

Agent Agreement



Mail to: Western Health Advantage, Attn: Sales
2349 Gateway Oaks Drive, Suite 100, Sacramento, CA 95833
Fax to: 916.568.1338
Email to: whasales@westernhealth.com
Direct questions to: 916.563.3198 or 888.499.3198 toll-free
Monday through Friday 8:30 a.m. to 5 p.m. (excluding holidays)

Indicate One: **AGENT** **AGENCY** **COMMERCIAL** **MEDICARE**

Please complete one set of agreements per agent and/or agency. If agent and agency both need appointment, complete one set each for agent and agency.

Name: _____

This Agent Agreement ("Agreement") is effective on this _____ day of _____, 20_____, by and between Western Health Advantage ("WHA"), a California nonprofit tax-exempt public benefit corporation, and _____ ("Agent").

1. APPOINTMENT OF AGENT

- 1.1 Agent is hereby appointed as an agent of WHA solely with respect to the solicitation of employer group subscribers and individual subscribers to apply to WHA for commercial health benefit plans and/or Medicare Advantage plans ("WHA Products") as set forth in this Agreement. Employer groups that subscribe to a WHA Product shall be referred to herein as "Group Subscribers." Individuals that subscribe to a WHA Product shall be referred to herein as "Individual Subscribers." Individuals enrolled in a WHA Product are referred to herein as "Enrollees." Employer groups and individuals that have applied for a WHA Product or are considering a WHA Product may be referred to herein as "Applicants."
- 1.2 This appointment may not be assigned or subdelegated by Agent.
- 1.3 This appointment is not exclusive. WHA reserves the right to appoint additional Agents and Agent reserves the right to accept appointment as an agent for other insurers and health care service plans, without limitation.
- 1.4 This appointment is "at will." WHA may revoke the appointment at any time upon 30 calendar days' written notice to Agent in its sole and absolute discretion without cause. Agent may terminate the appointment at any time upon 30 calendar days' written in its sole and absolute discretion without cause.

2. AGENT'S DUTIES

- 2.1 **Solicitation.** Agent agrees to perform solicitations on behalf of WHA, defined as advertisements or presentations to Applicants on behalf of WHA, in order to disseminate information and rate quotes regarding WHA Products, for the purpose of inducing employer groups or individuals to apply to subscribe to or enroll in WHA Products during the term of this Agreement. Nothing contained in this Agreement shall obligate Agent to sell any or all WHA Products. Agent shall use honest, good-faith efforts in all of its activities on behalf of WHA, and shall utilize reasonable skill, care and diligence in its representation of WHA and the performance of its solicitation duties hereunder. Agent shall act with loyalty, honesty, integrity and good faith, and shall avoid self-dealing, in its relationship with and representation of WHA hereunder.
- 2.2 **Applications for WHA Products.** Agent agrees to submit promptly to WHA all applications for WHA Products received from Applicants and to cooperate with WHA in a prompt manner to obtain additional information as WHA may deem necessary to evaluate each application and/or renewal in a commercially reasonable time frame.
- 2.3 **Agent's Associates.** Agent may utilize employees, subcontractors, partners or others ("Associates") to assist in the performance of Agent's duties, with the understanding that no Associate shall be considered an Agent of WHA or a "broker of record" unless WHA and the Associate have executed an Agent Agreement between the Associate and WHA. Agent shall assure that each Associate complies with the requirements of this Agreement.
- 2.4 **Solicitation Materials.** Agent shall utilize only those solicitation materials that have been preapproved in writing or provided by WHA. Upon termination of this Agreement, Agent immediately shall destroy or return the materials that have been provided by WHA.

- 2.5 **Maintenance of Applicable Licensure.** Agent and each Associate shall obtain and maintain any and all applicable licenses, appointments, or authorizations required by law to solicit employer groups or individuals on behalf of health care service plans under the laws of the State of California, including without limitation the Knox Keene Health Care Service Plan Act of 1975 ("Knox Keene Act"). Agent shall provide a copy of all applicable licenses to WHA upon request. Agent shall promptly notify WHA of the institution of any disciplinary proceedings against Agent, Agency, Associates or any of Agent's or agency's principal persons or employees, by the California Insurance Commissioner or Department of Managed Health Care ("DMHC"), and/or by any other regulatory body having jurisdiction over Agents', Associates or Agency's licensure and/or solicitation activities, regardless of whether such disciplinary proceedings are directly related to Agent's, Associate's or Agency's activities with respect to WHA. "Agency" as used herein means a firm that employs or contracts with Agent relative to Agent's activities in soliciting persons to apply for or purchase health care service plans or insurance products.
- 2.6 **Compliance with Applicable Law and WHA Health Plans.** Agent shall become familiar with and shall comply with any applicable California and federal laws and regulations which govern the conduct of health care service plans and the activities of Agent in relation to health care service plans. Agent shall not utilize as an Associate any individual who is currently suspended or barred by the DMHC from operating as a solicitor, or who is prohibited from serving as an officer, director, employee, or associate of any health care service plan or solicitor firm pursuant to an order issued by the Director of the DMHC in accordance with Health & Safety Code section 1388, or who is suspended or barred by the Department of Insurance from soliciting or selling insurance products. Agent shall not engage in any act or practice in violation or attempted violation or conspiracy to violate, directly or indirectly, of any applicable statute, rule, regulation or order issued by the Director of the DMHC. [1388]
- 2.6.1 If Agent performs solicitations that include WHA Medicare Advantage plans Agent also agrees to comply with the following:
- (a) the Medicare Marketing Guidelines;
 - (b) the Medicare Improvements for Patients and Providers Act of 2008 ("MIPPA") and all regulations adopted thereunder;
 - (c) the Telemarketing and Consumer Fraud and Abuse Prevention Act and the regulations adopted thereunder.
- 2.7 **Agent Training.** Agent shall become familiar with, and shall comply with, WHA's organization, rules, procedures, and WHA Products. Agent shall participate in WHA marketing training programs, and during the term of this Agreement, Agent shall attend seminars and educational meetings concerning WHA organization, procedures, and WHA Products when necessary to maintain Agent's knowledge. If Agent performs solicitations that include WHA Medicare Advantage plans, Agent also agrees to complete the requisite training and education in Medicare Advantage program compliance, and fraud, waste, and abuse as required by CMS and offered by America's Health Insurance Plans ("AHIP Medicare Training"). Agent is responsible for any cost associated with the AHIP Medicare Training. WHA shall be responsible for training Agent regarding WHA Products, and shall notify Agent of any significant changes to such WHA Products. Agent shall be responsible for the training of its Associates. [1300.59]
- 2.8 **Books and Records.** The parties hereto acknowledge that the Knox Keene Act requires, and Agent shall comply with, the following:
- (a) Agent shall keep and maintain current books and records including a current list of the names and addresses of its shareholders, principals and/or partners, if any, and a list of all employees who solicit pursuant to this Agreement, as well as such other information as may be required by the DMHC.[1300.85]
 - (b) All records, books, and papers of Agent shall be open to inspection by the DMHC during Agent's normal business hours, and shall not be removed from the State of California without prior consent of the DMHC. [1300.81]
 - (c) Agent shall make such special reports to the DMHC as the DMHC may require from time to time. [1384(d)]
 - (d) Agent shall preserve, for a period of not less than five (5) years, the last two (2) years of which shall be in an easily accessible place at Agent's offices, all books of account and other records required under the provisions of, and for the purpose of the Knox Keene Act. After such books and records have been preserved for two (2) years, they may be warehoused, stored, or microfilmed, so long as they are available to the DMHC within not more than five (5) days following a request therefor. [1300.85.1]
- 2.8.1 If Agent performs solicitations that include WHA Medicare Advantage plans, Agent agrees to maintain Scope of Appointment forms, and to provide such forms to WHA upon request.
- 2.9 **Covered California.** Agent shall maintain certification with Covered California. Agent acknowledges that WHA

will not pay Agent Commission on premium received for Individuals enrolled through Covered California unless Agent maintains such certification. Agent acknowledges that Covered California is responsible for the payment of Commission for Groups enrolled through Covered California, and WHA will not pay Commission for such enrollments.

2.10 **Required Disclosures.** Agent is required to make disclosures to groups with 50 or fewer eligible employees (“Small Groups”) pursuant to this section. [1357.514]

2.10.1 Whenever providing information to small groups, Agent shall:

- (a) Advise the group of WHA’s obligation to sell to any small group any small group health care service plan and provide the group, upon request, with the actual rates that would be charged to that employer for a given contract.
- (b) Notify the group that Agent will procure rate and benefit information for the group on any health care service plan offered by WHA.
- (c) Notify the group that upon request Agent will provide the group with a summary brochure for any health care service plan offered by WHA.
- (d) Notify the group of the availability of coverage and the availability of tax credits for certain employers consistent with federal and state law, including any rules, regulations, or guidance promulgated thereunder.

2.10.2 Whenever recommending a particular benefit plan, Agent shall advise the group that, upon request, Agent shall provide the group with a summary brochure contacting the benefit plan design being recommended by Agent.

2.10.3 Prior to submitting an application for a group, Agent shall:

- (a) For each of the plan contracts offered by WHA, provide the group with a summary brochure and the premium for that particular group.
- (b) Notify the group that, upon request, Agent will provide the group with an Evidence of Coverage document for each contract WHA offers.
- (c) Obtain a signed statement from the group acknowledging that the group has received the disclosures required by this Section 2.10.

2.10.4 Agent acknowledges that it is required to comply with Health and Safety Code Section 1357.514 notwithstanding any disagreement between that section and this Section 2.10 of this Agreement.

3. LIMITATIONS ON AUTHORITY OF AGENT

3.1 **No Authority to Legally Bind WHA.** Subject to applicable law, Agent shall have no authority, under this Agreement or otherwise, to do or perform, and shall not do or perform, any of the following in the name of or on behalf of WHA or any corporate member, director, officer or principal thereof, without WHA’s express grant of authority:

- (a) Incur any debt or liability;
- (b) Bind or execute any contract, including any Group Service Agreement or renewal thereof;
- (c) Make, alter, or discharge any contract, including a Group Service Agreement;
- (d) Change any aspect of any WHA Product;
- (e) Waive any default by a WHA current, former or potential Group Subscriber, Individual Subscriber or Enrollee;
- (f) Utilize rates other than those provided by WHA in any quote. This is not intended to prevent any Agent from utilizing a commercially available insurance quote system as long as the rates quoted through such system are the rates provided by WHA;
- (g) Extend the time for or method of payment by any WHA Group Subscriber, Individual Subscriber or Enrollee;
- (h) Withhold monies or property of WHA;
- (i) Settle or adjust claims against or on behalf of WHA; and
- (j) Make binding representations regarding benefits or coverage provided under WHA Products.

3.2 **No Authority to Collect Premiums.** Agent shall have no authority to collect or attempt to collect on behalf of WHA any payments or premiums tendered by or on behalf of Group Subscribers, Individual Subscribers or Enrollees of WHA Products. In the event that Agent receives payment for the account of WHA for any reason whatsoever, Agent shall (i) comply with the requirements of California law, including, without limitation, Section 1300.67.12 of Title 28 of the California Code of Regulations, and (ii) immediately pay over all monies to WHA. Any failure of Agent to pay

over to WHA said monies as provided herein or to comply with any of the provisions of this Section 3.2 shall give rise to a right by WHA to immediately terminate this Agreement upon written notice to Agent. Furthermore, upon termination of this Agreement in accordance with this Section 3.2, WHA shall have the right to offset said monies from any compensation due Agent as set forth in Section 4.4.2 hereof. Nothing herein shall waive or limit any rights that WHA may have at law or in equity to said monies.

3.3 **Medicare Restrictions.** If Agent performs solicitations that include WHA Medicare Advantage plans, Agent shall refrain from:

- (a) providing cash or other monetary rebates to Members as an inducement for enrollment or otherwise;
- (b) offering gifts to Applicants, unless the gifts are of nominal (as defined in the Medicare Marketing Guidelines) value, are offered to all Applicants without regard to whether or not the Applicant enrolls, and are not in the form of cash or other monetary rebates;
- (c) engaging in any discriminatory activity, such as attempting to recruit Applicants from higher income areas without making comparable efforts to enroll Applicants from lower income areas;
- (d) soliciting door-to-door for Applicants or through other unsolicited means of direct contact, including calling an Applicant without the Applicant initiating the contact;
- (e) engaging in activities that could mislead or confuse Applicants or Enrollees, or misrepresent WHA, including, without limitation, claiming that WHA is recommended or endorsed by CMS or Medicare or that CMS or Medicare recommends that the Applicant enroll in a plan (Agent may, however, explain that WHA is approved for participation in Medicare);
- (f) marketing, selling, or soliciting the purchase of any non-healthcare related products or services during any encounter with an Applicant in which Agent is also marketing or selling a WHA Product;
- (g) marketing any health care related product during a marketing appointment with an Applicant or Enrollee beyond the scope agreed upon by the Applicant or Enrollee prior to the appointment (as documented by Agent prior to the appointment, which shall be 48 hours in advance when practicable);
- (h) marketing additional health related lines of business not identified prior to an individual appointment without a separate scope of appointment identifying the additional lines of business to be discussed;
- (i) distributing any marketing materials for which Agent has received notice (written or verbal) from WHA that such marketing materials should not be distributed;
- (j) soliciting or arranging for providers, provider groups, or pharmacies to distribute printed information relating to any of the WHA Medicare Advantage plans unless the providers, provider groups, or pharmacies accept and display materials from all health plans (including health plans of other organizations) with which the providers, provider groups, or pharmacies contract;
- (k) conducting sales presentations or distributing and accepting applications or enrollment forms in provider offices or other areas where health care is delivered to individuals, except in the case where such activities are conducted in common areas in health care settings;
- (l) conducting sales presentations or distributing or accepting applications or enrollment forms at educational events;
- (m) providing meals for Applicants or Enrollees, which is prohibited, regardless of value; or
- (n) engaging in any other marketing activity prohibited by CMS in the Medicare Marketing Guidelines or other CMS marketing guidance.
- (o) distributing any marketing materials that require CMS approval without such approval
- (p) using any outbound call scripts that have not been submitted to WHA and approved by CMS

4. AGENT'S COMPENSATION.

4.1 **Compensation.** As payment for the performance of services pursuant to this Agreement, WHA shall pay Agent commissions ("Commissions") on premiums collected from Group Subscribers and Individual Subscribers for whom Agent is "broker of record" ("Agent's Accounts"), according to the schedule set forth on Exhibit A attached hereto and incorporated herein by reference, and consistent with the terms of this Agreement, and shall pay no other compensation. Agent shall be eligible to receive Commissions only so long as this Agreement remains in full force and effect. If this Agreement is terminated for any reason, WHA shall owe no Commission that would have accrued after the termination date hereof. WHA may change the commission schedule at any time in its sole discretion upon 60 days' written notice to Agent.

- 4.1.1 Commissions Paid as Premium Received. WHA shall pay Commission following receipt of premium for WHA Products from Agent's Accounts for a current month and shall calculate Commission on the actual premium amounts paid less any refunds paid or due to a Group Subscriber, Individual Subscriber or Enrollee, regardless of whether such premium payments reflect any reductions in premium, non-payments, NSFs, cancellations, late payments, and regardless of which month(s) such reductions, non-payments, NSFs and cancellations apply to.
- 4.1.2 Commissions Owed to Broker of Record. In no event shall WHA owe any Commissions to Agent if Agent is not the "broker of record" for a Group Subscriber during the period for which the Group Subscriber paid premiums to WHA. Any dispute as to "broker of record" shall be resolved by reference to the written instructions of the Group Subscriber. If more than one Agent is "broker of record", WHA shall evenly divide the Commission due among them unless all "brokers of record" issue mutually agreed upon written instructions to WHA for different division of Commission.
- 4.1.3 Commissions Payable Only on WHA Products. WHA shall pay Commission on premiums received for WHA Products, including any COBRA premium received. WHA shall not owe any Commission for premium paid by an Enrollee for any "conversion" product.
- 4.1.4 Agent's Instructions for Payment of Commissions. WHA shall comply with the instructions of Agent set forth in the Agent Information Sheet with respect to the name to which Commission payments shall be made out to. WHA shall not be liable for any error or omission of Agent with respect to such instructions. Agent represents that the information provided to WHA in the Agent Information Sheet and any replacement Agent Information Sheet is true and correct.
- 4.1.5 Covered California. WHA shall not pay Commission on premiums received for Groups enrolled through Covered California. WHA shall pay Commission on premiums collected for Individuals enrolled through Covered California pursuant to Section 2.9 of this Agreement.
- 4.2 Compensation Paid Solely by WHA. Agent shall look solely to WHA for payment of compensation under this Agreement and shall not look to any other source to obtain any compensation or reimbursement for products marketed under this Agreement, except as permitted under Section 2.9 of this Agreement.
- 4.3 WHA's Right to Terminate Agent's Accounts. WHA reserves the right to terminate any of Agent's Accounts or enrollee(s) thereof without notice to Agent in accordance with WHA's contractual, statutory and regulatory rights and obligations, all of which shall be interpreted in WHA's sole and absolute discretion.
- 4.4 Limitations Upon WHA's Obligation to Pay Commissions.
- 4.4.1 Legal Prohibitions. Agent acknowledges and agrees that WHA shall not be obligated to pay Agent any Commissions for services performed hereunder or otherwise if the payment of such Commissions would violate applicable statutory provisions, regulations, or rulings, which prohibit the payment of Commissions under certain circumstances.
- 4.4.2 Right of Offset. Any "indebtedness" owing by Agent to WHA which arises at any time constitutes a first lien in favor of WHA upon any Commissions due or to become due to Agent hereunder, and WHA, at its sole discretion, shall have the right to offset from any Commission due Agent such indebtedness in a lump sum or in two or more sums, at WHA's sole discretion, without notice. Nothing herein shall waive or limit any rights that WHA may have at law or in equity to said monies. "Indebtedness" as used herein shall include, without limitation, sums paid to Agent by WHA in error; sums paid to Agent by WHA that are later determined not to be owed to Agent; sums deducted as a consequence of issuing a refund of premiums to a Group Subscriber or Enrollee; sums collected by Agent on behalf of WHA but not immediately paid to WHA; and any and all other sums owed by Agent to WHA for any reason whether arising hereunder or otherwise.

5. TERMINATION

- 5.1 Without Cause. This Agreement may be terminated at any time, with or without cause, by either party upon thirty (30) days written notice mailed or delivered by the terminating party to the other party stating when the termination shall be effective.
- 5.2 For Cause. Either party may terminate this Agreement immediately upon written notice to the other if the terminating party reasonably believes that continuation of the Agreement would harm the terminating party's reputation or the reputation of any of the terminating party's shareholders, partners, corporate members, officers, directors, contracted medical groups, other agencies or employees. By way of example and not as a limitation,

either party may terminate this Agreement immediately if the other is involved in any public scandal, commits a crime, pleads nolo contendere to a crime related in any way to the parties' relationship, rights and obligations under this Agreement, or commits any act involving dishonesty, fraud, or deceit.

- 5.3 **Loss of Licensure.** This Agreement automatically shall be terminated if (a) Agent ceases to be licensed in the State of California to perform the services required under this Agreement, or (b) WHA ceases to be licensed in the State of California to offer WHA Products, such termination to be effective on the date on which the applicable license is lost or forfeited.
- 5.4 **Death of Agent.** This Agreement automatically shall be terminated upon Agent's death.
- 5.5 **Effect of Termination.** Termination of this Agreement shall automatically revoke the appointment set forth herein. Termination shall not release either party from obligations, rights or liabilities that accrued prior to the termination. No further commissions shall be due or owing by WHA to Agent after termination of this Agreement.

6. RELATIONSHIP OF PARTIES

- 6.1 **Independent Contractor.** It is the mutual intention of the parties hereto that Agent is an independent contractor for all purposes and is not an employee of WHA for any purpose. Agent reserves full control of its activities and those of any of its employees or contractors, with the right to exercise independent judgment as to the time, place, or manner of carrying out the provisions of this Agreement.
- 6.2 **Unauthorized Actions by Agent.** WHA shall not be bound by or liable for any actions taken or representations made beyond the scope of or in violation of this Agreement. However, the actions of any agent of Agent shall bind Agent under this Agreement.
- 6.3 **Indemnify.** Agent shall defend, indemnify, and hold harmless WHA from and against any and all injuries, claims, demands, liabilities, suits at law or in equity, costs or expenses (including court costs and reasonable attorneys, fees) or judgments of any nature whatsoever, which WHA or its corporate members, directors, officers, employees, or representatives may sustain or incur by reason of any act or omission of Agent or Agent's employees or agents arising out of or related to this Agreement.
- 6.4 **E&O Insurance.** Agent shall, at its sole cost and expense, procure and maintain such policies of professional liability, fidelity, and other insurance, acceptable to WHA, as shall be reasonably necessary to insure Agent and its Associates, employees, agents, shareholders, directors, and officers against any claim or claims for damages arising out of Agent's provision of its professional services hereunder. Such insurance shall be procured from an insurer(s) acceptable to WHA. Agent's professional liability insurance (unless the parties shall otherwise mutually agree in writing) shall provide for limits of not less than one million dollars (\$1,000,000) per occurrence, three million dollars (\$3,000,000) aggregate. Agent's fidelity insurance shall (unless the parties shall otherwise mutually agree in writing) provide for loss limits of not less than two hundred fifty thousand dollars (\$250,000) per single loss. Agent shall, upon written request, provide WHA with certificates of insurance demonstrating the insurance coverage required under this Section. Further, Agent shall provide WHA with not less than thirty (30) days written notice of any cancellation, reduction, or other material change in the amount or scope of any coverage required under this Section.
- 6.5 **Proprietary and Confidential Information.** Information, data and materials disclosed by one party to the other in connection with this Agreement that is not generally known to the public and that is clearly identified as confidential or which, by its nature, should reasonably be considered to be confidential, shall remain confidential and proprietary to the disclosing party. Each party agrees to use proprietary and confidential information of the other party in connection with the performance of this Agreement and only in the manner provided by this Agreement. Upon termination of this Agreement, each party shall immediately destroy or return all proprietary and confidential information to the other party.

7. GENERAL PROVISIONS

- 7.1 **Federal and State Law and Regulation.** This Agreement and the performance thereof is subject to the requirements of the Knox Keene Act, and the regulations promulgated thereunder by the DMHC. All provisions required by law or regulation to be in this Agreement shall bind the parties whether or not set forth herein.
- 7.2 **Arbitration.**
 - 7.2.1 **Binding Arbitration.** All disputes between Agent and WHA shall be resolved by binding arbitration before JAMS, a non-judicial arbitration and mediation service. If the amount at issue is less than \$200,000, then

the arbitrator will have no jurisdiction to award more than \$200,000. The JAMS Comprehensive Arbitration Rules and Procedures ("Rules") in effect at the time a demand for arbitration is made will be applied to the arbitration. The parties will seek to mutually agree on the appointment of an arbitrator; however, if an agreement cannot be reached within 30 days following the date demanding arbitration, the parties will use the arbitrator appointment procedures in the Rules. Arbitration hearings will be held at the neutral administrator's offices in Sacramento, California or at another location agreed upon in writing by the parties. Civil discovery may be taken in such arbitration as provided by California law and civil procedure. The arbitrator(s) selected will have the power to control the timing, scope and manner of the taking of discovery and will have the same powers to enforce the parties' respective duties concerning discovery as would a Superior Court of California. The arbitrator(s) will have the power to grant all remedies provided by California law. The parties will divide equally the fees and expenses of the arbitrator(s) and the neutral administrator. The arbitrator(s) will not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected pursuant to California law. The Federal Arbitration Act, 9 U.S.C. §§ 1-4, will also apply to the arbitration.

- 7.2.2 **Waiver of Jury Trial.** The parties specifically agree to use this arbitration procedure in place of any rights they otherwise would have to submit any controversy or dispute to a court or jury. The parties also expressly waive any right to recover punitive damages in connection with any arbitrable dispute.
- 7.3 **Assignment / No Third Party Beneficiary.** Neither this Agreement nor any of the rights, interests, or benefits arising hereunder shall be assigned, transferred, or delegated either in whole or in part by Agent without the prior written consent of WHA. Nothing in this Agreement is intended or shall be construed to give any third party, other than the parties hereto and their permitted assignees, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein.
- 7.4 **Entire Agreement.** This Agreement contains the entire understanding of Agent and WHA with respect to the subject matter hereof and it incorporates all of the covenants, conditions, representations, promises, and agreements exchanged by the parties hereto with respect to such matter. This Agreement supersedes any and all prior or contemporaneous negotiations, agreements, or communications, whether written or oral, between Agent and WHA with respect to the subject matter of this Agreement.
- 7.5 **Severability.** If any provision or provisions of this Agreement is rendered by a court or governmental agency of competent jurisdiction to be invalid, illegal, or unenforceable, the remainder of this Agreement shall not be affected thereby, but shall remain in full force and effect.
- 7.6 **Attorneys' Fees and Costs.** If any action at law or in equity, or any arbitration or mediation is brought to enforce or interpret the terms of this Agreement or any obligation owing hereunder, the prevailing party shall be entitled to reasonable attorneys' fees and costs and expenses of suit, including, without limitation, expert and accountant fees.
- 7.7 **Amendment/Waiver.** Except as otherwise set forth herein, this Agreement shall not be amended, or any condition hereof waived, except by a written instrument signed by both parties hereto, and then any such amendment or waiver shall be effective only in the specific instance and for the specific purpose for which it is given. Notwithstanding the foregoing, the Agent Information Sheet may be modified by the Agent by submitting a new Agent Information Sheet to WHA.
- 7.8 **Governing Law.** This Agreement shall be governed by, construed in accordance with, and enforced under the laws of the State of California.
- 7.9 **Notice.** All notices required or permitted by this Agreement shall be in writing and may be delivered in person, sent by registered or certified mail or a nationally recognized overnight courier that guarantees next day delivery, or by facsimile transmission, and shall be deemed sufficiently given if served in the manner specified in this Section to the address or facsimile number set forth below each party's signatures. Either party may revise its address / fax number by notifying the other party in writing.

8. ADDITIONAL CMS REQUIREMENTS

- 8.1 If Agent performs solicitations that include WHA Medicare Advantage plans, Agent shall comply with the following requirements:
- (a) **Compliance with Laws.** Agent must comply with all applicable Laws, including but not limited to, Medicare Advantage and Part D laws and regulations, all other Federal health care laws (including civil monetary penalty laws) and CMS policies and instructions, including the Medicare Marketing Guidelines.

- (b) Records. Agent will maintain all records and information related to the services provided under this Agreement in an accurate and timely manner and for a period of 10 years or as otherwise provided under any applicable Laws.
- (c) Confidentiality. Agent will comply with all State and Federal requirements regarding the privacy, security and disclosure of Member health information, including but not limited to, the requirements established by CMS and WHA, as applicable.
- (d) Access to Books and Records. In accordance with, but not limited to, 42 CFR 423.505(i) and .505(e) and 422.504(i), Agent agrees that as it relates to the Medicare Products, the Secretary of the United States Department of Health and Human Services, CMS and the Comptroller General and each of their agents or designees (the "Government") shall have the right to audit, evaluate or review any books, contracts, records, documentation or materials generated in support of this Agreement or the Medicare Products through ten (10) years from the final date of the CMS contract period with WHA or from the date of the completion of any audit, or for such longer period provided for in other applicable Law, whichever is later. For the purposes specified in this provision, Agent agrees that the Government may have direct access to Agent's premises, physical facilities and equipment, as well as records relating to this Agreement and any additional relevant information that the Government may require.
- (e) Federal Funds. Agent acknowledges that payments it receives from WHA to provide services under this Agreement are, in whole or in part, from Federal funds and Agent may be subject to certain laws that are applicable to individuals and entities that receive Federal funds.
- (f) Subcontractors. If Agent subcontracts for any of the services that it is required to perform under this Agreement, such subcontract shall include an agreement by the subcontractor to comply with all of the Agent's obligations under this Agreement.
- (g) Reporting Requirements. Agent will comply with any reporting responsibilities set forth in the Agreement or as otherwise requested for WHA's compliance with Laws and requests by CMS.
- (h) Termination. Agent understands and agrees that WHA has the right to immediately terminate this Agreement if WHA or CMS determines that Agent, or any subcontractor of Agent, has not performed its obligations under this Agreement satisfactorily or if any reporting and disclosure obligations are not performed timely.
- (i) Oversight. Agent acknowledges that WHA monitors the Agent on an ongoing basis and maintains ultimate responsibility for adhering to and complying with all terms and conditions in WHA's contract with CMS, including the services provided by Agent under this Agreement. All services provided by Agent under this Agreement are consistent with and comply with WHA's contractual obligations to CMS.
- (j) Excluded or Debarred. Agent represents and warrants that Agent has not been listed as debarred, excluded or otherwise ineligible for participation in a federal health care program. Agent will not employ or contract for the provision of any services under this Agreement with any individual excluded from participation in the Medicare and Medicaid program. Agent will notify WHA immediately if it, its employees or subcontractors are listed as debarred, excluded or otherwise ineligible for participation in federal health care programs.
- (k) Hold Harmless. Agent will not, in any event, including but not limited to non-payment or insolvency by WHA or breach of this Agreement, bill, charge, collect a deposit from, seek compensation or remuneration or reimbursement from, hold responsible for or otherwise have any recourse against any actual or prospective Member for any amounts otherwise payable to Agent under this Agreement.
- (l) Discrimination Prohibited. Agent will not engage in any discriminatory marketing practices, including "cherry picking" healthier Applicants. Commissions are not paid based on the health status or risk-profile of the Enrollee or based upon the value of the Medicare Product business generated by the Agent.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth below.

AGENT/AGENCY

Name of Agent/Agency _____ Date _____

Signature _____

Printed Name and Title (if different from above) _____

Address/fax for any notices due under this Agreement:

Address: _____

Fax: _____

WESTERN HEALTH ADVANTAGE



Signature

Rita Ruecker, Chief Financial Officer

Printed Name and Title

Address/fax for any notices due under this Agreement:

2349 Gateway Oaks Drive, Suite 100

Sacramento, CA 95833

Fax: 916.568.1338

Exhibit A

STANDARD AGENT COMMISSION SCHEDULE

Effective 1.1.24



ALL NON-MEDICARE BUSINESS

INDIVIDUAL SUBSCRIBERS

Individuals enrolled through Covered California receiving Advance Payment of Premium Tax Credit (APTC)	\$22 per member per month
All other individuals	5.0% flat commission

SMALL GROUP

1-100 Eligible Employees (as determined by the employer, consistent with state and federal law)

All groups with an effective date of December 1, 2018 or later and all groups that engage a general agent.	5.0% flat commission
All groups with an effective date of January 1, 2016 through November 30, 2018, except groups that engage a general agent.	6.5% flat commission
Small groups with an effective date of December 31, 2015 or earlier and did not transition from large group to small group, except groups that engage a general agent.	7.0% flat commission
Groups with an effective date of December 31, 2015 or earlier that transitioned from large group to small group in 2016.	5.0% flat commission

LARGE GROUPS

100+ Eligible Employees (as determined by the employer, consistent with state and federal law)

All groups	5.0% flat commission unless otherwise mutually agreed upon during proposal or renewal process of a specific Group Subscriber. Such mutually agreed rates shall be as set forth in the accepted proposed rates.
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INDIVIDUAL MEDICARE ADVANTAGE PRODUCTS

MEDICARE SUBSCRIBERS

Initial Year	\$762*
Renewal Years	\$381*

*Effective January 1, 2024

Note: Medicare Advantage commission levels subject to change annually. WHA will issue a "Notice of Commission Change" 60 days prior to any changes to the commission schedule.

Agent Information Sheet



Please complete this Agent Information Sheet and return with the signed Agent Agreement to:

Mail to: Western Health Advantage, Attn: Sales
2349 Gateway Oaks Drive, Suite 100, Sacramento, CA 95833

Fax to: 916.568.1338

Email to: whasales@westernhealth.com

Direct questions to: 916.563.3198 or 888.499.3198 toll-free
Monday through Friday 8:30 a.m. to 5 p.m. (excluding holidays)

Date _____

Agent/Agency Name _____

Agent Mailing Address (for marketing purposes) _____

City, State, Zip _____

Telephone _____

Fax _____

Agency Primary Contact _____

Email _____

Type of License (attach copy) _____

Agent License Number _____

Errors & Omissions Carrier _____

E&O Limits (attach copy of your certificate page) _____

Annual AHIP Medicare Certification (attach copy of your certificate page) _____

I direct WHA to make commission checks payable to the following Agent or Agency name and address

Required: Attach W-9 for Agent or Agency listed directly above.