

**EMPLOYER/UNION-ONLY GROUP PART D ADDENDUM TO CONTRACT WITH
APPROVED ENTITY PURSUANT TO SECTIONS 1860D-1 THROUGH 1860D-43 OF
THE SOCIAL SECURITY ACT FOR THE OPERATION OF A VOLUNTARY
MEDICARE PRESCRIPTION DRUG PLAN**

The Centers for Medicare & Medicaid Services (hereinafter referred to as “CMS”) and <<CONTRACT_NAME>>, a Prescription Drug Plan (PDP) Sponsor (hereinafter referred to as “PDP Sponsor”), agree to amend the contract <<CONTRACT_ID>> governing PDP Sponsor’s operation of one or more Voluntary Medicare Prescription Drug Plans, pursuant to §§1860D-1 through 1860D-43 of the Social Security Act (hereinafter referred to as “the Act”), to permit PDP Sponsor to offer employer-sponsored group prescription drug plans (as defined at 42 CFR 423.454) (hereinafter referred to in this Addendum as “employer/union-only group PDPs”) in accordance with the waivers granted by CMS under §§1860D-22(b) of the Act. The terms of this Addendum shall only apply to employer/union-only group PDPs offered by PDP Sponsor exclusively to Part D eligible individuals enrolled in employment-based retiree health coverage (as defined at 42 CFR §423.882) under a contract between PDP Sponsor and the employer/union sponsor of the employment-based retiree health coverage.

This Addendum is made pursuant to Subpart K of 42 CFR Part 423.

ARTICLE I
Voluntary Medicare Prescription Drug Plan

- A. PDP Sponsor agrees to operate one or more employer/union-only group PDPs in accordance with the terms of the Medicare Prescription Drug Plan contract, as modified by this Addendum, which incorporates in its entirety the *Solicitation for Applications for Medicare Prescription Drug Plan 2021 Contracts*, released on January 8, 2020 and any employer/union-only group waiver guidance issued by CMS (including, but is not limited to, those requirements set forth in Chapter 12 of the Prescription Drug Benefit Manual) (hereinafter “employer/union group waiver guidance”).
- B. This Addendum is deemed to incorporate any changes that are required by statute to be implemented during the term of the contract, and any regulations or policies implementing or interpreting such statutory or regulatory provisions.
- C. In the event of any conflict between the employer/union-only group waiver guidance issued prior to the execution of the contract and this Addendum, the provisions of this Addendum shall control. In the event of any conflict between the employer/union-only group waiver guidance issued after the execution of the contract and this Addendum, the provisions of the employer/union-only group guidance shall control.
- D. This Addendum is in no way intended to supersede or modify 42 CFR Part 423 or section 1860D-1 through D-43 of the Act, except as specifically provided in applicable employer/union-only group waiver guidance and/or in this Addendum. Failure to reference a regulatory requirement in this Addendum does not affect the applicability of such requirements to PDP Sponsor and CMS.
- E. The provisions of this Addendum apply to all employer/union-only group PDPs offered by PDP Sponsor under this contract number. In the event of any conflict between the provisions of this Addendum and any other provision of the contract, the terms of this Addendum shall control.

ARTICLE II
Functions To Be Performed By PDP Sponsor

A. ENROLLMENT

- 1. PDP Sponsor agrees to restrict enrollment in an employer/union-only group PDP to those Part D eligible individuals eligible for the employer’s/union’s employment-based retiree prescription drug coverage. PDP Sponsor agrees not to enroll active employees of an employer/union in its employer/union-only group PDPs.
- 2. PDP Sponsor will not be subject to the requirement to offer the employer/union-only group PDP to all Part D eligible beneficiaries residing in its service area as set forth in 42 CFR §423.104(b).

3. If an employer/union elects to enroll Part D eligible individuals eligible for its employer group only PDPs through a group enrollment process, PDP Sponsor will not be subject to the individual enrollment requirements set forth in 42 CFR §423.32(b). PDP Sponsor agrees that it will comply with all the requirements for group enrollment contained in CMS guidance, including those requirements contained in Chapter 3 of the Prescription Drug Benefit Manual.

B. PRESCRIPTION DRUG BENEFIT

1. Except as provided in this subsection, PDP Sponsor agrees to provide basic prescription drug coverage, as defined under 42 CFR §423.100, under any employer/union-only group PDP, in accordance with Subpart C of 42 CFR Part 423.
 - (a) CMS agrees that PDP Sponsor will not be subject to the actuarial equivalence requirement set forth in 42 CFR §423.104(e)(5) with respect to any employer/union-only group PDP and may provide less than the defined standard coverage between the deductible and initial coverage limit. PDP Sponsor agrees that its basic prescription drug coverage under any employer/union-only group PDP will satisfy all of the other actuarial equivalence standards set forth in 42 CFR §423.104, including but not limited to the requirement set forth in 42 CFR §423.104(e)(3) that the plan has a total or gross value that is at least equal to the total or gross value of defined standard coverage.
2. CMS agrees that nothing in this Addendum prevents PDP Sponsor from offering benefits in addition to basic prescription drug coverage to employers/unions. Such additional benefits offered pursuant to private agreements between PDP Sponsor and employers/unions will be considered non-Medicare Part D benefits (“non-Medicare Part D benefits”). PDP Sponsor agrees that such additional benefits may not reduce the value of basic prescription drug coverage (e.g., additional benefits cannot impose a cap that would preclude enrollees from realizing the full value of such basic prescription drug coverage).
3. PDP Sponsor agrees that enrollees of employer/union-only group PDPs shall not be charged more than the sum of his or her monthly beneficiary premium attributable to basic prescription drug coverage and 100% of the monthly beneficiary premium attributable to his or her non-Medicare Part D benefits (if any). PDP Sponsor must pass through the direct subsidy payments received from CMS to reduce the amount that the beneficiary pays (or, in those instances where the subscriber to or participant in the employer plan pays premiums on behalf of an eligible spouse or dependent, the amount the subscriber or participant pays).
4. PDP Sponsor agrees that any additional non-Medicare Part D benefits offered to an employer/union will always pay primary to the subsidies provided by CMS to low-income individuals under Subpart P of 42 CFR Part 423 (the “Low-Income Subsidy”).

5. PDP Sponsor agrees enrollees of employer/union-only group PDPs will not be permitted to make payment of premiums under 42 CFR §423.293(a) through withholding from the enrollee's Social Security, Railroad Retirement Board, or Office of Personnel Management benefit payment.
6. PDP Sponsor agrees it shall obtain written agreements from each employer/union that provide that the employer/union may determine how much of an enrollee's Part D monthly beneficiary premium it will subsidize, subject to the restrictions set forth in this subsection. PDP Sponsor agrees to retain these written agreements with employers/unions, including any written agreements related to items (d) through (f), and must provide access to this documentation for inspection or audit by CMS (or its designee) in accordance with the requirements of 42 CFR §§423.504(d) and 423.505(d) and (e)
 - (a) The employer/union can subsidize different amounts for different classes of enrollees in the employer/union-only group PDP provided such classes are reasonable and based on objective business criteria, such as years of service, date of retirement, business location, job category, and nature of compensation (e.g., salaried v. hourly). Different classes cannot be based on eligibility for the Low Income Subsidy.
 - (b) The employer/union cannot vary the premium subsidy for individuals within a given class of enrollees.
 - (c) The employer/union cannot charge an enrollee for prescription drug coverage provided under the plan more than the sum of his or her monthly beneficiary premium attributable to basic prescription drug coverage and 100% of the monthly beneficiary premium attributable to his or her non-Medicare Part D benefits (if any). The employer/union must pass through direct subsidy payments received from CMS to reduce the amount that the beneficiary pays (or, in those instances where the subscriber to or participant in the employer plan pays premiums on behalf of an eligible spouse or dependent, the amount the subscriber or participant pays).
 - (d) For all enrollees eligible for the Low Income Subsidy, the low income premium subsidy amount will first be used to reduce any portion of the monthly beneficiary premium paid by the enrollee (or in those instances where the subscriber to or participant in the employer plan pays premiums on behalf of a low-income eligible spouse or dependent, the amount the subscriber or participant pays), with any remaining portion of the premium subsidy amount then applied toward the portion of any monthly beneficiary premium paid by the employer/union. However, if the sum of the enrollee's monthly premium (or the subscriber's/participant's monthly premium, if applicable) and the employer's/union's monthly premiums (i.e., total monthly premium) are less than the monthly low-income premium subsidy amount, any portion of the low-income subsidy premium amount above the total monthly premium must be returned directly to CMS. Similarly, if there is no monthly premium charged the beneficiary (or subscriber/participant, if applicable) or employer/union, the entire low-income premium subsidy amount must be returned

directly to CMS and cannot be retained by PDP Sponsor, the employer/union, or the beneficiary (or the subscriber/participant, if applicable).

- (e) If the Part D sponsor does not or cannot directly bill an employer group's beneficiaries, CMS will permit the Part D sponsor to directly refund the amount of the low-income premium subsidy to the LIS beneficiary. This refund must meet the above requirements concerning beneficiary premium contributions; specifically, that the amount of the refund not exceed the amount of the monthly premium contribution by the enrollee and/or the employer. In addition, the sponsor must refund these amounts to the beneficiary within a reasonable time period. However, under no circumstances may this time period exceed forty five (45) days from the date that the Part D sponsor receives the low-income premium subsidy amount payment for that beneficiary from CMS.
 - (f) PDP Sponsor and the employer/union may agree that the employer/union will be responsible for reducing up-front the premium contribution required for enrollees eligible for the Low Income Subsidy. In those instances where the employer/union is not able to reduce up-front the premiums paid by the enrollee (or, the subscriber/participant, if applicable), PDP Sponsor and the employer/union may agree that the employer/union shall directly refund to the enrollee (or subscriber/participant, if applicable) the amount of the low-income premium subsidy up to the monthly premium contribution previously collected from the enrollee (or subscriber/participant, if applicable). The employer/union is required to complete the refund on behalf of PDP Sponsor within forty-five (45) days of the date PDP Sponsor receives from CMS the low-income premium subsidy amount payment for the low-income subsidy eligible enrollee.
 - (g) If the low income premium subsidy amount for which an enrollee is eligible is less than the portion of the monthly beneficiary premium paid by the enrollee (or subscriber/participant, if applicable), then the employer/union should communicate to the enrollee (or subscriber/participant) the financial consequences of the low-income subsidy eligible individual enrolling in the employer/union-only group PDP as compared to enrolling in another Part D plan with a monthly beneficiary premium equal to or below the low income premium subsidy amount.
7. For non-calendar year employer/union-only group PDPs, PDP Sponsor may determine benefits (including deductibles, out-of-pocket limits, etc.) on a non-calendar year basis subject to the following requirements:
- (a) Applications, formularies, and other submissions to CMS must be submitted on a calendar year basis;
 - (b) The prescription drug coverage under the employer/union-only group PDP must be at least actuarially equivalent to defined standard coverage for the portion of its plan year that falls in a given calendar year. An employer/union-only group PDP will meet this standard if its prescription drug coverage is at least actuarially equivalent

for the calendar year in which the plan year starts and no design change is made for the remainder of the plan year. In no event can PDP Sponsor increase during the plan year the annual out-of-pocket threshold;

- (c) After an enrollee's incurred costs exceed the annual out-of-pocket threshold, the employer/union-only group PDP must provide coverage that is at least actuarially equivalent to that provided under standard prescription drug coverage; eligibility for such coverage can be determined on a plan year basis.

C. DISSEMINATION OF PLAN INFORMATION

1. PDP Sponsor acknowledges that CMS releases to the public the following data, consistent with 42 CFR Part 423, Subpart K:
 - (a) summary reconciled Part D payment data after the reconciliation of Part D payments, as provided in 42 CFR §423.505(o)(1);
 - (b) Part D Medical Loss Ratio data for the contract year, as described at 42 CFR §423.2490.
2. PDP Sponsor also acknowledges that CMS releases Part D retiree drug subsidy payment data for the most recently reconciled year as provided in 42 CFR §423.884(c)(3)(iii).

D. DISSEMINATION OF EMPLOYER/UNION-ONLY GROUP PLAN INFORMATION

1. Except as provided in II.C.2., CMS agrees that with respect to any employer/union-only group PDPs, PDP Sponsor will not be subject to the information requirements set forth in 42 CFR §423.48 and the prior review and approval of marketing materials and enrollment forms requirements set forth in 42 CFR §423.50. PDP Sponsor will be subject to all other dissemination requirements contained in 42 CFR §423.128 and that are conditions of waivers for EGWPs provided in CMS guidance in Chapter 12 of the Prescription Drug Benefit Manual.
2. CMS agrees that the dissemination requirements set forth in 42 CFR §423.128 will not apply with respect to any employer/union-only group PDP when the employer/union is subject to alternative disclosure requirements (e.g., the Employee Retirement Income Security Act of 1974 ("ERISA")) and fully complies with such alternative requirements. PDP Sponsor agrees to comply with the requirements for this waiver contained in employer/union-only group waiver guidance in Chapter 12 of the Prescription Drug Benefit Manual.

E. PAYMENT TO PDP SPONSOR

1. Except as provided in this subsection, payment under this Addendum will be governed by the rules of Subpart G of 42 CFR Part 423.
 - (a) PDP Sponsor is not required to submit a Part D bid and will receive a monthly direct subsidy for each employer/union-only group PDP enrollee equal to the amount of the national average monthly bid amount, adjusted for health status (as determined under

- 42 CFR §423.329(b)(1)) and reduced by the base beneficiary premium for the employer/union-only group PDP, as adjusted under 42 CFR §423.286(d)(3), if applicable. The further adjustments to the base beneficiary premium contained in 42 CFR §423.286(d)(1) and (2) will not apply.
- (b) PDP Sponsor agrees that the risk-sharing payment adjustment described in 42 CFR §423.336 is not applicable for any employer/union-only group PDP enrollee.
 - (c) PDP Sponsor will not receive monthly reinsurance payment or low-income cost-sharing subsidy amounts in the manner set forth in 42 CFR §423.329(c)(2)(i) and 42 CFR §423.329(d)(2)(i) for any employer/union-only group PDP enrollee, but instead will receive the full reinsurance and low-income cost-sharing subsidy payments following the end of year reconciliation as described in 42 CFR §423.329(c)(2)(ii) and 42 CFR §423.329(d)(2)(ii) respectively.
2. For non-calendar year plans:
- (a) CMS payments will be determined on a calendar year basis;
 - (b) Low income subsidy payments and reconciliations will be determined based on the calendar year for which the payments are made; and
 - (c) PDP Sponsor acknowledges that it will not receive reinsurance payments under 42 CFR §423.329(c).

F. SERVICE AREA, FORMULARIES, AND PHARMACY ACCESS

- 1. CMS agrees that PDP Sponsor may offer an employer/union-only group PDP in any PDP region in which eligible enrollees reside provided PDP Sponsor has properly designated (in accordance with CMS operational requirements) its employer/union-only group service areas in CMS's Health Plan Management System (HPMS) as including those areas outside of its individual service area(s) to allow for enrollment of these beneficiaries.
- 2. PDP Sponsor agrees to utilize, as the formulary for any employer/union-only group PDP, a base formulary that has received approval from CMS, in accordance with CMS formulary guidance, for use in a non-group PDP offered by PDP sponsor. Except as set forth in 42 CFR §423.120(b) and sub-regulatory guidance, PDP Sponsor may not modify the approved base formulary used for any employer/union-only group PDP by removing drugs, adding additional utilization management restrictions, or increasing the cost-sharing status of a drug from the base formulary. Enhancements that are permitted to the base formulary include adding additional drugs, removing utilization management restrictions, and improving the cost-sharing status of drugs.
- 3. For any employer/union-only group PDP, PDP Sponsor agrees to provide Part D benefits in the plan's service area utilizing a pharmacy network and formulary that meets the

requirements of 42 CFR §423.120, with the following exception: CMS agrees that the retail pharmacy access requirements set forth in 42 CFR §423.120(a)(1) will not apply when the employer/union-only group PDP's pharmacy network is sufficient to meet the needs of its enrollees throughout the employer/union-only group PDP's service area, as determined by CMS. CMS may periodically review the adequacy of the employer/union-only group PDP's pharmacy network and require the employer/union-only group PDP to expand access if CMS determines that such expansion is necessary in order to ensure that the employer/union-only group PDP's network is sufficient to meet the needs of its enrollees.

G. PDP SPONSOR REIMBURSEMENT TO PHARMACIES (42 CFR §§ 423.505(b)(21), 423.520)

1. If a PDP Sponsor uses a standard for reimbursement of pharmacies based on the cost of a drug, PDP Sponsor will update such standard not less frequently than once every 7 days, beginning with an initial update on January 1 of each year, to accurately reflect the market price of the drug.
2. If the source for any prescription drug pricing standard is not publicly available, PDP Sponsor will disclose all individual drug prices to be updated to the applicable pharmacies in advance for their use for the reimbursement of claims.
3. PDP Sponsor will issue, mail, or otherwise transmit payment with respect to all claims submitted by pharmacies (other than pharmacies that dispense drugs by mail order only, or are located in, or contract with, a long-term care facility) within 14 days of receipt of an electronically submitted claim or within 30 days of receipt of a claim submitted otherwise.
4. PDP Sponsor must ensure that a pharmacy located in, or having a contract with, a long-term care facility will have not less than 30 days (but not more than 90 days) to submit claims to PDP Sponsor for reimbursement.

H. PUBLIC HEALTH SERVICE ACT

Pursuant to §13112 of the American Recovery and Reinvestment Act of 2009 (ARRA), PDP Sponsor agrees that as it implements, acquires, or upgrades its health information technology systems, it shall utilize, where available, health information technology systems and products that meet standards and implementation specifications adopted under § 3004 of the Public Health Service Act, as amended by §13101 of the ARRA.

In witness whereof, the parties hereby execute this Addendum.

This document has been electronically signed by:

FOR PDP SPONSOR

<<CONTRACTING_OFFICIAL_NAME >>

Contracting Official Name

<<DATE_STAMP>>

Date

<<CONTRACT_NAME>>

Organization

<<ADDRESS>>

Address

FOR THE CENTERS FOR MEDICARE & MEDICAID SERVICES

<<AMY_LARRICK_ESIG>>

Amy Larrick Chavez-Valdez

Director

Medicare Drug Benefit
and C & D Data Group,
Center for Medicare

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Date