

COOPERATIVE OF AMERICAN PHYSICIANS, INC.
MEDEFENSE PLUS
BILLING ERRORS INSURANCE
(Claims-Made and Reported Insurance)

THIS POLICY PROVIDES CLAIMS MADE AND REPORTED COVERAGE. CLAIMS MUST FIRST BE MADE AGAINST YOU DURING THE POLICY PERIOD AND MUST BE REPORTED IN WRITING TO US AS SOON AS PRACTICABLE DURING THE POLICY PERIOD OR WITHIN SIXTY (60) DAYS AFTER EXPIRATION OF THE POLICY PERIOD.

Legal Expenses and **Audit expenses** are included within the limits of liability and will reduce the limits available to respond to the **finances or penalties**.

Various Articles and provisions in this policy restrict coverage. Read the entire policy carefully to determine your rights, duties and what is and is not covered.

Throughout the policy the words "you" and "your" refer to the **Insured**. The **Named Insured** is the Cooperative of American Physicians, Inc. The words "we," "us," and "our" refer to the underwriters providing this insurance.

In consideration of the payment of the premium and in reliance upon the statements, representations and warranties in the Application and its attachments and any materials submitted therewith, all of which are made a part of, and subject to, the Declarations and the various Articles of this policy (including any endorsements hereto), you and we agree as follows:

Article I. COVERAGE AGREEMENT

This policy will reimburse you, subject to the terms, definitions, exclusions and conditions set forth below ("terms"), for any **legal expenses or audit expenses** and/or **finances or penalties** incurred by you arising out of an **insured event instituted** against you during the **policy period**. We have no duty to provide coverage under this policy unless there has been full compliance with all the conditions and provisions contained in this policy. The **maximum amount reimbursable**, deductible and **co-payment** amounts shall be as shown on the Declaration Page that forms part of this policy, and shall operate per the terms set forth below.

Article II. GENERAL POLICY CONDITIONS

- 1) All related **billing errors proceedings, disciplinary proceedings** or **HIPAA proceedings**, consolidated proceedings and proceedings arising out of the same events shall be considered as one **insured event** and shall be deemed to have been **instituted** at the time the earliest of such proceedings was first **instituted**. Appeals and any post-trial proceedings shall be considered to be part of the original **insured event**.
- 2) As a condition precedent to payment of any benefit hereunder, you shall notify us as soon as practicable after the date of an **insured event** being **instituted** but in no event later than sixty (60) days after expiration of the **policy period**.
- 3) This policy applies only if the **insured event**:
 - a. Is first made against you in accordance with the WHEN COVERAGE IS PROVIDED and WHERE COVERAGE IS PROVIDED Articles;
 - b. Is first reported in accordance with the WHEN COVERAGE IS PROVIDED and WHERE COVERAGE IS PROVIDED Articles;
 - c. Takes place within the territory specified in the WHERE COVERAGE IS PROVIDED section.

- 4) This policy does not apply to **insured events** which arise from any facts, circumstances, situations, events, transactions, or causes which:
 - a. Are underlying or alleged in any litigation or other notice pending on or prior to the initial inception date of this insurance; or
 - b. Are underlying or referred to in any judicial decree or judgment entered for or against any **insured** on or prior to the initial inception date of this insurance; or
 - c. Have been the subject of notice to an insurer under any policy of insurance, or the equivalent thereof, issued prior to the initial inception date of this insurance; or
 - d. You or any individual employed by you in a managerial or supervisory position knew or had reasonable basis to know may result in an **insured event** prior to the inception date of this policy.
- 5) Other Insurance: This policy shall be excess insurance over any other valid and collectible insurance available to you, whether such insurance is stated to be primary, pro rata, contributory, excess, contingent, or otherwise, unless such insurance specifically applies as excess insurance over the **maximum amount reimbursable** under this policy.
- 6) Cancellation: You may cancel this policy by mailing to us or our authorized representative, shown in the Declarations, written notice stating when thereafter such cancellation shall be effective. We may cancel this policy by mailing to you, at the address shown in this policy, written notice stating when not less than thirty (30) days thereafter, such cancellation shall be effective. The mailing of notice as described shall be sufficient proof of notice. The effective date and hour of cancellation as stated in the notice shall become the end of the policy period. Delivery of such written notice shall be equivalent to mailing. If you cancel, earned premium shall be computed in accordance with the attached short rate cancellation table and procedure. If we cancel this policy for non-payment of premium and no premium payments have been received prior to the date of cancellation during the policy period identified in the Declarations, then the policy shall be cancelled as of the date of inception. If we cancel for any reason other than non-payment of premium, earned premium shall be computed pro-rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

Article III. SPECIAL CONDITIONS FOR REIMBURSEMENT

- 1) **Voluntary Self Disclosure**: In the event of any **finances or penalties** which arise out of **Voluntary Self Disclosure** of information by you to any **government entity** or commercial payer without inquiry, you must establish that the circumstances giving rise to the disclosure became known to you fortuitously subsequent to the initial effective date of this insurance.
- 2) **Shadow Audit**: You shall not have a **shadow audit** performed without our prior approval of the **shadow audit** and its expense. Only **audit expenses** from previously approved **shadow audits** will be reimbursed by this policy. We will not unreasonably withhold our approval.
- 3) Reimbursement for **finances or penalties**: We will reimburse you for **finances or penalties** which are the subject of final adjudication by an administrative tribunal or court, or are the subject of a settlement agreement or stipulated judgment to which we have given our prior consent. You shall not admit or assume any liability for **finances or penalties**, enter into any settlement agreement or stipulate to any judgment for **finances or penalties** without our prior written consent. Only those settlements, stipulated judgments or **finances or penalties** to which we have consented in writing shall be reimbursable under this policy. We will not unreasonably withhold our consent.
- 4) We will reimburse you for covered **legal expenses or audit expenses** and **finances or penalties**. You must pay for any **co-payment** due. We are entitled to require evidence of payment by you of the **co-payment** amount.

Article IV. DEFINITIONS

The following terms, whenever used in this policy in boldface type, are defined as follows.

- 1) **Attorney(s)** shall mean an individual(s) duly licensed to practice law at the time and place the legal services are rendered.

- 2) **Audit Expenses** means the fees for the services of a qualified audit professional and associated expenses incurred on your behalf in the course of an audit of your billing records and related documents arising out of a **billing errors proceeding**.
- 3) **Fines or Penalties** shall mean administrative fines or penalties you are required to pay as a result of a covered **billing errors proceeding** or **HIPAA privacy proceeding**.
- 4) **Billing Errors Proceeding** means:
 - a. Investigations or other proceedings instituted against you by a government entity or commercial payer alleging presentation, causing or allowing to be presented or being liable for the presentation, of any actual or alleged erroneous billings by you to a government health benefit payer or commercial payer from which you seek and/or have received payment or reimbursement for medical services or items provided or prescribed by you; or
 - b. Investigations or other proceedings instituted against you because you voluntarily without inquiry disclose information about your billing records and/or related documents to any **government entity** or commercial payer.
- 5) **Co-payment** means the stipulated percentage, if applicable, of all **legal expenses**, or **audit expenses** or **finances or penalties**, you pay (over the deductible amount) per **insured event**.
- 6) **Disciplinary proceeding** shall mean and shall be limited to:
 - a. Proceedings **instituted** by the California Medical Board or the Osteopathic Medical Board of California against an **Insured Member** for unprofessional conduct; or
 - b. Proceedings **instituted** by the California Department of Health Services or the U.S. Department of Health and Human Services against an **Insured** alleging Medicare/Medicaid fraud and abuse by an **Insured** or performance of medical services by an **Insured** in excess of, or in violation of, guidelines for appropriate utilization of said services.
 - c. Proceedings **instituted** by a **Government Entity** against an **Insured** alleging one or more violations of the Emergency Medical Treatment and Active Labor Act (EMTALA).
- 7) **Government entity** means:
 - a. Any department, agency, task force or other organization created by any United States federal or state law, regulation, rule or executive order;
 - b. Any department, agency, task force or other organization operated, funded or staffed, in whole or in part, by the United States federal government or any state government; or
 - c. Any organization operating as a Medicare Integrity Program Contractor.
- 8) **HIPAA proceeding** means and shall be limited to proceedings **instituted** by a **Government Entity** alleging violation of HIPAA privacy regulations.
- 9) **Instituted**, when referring to any **insured event**, means the time formal written notice of said **insured event** is served upon or otherwise provided to you.
- 10) **Insured** means: 1) an **Insured Member** who has paid the premium for this insurance; or 2) a **Medical Group** that has paid the premium for this insurance.
- 11) **Insured Event** means a **billing errors proceeding**, **disciplinary proceeding**, or **HIPAA proceeding** instituted against you during the **policy period**, which results in **legal expenses**, **audit expenses** or **finances or penalties**.
- 12) **Insured Member** means a natural person licensed to practice as a physician in the state of California, who is a member in good standing with CAP at the time an **Insured Event** is **instituted**.
- 13) **Legal Expenses** means an **attorney's** fees for legal services rendered and associated expenses incurred in defense of an **Insured Event**. **Legal Expenses** include expenses of a qualified consulting professional necessary to your defense, in the course of an audit of your billing records and related documents, if previously approved by us. **Legal Expenses** do not include:
 - a. Remuneration, salaries, wages, overhead, fees or benefits of any insured or the insurer; or
 - b. The costs associated with the adoption and implementation of any corporate integrity agreement, compliance program or similar provision regarding the operations of the insured's business negotiated as part of a settlement with or by order of a **government entity**.
- 14) **Maximum Amount Reimbursable** means the total dollar amount, as set forth in the Declarations Page, of covered **legal expenses**, **audit expenses** and **finances or penalties** that

- will be reimbursed for any one **Insured Event** and in the aggregate for a **policy period** in respect of all **insured events instituted** during such **policy period**.
- 15) **Medical Group** means an entity: 1) formed for the purpose of practicing medicine and performing medical services; and 2) composed of physicians, a majority of whom are CAP members.
 - 16) **Named Insured** means the Cooperative of American Physicians, Inc. (throughout, CAP), as set forth on the Declarations Page of this Policy.
 - 17) **Policy Period** means the period between the beginning and end dates shown on the Declarations Page. Coverage may be canceled or otherwise terminated before the end date. If that happens, the policy period ends on the Termination Date.
 - 18) **Reimbursement** means we pay for **legal expenses, audit expenses** or **finances or penalties** you incur as a result of an **insured event** being **instituted** against you during the **policy period**, subject to any applicable deductible or **co-payment** amounts, up to the **maximum amount reimbursable**. Actual payment by you for **legal expenses** or **audit expenses** is not a condition precedent to reimbursement.
 - 19) **Restitution** means repayment of fees, reimbursements, profits, charges or benefit payments:
 - a. Received by you from:
 - i. A governmental health benefit payer or program, or carrier or intermediary making payments as part of, or in connection with any such program; or
 - ii. A commercial payer; or
 - iii. Any patient
 - b. To which you were not legally entitled by reason of a billing error or errors, the return of which is sought in a **billing errors proceeding**.
 - 20) **Shadow Audit** means an audit performed by a qualified professional, which examines the same billing records and related documents as those subject to an ongoing **billing errors proceeding**, with the intent of providing you with a private expert opinion. Such **shadow audits** are subject to our prior approval.
 - 21) **Voluntary Self Disclosure** means the **Insured's** disclosure of information to a **Government Entity** or commercial payer, which may serve as grounds for a **billing errors proceeding**. Such information must have become known to you fortuitously and subsequent to the initial effective date of this insurance.

Article V. EXCLUSIONS

- No benefits shall be payable hereunder for **legal expenses, audit expenses** or **finances or penalties**:
- 1) Incurred in disputes with respect to this insurance, including questions as to whether **legal expenses, audit expenses** or **finances or penalties** are reimbursable under this policy;
 - 2) If the **legal expenses, audit expenses** or **finances or penalties** arise out of any matter that you have acted with another to **institute** or have **instituted**. This exclusion does not apply to **voluntary self disclosure**;
 - 3) Incurred in defense of criminal prosecution which can result in criminal fine or incarceration in a jail or penal institution.
 - 4) Arising out of any circumstance or event of which you were aware prior to the initial policy effective date which you reasonably knew or should have known would result in such **legal expenses, audit expense** or **finances or penalties**;
 - 5) Arising out of any matter other than an **insured event**;
 - 6) Which are intended to serve as compensatory damages, punitive damages, exemplary damages or any additional damages resulting from the multiplication of compensatory damages, or any other amounts which are or may be deemed uninsurable under the law under which this policy shall be construed;
 - 7) Incurred in the course of a **shadow audit** not previously approved by us.
 - 8) Relating to any professional liability errors or omissions other than those specifically covered by this policy; medical malpractice; bodily injury, sickness, disease, death, emotional distress, personal injury of any person; or damages to, or destruction of, any first party or third party tangible or intangible property, including the loss of use thereof.

- 9) Which are intended to serve as **restitution** or repayment of monies received by you, to which you were not entitled, as a result of billing errors you made.
- 10) Incurred by a consulting professional whose services were not previously approved by us.
- 11) Arising out of any actual or alleged liability of any **insured** under any contract or agreement, but this exclusion shall not apply to the extent that such liability would have attached to the **insured** and would have been insured by this policy even in the absence of such contract or agreement.
- 12) Which arise out of a **billing errors proceeding** involving billing errors for medical services or items which are not provided or prescribed by you.
- 13) Arising out of any matter, circumstance or event other than the practice of medicine and examination and/or treatment of patients.
- 14) Arising out of any matter brought by any other **insured** against you.
- 15) With respect to **finances or penalties**, no benefits shall be payable hereunder for **insured events** other than **billing errors proceedings** or **HIPAA proceedings**.

Article VI. WHEN COVERAGE IS PROVIDED

- 1) This policy applies only to **insured events** which are first **instituted** during the **policy period** and reported to us no later than sixty (60) days after expiration of the **policy period**.
- 2) **How to add an Extended Reporting Period.** If this policy is cancelled or not renewed: (a) by us for any reason other than non-payment of premium; or (b) by you for any reason, an Extended Reporting Period of twelve (12) months can be purchased with the payment of an additional premium of one hundred percent (100%) of the last annual policy premium amount. A change in the premium or conditions we require shall not be deemed non-renewal by us.

The Extended Reporting Period Endorsement will not be issued unless we receive a written request for it within thirty (30) days after this policy ends, nor will it take effect unless the additional premium is paid within thirty (30) days after this policy ends. Once that premium is paid, the Extended Reporting Period may not be cancelled by us and the premium will be fully earned.

The Extended Reporting Period does not extend the **policy period** nor change the scope of coverage provided. Coverage under the Extended Reporting Period is limited to **insured events** that are **instituted** during the **policy period**, and which are otherwise covered by this policy.

- 3) **How the Maximum Amount Reimbursable applies to the Extended Reporting Period.** The **Maximum Amount Reimbursable** that applies at the end of the **policy period** is not renewed or increased and the **Maximum Amount Reimbursable** shown in the Declarations shall not be increased by the addition of an Extended Reporting Period. The Extended Reporting Period will not apply to **insured events** if other insurance you buy covers them or would cover them if its limits of coverage had not been exhausted.

Article VII. WHERE COVERAGE IS PROVIDED

This policy covers **insured events instituted** anywhere in the United States of America.

Article VIII. CHOICE OF COUNSEL

We do not assume any duty to defend under this policy.

Upon receiving notice from you of an **insured event**, we will provide you with the name(s) of panel counsel. If you retain panel counsel to defend you in connection with an **insured event**, we will, subject to the other provisions of this policy, pay 100% of covered **legal expenses**, **audit expenses** and **finances or penalties** in excess of the deductible up to the **maximum amount reimbursable**, less any amounts previously reimbursed or reimbursable. If you retain non-panel counsel to defend you in connection with an **insured event**, we will pay 80% of covered **legal expenses**, **audit expenses**, and **finances or penalties** and you must pay a **co-**

payment of 20%. All counsel, panel or non-panel, must comply with our reasonable parameters. However, you shall have complete freedom of choice with respect to the selection of the licensed **attorney** who provides legal services in respect of which **legal expenses** are reimbursable under this agreement.

Article IX. REIMBURSEMENT

You will be reimbursed only for **legal expenses or audit expenses** incurred in respect of legal or audit services actually rendered, and **finances or penalties** actually incurred or due as a result of an **insured event**. You will not be reimbursed for **restitution** or repayment of monies received by you, to which you were not entitled, as a result of billing errors you made.

Article X. RECOVERY AND SUBROGATION

We shall be entitled to recover from you any and all benefits paid by us to you under this policy which you have otherwise received from any other party in respect of the covered action. If we become liable for any payment under this insurance in respect of **legal expenses, audit expenses or fines or penalties**, we shall be subrogated, to the extent of such payment, to all your rights and remedies against any party in respect of such **legal expenses, audit expenses or fines or penalties**, and shall be entitled at our own expense to sue, mediate or arbitrate in your name. You shall give us all such assistance in your power as we may require to secure our rights and remedies and at our request, you shall execute all documents necessary to enable us to effectively bring suit or demand mediation or arbitration in your name.

Article XI. MEDIATION AND ARBITRATION

In the event any controversy, claim or dispute arises out of or relates to this policy, the first attempt to resolve such controversy or claim shall be by formal mediation. Formal mediation is the non-binding process by which a qualified mediator, chosen with our agreement and yours, meets and intercedes with us in order to reach a resolution. In order to be considered formal mediation under this policy the process must be of a kind set forth in the Commercial Mediation Rules of the American Arbitration Association. We, at our sole option, may recognize any other mediation process presented for approval.

If you and/or we exhaust all mediation procedures and the controversy, claim or dispute remains unresolved, you and we agree that the final and binding means of resolution shall be arbitration. You and we will go to arbitration in accordance with the then current rules of the American Arbitration Association, and judgment upon the award may be entered in any court having jurisdiction thereof. The arbitrator shall have the power to decide any dispute between us concerning the insurance and said arbitrator shall have no power to change, or add to the provisions of this agreement. Prior to the beginning of arbitration, each disputing party shall pay an equally proportionate share of the estimated cost of arbitration.

Article XII. FALSE OR FRAUDULENT NOTIFICATION OF CLAIMS TO THE INSURER

If any **insured** shall commit any false or fraudulent act in connection with the making of a claim under this Policy, this Policy shall be rendered null and void as to that **insured**.

Article XIII. APPLICATION

By acceptance of this policy, you agree that:

- 1) The statements in the application, its attachments and accompanying materials, if any, are true and correct representations;
- 2) Each representation shall be deemed material;
- 3) This policy is issued in reliance upon the truth of said representations; and
- 4) This policy embodies all agreements existing between you and us in connection with this policy.

Article XIV. CHANGES

Notice to any agent acting on your behalf or knowledge possessed by any such agent or any other person shall not act as a waiver or change in any part of this policy. Notice to any agent will not prevent you from

asserting your rights under this policy. This policy will not be waived, changed or modified except by written endorsement issued to form a part of this policy and signed by us.

Article XV. ALTERATION AND ASSIGNMENT

No change in, modification of or assignment of interest under this policy shall be effective except when made by written endorsement to this policy signed by us.

Article XVI. AUDIT

We may examine and audit your books and records at any reasonable time, requested by us, during the policy period and/or within three years after the final termination of this policy, as far as they relate to the subject matter of this policy.

Article XVII. ACTION AGAINST THE INSURER

No action shall lie against us unless there has been full compliance with all of the terms and conditions of this policy and both your liability and the amount of your obligation to pay has been finally determined either by judgment against you after trial or by agreement in writing by you, those instituting the **insured event** or their legal representative and us.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this Policy to join us as a party to the action against you to determine our liability, nor shall we be impleaded by you or any of your legal representative thereof.

NAS Insurance Services, Inc.

By: **SPECIMEN**

**On behalf of the Underwriters
providing this insurance.**