



BlueCross BlueShield of Texas

## STOP LOSS COVERAGE POLICY

between

**BLUE CROSS AND BLUE SHIELD OF TEXAS  
A DIVISION OF HEALTH CARE SERVICE CORPORATION,  
a Mutual Legal Reserve Company**

Herein called "the Company"  
and

**The Policyholder**

The Application for Stop Loss Coverage (herein called the "Application") attached hereto and made a part of this Policy shall establish the Policyholder's Employer Group Name, Employer Group Number, the Effective Date of Policy, and the Policy Period.

In consideration of the Application attached hereto and in consideration of the payment made by the Policyholder of all premiums when due as hereinafter provided, the Company agrees to make the payments herein specified, subject to the provisions and conditions of this Policy.

All obligations, terms, definitions, conditions, promises, agreements and provisions of the Administrative Services Agreement between the Policyholder and the Company (herein called the "Agreement") shall apply equally to this Policy unless otherwise specified in this Policy or the Application.

**THIS IS NOT A POLICY OF WORKERS' COMPENSATION INSURANCE. THE POLICYHOLDER DOES NOT BECOME A SUBSCRIBER TO THE WORKERS' COMPENSATION SYSTEM BY PURCHASING THIS POLICY, AND IF THE POLICYHOLDER IS A NON-SUBSCRIBER, THE POLICYHOLDER LOSES THOSE BENEFITS THAT WOULD OTHERWISE ACCRUE UNDER THE WORKERS' COMPENSATION LAWS. THE POLICYHOLDER MUST COMPLY WITH THE WORKERS' COMPENSATION LAW AS IT PERTAINS TO NON-SUBSCRIBERS AND THE REQUIRED NOTIFICATIONS THAT MUST BE FILED AND POSTED.**

ATTEST:

Secretary

President

**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.**

**A Division of Health Care Service Corporation, a Mutual Legal Reserve Company,  
an Independent Licensee of the Blue Cross and Blue Shield Association**

The Policyholder understands the liability assumed under the portion of the self-funded employee health and welfare benefit plan (the Plan) which it is self-insuring and further understands that it is exempted from Chapter 101 of the *Texas Insurance Code* only if a qualified employee benefit plan has been filed and meets the requirements of Employee Retirement Income Security Act of 1974, as amended, (ERISA) unless the Policyholder is exempt from requirements of ERISA.

## **SECTION I DEFINITIONS**

Additional definitions applicable to this Policy are contained in the Agreement.

**“Application”** means the attached **APPLICATION FOR STOP LOSS COVERAGE** specifying the particulars of this Policy or any subsequent replacement Application supplied by the Company. The specifications or items of the Application shall be applicable for the Policy Period indicated on the Application, except that any item of the Application may be changed in accordance with the provisions described in this Policy.

**“Covered Person”** means an individual Employee, dependent(s) of an Employee, a retired Employee, dependent(s) of a retired Employee, and certain continued persons and their dependents covered under a continuation of coverage provision, whose coverage has become effective in accordance with the terms of the Policyholder’s Plan and whose Paid Claims are eligible for Stop Loss Coverage as indicated on the most current Application to this Policy.

**“Claim Liability”** means the total amount of Paid Claims that the Policyholder is responsible for paying each Policy Period. Claim Liability will be calculated for each Policy Period in accordance with the formula indicated in Item A.5. of the most current Application to this Policy.

**“Effective Date of Policy”** means the date specified on the Application.

**“Employee”** means an individual employee, retired employee, or continued person, whose coverage has become effective under the Policyholder’s Plan and whose Paid Claims are eligible for Stop Loss Coverage as indicated on the most current Application to this Policy.

**“Final Policy Period”** means the period of time beginning on the first day of the Policy Period specified on the most current Application and ending on the date the Policy is terminated.

**“Month”** means each succeeding calendar Month period beginning on the first day of the Policy Period.

**“Paid Claims”** shall mean:

- (a) The total amount of Claim Payments under and pursuant to the Agreement; and
- (b) If applicable, the claim payments made by the Policyholder’s prior claim administrator, as specified on the Application;

for the types of claims specified on the Application and in settlement of claims for any benefits under the Plan which are:

- (a) In the case of new coverage: (i.) Incurred and paid during the Policy Period or (ii.) Incurred during the Stop Loss Coverage Period and paid during the Policy Period, as specified on the Application;
- (b) In the case of a renewal of existing coverage, incurred on or after the original Effective Date of Policy and paid during the most current Policy Period, as specified on the Application.
- (c) Paid Claims may also include Run-Off Paid Claims in accordance with the provisions of this Policy.

A claim is considered "incurred" on the date the service or supply is furnished; a claim is considered "paid" on the date the claim is processed.

**"Paid Claims"** shall not include:

- (a) Claims incurred prior to the original Effective Date of Policy, except as specified on the Application; or
- (b) Claims incurred after the termination date of this Policy; or
- (c) Extra contractual damages of any nature, compensatory damages, or any similar damages however assessed, or any payments made as an exception to the Plan or as settlement of a lawsuit; or
- (d) Any payments made at the specific written request of the Policyholder when not provided for as benefits under the Plan or which are limited or excluded under such document; or
- (e) Any payments of benefits which are interpreted by the Policyholder as coming within the terms of the Plan if the Company notifies the Policyholder that it does not agree with that interpretation.

**"Plan"** shall mean the self-funded Group Health Plan of the Policyholder.

**"Point of Attachment"** means the dollar amount above which Stop Loss Insurance will apply as indicated in Items A.7. and/or B.4. of the most current Application to this Policy provided, however, that the Point of Attachment for Aggregate Stop Loss Insurance shall never be less than the minimum specified in Item A.7. of the most current Application.

**"Policy"** as used herein means this Stop Loss Coverage Policy.

**"Policy Period"** means the period of time beginning and ending on the dates shown on the most current Application.

**"Run-In Period"** means the period immediately prior to the initial Policy Period, if any, as specified in Items A.2. and/or B.2 of the Application.

**“Run-Off Paid Claims”** means those Paid Claims incurred on or after the original Effective Date of this Policy but prior to termination, which are paid in accordance with the Agreement during the Run-Off Period.

**“Run-Off Claims Liability”** means the amount to fund anticipated Run-Off Paid Claims. Settlements for Run-Off Paid Claims will be in accordance with the section entitled SETTLEMENTS, Run-Off Period Settlement subsection of this Policy.

**“Run-Off Period”** means the twelve-Month period immediately following the termination of this Policy.

**“Stop-Loss Claims”** means the amount of Paid Claims for which the Company assumes responsibility and risk.

- (a) If the amount of Paid Claims that have accumulated during the Policy Period for any Covered Person exceeds the amount indicated in Item B.4. of the most current Application to this Policy, such excess, up to the maximum amounts indicated, if any, shall be referred to in this Policy as **Individual (Specific) Stop-Loss Claims**. A monthly review will occur to determine if such excess exists.
- (b) Individual (Specific) Stop-Loss Insurance does not extend beyond the termination date of this Policy.
- (c) If, during the current Policy Period, Paid Claims less Individual (Specific) Stop-Loss Claims, if any, exceed the Aggregate Point of Attachment indicated in Item A.7. of the most current Application to this Policy, such excess, if any, shall be referred to in this Policy as **Aggregate Stop-Loss Claims**.
- (d) Stop Loss Claims may also include claims paid by the Policyholder’s prior claim administrator as specified on the Application.

**“Stop Loss Coverage Period”** means the period specified in Items A.2. and/or B.2. of the most current Application.

**“Stop-Loss Premium”** means the Monthly or annual premium, calculated in accordance with the formulas indicated in Items A.8. and/or B.5. of the most current Application, that is required by the Company for the risk assumed for the Stop Loss Coverage indicated in Item A.7. and/or B.4. of the most current Application. The Policyholder shall pay to the Company the Stop Loss Premium within ten (10) calendar days of receipt of a billing.

The Stop-Loss Premium shall be subject to change by the Company as follows:

- (a) At the end of the Policy Period shown in the most current Application, provided that sixty (60) days prior written notice is given by the Company;
- (b) On the implementation date of any changes or benefit variances in the Policyholder’s Plan, its administration, or the level of benefit valuation which would increase the Company’s risk;

- (c) On any date changes imposed by governmental entities increase expenses incurred by the Company provided that such increases shall be limited to an amount sufficient to recover such increase in expenses; or
- (d) On any date that the number of Covered Persons enrolled changes by an amount equal to 10% or more of total enrollment over a one-Month period or 25% or more of total enrollment over a three-Month period.

## **SECTION II POLICY PROVISIONS**

**INDEMNIFICATION OF RISK.** The Company hereby agrees to indemnify the Policyholder as specified in the section of this Policy entitled SETTLEMENTS against the amount paid pursuant to the Plan during the Policy Period which is in excess of the Point of Attachment specified in Items A.7. and/or B.4. of the most current Application. The Company shall not be liable for, nor shall the indemnification be extended to, any claim or liability for extra-contractual or punitive damages, including interest, statutory penalties and attorney fees or any claims in excess of any lifetime or individual maximums specified in A.7. and B.4.

**ENTIRETY.** This Policy, the most current Application and any attachments shall constitute the entire Policy between the parties for the purposes of this Policy and shall supersede any and all prior or contemporaneous Policies or understandings, either oral or in writing, between the parties with respect to the subject matter herein. This Policy shall not create any right or legal obligation between the Company and the Covered Person under the Plan.

**MODIFICATION.** Except for the Application to this Policy, which may be changed at any time in accordance with the provisions of this Policy by notifying the Policyholder in writing of such change, no modification, amendment, change, or waiver of any provision of this Policy shall be valid unless agreed to by an officer of Company and an authorized representative of the Policyholder.

## **SECTION III PREMIUM PROVISIONS**

**PREMIUM PAYMENT.** The premium(s) to be paid to the Company as consideration for the insurance provided hereunder and the method of premium payment (monthly or annual) shall be as specified on the Application. Monthly premium is due on the first day of each Month beginning on the first day of the Policy Period through the end of the Policy Period. Annual Premium is due on the first day of the Policy Period. Premium is based on the current membership specified on the Application.

**REMITTANCE.** The Company shall bill the Policyholder in advance for the Stop-Loss Premium amount due and the Policyholder shall remit payment within ten (10) calendar days of receipt of a billing. A remittance will be considered received when actually delivered into the possession or control of the Company.

**DAILY CHARGE.** A daily charge shall be assessed for the late remittance of any amount(s) due and payable to the Company by the Policyholder. This charge shall be an amount equal to the amount resulting from multiplying the amount due times the lesser of:

- (a) The rate of .0329% per day (which equates to an amount of 12.0% per annum);  
or
- (b) The maximum rate permitted by state law.

**NOTICE AND PROOF OF LOSS.** The Company shall reimburse the Policyholder as specified in the section of this Policy entitled SETTLEMENTS. Payment to the Policyholder in settlement of claims hereunder shall not be construed as a waiver of, or prohibition against, the Company's right to adjudicate or make further adjustments to such settlements.

Any amount which the Policyholder recovers from a third party, whether by subrogation, reimbursement or otherwise, in connection with a claim under the Policyholder's Plan shall not be eligible to satisfy the Point(s) of Attachment applicable to the Policyholder as specified on the Application nor will the Company pay any benefit hereunder with respect to any such recovered amount. Any such recovery shall be applied first to refund to the Company any benefit paid hereunder with respect to such claim and the Policyholder shall pay such refund to the Company within thirty-one (31) days after its receipt of such recovery, whether or not this Policy is still in force at that time.

No action at law or in equity shall be brought to recover on this Policy more than three (3) years from expiration of this Policy.

If any time limitation of this section of the Policy is less than that permitted by the state of Texas at the time this Policy is issued, such limitation is hereby extended to agree with the minimum permitted by such law.

The books and records of the Policyholder which pertain to the Plan shall be open to the Company and its representatives at all times during the usual business hours for inspection.

#### **SECTION IV. DISPUTE RESOLUTION**

Any dispute arising out of or relating to this Policy shall be resolved in accordance with the procedures specified in this Section IV. which shall be the sole and exclusive procedures for the resolution of any such disputes. All negotiations pursuant to this Section IV. are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

##### **(a) Arbitration**

In the event the parties fail to agree with respect to any matter covered herein, the question in dispute shall be submitted for arbitration in Dallas, Texas. The arbitrator shall be selected as follows:

1. Upon declaration by one of the parties hereto that a deadlock exists, the parties shall select an arbitrator;

2. If no appointment is made within thirty (30) days after the deadlock is declared and the amount in contest is in excess of \$200, the American Arbitration Association shall recommend an arbitrator; or
3. If no appointment is made within thirty (30) days after the deadlock is declared and the amount in question is \$200 or less, the Company shall select an independent third party to be the arbitrator.

The arbitrator will submit a decision within thirty (30) days after appointment or as soon as reasonably feasible and such decision shall be binding on the parties hereto. Arbitration expenses will be shared by the parties. All other expenses (legal, incidental, etc.) shall be borne by the losing party or, if both parties prevail, be apportioned by the arbitrator to each party. Arbitration proceedings will be governed by the Rules of the American Arbitration Association then in effect.

**(b) Obligation to Continue Performance**

Except as provided otherwise in this Policy, each party is required to continue to perform its obligations under this Policy pending final resolution of any dispute arising out of or relating to this Policy.

## **SECTION V SETTLEMENTS**

**INDIVIDUAL (SPECIFIC) STOP LOSS SETTLEMENT.** For any Individual (Specific) Stop Loss Claims, the claim settlement shall be provided to the Policyholder by the Company within ninety (90) days after the end of each Policy Period during which this Policy is in effect. The Company reserves the right to deduct any amount(s) owed the Company by the Policyholder from any payment due the Policyholder as a result of the claim settlement.

If this Policy is terminated prior to the expiration of the Policy Period, claim settlements for Individual (Specific) Stop Loss Claims will be made, as specified herein, for only those full Months of the Policy Period immediately preceding Policy termination. Individual Stop-Loss Coverage shall not extend beyond the termination date of this Policy.

### **AGGREGATE STOP LOSS SETTLEMENT OR ACCOUNTING.**

For any Aggregate Stop Loss Claims, the claim settlement shall be provided to the Policyholder by the Company within ninety (90) days after the end of each Policy Period during which this Policy is in effect. The Company reserves the right to deduct any amount(s) owed the Company by the Policyholder from any payment due the Policyholder as a result of the claim settlement. Aggregate Stop Loss Insurance shall not exceed the maximum indicated in Item A.7. of the most current Application to this Policy in any Policy Period or any Final Policy Period.

If the settlement reflects that Paid Claims for the Policy Period exceed the Point of Attachment for that Policy Period, then Aggregate Stop Loss Claims, minus any Individual (Specific) Stop Loss Claims, to the extent funded by the Policyholder, shall be the responsibility of the Company. If the Aggregate Point of Attachment exceeds the Paid Claims, then no Aggregate Stop-Loss benefit shall be payable to the Policyholder.

**RUN-OFF PERIOD SETTLEMENT.** In the event of termination of this Policy on the last day of the Policy Period, the Run-Off Period immediately following termination will be combined with the Final Policy Period and this shall be termed a **Final Settlement Period**. Within ninety (90) days following the end of the Run-Off Period, a final settlement will reflect the following:

(a) **Final Settlement Paid Claims:**

- (1) The sum of the Paid Claims during the Final Policy Period and the Run-Off Paid Claims, minus
- (2) Any Individual (Specific) Stop-Loss Claims during the Final Policy Period, if applicable.

(b) **Final Settlement Point of Attachment:**

- (1) The sum of the Policyholder's Claims Liability for the Final Policy Period, plus
- (2) The Policyholder's Run-Off Claim Liability

If the Final Settlement Paid Claims exceed the Final Settlement Point of Attachment, then Aggregate Stop-Loss benefits shall be payable to the Policyholder to the extent funded by the Policyholder.

If the Final Settlement Point of Attachment exceeds the Final Settlement Paid Claims, then no Aggregate Stop-Loss benefits shall be payable to the Policyholder

## **SECTION VI GENERAL PROVISIONS**

**LIMITATION OF LIABILITY.** Liability for any errors or omissions by the Company (or its officers, directors, employees, agents, or independent contractors) in the administration of this Policy, or in the performance of any duty of responsibility contemplated by this Policy, shall be limited to the maximum benefits which should have been paid under the Policy had the errors or omissions not occurred (including the Company's share of any arbitration expenses incurred under the Policy), unless any such errors or omissions are adjudged to be the result of intentional misconduct, gross negligence, or intentional breach of a duty under this Policy by the Company.

**TERM AND TERMINATION.** This Policy shall continue in full force and effect from year to year unless terminated as provided herein.

This Policy may be terminated as follows:

- (a) By either party at the end of any Policy Period following thirty (30) days prior written notice to the other;
- (a) By both parties on any date mutually agreed to in writing.

- (b) This Policy will terminate automatically:
- (1) On the date the most current Application terminates as specified on the Application, unless a replacement Application for the period immediately following is executed by the Company and the Policyholder;
  - (2) Upon failure of the Policyholder to pay Stop Loss Premium in accordance with the provisions of this Policy;
  - (3) On the date the Plan terminates; or
  - (4) On the date the Agreement terminates. The Policyholder shall notify the Company in writing of a change in claim administrator from the Company to another carrier or administrator no later than thirty (30) days in advance of the date of change.

In the event of termination of this Policy for any reason prior to the expiration of a Policy Period, no Aggregate Stop Loss Insurance will exist for the Final Policy Period or Run-Off Period. The Policyholder will be required to fund all claims during the Final Policy Period and Run-Off Period. The Company shall have no obligation to determine a claim settlement for the period during which coverage was in effect nor shall the Company refund any portion of the premium(s) to the Policyholder.

**ASSIGNMENT.** No part of this Policy, or any rights, duties, or obligations described herein, shall be assigned or delegated without the prior express written consent of both parties. Any such attempted assignment shall be null and void. The Company's standing contractual arrangements for the acquisition and use of facilities, services, supplies, equipment, and personnel from other parties shall not constitute an assignment under this Policy.

**GOVERNING LAW.** This Policy shall be governed by, and shall be construed in accordance with, the laws of the State of Texas without regard to any state choice-of-law statutes, and any applicable federal law. All obligations created hereunder are performable in Dallas, Texas and all disputes arising out of this Policy will be resolved in Dallas, Texas.

**NO WAIVER.** The failure of either the Policyholder or the Company to insist upon strict performance of any of the terms of this Policy shall not be construed as a waiver of its respective rights to remedies with respect to any subsequent breach or default in any of the terms of this Policy.

**SEVERABILITY.** In case any one or more of the provisions contained in this Policy shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Policy, but this Policy shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

**TAXES.** Any premium amounts due under this Policy will automatically be increased by the amount of any taxes imposed, increased, or adjudged due by any lawful authority on or after the Effective Date of this Policy, which directly pertain to this Policy and which the Company is required to pay or remit, whether relating to fees, services, benefits, payments, or any other aspect of this Policy or the Plan.

**INSOLVENCY.** The insolvency, bankruptcy, financial impairment, receivership, voluntary plan of arrangement with creditors, or dissolution of the Policyholder or its Claim Administrator will not impose on the Company any liability other than the liability defined this Policy. The insolvency of the Policyholder will not make the Company liable to the creditors of the Policyholder, particularly the Covered Persons under the Plan.

**RIGHT OF RECOVERY.** The Company will not seek recovery of any excess or erroneous payment made under this Policy more than twenty-four (24) months after the payment is made, unless:

- (a) The payment was made because of fraud committed by the Policyholder, the Covered Person or the provider; or
- (b) The Policyholder, Covered Person or provider has otherwise agreed to make a refund to the Company for overpayment of a claim.