

MEDIGUARD PLUS APPLICATION

Higher Limits for Regulatory and Cyber Liability Coverage
for Healthcare Professionals

PART I – APPLICATION INFORMATION

First name/Corporate name: _____ Middle initial: _____ Last name: _____

Professional liability policy number: _____ Professional liability policy period: _____

Requested Effective Date: _____

Address: _____

Name, title, telephone number, and e-mail address of Authorized Officer:

PART II – COVERAGE SELECTION

Type of Coverage

- Combined CyberGuard and MediGuard Higher Limits
- MediGuard Higher Limits Only
- CyberGuard Higher Limits Only

To select additional limits of liability, please select either Option 1 or identify your choices within the Option 2 column.

LIMITS OF LIABILITY

COVERAGE	<input type="checkbox"/> OPTION 1*	<input type="checkbox"/> OPTION 2*** Limits of liability greater than \$1 million only.
CyberGuard		
Information Security & Privacy Liability	\$1,000,000	
Notification Services**	see chart below	
Privacy Breach Response Services	\$1,000,000	
Regulatory Defense and Penalties	\$1,000,000	
Website Media Content Liability	\$1,000,000	
Cyber Extortion	\$1,000,000	
First Party Data Protection	\$1,000,000	
First Party Network Business Interruption	\$1,000,000	
MediGuard	\$1,000,000	

* Limits are excess of the underlying coverage provided.

** Notification services limit varies by group size.

GROUP SIZE	NOTIFICATION LIMIT
1	20,000 notifications
2 - 20	50,000 notifications
21 +	150,000 notifications

*** Limits of liability greater than \$1 million will only be offered to groups with 20 or more physicians. The maximum limit of liability per any single coverage, and aggregate, is \$5 million.

PART III – GENERAL QUESTIONS

1. Total net revenue: _____ Medicare revenue: _____
Total revenue for most recent 12 months: _____ Medicaid revenue: _____

Previous year: _____
Next year: _____

Total number of Full Time Equivalent (FTE) physicians on your policy with The Doctors Company: _____
(One full-time physician counts as one FTE. One part-time physician counts as 1/2 FTE.)

Do you have any physicians not listed on your professional liability policy with The Doctors Company that bill their services through your Tax Identification Number? Yes No

If yes, how many? _____

Do you want to provide this coverage to these physicians? Yes No
If yes, please provide a roster with the following information: name, designation, specialty, effective date, and your current policy number with The Doctors Company (if applicable).

2. Do you have a written compliance program in place for both HIPAA and billing errors?

Yes No *If yes, when was it implemented?*

3. Provide detail on any compliance software used:

4. Do you purchase any form of the following insurance other than what is included on your policy with The Doctors Company:

Healthcare Regulatory Liability Insurance? Yes No

Cyber Liability? Yes No

Reputational Harm? Yes No

5. Are any changes in the nature or size of your business anticipated over the next year? Yes No

Have there been any such changes in the past year? Yes No *If yes, please explain.*

6. Please indicate what person/position (if any) is responsible for:

Privacy Issues _____

Billing Compliance _____

Network Security _____

Who is your privacy officer? _____

7. Do you have a written network security and privacy policy?

Yes No *If yes, please provide copies.*

8. Do all employees with access to computer systems receive training in computer-system security issues and procedures?

Yes No *If yes, please summarize the scope of such training and provide the schedule for conducting this training.*

9. Are you or any director, officer, employee, or other proposed insured aware of any actual or alleged fact, circumstance, issue, situation, error, omission, or event which:

Might give rise to a claim against any proposed insured for invasion or interference with rights of privacy, disclosure, loss or misuse of personal information, or which might otherwise result in a claim against any proposed insured with regard to the insurance sought?

Yes No

Might give rise to an obligation to comply with a law requiring notification of an actual or suspected disclosure of personal information?

Yes No

Might give rise to a claim or privacy breach notification under the proposed insurance for knowledge or information of any fact, circumstance, situation, event, or transaction?

Yes No *If yes, please provide details.*

PART IV – MEDIGUARD QUESTIONS

(To be completed if MediGuard or combined CyberGuard/MediGuard coverage is desired.)

1. Do you handle all billings in-house?

Yes No *If no, please list the amount done in-house and the amount done by third party billing service(s) and any ownership percentage in the third party billers used:*

2. Is the billing done by credentialed individuals?

Yes No *If no, please provide details:*

3. Have you ever been subject to:

A Stark investigation or proceeding? Yes No

An EMTALA investigation or proceeding? Yes No

A HIPAA investigation or proceeding? Yes No

If yes to any of the above, please provide relevant documents.

4. Have you ever been subject to a medical billings audit by any entity of or on behalf of the government or by a commercial payor?

Yes No *If yes, please provide details:*

PART V – CYBERGUARD QUESTIONS

(To be completed if CyberGuard or combined CyberGuard/MediGuard coverage is desired.)

1. Do you enforce network security policies and procedures that include:

- Antivirus software and protection for all computers? Yes No
- Firewalls for all internet access points? Yes No
- A software-update process, including installation of security-related software patches, on a regular basis? Yes No

2. Do you encrypt data that contains Protected Health Information stored on laptop computers, blackberries, other smartphones, and portable media such as thumb drives and backup tapes?

Yes No

3. Please describe any website content you produce.

4. Does the process for posting on the website include screening the content for the following:

- Disparagement issues? Yes No
- Copyright infringement? Yes No
- Trademark infringement? Yes No
- Invasion of privacy? Yes No

5. Within the last three (3) years, have you ever received any claims or complaints or cease and desist demands alleging trademark, copyright, invasion of privacy, or defamation with regard to any content published, displayed, or distributed by you or on your behalf?

Yes No *If yes, please provide details regarding any such demands and attach any relevant documents.*

6. Within the last three (3) years, have you ever received any claims or complaints or cease and desist demands with respect to allegations of invasion of or injury to privacy, identity theft, theft of information, breach of information security, software copyright infringement or content infringement, or been required to provide notification to individuals due to an actual or suspected disclosure of personal information?

Yes No *If yes, provide details of each such claim, allegation or incident, including costs, losses, or damages incurred or paid, and any amounts paid as a loss under any insurance policy.*

7. Do you have a written process to review all content prior to posting?

Yes No *If no, please describe procedures to avoid the posting of improper or infringing content.*

If yes, is the review performed by a qualified attorney? Yes No

8. Have you been subject to any government action, investigation, or subpoena regarding any alleged violation of any privacy or information security related law or regulation?

Yes No *If yes, please provide details of any such action, investigation, or subpoena.*

9. Have you ever experienced an extortion attempt or demand with respect to your computer systems?

Yes No *If yes, please provide details.*

AGREEMENTS & NOTICES

AGREEMENT: I do hereby affirm the truth of all statements and answers, and that I have not intentionally withheld any information that could influence the judgment of the company in considering this application for professional liability insurance. I have also made a reasonable inquiry, where appropriate, to ensure the responses herein are as complete and accurate as possible. I understand that any erroneous information or material misrepresentation may cause immediate rescission of my insurance coverage.

AGREEMENT: I understand that no coverage will be bound by the company until such time as I have signed the application and returned the original to the company with the required payment.

AGREEMENT: I understand that in order to underwrite professional liability insurance, the company must have access to all possible information concerning my professional conduct and experience. I hereby authorize and direct any medical society, medical doctor, hospital, residency program, insurance company, interindemnity arrangement, underwriter, or insurance agent to furnish any information concerning me or my medical practice that the company may request.

AGREEMENT: I understand that in connection with this application for insurance, the company may review my credit report or obtain or use a credit-based insurance score based on the information contained in that credit report. The company may use a third party in connection with the development of my insurance score.

AGREEMENT: Since I understand that the free exchange of information is essential, I agree that any person or organization furnishing information to the company pursuant to this consent and direction, together with the agent, employees, or officers of such person or organization, will not be liable to me in any way for furnishing such information.

SIGNATURE REQUIRED:

X

Applicant Signature

Date

Notice to Alabama Applicants: Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit, or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to restitution fines or confinement in prison, or any combination thereof.

Notice to Arkansas Applicants: Any person who knowingly presents a false or fraudulent claim for payment for a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

Notice to Colorado Applicants: It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado Division of Insurance within the Department of Regulatory Agencies.

Notice to District of Columbia Applicants: **WARNING:** It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits if false information materially related to a claim was provided by the applicant.

Notice to Florida Applicants: Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree.

Notice to Kansas Applicants: Any person who knowingly and with intent to defraud any insurance company or other person by presenting any written statement as part of an application for insurance, the rating of an insurance policy, or statement of claim containing any materially false information, or conceals for the purpose of misleading information concerning any fact material thereto has committed a fraudulent insurance act.

Notice to Kentucky Applicants: Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any materially false information or conceals, for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime.

Notice to Louisiana Applicants: Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

Notice to Maine Applicants: It is a crime to knowingly provide false, incomplete, or misleading information to an insurance company for the purpose of defrauding the company. Penalties may include imprisonment, fines, or denial of insurance benefits.

Notice to Maryland Applicants: Any person who knowingly and willfully presents a false or fraudulent claim for payment of a loss or benefit, or who knowingly and willfully presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

Notice to Missouri Applicants (Special Non-fraud Notice for Application): An insurance company or its agent or representative may not ask an applicant or policyholder to divulge in a written application or otherwise whether any insurer has canceled or refused to renew or issue to the applicant or policyholder a policy of insurance. If a question of this nature appears in this application, you should not respond.

Notice to New Jersey Applicants: Any person who includes any false or misleading information on an application for an insurance policy is subject to criminal and civil penalties.

Notice to New Mexico Applicants: Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to civil fines and criminal penalties.

AGREEMENTS & NOTICES

Notice to New York Applicants: Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation. NOTE: The fraud warning statements must be placed immediately above the space provided for the signature of the person executing the application.

Notice to Ohio Applicants: Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.

Notice to Oklahoma Applicants: WARNING: Any person who knowingly, and with intent to injure, defraud or deceive any insurer, makes any claim for the proceeds of an insurance policy containing any false, incomplete or misleading information is guilty of a felony. The absence of such a statement shall not constitute a defense in any prosecution.

Notice to Pennsylvania Applicants: Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.

Notice to Rhode Island Applicants: Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

Notice to Tennessee Applicants: It is a crime to knowingly provide false, incomplete, or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines, and denial of insurance benefits.

Notice to Virginia Applicants: It is a crime to knowingly provide false, incomplete, or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines, denial of insurance benefits, and civil damages.

Notice to Washington Applicants: It is a crime to knowingly provide false, incomplete, or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines, and denial of insurance benefits.

Notice to West Virginia Applicants: Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

SIGNATURE REQUIRED:

X

Applicant Signature

Date

INSURANCE APPLICANT BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement is entered into by and between The Doctors Company, an Interinsurance Exchange, including all of its subsidiaries, hereinafter referred to as “we,” and “you” in conjunction with the policy of insurance we have entered into with you. This agreement supersedes and replaces any prior Business Associate Agreement (“BAA”).

We are committed to comply with the Standards for Privacy of Individually Identifiable Health Information under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and as modified by the HITECH provisions of the American Recovery and Reinvestment Act of 2009 and related rules and as may be modified subsequently (the “Privacy Regulations”). Under the Privacy Regulations, you are a “covered entity,” and as required by 45 C.F.R. Section 164.502(e) and 45 C.F.R. Section 164.504(e), we acknowledge that we, in certain instances, may be your “business associate.” We must use and disclose information that identifies an individual; relates to health, health treatment, or healthcare payment; and is maintained in any form (e.g., electronic, paper, oral) (“Protected Health Information” or “PHI”) in our performance of services under this Policy, and we agree to abide by the assurances, terms, and conditions contained herein in the performance of our obligations.

This document sets forth the terms, conditions, and obligations pursuant to which Protected Health Information that is provided, created, or received by us from you or on your behalf, will be handled.

We agree as follows:

A. Permitted Uses and Disclosures of Protected Health Information.

Pursuant to this Agreement, we provide services (“Services”) for your operations that may involve the use and disclosure of Protected Health Information as defined by the Privacy Regulations. These Services may include, among others, quality assessment; quality improvement; outcomes evaluation; protocol and clinical guidelines development; reviewing the competence or qualifications of healthcare professionals; evaluating practitioner and provider performance; conducting training programs to improve the skills of healthcare practitioners and providers; credentialing, conducting, or arranging for medical review; arranging for legal services; conducting or arranging for audits to improve compliance; resolution of internal grievances; placing stop-loss and excess of loss insurance; and other functions necessary to perform these Services. Except as otherwise specified herein, we may make any uses of Protected Health Information necessary to perform our obligations under this Agreement. All other uses not authorized by this Agreement are prohibited. Moreover, we may disclose Protected Health Information for the purposes authorized by this Agreement: (i) to our employees, subcontractors, and agents, in accordance with Section D(5) below; (ii) as directed by you in writing; or (iii) as otherwise permitted by the terms of this Agreement. Additionally, unless otherwise limited herein, we are permitted to make the following uses and disclosures:

B. Our Obligations and Activities.

We may use and disclose the Protected Health Information in our possession to third parties for the purpose of our proper management and administration, such as obtaining reinsurance, or to fulfill any of our present or future legal responsibilities, such as complying with insurance regulator requests, provided that (i) the disclosures are required by law; or (ii) we have received from the third party written assurances regarding its confidential handling of such Protected Health Information as required under 45 C.F.R. Section 164.504(e)(4) and where necessary received a BAA.

C. In addition to using the Protected Health Information to perform the services set forth above, we may:

- (1) Aggregate the Protected Health Information in our possession with the Protected Health Information of other covered entities that we have in our possession through our capacity as a business associate to said other covered entities, provided that the purpose of such aggregation is to provide you with data analyses relating to your healthcare operations. Under no circumstances may we disclose Protected Health Information of one covered entity as defined by 45 C.F.R. Parts 160 and 164 to another covered entity absent your express written authorization; and
- (2) De-identify any and all Protected Health Information provided that the de-identification conforms to the requirements of 45 C.F.R. Section 164.514(b), and further provided that you are sent the documentation required by 45 C.F.R. Section 164.15(b), which shall be in the form of a written assurance from us. Pursuant to 45 C.F.R. 164.502(d)(2), de-identified information does not constitute Protected Health Information and is not subject to the terms of this Agreement.

D. With regard to our use and/or disclosure of Protected Health Information, we agree to do the following:

- (1) Use and/or disclose the Protected Health Information only as permitted or required by this Agreement or as otherwise required by law and then only to the minimum necessary extent to accomplish the intended purpose of the use;
- (2) Report to your designated Privacy Officer, in writing, any use and/or disclosure of the Protected Health Information that is not permitted or required by this Agreement of which we become aware as soon as practical and within ten (10) business days of our discovery of such unauthorized use and/or disclosure. Where practical and possible, we will take steps to mitigate the harmful effect of any unpermitted disclosure of PHI;

INSURANCE APPLICANT BUSINESS ASSOCIATE AGREEMENT (CONTINUED)

- (3) Use commercially reasonable efforts to maintain the security of the Protected Health Information and take appropriate physical, administrative, and technical safeguards to prevent unauthorized use and/or disclosure of such Protected Health Information;
- (4) Require all of our subcontractors and agents that undertake to perform the services that we perform under this Agreement and that receive, use, or have access to Protected Health Information under this Agreement to agree, in writing, to adhere to the same restrictions and conditions on the use and/or disclosure of Protected Health Information that apply to us pursuant to this Agreement;
- (5) Unless prohibited by attorney-client and other applicable legal privileges or unless it would violate our contractual and other legal obligation to you, make available all records, books, agreements, policies, and procedures relating to the use and/or disclosure of Protected Health Information to the Secretary of the United States Department of Health and Human Services for purposes of determining your compliance with the Privacy Regulations;
- (6) Upon prior written request, make available during normal business hours at our offices all records, books, agreements, policies, and procedures relating to the use and/or disclosure of Protected Health Information to you within five (5) business days for purposes of enabling you to determine our compliance under the terms of this Agreement;
- (7) We shall honor any request from you for information to assist in responding to an individual's request for an accounting of disclosures of Protected Health Information to us. However, should you be asked for an accounting of the disclosures of an individual's Protected Health Information in accordance with 45 C.F.R. Section 164.528, such accounting should not include any disclosures to us which are to carry out your healthcare operations. See 45 C.F.R. Section 164.528(a)(1)(i);
- (8) Upon termination of this Policy, the protections of this Agreement will remain in force and we shall make no further uses and disclosures of Protected Health Information except for the proper management and administration of our business or as required by law;
- (9) In those instances when you would be required to honor an individual's request for access and/or amendment of Protected Health Information disclosed to us, we will assist you to comply with your duties under 45 C.F.R. Sections 154.524 and 164.526. However, usually you will not be required to honor such requests because Protected Health Information in our possession is not part of a designated record set as that term is defined by 45 C.F.R. 164.501; and/or because the information is exempt from access and amendment under 45 C.F.R. Sections 164.524(a) and 164.526(a)(2); and/or because access would violate your superseding contractual and other legal rights; and/or because any amendment could be tampering with evidence in a civil or administrative matter;
- (10) You may terminate this Agreement by canceling this Policy if we violate a material term of this Agreement;
- (11) You agree that we may modify this Agreement as required to comply with applicable laws or regulations.

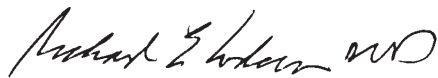
SIGNATURE REQUIRED:

X

Signature

Executed this day of

In witness whereof, The Doctors Company has caused this Agreement to be signed by its Chairman at its Home Office.



Richard E. Anderson, MD
Chairman of the Board of Governors

PART 2—SUBSCRIBER AGREEMENT AND POWER OF ATTORNEY

For and in consideration of similar agreements executed or to be executed by other Subscribers and of the benefits of the exchange of such agreement, the Subscriber agrees to the below-stated terms and conditions.

1. The undersigned subscribes for membership in The Doctors Company, an Interinsurance Exchange (“the Exchange”), and agrees with the Exchange and with other Subscribers, through their Attorney-in-Fact, The Doctors Management Company (“the Attorney”), to exchange with all other Subscribers contracts of liability insurance, or reinsurance, in a form and containing terms and conditions as are approved by the Exchange’s Board of Governors.
2. Subscriber designates and appoints the Attorney to be his or her true and lawful agent and Attorney-in-Fact to act in his or her name, place, and stead and in the name of the Exchange, to exchange contracts of insurance and to do all things that the Subscribers might or could do severally or jointly with regard to the operation and management of the Exchange and the business of interinsurance. Subscriber adopts and approves the Management Agreement between the Exchange and the Attorney, as it may be amended from time to time, and of any successor Management Agreement as it also may be amended.
3. Subscriber delegates to the Board of Governors of the Exchange authority to negotiate all the terms and conditions of the Management Agreement between the Exchange and the Attorney on behalf of the Subscriber, including, but not limited to, the compensation to be paid to the Attorney by the Subscriber or Exchange.
4. Subscriber further delegates to the Board of Governors of the Exchange all necessary and proper powers to conduct, manage, and control the affairs and business of the Exchange, subject to those retained by law or through the Rules and Regulations of the Exchange, or as they may be further amended at the Annual Meeting of Subscribers.
5. The Board of Governors is made up of public and professional members elected by a majority of Subscribers present or represented by proxy at the Annual Meeting of Subscribers. Governors generally serve four-year terms. Each year, Governors with expiring terms will stand for election.
6. Subscribership begins with the commencement of the policy period of the liability insurance policy issued by the Exchange and ends upon cancellation or other termination of that policy. The period of subscription shall not include any period of coverage under extended reporting policies or extended reporting or tail coverage endorsements. After termination of subscription, Subscriber shall have no further rights to participate in any distribution of savings to Subscribers or in any distribution of assets upon dissolution of the Exchange.
7. The Board of Governors may appoint any individual, partnership, or corporation to become successor to the Attorney with all of the powers and duties stated in this Agreement. All references to “Attorney” shall then be deemed to include such successor Attorney-in-Fact.
8. The principal offices of the Exchange and the Attorney shall be maintained at Napa, California, or at such other place approved by the Board of Governors.
9. The Agreement can be signed by each Subscriber separately with the same effect as if the signatures of all Subscribers were on one and the same instrument. This Agreement shall continue in full force and effect until revoked by the written request of Subscriber who has signed this document. This Agreement shall be governed by and interpreted according to the laws of the State of California. All Subscriber Agreements shall be binding upon all Subscribers, and the provision of each shall not materially differ. Wherever the word “Subscriber” is used, it refers to all members of the Exchange, including the Subscriber who has signed this document.

SIGNATURE REQUIRED:

X

Signature

Executed this day of

Type or print name: _____