

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

CAPITAL AND SURPLUS GUARANTY

This Guaranty is made on the ____ day of ____ 20__, by _____(hereafter “Guarantor”) a corporation formed under the laws of (name of domiciliary jurisdiction) _____.

Whereas, Guarantor is or will be in control of _____(Hereafter “Licensee”) as that term is defined in N.J.S.A. 17:27A-1c,

Whereas, on the date of this Guaranty, Licensee has an existing Certificate of Authority with the Commissioner of Banking and Insurance, of the State of New Jersey, to do the business of a health maintenance organization in the State of New Jersey;

Whereas, Guarantor desires that the Commissioner of Banking and Insurance, of the State of New Jersey, exercise his/her discretion to and continue to grant a Certificate of Authority to Licensee to do the business of a health maintenance organization in the State of New Jersey, and makes this resolution as a condition of maintaining approval for the Certificate of Authority; and

Whereas, Guarantor desires to give legal assurances to the Commissioner of Banking and Insurance, of the State of New Jersey, that at all times its control of the Licensee will be or will have been exercised so that Licensee’s capital and surplus meets or exceeds the requirements of the State of New Jersey, as amended at any time.

Wherefore, Guarantor absolutely and unconditionally guarantees as follows:

1. Licensee shall have and maintain capital and surplus at least in the minimum amount as required by law, and such additional surplus as the Commissioner of Banking and Insurance, of the State of New Jersey, requires so that its surplus as regards enrollees is reasonable in relation to Licensee’s outstanding liabilities and financial needs as to all of its obligations including its obligations to New Jersey enrollees.
2. Licensee shall have and maintain this capital and surplus in funds and investments which are admitted assets under the investment laws governing health maintenance organizations in the State of New Jersey.

3. Licensee shall have and maintain adequate capital and surplus as herein contemplated so long as Licensee has any health maintenance organization obligations to enrollees in the State of New Jersey.
4. This Guaranty shall continue until such time as the Commissioner of Banking and Insurance, of the State of New Jersey, may release Guarantor in writing.
5. This Guaranty is made in addition to all other requirements and obligations imposed on Guarantor and Licensee by New Jersey law.
6. The Commissioner of Banking and Insurance of the State of New Jersey may enforce this Guaranty as an alternative to or, in addition to any other remedies provided by New Jersey law, by making a written demand upon Guarantor to deposit funds into the account of Licensee currently held pursuant to N.J.A.C. 11:24-11.4(d)1..
7. The Commissioner of Banking and Insurance of the State of New Jersey may enforce this Guaranty in his/her capacity as Commissioner of Banking and Insurance or in any other capacity provided by law whether as Supervisor, Rehabilitator, Liquidator, Ancillary Receiver, Conservator, or any other capacity.
8. Guarantor consents to the exclusive jurisdiction of the Superior Court of New Jersey, Mercer County for enforcement of this Guaranty and all other purposes related to this Guaranty.
9. Guarantor waives all defenses related to the capacity of and authority of any person concerning the making of this Guaranty, whether the defense is based on the law of New Jersey, or any other jurisdiction.
10. This Guaranty may be amended only in writing signed by the Commissioner of Banking and Insurance of the State of New Jersey and Guarantor.
11. Except as herein stated, this Guaranty cannot be enforced by any third party.

12. Guarantor warrants that it has the capacity to and is authorized to make this Guaranty. Attached hereto and made a part hereof is a Certified Resolution of the Board of Directors of Guarantor authorizing the making of this Guaranty.
13. Guarantor authorizes the Commissioner of Banking and Insurance of the State of New Jersey to hold this Guaranty in the records of the New Jersey Department of Banking and Insurance as a public document not subject to any requirement, now or hereafter pertaining, that it is or should be treated as confidential.
14. Guarantor agrees that within 15 days following receipt of a written demand of the Commissioner of Banking and Insurance of the State of New Jersey, because the net worth has dropped below 125% of the minimum requirement established by law or because the Commissioner has otherwise reasonably determined that the surplus of the licensee is insufficient in respect to its outstanding liabilities and financial needs as to all of its obligations, including its obligations to New Jersey enrollees, Guarantor will deliver to a depository or custodian located in New Jersey sufficient funds or other assets satisfactory to the Commissioner of Banking and Insurance of the State of New Jersey to meet its obligations under this Guaranty. Further, Guarantor shall notify any issuer or maker of any such assets, which are investment securities, that it has so-delivered such assets under this Guaranty.

Guarantor's contract with any such depository or custodian shall refer to this Guaranty and shall permit withdrawal of such funds or other assets only upon prior written approval or prior written demand of the Commissioner of Banking and Insurance of the State of New Jersey and any such withdrawal shall be made only for purposes of meeting the obligations of this Guaranty or for such other purpose as the Commissioner of Banking and Insurance may permit in writing.

Guarantor agrees that the delivery of such funds or other assets to a depository or custodian under this Guaranty constitutes, for all purposes of law, possession of such funds or other assets by the Commissioner of Banking and Insurance, of the State of New Jersey, whether title to such funds or other assets remains in Guarantor or otherwise as required by the Commissioner of Banking and Insurance of the State of New Jersey.

15. Demand and notice of obligations under this Guaranty are hereby waived by Guarantor, and Guarantor acknowledges that Guarantor's liability is absolute and unconditional and not dependent on the pursuit of any other remedies or on the exercise of any authority against the Licensee or any other person.
16. Other than the obligations stated in this Guaranty, there are no oral or written prior or contemporaneous agreements between Guarantor and the Commissioner of Banking and Insurance of the State of New Jersey, or between the Licensee and the Commissioner of Banking and Insurance, of the State of New Jersey.

Signed at _____ on the _____ day of _____, 20__.

Guarantor: _____

By: _____

Its: _____

Attachment Required: Board Resolution, see paragraph 12