



Dear Prospective Broker,

Thank you for your interest in becoming appointed with Guardian to sell our employee benefits products (group insurance) and the products of its licensed subsidiaries. Enclosed you will find everything you need to request an appointment.

Important Notes: If you are a...

- Guardian career agent (Field Representative, Financial Professional or Full-Time Agent), please consult with your respective Guardian General Agency for applicable appointment materials.
- Brokers who would also like to sell Guardian individual life and/or individual multi-life disability income insurance, must obtain a separate appointment(s) via a local Guardian General Agency and/or through Berkshire Life Insurance Company of America. Please ask your local Group Sales Office for assistance, if needed.

Please review the materials and complete the following documents:

- Individual Broker Data Form
- Fair Credit Reporting Act Disclosure *(signature required)*
- Brokerage Agreement *(signature required)*
- Exhibit C: Business Associate Agreement *(signature required)*
- Direct Deposit of Group Commissions Form *(signature required)*
(Note: All brokers must enroll in direct deposit)
- Voided check or deposit slip
- Copy of your applicable state license(s)

For documents requiring signature, Guardian requires an official signature; electronic signatures are not acceptable at this time. A failure to complete all documents noted above will result in a delay in your appointment, and consequently the installation of and commission payment for any cases in progress.

Either, scan & e-mail OR mail your completed documents to the following:

Email (*preferred method*): Agent_Contracting_&_Licensing@glic.com

Mailing Address:

The Guardian Life Insurance Company of America
Agent Contracting & Licensing
81 Highland Avenue, Mail Station A259
Bethlehem, PA 18017

Upon review and approval of your documents, Guardian will send you two e-mails notifying you of:

- 1) Approval of your group insurance appointment and your agent code
- 2) Confirmation that your direct deposit has been established

If you have any questions, please contact your local Guardian group sales office or Customer Response Unit.

Sincerely,

The Guardian Life Insurance Company of America

DENTAL • LIFE • DISABILITY • CRITICAL ILLNESS • SECTION 125 • VISION



Individual Broker Data Form

Name of Broker (As it appears on insurance license): _____

Salutation

☐ Miss ☐ Mr. ☐ Mrs. ☐ Ms. _____

Social Security Number _____

Date of Birth _____

Gender

☐ Male ☐ Female _____

Resident & Business Information

Resident Address:

Street _____ City _____ State _____ Zip Code/County _____

Telephone Number _____ Cell Number _____

Business Address:

Street _____ City _____ State _____ Zip Code/County _____

Telephone Number _____ Fax Number(s) _____

Email Address _____

Appointment Requests

List state(s) in which to be appointed, include license number(s): _____

if Florida non-resident licensee, please list the county where you wish to be appointed: _____



FAIR CREDIT REPORTING ACT DISCLOSURE

Disclosure to the Consumer

As a routine part of our due diligence effort, Guardian Life Insurance Company intends to obtain an investigative consumer report on you. To ensure full compliance with the 1997 Fair Credit Reporting Act [Section 606(a)] and to facilitate easy access to all information necessary, please read and sign this form.

I, _____ (please print name),
_____ (please print social security number),
_____ (please print date of birth),

authorize all persons and entities (including but not limited to businesses, corporations, former supervisors, credit agencies, governmental agencies, law enforcement authorities, educational institutions, state insurance departments, FINRA, and all military services) to release all written and verbal information about me to Business Information Group (B.I.G.).

I also give my consent for The Guardian Life Insurance Company of America to review previous Uniform Application for Registration (U-4) and Uniform Termination Notice (U-5) information for employment, registration and disciplinary history through FINRA Web-CRD. I understand that a completed U-4 will be necessary for registration.

I specifically understand and authorize the procurement of an investigative consumer credit report and understand that in all likelihood it will contain information about my background, mode of living, character, general reputation, and personal characteristics.

I further understand that upon written request I will be given a list of the areas which will be researched and included in the investigative report into my background. I have read and understand the attached summary of my rights under the 1997 Fair Credit Reporting Act. This release, in original or copy form, is valid now or any time in the future. I release all parties from any claims or liability in connection with its review of the above information. I agree with all the provisions shown in this disclosure form and have been provided a copy of this document.

For Maine Applicants Only

Upon request, you will be informed whether or not an investigative consumer report was requested, and if such a report was requested, the name and address of the consumer reporting agency furnishing the report. You may request and receive from us, within 5 business days of our receipt of your request, the name, address and telephone number of the nearest unit designated to handle inquiries for the consumer reporting agency issuing an investigative consumer report concerning you. You also have the right, under Maine law, to request and promptly receive from all such agencies copies of any reports.

For New York Applicants Only

You have the right, upon written request, to be informed of whether or not a consumer report was requested. If a consumer report is requested, you will be provided with the name and address of the consumer report agency furnishing the report.

For Washington Applicants Only

If we request an investigative consumer report, you have the right, upon written request made within a reasonable period of time, to receive from us a complete and accurate disclosure of the nature and scope of the investigation. You have the right to request from the consumer reporting agency a summary of your rights and remedies under state law.

California, Minnesota, and Oklahoma Residents

I also understand that this document will be given full legal recognition under the laws of the States of California, Minnesota and Oklahoma.

☐ Check if you wish to have a copy of the reports sent to your resident address.

Date

Signature of Broker

Print Broker Name



BROKERAGE AGREEMENT

Parties:

Broker

Company

The Guardian Life Insurance Company of America
7 Hanover Square, New York, New York 10004

Effective Date

This Agreement is made by and between the Company, on its own behalf and on behalf of its licensed subsidiary and/or affiliated companies, as set forth on **Exhibit A**, which is attached hereto and incorporated herein by reference, and the Broker identified above. This Agreement shall run for an indefinite period subject to termination at any time by either of the parties pursuant to Section 3 herein.

Whenever the singular form or masculine gender occurs in this Agreement, as to either Company or Broker, the substitution of the respective plural form is understood in the case of a partnership or feminine gender in the case of a corporation.

(1) Appointment.

The Company appoints the Broker to solicit all forms of insurance coverage included in this Agreement, excluding the products set forth in paragraph 23 below, provided he is or may be licensed for the type of coverage solicited in accordance with applicable law. The territory of the Broker shall be wherever he is or may be licensed for the type of coverage solicited. The Broker shall transmit to the Company, or its authorized agents, for its consideration all applications for such forms of policies as may be issued by it, collect the initial premiums or otherwise instruct the planholder to remit premium directly to the Company or its designee, countersign (when necessary) and deliver any policies forwarded to him by the Company for that purpose, and shall perform such other duties and services to policyholders and beneficiaries pertaining to the business of the Company as may be required of him. It is expressly understood between the parties to this Agreement that the Broker represents the insured and does not represent the Company except as herein specified. Nothing in this Agreement shall create or be construed to create any exclusive authority to represent the Company or to effect sales of policies with respect to a specific geographic territory or otherwise.

(2) Compensation.

The Company will pay, directly or through its authorized agents, the Broker commissions at the rates provided for under the applicable compensation schedules between the Parties, on first year and renewal premiums which are actually due, collected and paid in cash, to the Company on policies issued by the Company on applications submitted under this Agreement and further consistent with the Group Commission Payment Rules set forth on **Exhibit B**, which is attached hereto and incorporated herein by reference, or otherwise provided by Company to Broker. Commission payments shall constitute full compensation to the Broker for his services. During the continuance of this Agreement, commissions on group insurance business will only be paid to the Broker as long as he continues to be recognized by both the policyholder and the Company as the 'Agent of Record' on the applicable group insurance business. Notwithstanding the forgoing, Broker commission payments shall terminate upon a block transfer of insurance business ("Block Transfer") requested by the Broker and after prior written approval by the Company, consistent with applicable law. Broker shall release, hold harmless and otherwise indemnify Company for any and all damages, expenses (including attorneys' fees), claims or causes of action arising out of or relating to any approved Block Transfer.

(3) Termination of Agreement.

This Agreement shall terminate, with or without cause, at any time upon notice in writing by either of the parties, or automatically by nonrenewal of the Broker's Guardian appointment or state license. Upon termination, Broker's right to compensation, if any, as set forth in Section 2 above shall also terminate. This Agreement shall terminate automatically without notice if the Broker ceases to exist. The Company reserves the right to revoke the Broker's authority to sell any product hereunder at any time, upon written notice to Broker.

(4) Indebtedness.

All commissions, including renewal commissions, earned hereunder shall be subject to any indebtedness (with interest thereon, at the current rate established by the Board of Directors of the Company) of the Broker to the Company, including any indebtedness incurred by the Broker under this and any other agreement entered into between him and the Company. Any such indebtedness to the Company or its applicable affiliates and subsidiaries set forth on **Exhibit A** shall be subject to the reversal of commissions regardless of which entity issued the applicable policy. Indebtedness means any debt, liability, or debit balance incurred resulting from our reversal of commissions under any contract



maintained by Broker with the Company. It also includes any amount paid by the Company to settle a complaint or satisfy any judgment entered by any court, administrative agency or arbitrator related to any policy sold by Broker, or breach of Broker's duties and responsibilities under this Agreement and any other agreement entered into between him and the Company, whether or not the liability for settlement or satisfaction of judgment arose after the termination of this Agreement or any applicable agreement. The provisions of this Section 4 shall survive the termination of this Agreement

- (5) Freedom of Action.** The Broker shall be free to exercise his own judgment as to the time and place of solicitation of persons acceptable to the Company, and as to the general conduct of his business, but he shall comply with and be bound by the rules of the Company now in force or as they hereafter may be amended or supplemented; such rules, however, are not to interfere with such freedom of action of the Broker. The relationship of the Broker to the Company is that of an independent contractor; and nothing herein contained shall be construed to create the relation of employee and employer between the Broker and Company. The Broker shall not be required to spend any particular portion of his or her working time as a Broker for the Company, nor shall this Agreement create any exclusive authority of the broker to represent the Company.
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- (6) First Premium.** The first premium or any monies collected on any application for insurance submitted by the Broker under this Agreement is due and payable to the Company in cash immediately upon collection.
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- (7) Charges.** The Broker agrees to pay the Company all charges provided for in the Company's rules as now in force or as such may hereafter be amended or supplemented, including but not limited to additional or optional policies, "not-taken" policies, acceptance of notes, term rates, medical and inspection fees and supplies. If the Company cancels a policy or contract for any reason or if the policy or contract owner exercises any right to cancel a policy or contract, resulting in the Company's refund or return of any payment, or portion thereof, made on such policy or contract, any compensation paid by the Company to Broker on such policy or contract shall be promptly repaid to the Company by Broker.
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- (8) Authority of Broker.** The Broker shall have no power or authority other than as herein expressly granted, and no other or greater powers shall be implied from the grant or denial of powers, specifically mentioned herein. He shall have no power or authority:
- a) To make, alter or discharge any contract in the name of the Company or to bind the Company;
 - b) To waive a forfeiture or waive, alter or amend the performance, provisions, terms or conditions of any policy, or commit to any policy's reinstatement;
 - c) To extend the time for the payment of premiums or other monies due the Company;
 - d) To incur any debt or liability against the Company;
 - e) To accept any risk or determine insurability on behalf of the Company;
 - f) To give credit for any application for insurance;
 - g) To use Broker's own funds for the payment of any applicant's or insured's obligations under a policy;
 - h) To use the Company's name in connection with any financial account maintained by the Broker;
 - i) To initiate legal proceedings or regulatory actions in the name of the Company; or
 - j) To collect money for the Company, except as to the collection of the first premium on policies issued by the Company pursuant to this Agreement.
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- (9) Advertising and Representations.** The Broker shall use no advertising material, prospectus, proposal or representation, either in general or in relation to a particular policy of the Company, unless furnished by the Company or until the consent of the Company thereto shall have first been secured through the Company. The Broker shall not issue or circulate any illustration, circular, statement or memorandum of any sort misrepresenting the terms, benefits or advantages of any policy issued by the Company, or make any misleading statement as to the dividends to be received thereon. The Broker shall not make any misleading statement as to the benefits to be received on any contract issued by the Company, or as to historical or future investment performance relating to such contract, or as to the financial position of the Company. The Broker shall not use any information related to the Company on any web site without the Company's prior consent. The Broker may not use the Company's trademarks, service marks, trade names, logos, or other commercial or product designations for any purpose whatsoever without the prior written consent of the Company.
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- (10) Ethical Behavior.** In the performance of this Agreement Broker shall comply with all applicable laws and regulations, including but not limited to laws protecting the privacy of non-public personal information about individuals, as well as all policies and procedures established by the Company, as may be amended from time to time and communicated to Broker; including but not limited to those published electronically by the Company. The Broker shall at all times in the performance of this Agreement be validly licensed in the states and other jurisdictions that require licensing or registration in connection with the Broker's sales activities. Broker shall immediately notify the Company in writing if he may not be in compliance or licensed as required by this Section 10.



(11) New Coverages and Changes in Coverages

In the event the Company has undertaken, or shall undertake, the writing of types of coverage not mentioned herein, an appropriate amendment to this Agreement shall be made, and deemed to be effective, by written notice to the Broker, setting forth the commissions payable, and conditions of such payment, for such business, and modifying any of the provisions of this Agreement deemed necessary in order to adapt this Agreement to the nature of such business. The Company may make such changes and decisions as it deems advisable in the conduct of its business, including the discontinuance of any policy form or the withdrawal from any territory, without any liability to the Broker by reason of its doing so.

(12) Cooperation with Legal and Regulatory Proceedings.

The Broker will fully cooperate with the Company in any federal, state or regulatory investigation. The Broker and the Company will promptly inform the other party of any regulatory investigation or proceeding being conducted with respect to their activities. The Broker agrees to fully cooperate with the Company in the defense of any action filed against the Broker and/or the Company by a third party for alleged acts that occur while this Agreement is in effect. The Broker shall promptly notify the Company of any customer complaints with respect to policies sold pursuant to this Agreement and to cooperate with the Company in resolving all customer complaints with respect to such policies, or activities of the Broker.

(13) Assignment.

No assignment of any insurance commissions, except to the Company, shall be valid, unless authorized in advance in writing by the Company.

(14) Return of Materials.

All prospectuses, forms, sales literature, customer lists, documentation and computer software containing the rates and values of products issued by the Company, computer printouts, applications, forms, policies, brochures, sales promotion materials, whether in hard copy or computer format, are the property of the Company and are furnished to the Broker in confidence, and the Broker agrees to refrain from reproducing, publishing or disclosing such material other than in the ordinary course of business or with the written consent of the Company. All such property shall be returned to the Company by the Broker upon demand or upon termination of the Agreement. Upon termination of this Agreement for any reason, the Broker agrees not to use any such material for his commercial purposes or for that of any other entity.

(15) Abrogation of Prior Agreements.

All agreements heretofore entered into by and between the parties hereto, whether oral or in writing save as hereinafter excepted, are hereby released, abrogated and declared to be null, void and of no effect, any stipulation contained therein to the contrary notwithstanding, except such agreements or parts thereof relating to:

- a) Any indebtedness of the Broker to the Company and liens created in connection therewith;
- b) Any liabilities or obligations previously assumed or incurred by the Broker and owing to or running for the benefit of the Company and liens created in connection therewith; and
- c) The right to commissions hereafter accruing and earned under any prior agreement between the parties hereto, subject to the offsets and counterclaims therein provided.

(15) Forbearance Not Waiver.

Forbearance or failure of the Company to insist upon the strict performance of any provision of this Agreement or to enforce its rights hereunder, shall not constitute a waiver of the Company's rights or privileges hereunder or of its subsequent right to insist upon such performance.

(16) Confidentiality.

If, in the course of performance of this Agreement, Broker receives or learns personal, financial and/or health information, ("Confidential Information"), about individuals who have applied for or purchased policies from the Company, Broker shall keep all Confidential Information strictly confidential, and shall not use or disclose to any affiliate or third party, either orally or in writing, any Confidential Information for any purpose other than the purpose for which the Confidential Information was provided to the Broker consistent with applicable law. Broker shall take all precautions that are reasonably necessary to protect the security of the Confidential Information, and shall restrict access to the Confidential Information to any of Broker's employees who need to know the Confidential Information in order for Broker to perform his duties under this Agreement. Upon request, Broker shall return to the Company all tangible items containing any Confidential Information received from the Company, whether in hard copy or electronic format, including all copies, drafts, abstractions and compilations of the Confidential Information, without retaining any copies of the items required to be returned. The obligations of this section extend to all of Broker's employees, agents, affiliates and contractors, each of whom shall be informed by Broker of their obligations hereunder.



If Broker is required by law or by a subpoena or court or regulatory order or demand to disclose any Confidential Information, Broker shall, prior to making such disclosure, promptly notify the Company in writing of such requirement and shall furnish the Company with a copy of the subpoena, court order or demand, and shall allow the Company an opportunity to seek a protective order or other judicial relief. This provision does not apply to audits and inquiries from state or federal regulatory agencies if the Broker is legally required to provide them with access to the Broker's records.

Upon learning of any unauthorized disclosure or use of any Confidential Information, Broker shall promptly notify the Company and shall cooperate fully with us the Company to protect and/or retrieve such Confidential Information. The provisions of this Section shall survive termination or expiration of this Agreement

Notwithstanding the foregoing, with respect to personal health information relating to health insurance coverages, Broker, its employees and agents, shall be subject to and shall comply with the Business Associate Agreement, attached hereto as **Exhibit C** and incorporated herein by reference.

(18) Amendments.

The Company, at its sole discretion, shall have the right to amend this Agreement of any of its provisions or terms of compensation by general announcement. The Amendments shall be deemed to be effective upon the general announcement of such amendment and assent of the Broker shall not be required or necessary.

(19) Records and Inspection

The Broker agrees to maintain complete and accurate records of his activities in the performance of this Agreement, including but not limited to, the marketing and sale of the Company's products. Broker shall make available to the Company for examination, review and audit Broker's files, books and records pertaining to his activities under this Agreement and respecting the Company's products, insureds and customers, and Broker shall cooperate to the fullest extent with such examinations, reviews and audits.

(20) Errors and Omissions Insurance.

While this agreement is in force and effect, Broker shall maintain Errors and Omissions (E&O) coverage in an amount satisfactory to the Company. Broker shall give the Company prompt written notice of any notice of cancellation or change of the E&O coverage.

(21) Non-Solicitation.

Broker covenants and agrees that after the termination of this Agreement, whether terminated by the Company or Broker, the Broker will not, directly or indirectly, by or through any partner, agent, employer, or individual or entity from or on the Broker's behalf, advise, induce or attempt to induce any policyholder or annuitant of the Company or any subsidiary company of the Company to lapse, cancel or replace any insurance policy, annuity or account of the Company or of any subsidiary company. These restrictions shall last for a period of 18 months following the termination of this Agreement and shall be effective in those sales territories in which the Broker sold products on behalf of the Company or any of its subsidiary companies while subject to this Agreement. In the event the Broker breaches this provision, the Broker agrees that the Company may compel the Broker's compliance with this provision by injunction or by any other remedy at law or equity, or by any other remedy under this Agreement.

(22) Governing Law.

This Agreement shall be governed by the laws of the State of New York without regard to New York's choice of law rules.

(23) Excluded Products.

Notwithstanding the foregoing, this Agreement expressly excludes the following Company products: individual life insurance, individual disability income insurance, multi-life insurance, bank owned life insurance, and annuities. Such excluded Company products are subject to a separate and distinct agreement which must be executed by the Broker.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year first written above.

Broker:

Signature

Date

Company:

**On behalf of Guardian Life Insurance Company of America
And its affiliates and subsidiaries listed on Exhibit A**

Signature

Title:

Date

Stu Shaw, Vice President, Risk Management



The Guardian Life Insurance Company of America
Agent Contracting & Licensing
81 Highland Avenue, Mail Station A259, Bethlehem, PA 18017

Exhibit A

Licensed Subsidiaries and Affiliates

As of the Effective Date, below are the applicable licensed subsidiaries and affiliates of the Company. This list may be amended from time to time by the Company upon notice or other general announcement consistent with Company's policies and procedures.

- First Commonwealth, Inc. (DE)
- First Commonwealth Insurance Company (IL)
- First Commonwealth of Illinois, Inc. (IL)
- First Commonwealth Limited Health Services Corporation (IL)
- First Commonwealth Limited Health Services Corporation of Michigan (MI)
- First Commonwealth of Missouri, Inc. (MO)
- Managed DentalCare of California. (CA)
- Managed DentalGuard, Inc. (NJ)
- Managed DentalGuard, Inc. (OH)
- Managed DentalGuard Inc. (TX)
- Guardian Insurance & Annuity Company, Inc. (DE)



Exhibit B

Group Commission Payment Rules

- 1) Each employer plan of insurance written under a group policy issued to an industry-wide multiple employer trust fund under an arrangement where the employees are individually solicited for participation in the plan by Broker shall each be treated as a separate policy for all purposes of commission and wherever the term "policy" is used in this Agreement it shall be deemed to mean the insurance plan of each employer.
- 2) Commissions on premiums refunded by Insurer shall be refunded by Broker.
- 3) No commissions are payable on premiums waived on account of disability.
- 4) In the event a policy or plan is issued in replacement of an existing policy or plan or if a policy or plan is issued to provide coverage for a group of persons substantially all of whom were previously insured under an existing policy or plan, such new policy or plan shall be deemed to have been issued as of the original effective date of the policy(s) or plan(s) it replaced for the purposes of determining the rates of commissions payable. The term "existing policy or plan" will be deemed to include any policy or plan which has cancelled with Insurer within six (6) months of the effective date of the new policy or plan.
- 5) In the event Broker submits an application for additional business to an existing policy or plan for which Broker was not the original writing agent on the effective date of such policy or plan, the commission payment rules apply as if Broker were the original writing agent indicated in the original preliminary application for such policy or plan for the additional business. If a plan or policy is amended because state or federal law mandates that an insurer provide specified benefits for its policyholders or requires that an employer provide additional benefits to his employees, the amendment is not considered a new sale unless the additional benefits meet the criteria for a productive add-issue.
- 6) The rules and regulations of Insurer in effect on the date a commission payment is due shall apply in any case not covered by the terms of this Schedule III.
- 7) Scales shown do not apply in certain states in respect to statutory small employee plans or to certain community rated plans.
- 8) The authority given by this Agreement may not be assigned to another person or entity.
- 9) The applicable commission referred to above shall be determined based upon commissionable premium.
- 10) With respect to group insurance policies (both conventionally funded and alternatively funded) and group annuity contracts, whether or not such group annuity contract is an employee welfare benefit plan subject to the Employee Retirement Income Security Act (ERISA), notwithstanding any provision herein to contrary, Insurer reserves the right to change this supplement, where a change in ERISA, applicable regulations or administrative order or directive, in Insurer's sole discretion, necessitates a change to this supplement.
- 11) Broker represents and warrants that it, and any owner, partner, director, officer or employee engaged in transacting insurance, is properly licensed to transact insurance in all states where it intends to solicit insurance on behalf of Insurer. Broker shall furnish Insurer with copies of such licenses and shall cooperate with Insurer in making any appointments required by state insurance laws. Broker represents and warrants that neither it nor any owner, partner, director, officer, or employee engaged in transacting insurance has been convicted of any crime which would disqualify such person from engaging in the business of insurance under Title 18, U.S.C. §1033; nor has any such person been disqualified by the U.S. Department of Labor from providing services with respect to any employee benefit plan subject to ERISA.
- 12) It is agreed that, in all matters of controversy between Insurer and any policyholder, insured or beneficiary, Broker shall be deemed to be acting as the agent of the policyholder, insured or beneficiary and not as the agent of Insurer.



Exhibit C BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("BAA") is entered into this ____ day of ____, 201__, by and between _____ ("Business Associate") and The Guardian Life Insurance Company of America and its affiliates (collectively, "Guardian"). It shall become effective the date of execution.

In consideration for the promises and the mutual covenants and undertaking set forth in this BAA, including the Business Associate's access to and/or use of Protected Health Information as defined in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended, for those purposes allowed by Privacy Rule, Security Standards, Transaction Standards under HIPAA and under the Health Information Technology for Economic & Clinical Health Act ("HITECH") as well as any applicable state or federal law consistent with the terms of this BAA, Business Associate and Guardian agree as follows:

I. **Definitions.** As used in this BAA:

- I.1. "Breach" has the same meaning as this term has in §13400 of HITECH, and shall include the unauthorized acquisition, access, use, or disclosure of PHI that compromises the security or privacy of such information.
- I.2. "Designated Record Set" shall mean a group of records maintained by or for Guardian that is (i) the health records and billing records about individuals maintained by or for Guardian, (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for Guardian to make decisions about individuals. As used herein, the term "Record" means any item, collection, or grouping of information that includes Protected Health Information and is maintained, collected, used, or disseminated by or for Guardian.
- I.3. "Electronic Protected Health Information" means Protected Health Information supplied by Guardian and transmitted by or maintained in electronic media by either party.
- I.4. "HIPAA" shall mean the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act, Public Law 104-191, and any amendments thereto.
- I.5. "HIPAA Transaction" shall mean Transactions as defined in 45 C.F.R. § 160.103 of the Transaction Standards.
- I.6. "HITECH Act" means Subtitle D of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (42 U.S.C. §§ 17921 – 53).
- I.7. "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- I.8. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, as amended by the HITECH Act and as may otherwise be amended from time to time.
- I.9. "Protected Health Information" (PHI) shall have the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Guardian.
- I.10. "Required by Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.103.
- I.11. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- I.12. "Security Standards" shall mean the Security Standards at 45 C.F.R. Parts 160, 162, and 164, as they exist now or as they may be amended.
- I.13. "Transaction Standards" shall mean the Standards for Electronic Transactions, 45 C.F.R. 160 and 162, as they exist now or as they may be amended.
- I.14. "Services Agreement" shall mean any agreement (or other arrangement) under which Business Associate performs a function or activity on Guardian's behalf involving the use, disclosure, maintenance, or creation of Protected Health Information.



- 1.15. "Unsecured Protected Health Information" or "Unsecured PHI" shall mean PHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined in the §13402(h) of the HITECH Act.

Terms used, but not otherwise defined, in this BAA (or the Services Agreement) shall have the same meaning as those terms in 45 C.F.R. §§ 160.103 and 164.501.

2. **Obligations and Activities of Business Associate.**

- 2.1. Business Associate agrees that it shall not use or further disclose Protected Health Information other than as permitted or required by this BAA or as Required by Law.
- 2.2. Business Associate shall develop, implement, maintain and use appropriate safeguards to prevent the use or disclosure of Protected Health Information other than as provided for by this BAA.
- 2.3. Business Associate shall develop, implement, maintain written policies and procedures regarding appropriate administrative, technical and physical safeguards for compliance with the HITECH Act, applicable provisions of the Security Standards and any other applicable implementing regulations issued by the Department of Health and the Human Services as they relate to the preservation of the integrity, confidentiality, and availability of electronic Protected Health Information.
- 2.4. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Breach or any other use or disclosure of Protected Health Information in violation of the requirements of this BAA.
- 2.5. Notification Pursuant to an Incident or Breach.
- 2.5.1. Breach Notification. Business Associate shall report any "Breach" of Unsecured Protected Health Information following discovery. Business Associate shall make such report without unreasonable delay and in any event within five (5) days. Business Associate shall cooperate with Guardian in investigating the breach and in meeting Guardian's obligations under the breach notification provisions of HIPAA (45 C.F.R. Part 164 Subpart D).
- 2.5.2. Privacy Incident Notification. With respect to any incident not subject to reporting under the Breach Notification provision of Section 2.5 of this BAA, Business Associate shall promptly report to Guardian any Breach or other use or disclosure of Protected Health Information of which it becomes aware that is not permitted or required by this BAA. Business Associate shall make such report as soon as administratively feasible and within a timeframe adequate to allow the Guardian to meet its reporting obligation with respect to applicable state and federal reporting requirements.
- 2.5.3. Security Incident Notification. With respect to any incident not subject to reporting under Breach Notification and/or Privacy Incident provision(s) of Section 2.5 of this BAA, Business Associate shall report to Guardian any successful (a) unauthorized access, use, disclosure, modification, or destruction of Electronic Protected Health Information or (b) unauthorized interference with system operations in Business Associate's information system, of which Business Associate becomes aware. Business Associate shall, upon Guardian's request, report to Guardian any attempted, but unsuccessful (a) unauthorized access, use, disclosure, modification, or destruction of Electronic Protected Health Information or (b) unauthorized interference with system operations in Business Associate's information systems, of which Business Associate becomes aware. Upon Guardian's request, Business Associate shall make such report as soon as administratively feasible and within a timeframe adequate to allow the Guardian to meet its reporting obligation with respect to applicable state and federal reporting requirements.



- 2.5.4. Report Contents. To the extent that any information described below is not available to be included in the Security Incident report, the report must include an explanation of why such information is not available to Business Associate. If any such information later becomes available, the information will be provided to Guardian as soon as reasonably practicable after it becomes available.

Each Breach/Incident report will include the following elements (as applicable):

- i. Identification of each individual whose Protected Health Information is known to have been, or is reasonably believed by Business Associate to have been accessed, acquired, or disclosed during the incident;
 - ii. Identification of the nature of the non-permitted access, use, or disclosure and the date of the incident and the date of discovery;
 - iii. Identification of the Protected Health Information accessed, used, or disclosed;
 - iv. Identification of who made the non-permitted access, use, or received the non-permitted disclosure;
 - v. Identification of any corrective action Business Associate has taken or will take to prevent similar Security Incidents in the future;
 - vi. Identification of any actions Business Associate has taken or will take to mitigate any harmful effects of the Security Incident;
 - vii. An appraisal of whether Business Associate believes its current security measures are adequate given the outcome, scope and nature of the attempt. If existing security measures are not adequate, the Business Associate plans for implementation, which will address the security inadequacies.
 - viii. Provide other such information, as Guardian may reasonably request, in meeting the Guardian's obligations under the breach notification provisions of HIPAA as well as any other applicable state and/or federal breach notification provisions.
- 2.6. If Business Associate is a subcontracting Business Associate to the Guardian, Business Associate agrees to comply with and be bound by any restrictions and conditions that apply to Guardian under any business associate agreement that Guardian maintains with any entity relating to any Protected Health Information.
- 2.7. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information agrees in writing to the same restrictions and conditions that apply through this BAA to Business Associate with respect to Protected Health Information, including Electronic Protected Health Information. To the extent that a subcontractor or other agent of Business Associate creates, receives, maintains or transmits Electronic Protected Health Information on behalf of Business Associate, Business Associate will ensure that the subcontractor or agent agrees to comply with the applicable requirements of the Security Standards by entering into an agreement that complies with 45 CFR §164.314.
- 2.8. Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of Protected Health Information available to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining Guardian's (and/or the Business Associate's) compliance with the Privacy Rule and Security Rule.
- 2.9. Business Associate agrees to document disclosures of Protected Health Information, and information related to such disclosures, as would be required for Guardian to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.
- 2.10. Business Associate agrees to provide to Guardian, in a time and manner designated by Guardian, information collected in accordance with documentation of disclosure requirements of this BAA and 45 C.F.R. § 164.528, to permit Guardian to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.



- 2.11. To the extent reasonably necessary for Guardian to comply with 45 CFR §164.524(c)(2), if Business Associate maintains PHI in an electronic format for any Individual, Business Associate agrees to provide, at the request of an Individual, and in the time and manner designated by the Individual, a copy of such information in the electronic format designated by the Individual to that Individual or, if clearly, conspicuously and specifically directed by the Individual to transmit an electronic copy of that information directly to an entity or person designated by the Individual. If electronic information described in the preceding sentence is not readily producible in the form and format requested by the Individual, it will be provided in a readable electronic form and format as agreed to by Business Associate and the individual, or, if no agreement is reached in a hard copy format. If a request described in this Section is made by the Individual to Guardian instead of Business Associate, Business Associate shall promptly provide Guardian with the information in a Designated Record Set as necessary for Guardian to comply with an Individual's request for access pursuant to 45 C.F.R. § 164.524.
- 2.12. Upon direction from Guardian, Business Associate shall amend records in a Designated Record Set as necessary for Guardian to comply with an Individual's amendment request pursuant to 45 C.F.R. § 164.526, or, in the alternative, Business Associate shall allow Guardian access to records in a Designated Record Set as necessary for Guardian to comply with an Individual's amendment request pursuant to 45 C.F.R. § 164.526.
- 2.13. Business Associate shall comply with any limitation in Guardian's Notice of Privacy Practices (www.guardianlife.com/privacypolicy), as such Notice may be updated from time to time. Business Associate shall comply with any restriction request or confidential communications request to which Guardian agrees, provided that Guardian makes Business Associate aware of such request.
- 2.14. To the extent that Guardian delegates to Business Associate any obligation imposed on Guardian by the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to Guardian in the performance of such delegated obligation.
- 2.15. Business Associate shall encrypt Electronic Protected Health Information prior to saving it on portable media. In other circumstances, Business Associate shall encrypt Electronic Protected Health Information whenever reasonably practicable.
- 2.16. Upon request, Business Associate shall provide Guardian with a list of personnel who are authorized to receive Protected Health Information pursuant to this BAA.
- 2.17. Business Associate, and its agents and subcontractors, if any, are prohibited from directly or indirectly receiving any remuneration in exchange for any of Guardian's PHI.
- 2.18. Business Associate, and its agents and subcontractors, if any, are prohibited from use or disclosure of Genetic Information (as defined in 29 C.F.R. §1635.3(c), except as permitted by 45 C.F.R. § 164.502(a)(5)(i).

3. Permitted Uses and Disclosures by Business Associate.

- 3.1. General Use. Except as otherwise limited in this BAA, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Guardian, provided that such use or disclosure would not violate (i) the Privacy Rule, the HITECH Act or (ii) the minimum necessary as set forth by 45 C.F.R. § 164.502(b) if done by Guardian.
- 3.2. Specific Use and Disclosure.
 - 3.2.1. Except as otherwise limited in this BAA, Business Associate may use Protected Health Information for the proper management and administration of Business Associate or to carry out its legal responsibilities.
 - 3.2.2. Except as otherwise limited in this BAA, Business Associate may disclose Protected Health Information for its proper management and administration, provided that such disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that: (i) it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the entity (or person), and (ii) the person (or entity) will notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.



3.2.3. Except as otherwise limited in this BAA, Business Associate may use Protected Health Information to provide Data Aggregation services to Guardian as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B), to the extent Business Associate performs such services.

3.2.4. Business Associate may use Protected Health Information to report violations of law to appropriate state and/or federal authorities, consistent with 45 C.F.R. § 164.502(j)(1).

4. **Obligations of Guardian.**

- 4.1. Guardian shall notify Business Associate of any limitation(s) in the Notice of Privacy Practices of Guardian in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information. (Guardian's HIPAA Notice of Privacy Practices may be found at: www.guardianlife.com/privacypolicy, and may be subject to change from time to time.)
- 4.2. Guardian shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
- 4.3. Guardian shall notify Business Associate of any restriction(s) to the use or disclosure of Protected Health Information that Guardian has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction(s) may affect Business Associate's use or disclosure of Protected Health Information.
- 4.4. Guardian shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Guardian, except as specifically permissible by this BAA and the Privacy Rule.

5. **Term and Termination.**

- 5.1. Term. The Term of this BAA shall be effective as of the date it is executed, and shall terminate upon (i) termination of the Services Agreement and (ii) when all of the Protected Health Information provided by Guardian to Business Associate, or created or received by Business Associate on behalf of Guardian, is destroyed, returned or protections in accordance with the terms of this BAA.
- 5.2. Guardian's Termination for Breach. Upon a material breach of the terms of this BAA by Business Associate, Guardian shall, at its option: (i) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this BAA (and the Service Agreement) if Business Associate does not cure the breach or end the violation within the time specified by Guardian; or (ii) Immediately terminate this BAA (and the Services Agreement) if Business Associate has breached a material term of this BAA and cure is not possible.
- 5.3. Other Circumstances Allowing for Immediate Termination. Notwithstanding anything to the contrary in this BAA, Guardian may terminate this BAA immediately upon written notice to Business Associate, without liability for such termination, in the event that Business Associate is found to have (or stipulates that it has) violated any privacy, security or confidentiality protection requirements under any applicable information privacy and protection law in any administrative or civil proceeding in which Business Associate has been joined.
- 5.4. Conditions of Termination. Upon termination of this BAA, for any reason, Business Associate shall return to Guardian (or destroy) all Protected Health Information. In the event that return (or destruction) of the Protected Health Information is infeasible, Business Associate shall extend the protections of this BAA to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information. (This provision shall apply to Protected Health Information that is in the possession of Business Associate's subcontractors (or agents).
- 5.5. The termination provisions of this Section 5 shall supersede and replace any contrary provision that may appear in said underlying Services Agreement.



6. **Miscellaneous.**

- 6.1. Amendment. The parties agree to amend this BAA, as appropriate, to conform to any new or revised legislation, rules and regulations to which Guardian is subject now or in the future including, without limitation, the Privacy Rule, Security Standards or Transactions Standards (collectively "HIPAA") as well as any other applicable state or federal law. If Guardian and Business Associate cannot agree in good faith to the terms of the amendment, Guardian may terminate this Agreement and the underlying Services Agreement. Otherwise, no provision of this BAA may be modified except by a written document signed by a duly authorized representative of the parties.
- 6.2. Assignment. No party may assign or transfer any or all of its rights and/or obligations under this BAA or any part of it, nor any benefit or interest in or under it, to any third party without the prior written consent of the other party.
- 6.3. Survival. The respective rights and obligations of Business Associate under the Conditions of Termination provision shall survive the termination of this BAA.
- 6.4. Interpretation. Any ambiguity in this BAA shall be resolved to permit Guardian to comply with the Privacy Rule, Security Standards, Transaction Standards, and HITECH Act.
- 6.5. Indemnification. Business Associate shall indemnify Guardian for any and all reasonable costs and attorney's fees that Guardian incurs arising from a violation by Business Associate of its obligations hereunder. In turn, Guardian shall indemnify Business Associate for any and all reasonable costs and attorney's fees that Business Associate incurs arising from a violation by Guardian of its obligations hereunder.
- 6.6. Third Party Rights. The terms of this BAA are not intended, nor should they be construed, to grant any rights to any parties other than Business Associate and Guardian.
- 6.7. Entire Agreement. The BAA constitutes the entire agreement of the parties with respect to the parties' compliance with federal and/or state health information confidentiality laws and regulations, as well as the parties' obligations under the business associate provisions of 45 C.F.R. parts 160 and 164. This BAA supersedes all prior or contemporaneous written or oral memoranda, arrangements, contracts or understandings between the parties with respect to the parties' compliance with federal and/or state health information confidentiality laws and regulations.
- 6.8. Conflict. In the event of a conflict between the terms of the Services Agreement and this BAA, this BAA will control.
- 6.9. Electronic Transactions. Business Associate hereby represents and warrants that, to the extent that it is electronically transmitting any of the HIPAA Transactions for Guardian, the format and structure of such transmissions shall be in compliance with the Transaction Standards.
- 6.10. Minimum Necessary. Business Associate shall, if practicable, use, disclose, or request Protected Health Information in a limited data set, as that term is defined in 45 C.F.R. § 164.514(e)(2). Otherwise, Business Associate shall request from Guardian or a third party only the minimum amount of information necessary to perform services under this BAA. Business Associate shall develop, implement, maintain and use policies and procedures to limit uses and disclosures of Protected Health Information to the minimum necessary to perform services under this BAA. Business Associate shall determine what constitutes the minimum necessary Protected Health Information to accomplish the intended purpose of any disclosure and shall not rely on a request from a third party being for the minimum necessary, except as allowed Privacy Rule pursuant to the HITECH Act.



The Guardian Life Insurance Company of America
Agent Contracting & Licensing
81 Highland Avenue, Mail Station A259, Bethlehem, PA 18017

- 6.11. Notice. All notices required under this BAA shall be in writing and shall be deemed to have been given on the next day by fax or other electronic means or upon personal delivery, or in ten (10) days upon delivery in the mail, first class, with postage prepaid. Notices shall be sent to the attention of the Privacy Office. Either Party may at any time change its address for notification purposes by mailing a notice to the other stating the change and setting forth the new address.

Up-to-date information regarding Guardian's Privacy Program may be obtained at: www.GuardianLife.com/PrivacyPolicy

- 6.12. Owner of Protected Health Information. Under no circumstances shall Business Associate be deemed in any respect to be the owner of any Protected Health Information used or disclosed, created or maintained by or to Business Associate pursuant to the terms of this BAA.
- 6.13. Irreparable Harm. Business Associate acknowledges and agrees that any use, disclosure or maintenance of any Protected Health Information in a manner inconsistent with this BAA may give rise to irreparable injury to Guardian for which damages would not be an adequate remedy. Accordingly, in addition to any other legal remedies, which may be available at law or in equity, Guardian shall be entitled to equitable or injunctive relief against the unauthorized use or disclosure of Protected Health Information or failure to maintain the security of Protected Health Information, as required by this BAA.

IN WITNESS WHEREOF, the Parties have caused this Business Associate Agreement to be executed as of the day and year first written above.

By: **Guardian Life Insurance Company**

By: **Business Associate:**

Signature: _____

Signature: _____

Name: Stu Shaw

Name: _____

Title: Vice President, Risk Management

Title: _____

Date: _____

Date: _____



Para informacion en español, visite www.ftc.gov/credit o escribe a la FTC Consumer Response Center, Room 130-A 600 Pennsylvania Ave. N.W., Washington, D.C. 20580.

A SUMMARY OF YOUR RIGHTS UNDER THE FAIR CREDIT REPORTING ACT

The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records). Here is a summary of your major rights under the FCRA. **For more information, including information about additional rights, go to www.ftc.gov/credit or write to: Consumer Response Center, Room 130-A, Federal Trade Commission, 600 Pennsylvania Ave. N.W., Washington, D.C. 20580.**

- **You must be told if information in your file has been used against** anyone who uses a credit report or another type of consumer report to deny your application for credit, insurance, or employment – or to take another adverse action against you – must tell you, and must give you the name, address, and phone number of the agency that provided the information.
- **You have the right to know what is in your file.** You may request and obtain all the information about you in the files of a consumer reporting agency (your “file disclosure”). You will be required to provide proper identification, which may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if:
 - a person has taken adverse action against you because of information in your credit report;
 - you are the victim of identity theft and place a fraud alert in your file;
 - your file contains inaccurate information as a result of fraud;
 - you are on public assistance;
 - you are unemployed but expect to apply for employment within 60 days. In addition, effective September 2005 all consumers are entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See www.ftc.gov/credit for additional information.
- **You have the right to ask for a credit score.** Credit scores are numerical summaries of your credit-worthiness based on information from credit bureaus. You may request a credit score from consumer reporting agencies that create scores or distribute scores used in residential real property loans, but you will have to pay for it. In some mortgage transactions, you will receive credit score information for free from the mortgage lender.
- **You have the right to dispute incomplete or inaccurate information** you identify information in your file that is incomplete or inaccurate, and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. See www.ftc.gov/credit for an explanation of dispute procedures.
- **Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information.** Inaccurate, incomplete or unverifiable information must be removed or corrected, usually within 30 days. However, a consumer reporting agency may continue to report information it has verified as accurate.
- **Consumer reporting agencies may not report outdated negative information** most cases, a consumer reporting agency may not report negative information that is more than seven years old, or bankruptcies that are more than 10 years old.
- **Access to your file is limited.** A consumer reporting agency may provide information about you only to people with a valid need – usually to consider an application with a creditor, insurer, employer, landlord, or other business. The FCRA specifies those with a valid need for access.
- **You must give your consent for reports to be provided to employer.** Consumer reporting agency may not give out information about you to your employer, or a potential employer, without your written consent given to the employer. Written consent generally is not required in the trucking industry. For more information, go to www.ftc.gov/credit.
- **You may limit “prescreened” offers of credit and insurance you get based on information in your credit report.** Unsolicited “prescreened” offers for credit and insurance must include a toll-free phone number you can call if you choose to remove your name and address from the lists these offers are based on. You may opt-out with the nationwide credit bureaus at 1-888-5-OPTOUT (1-888-567-8688).
- **You may seek damages from violators.** If a consumer reporting agency, or, in some cases, a user of consumer reports or a furnisher of information to a consumer reporting agency violates the FCRA, you may be able to sue in state or federal court.
- **Identity theft victims and active duty military personnel have additional right.** For more information, visit www.ftc.gov/credit.



TYPE OF BUSINESS:	CONTACT:
Consumer reporting agencies, creditors and others not listed below	Federal Trade Commission: Consumer Response Center - FCRA Washington, DC 20580 1-877-382-4357
National banks, federal branches/agencies of foreign banks (word "National" or initials "N.A." appear in or after bank's name)	Office of the Comptroller of the Currency Compliance Management Mail Stop 6-6 Washington, DC 20219 800-613-6743
Federal Reserve System member banks (except national banks, and federal branches/agencies of foreign banks)	Federal Reserve Board Division of Consumer & Community Affairs Washington, DC 20551 202-452-3693
Savings associations and federally chartered savings banks (word "Federal" or initials "F.S.B." appear in federal institution's name)	Office of Thrift Supervision Consumer Complaints Washington, DC 20552 800-842-6929
Federal credit unions (words "Federal Credit Union" appear in institution's name)	National Credit Union Administration 1775 Duke Street, Alexandria, VA 22314 703-519-4600
State-chartered banks that are not members of the Federal Reserve System	Federal Deposit Insurance Corporation Consumer Response Center 2345 Grand Avenue, Suite 100 Kansas City, Missouri 64108-2638 1-877-275-3342
Air, surface, or rail common carriers regulated by former Civil Aeronautics Board or Interstate Commerce Commission	Department of Transportation , Office of Financial Management Washington, DC 20590 202-366-1306
Activities subject to the Packers and Stockyards Act, 1921	Department of Agriculture Office of Deputy Administrator - GIPSA Washington, DC 20250 202-720-7051



NY CIRCULAR LETTER (NY LICENSEES ONLY)



**STATE OF NEW YORK
INSURANCE DEPARTMENT
160 WEST BROADWAY
NEW YORK NEW YORK 10013-3393**

SALVATORE R. CURIALE, SUPERINTENDENT OF INSURANCE

Circular Letter No. 8
July 11, 1991

ALL INSURANCE AGENTS AND BROKERS

PLACEMENT OF HEALTH INSURANCE COVERAGE WITH UNLICENSED AND UNAUTHORIZED MULTIPLE EMPLOYER WELFARE ARRANGEMENTS.

Since the release of Circular Letter No. 7 (1978) and Circular Letter No. 7 (1977), the Insurance Department has received additional inquiries as to whether purported "comprehensive health plans" offered by Multiple Employer Welfare Arrangements ("MEWAs") which provide major medical type benefits to employees residing in New York State on a self-funded basis can be sold in this state.

The term "MEWA" is defined in the Employee Retirement Income Security Act, Public Law 93-406, ("ERISA") to mean an employee welfare benefit plan, or any other arrangement (other than an employee welfare benefit plan), which is established or

maintained for the purpose of offering or providing any welfare benefit to the employees of two or more employers *including one or more self-employed individuals), or to their beneficiaries. However, the term "MEWA" does not include any such plan or other arrangement which is established or maintained (i) pursuant to one or more collective bargaining agreements or (ii) by a rural electric cooperative.

It is the position of this Department that the selling of the above major medical type benefits constitutes the doing of an insurance business in this state under the New York Insurance Law, and only a licensed insurer or an organization specifically exempt from such licensing requirement may offer such insurance coverage of benefits in this state.

The Department understands that certain self-funded MEWAs claim that they are exempt from the requirement of licensing and conformance to the New York Insurance Law because of the provisions of ERISA.

Based on a review of the applicable provisions of ERISA, it is the position of this Department that except as discussed below, ERISA exemption does not apply to self-funded MEWAs. Accordingly, all self-funded MEWAs must be licensed to do an insurance business in this state. It should be noted that, upon referral by this Department, the Attorney General commenced an injunctive action against one such program and its sponsors and obtained a Temporary Restraining Order and Decision that the program did in fact conduct an insurance business in violation of the Insurance Law. *Corcoran v. Empire Benefit Plans, Inc.*, N.Y. Sup. Ct., Albany Co., (June 13, 1989).

Any licensee of this Department who solicits, negotiates or effectuates any coverage on behalf of an unlicensed or unauthorized self-funded MEWA would be subject to disciplinary action for having violated Sections 2110, 2117 and 2112 and other applicable provisions of the Insurance Law, and to the penalties provided therein which include suspension or revocation of all insurance licenses held and/or the imposition of monetary penalties.

Any other person who acts on behalf of an unlicensed or unauthorized self-funded MEWA in this state would be subject to monetary penalties for having violated Sections 1102, 2117, and 2122 of the Insurance Law.



The Department recognized that certain self-funded multiple employer programs which are established or maintained (i) pursuant to one or more collective bargaining agreements, (ii) by rural electric cooperatives, or (iii) by trades or businesses under common control may be exempt from the requirements of obtaining a license and other provisions of the Insurance Law by virtue of ERISA preemption.

However, we believe that our licensees should exercise caution when they are approached to provide services on behalf of any self-funded multiple employer program. Licensees should be suspicious when the coverage is offered to unaffiliated or unrelated parties and provides for profit-making opportunities. We note that the exemption from insurance regulation under ERISA is not intended to apply to insurance programs masquerading as employee benefit plans. If an insurance agent or broker is approached to provide services on behalf of a self-funded multiple employer program and is unsure as to whether the program is exempt from the requirement of licensing, such licensee may submit all relevant documents to the Department for review. Placement of such coverage pending Insurance Department review may expose licensees to the liabilities of the type herein above mentioned.

Licensees of this Department who provide services to self-funded ERISA exempt plans are hereby cautioned not to misrepresent the nature of their services as being within the scope of their insurance licenses. The public relies upon Department licensees, acting in their professional capacity, to evaluate their insurance needs and to secure appropriate insurance coverage. It is the position of this Department that licensees are responsible for making full and complete disclosure in writing when they are not acting within the scope of their license. In addition, licensees should disclose in writing that the self-funded ERISA exempt plan does not operate under the supervision or jurisdiction of the New York State Insurance Department and that the insurance type benefits are not provided or guaranteed by a licensed insurer and are not subject to the minimum standards or mandated benefits provisions of the Insurance Law. Licensees should retain signed and dated copies of such written disclosure for a period of not less than five years.

As a final matter, agents and brokers should consider their potential liability under the fiduciary responsibility provisions in ERISA before agreeing to provide services on behalf of self-funded multiple employer programs. Agents and broker may be held personally liable for the payment of benefits or for other losses incurred resulting from the failure to discharge their duties solely in the interest of and for the exclusive benefit of plan participants and their beneficiaries or from similar failures by co-fiduciaries and, in addition may be liable for other penalties for activities or transactions which are prohibited. Furthermore, a licensee's involvement with a fraudulent or financially unsound arrangement, including programs which charge excessive fees, may reflect negatively on the competence and trustworthiness of such licensee.

Receipt of this letter must be acknowledged in writing to Mr. John Mansfield, Supervising Insurance Examiner, New York State Insurance Department, 160 West Broadway, New York New York 10013.

Very truly yours,

SALVATORE R. CURIALE, SUPERINTENDENT OF INSURANCE

PLEASE READ THE FOLLOWING IMPORTANT INFORMATION CAREFULLY BEFORE COMPLETING THIS AUTHORIZATION FORM.

- *This program applies to Guardian's 'Group' Business only-all other commission activity (i.e. 'Individual' business written through Guardian/Berkshire) will continue to be administered through Guardian's existing practices.*
- *Most of our producers are eligible for Direct Deposit, except for:*
 - *Guardian Field Representatives (FRs), Full Time Agents (FTAs), and Financial Professionals (FPs).*
 - *Brokers with outstanding advances, withdrawals, loans, etc., with a Guardian General Agency.*
 - *Brokers who have assigned and/or are receiving assigned commissions via a 'blanket' assignment (case by case assignments are eligible).*
- *What if there are several writing codes that 'roll-up' to my Prod ID?*
 - *Any writing code(s) affiliated with a Prod ID will automatically be included as part of the election. Guardian is unable to administer the election of direct deposit at a writing code level.*
- *Guardian utilizes "ACH" functionality. If a Producer's bank only accepts "Wire Transfers", Guardian will be unable to successfully credit your account via Direct Deposit..*
- *Direct deposit funds can only be transmitted to United States banks.*
- *Direct deposit will begin the 1st day of the month following the date a producer's election has been successfully coded in the Guardian system. For example, an enrollment is coded in Guardian's system on June 15th; therefore, commissions for the month of July, paid in early August, will be the first to be administered via direct deposit. Email notification will be sent to the email address provided above, once an election has been successfully processed. Please allow ample time for Guardian to receive and code your request.*
- *If a Producer transfers to a new bank or changes bank accounts, direct deposit may be interrupted unless Guardian is provided with adequate advance notice of the transfer or change.*
- *If, at any time, Guardian is obligated to apply all or part of a Producer's commissions toward a garnishment, income execution or levy of any kind, direct deposit will be discontinued immediately and without notice to the Producer.*
- *Guardian, at its sole discretion, may terminate the Direct Deposit Program in its entirety or may terminate direct deposit for any Producer.*
- *By authorizing direct deposit of group commissions, the Producer specifically waives his rights under any and all applicable Brokerage Agreements in effect with one or more Guardian General Agents to receive such commissions from such General Agent(s).*
- *By implementing direct deposit for a Producer (and subject to all terms, conditions, and limitations contained herein and in any applicable Brokerage Agreement) Guardian acknowledges that it is assuming the duty of one or more General Agents under one or more such Brokerage Agreements to pay to the Producer any and all group commissions due such Producer by depositing such commissions directly into a specified bank account as authorized herein by such Producer.*

| If you have any questions regarding this process, please contact the Guardian's Customer Response Unit (CRU) at 1-888-278-4542.

Please read this entire form carefully and complete all applicable sections.

Please check one:

- ☐ Authorize direct deposit
☐ Update account information
☐ Terminate direct deposit

- I understand that after authorizing direct deposit of group commissions, I will only be able to view and print the statements relating to such commissions at www.GuardianAnytime.com and that Guardian will no longer furnish paper copies of such statements.
- Producer initials: _____

IMPORTANT NOTE:

If you have one (1) Prod ID, please proceed directly to the 'DIRECT DEPOSIT INFORMATION' section below.

If you have more than one Prod ID, this form may be used to authorize direct deposit of multiple Prod IDs to one (1) bank account. If you would like to authorize the direct deposit of the commissions related to multiple Prod IDs to a single bank account, simply list all applicable Prod IDs where indicated below.

However, if you would like to authorize the direct deposit of multiple Prod IDs to different bank accounts, you must complete a separate enrollment form for each bank account. List on each form the applicable Prod ID(s) that you authorize for direct deposit to each bank account.

DIRECT DEPOSIT INFORMATION:

Producer's Name: _____

Guardian Producer ID(s) _____

Producer's TIN, EIN, or SSN: _____

Producer's Mailing Address:

Street Address: _____ Apt/Suite Number: _____

City/State/Zip: _____

Producer's Phone _____ Fax _____

Producer's Email Address: _____

Bank Name: _____

Bank City/State _____

Please check one:

- ☐ Checking Account – **PLEASE ATTACH A VOIDED CHECK FROM THIS ACCOUNT.**
- ☐ Savings Account – **PLEASE ATTACH A DEPOSIT SLIP – WHICH ILLUSTRATES THE APPLICABLE ROUTING AND ACCOUNT NUMBERS - FROM THIS ACCOUNT.**

FOR YOUR SECURITY: ENROLLMENTS WILL ONLY BE PROCESSED WHEN THE NAME(S) ASSOCIATED WITH BOTH THE BANK ACCOUNT AND THE GUARDIAN PRODUCER ID ARE THE SAME.

I hereby authorize The Guardian Life Insurance Company of America ("Guardian") to make payment of certain group commissions owed to me by initiating credit entries into the account and at the bank listed above. This authorization will remain in effect until I give written notice to Guardian to change financial institutions, to terminate such authorization, or until Guardian terminates direct deposit. I hereby authorize Guardian and the bank to electronically deposit such payment into my designated account and to debit my account for any payments deposited by Guardian, to which Guardian, in good faith, determines that I am not entitled.

I represent that I am entitled to group commissions in connection the Producer IDs listed above and that I have read this entire form and agree to its terms, conditions, and limitations. I further represent that the listed bank account is in the Producer's name.

Signature: _____

Date: _____

Joint Account Holder (if applicable*): _____

Date: _____

*If account requires countersignatures, both signatures must be provided.

GUARDIAN COMMISSIONS

How to View/Print Your Direct Deposit Statement

If you've signed up for Direct Deposit, you can view and print your commission statement from www.GuardianAnytime.com by following these instructions.

1. Log in to Guardian Anytime.
2. Click on 'View Direct Deposit Commission Statements,' or click on the 'Commissions' tab and then on 'View Direct Deposit Statements.' A gray box with links of 'Most Recent Statements' is displayed.
3. Click on the date link of the commission statement you need. The statement is displayed.

Note: If a date link for the statement you're looking for is not displayed, you can search for the correct statement by entering a date range. Click on the Date Range button and enter dates. Then, click on the date link to view the statement.

4. Once the statement is displayed a separate window will open and you'll have the option to Save or Print the statement. If you print, be sure to select the landscape option and use legal size paper.

Guardian Anytime Commissions Page

The screenshot shows the Guardian Anytime website interface. At the top, there's a navigation bar with 'Guardian Anytime' and 'Commissions' tabs. Below this, there's a section titled 'View Direct Deposit Commission Statements'. It includes a note about product eligibility, a search bar for Producer ID, and options to display statements by 'Most Recent Statement(s)' or 'Date Range'. A list of statement dates is shown: 03/01/2009, 02/25/2009, and 01/31/2009.

Guardian Anytime | **Commissions** | Home | Compensation | Forms & Materials | Products & Services | Client Eligibility | Client Billing

View Direct Deposit Commission Statements

Please note: Direct deposit for commissions is not available for the following Guardian Products: Universal Life, Universal Accidental Death, Managed Dental Care (MDC) and First Commonwealth Dental.

Direct Deposit Commission Statements

Below are the most recent direct deposit commission statement(s) for the Producer ID appearing below. If you have other Producer IDs, you may select another Producer ID from the drop down list to view the most recent statements for that ID.

Direct deposit commission statements are available for statements issued beginning 04/01/2009.

Producer ID:

Display these Commission Statement(s): ☒ Most Recent Statement(s) ☐ Date Range (limited to a 12 month period)

Statement Date(s)

Producer ID: XXXXX

Please click on a statement below to view its content. For best printing results, please change your printer setting to landscape and print on legal size paper.

[03/01/2009](#)
[02/25/2009](#)
[01/31/2009](#)

The Guardian Life Insurance Company of America, New York, NY 10004

2009-4277



We take your business personallySM

DENTAL • LIFE • DISABILITY PROTECTION • MEDICAL BENEFITS • CRITICAL ILLNESS • SECTION 125/FLEX PLAN • VISION CARE