Compliance Loss" means CAP Penalties, Delinquent Filer Penalties and Voluntary Fiduciary Correction Loss.
- (gg) "Voluntary Fiduciary Correction Loss" means damages, Defense Expenses and Consulting Fees incurred in connection with the U.S. Department of Labor's ("DOL") Voluntary Fiduciary Correction Program as set forth in the

Federal Register, resulting from an inadvertent Breach of Fiduciary Duty occurring during the Policy Period (or during the policy period of a policy issued by the Insurer of which this policy is a continuous renewal), provided that such compliance with the DOL's Voluntary Fiduciary Correction Program results in the Insured obtaining a "No Action" letter from the DOL; however, Voluntary Fiduciary Correction Loss shall not include: (1) civil or criminal fines or penalties imposed by law; (2) punitive or exemplary damages; (3) the multiplied portion of multiplied damages; (4) taxes or tax penalties; (5) any amount for which an Insured is not financially liable or which is without legal recourse to the Insured; (6) Benefits, or that portion of damages equal to such Benefits; (7) matters of which the Insured had knowledge prior to the inception date of this policy or the first policy issued by the Insurer to the Insured of which this policy is a continuous renewal; or (8) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.

(d) Clause 6 "LIMIT OF LIABILITY (FOR ALL LOSS – INCLUDING DEFENSE COSTS)" is amended by adding the following paragraphs to the end thereof:

VOLUNTARY COMPLIANCE LOSS SUBLIMIT OF LIABILITY:

The maximum limit of the Insurer's liability for all Voluntary Compliance Loss occurring during the Policy Period or the Discovery Period (if applicable), in the aggregate, shall be \$ (the "Voluntary Compliance Loss Sublimit of Liability"). The Voluntary Compliance Loss Sublimit of Liability shall be part of, and not in addition to, the Aggregate Limit of Liability set forth in Item 3(b) of the Declarations, and shall in no way serve to increase the Insurer's Aggregate Limit of Liability as stated therein.

HIPAA PENALTIES SUBLIMIT OF LIABILITY:

The maximum limit of the Insurer's liability for all HIPAA Penalties, in the aggregate, shall be \$ (the "HIPAA Penalties Sublimit of Liability"). The HIPAA Penalties Sublimit of Liability shall be part of, and not in addition to, the Aggregate Limit of Liability set forth in Item 3(b) of the Declarations, and shall in no way serve to increase the Insurer's Aggregate Limit of Liability as stated therein.

502(c) PENALTY SUBLIMIT OF LIABILITY:

The maximum limit of the Insurer's liability for all 502(c) Penalties, in the aggregate, shall be \$ (the "502(c) Penalties Sublimit of Liability"). The 502(c) Penalties Sublimit of Liability shall be part of, and not in addition to, the Aggregate Limit of Liability set forth in Item 3(b) of the Declarations, and shall in no way serve to increase the Insurer's Aggregate Limit of Liability as stated therein.

4. **“WRONGFUL ACT” AMENDED TO INCLUDE SELECTION OF MANAGED CARE PROVIDER, COUNSELING PARTICIPANTS AND BENEFICIARIES, “STATUS” CLAIMS, AND PRIVACY PROVISIONS OF HIPAA.**

In Clause 3 “Definitions”, the definition of “Wrongful Act” is deleted in its entirety and replaced with the following:

(o) “Wrongful Act” means:

- (1) as respects an Insured: A Breach of Fiduciary Duty (including, without limitation, Breach of Fiduciary Duty in connection with the selection or monitoring of a managed care provider), but only with respect to a Plan;
- (2) as respects an Administrator, any act, error or omission solely in the performance of one or more of the following administrative duties or activities, but only with respect to a Plan:
 - (i) counseling employees, participants or beneficiaries;
 - (ii) providing interpretations;
 - (iii) handling of records; or
 - (iv) activities effecting enrollment, termination or cancellation of employees, participants or beneficiaries;
- (3) as respects a Natural Person Insured: any matter claimed against a Natural Person Insured solely by reason of his or her status as a Natural Person Insured, but only with respect to a Plan; and
- (4) the failure to comply with the privacy provisions of HIPAA, but only with respect to a Plan.

5. **EXTENSIONS – DOMESTIC PARTNER AND INSOLVENCY**

Clause 4 “EXTENSIONS” is deleted in its entirety and replaced with the following:

4. EXTENSIONS

Subject otherwise to the terms hereof, this policy shall cover Loss arising from any Claim made against: (i) the estates, heirs, or legal representatives of deceased Natural Person Insureds, and the legal representatives of Natural Person Insureds in the event of incompetency, insolvency or bankruptcy, who were Natural Person Insureds at the time the Wrongful Acts upon which such Claims are based were committed; or (ii) the lawful spouse (whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world) or Domestic Partner of a Natural Person Insured for all Claims arising solely out of his or her status as the spouse or Domestic Partner of a Natural Person Insured, including a Claim that seeks damages recoverable from marital community property, property jointly held by the Natural Person Insured and the spouse or Domestic Partner, or property transferred from the Natural Person Insured to the spouse or Domestic Partner; provided, however, this extension shall not afford coverage for any Claim for any actual or alleged Wrongful Act of the spouse or Domestic

Partner, but shall apply only to Claims arising out of any actual or alleged Wrongful Acts of a Natural Person Insured, subject to the policy's terms, conditions and exclusions.

As used herein, the term "Domestic Partner" means any natural person legally recognized as a domestic or civil union partner under the provisions of any applicable federal, state or local law.

6. CONDUCT EXCLUSIONS AMENDED TO FINAL ADJUDICATION

In Clause 5 "EXCLUSIONS," paragraphs (a) and (b) are deleted in their entirety and replaced by the following:

- (a) arising out of, based upon or attributable to the gaining of any profit or advantage to which any final adjudication establishes an Insured was not legally entitled;
- (b) arising out of, based upon or attributable to the committing of any criminal or deliberate fraudulent act by an Insured, or any knowing or willful violation of any statute, including but not limited to ERISA, if any final adjudication establishes that such criminal or deliberate fraudulent act, or any knowing or willful violation of any rule or law, including but not limited to Employee Benefit Law, was committed by an Insured.

7. LOSS PAYABLE AS A PERSONAL OBLIGATION

In Clause 5, "EXCLUSIONS," paragraph (f) is deleted in its entirety and replaced by the following:

- (f) for failure to collect or make contributions owed to the Plan; provided, however, this exclusion shall not apply to: (1) Defense Costs; or (2) the portion of Loss that is payable as a personal obligation of a Natural Person Insured;

8. POLLUTION EXCLUSION CARVEBACK FOR NON-INDEMNIFIABLE LOSS

In Clause 5, "EXCLUSIONS," paragraph (i) is amended by adding the following to the end thereof:

Notwithstanding the foregoing, this exclusion shall not apply to non-indemnifiable Loss of a Natural Person Insured arising from a Claim alleging damage to a Plan, other than Non-Indemnifiable Loss constituting Cleanup Costs. As used herein: (1) the term "Cleanup Costs" means expenses, including, but not limited to, legal and professional fees incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of pollutants; and (2) the term "Non-Indemnifiable Loss" means Loss for which a Plan has neither indemnified nor is permitted or required to indemnify a Natural Person Insured pursuant to law or contract or

the charter, bylaws, operating agreement or similar document of the Plan or trust agreement.

9. SEVERABILITY OF THE EXCLUSIONS

In Clause 5, "EXCLUSIONS," is amended by adding the following to the end of the Clause:

For the purpose of determining the applicability of the foregoing exclusions, except for exclusions 5(d) and 5(e), the Wrongful Act of any Insured shall not be imputed to any other Insured.

10. POLICY NON-CANCELABLE BY THE INSURER EXCEPT FOR NON-PAYMENT OF PREMIUM

Clause 11. "CANCELLATION CLAUSE," is deleted in its entirety and replaced by the following:

11. CANCELLATION CLAUSE

This policy may be canceled by the Insured at any time solely by mailing written prior notice to the Insurer or by surrender of this policy to the Insurer or its authorized agent. This policy may be canceled by or on behalf of the Insurer solely in the event of non-payment of premium by the Insured or the Insured's Representative. In the event of non-payment of premium by the Insured or the Insured's Representative, the Insurer may cancel this policy by delivering to the Insured's Representative or by mailing to the Insured's Representative, by registered, certified, or other first class mail, at the Insured Representative's address as shown in Item 1(a) of the Declarations, written notice stating when, not less than 15 days thereafter, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice. The Policy Period terminates at the date and hour specified in such notice, or at the date and time of surrender. The Insurer shall have the right to the premium amount for the portion of the Policy Period during which the policy was in effect.

If this policy shall be canceled by the Insured, the Insurer shall retain the customary short rate proportion of the premium herein. Payment or tender of any unearned premium by the Insurer shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.

If the period of limitation relating to the giving of notice as set forth in this Clause 10 is also set forth in any law controlling the construction thereof, then such period shall be deemed to be amended so as to be equal to the minimum period of limitation set forth in the controlling law.

12. SUBROGATION AMENDED TO FINAL ADJUDICATION

In Clause 13. "SUBROGATION AND WAIVER OF RECOURSE," the first paragraph thereof is deleted in its entirety and replaced with the following:

In the event of any payment under this policy, the Insurer shall be subrogated to the extent of such payment to all the Insureds' rights of recovery thereof, and the Insureds shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Insurer effectively to bring suit in the name of the Insureds. In no event shall the Insurer exercise its rights of subrogation against an Insured under this policy unless such Insured has been convicted of a criminal act, or been determined by any final adjudication to have (i) knowingly or willingly violated any statute (including but not limited to ERISA), (ii) committed a deliberate fraudulent act, or (iii) obtained any profit or advantage to which such Insured was not legally entitled.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

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AUTHORIZED REPRESENTATIVE

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