

**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 Cost Plan Part D Sponsor (hereinafter referred to as the “Cost Plan Sponsor”), agree to amend the contract <<CONTRACT\_ID>> governing the Cost Plan Sponsor’s operation of one or more Cost Plans pursuant to section 1876 (h) of the Social Security Act (hereinafter referred to as “the Act”), to permit Cost Plan Sponsor to offer employer-sponsored group optional supplemental Part D Prescription Drug benefits (hereinafter referred to in this Addendum as “employer/union-only group Part D plans”) 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 Part D benefits offered by the Cost Plan 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 the Cost Plan 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. Cost Plan Sponsor agrees to operate one or more employer/union-only group Part D plans in accordance with the terms of the contract governing the Cost Plan Sponsor's operation of a Medicare Cost Plan, 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 Medicare 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 statutory or regulatory requirement in this Addendum does not affect the applicability of such requirement to the Cost Plan Sponsor and CMS.
- E. The provisions of this Addendum apply to all employer/union-only group Part D benefits offered by Cost Plan 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 Cost Plan Sponsor**

**A. ENROLLMENT**

- 1. Cost Plan Sponsor will not be subject to the requirement to offer the employer/union-only group Part D benefit to all Part D eligible beneficiaries residing in its service area as set forth in 42 CFR §423.104(b).
- 2. Except as provided in this subsection, if an employer/union elects to enroll Part D eligible individuals eligible for its employer/union-only group Part D plan through a group enrollment process, Cost Plan Sponsor will not be subject to the individual enrollment requirements set forth in 42 CFR §423.32(b). Cost Plan 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 Medicare Prescription Drug Benefit Manual.

- (a) The group enrollment process is not available for the A/B portion of the plan the Cost Plan Sponsor offers. Therefore, the Cost Plan Sponsor may only elect to enroll individuals into the optional supplemental Part D prescription drug benefit using the group enrollment process if that individual is already enrolled in the A/B portion of the Cost Plan. Enrollees already enrolled in the A/B portion of the Cost Plan may be group enrolled into the optional supplemental Part D employer/union-only group Part D benefit.

## B. PRESCRIPTION DRUG BENEFIT

1. Except as provided in this subsection, when offering employer/union-only group Part D benefits, Cost Plan Sponsor agrees to provide basic prescription drug coverage, as defined under 42 CFR §423.100, under any employer/union-only group Part D benefit, in accordance with Subpart C of 42 CFR Part 423.
  - (a) CMS agrees that Cost Plan 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 Part D benefit and may provide less than the defined standard coverage between the deductible and initial coverage limit. Cost Plan Sponsor agrees that its basic prescription drug coverage under any employer/union-only group Part D benefit 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 Part D benefit has a total or gross value that is at least equal to the total or gross value of defined standard coverage.
  - (b) CMS agrees that nothing in this Addendum prevents Cost Plan Sponsor from offering prescription drug benefits in addition to basic prescription drug coverage to employers/unions. Such additional benefits offered pursuant to private agreements between Cost Plan Sponsor and employers/unions will be considered non-Medicare Part D benefits (“non-Medicare Part D benefits”). Cost Plan 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).
  - (c) Cost Plan Sponsor agrees that enrollees of employer/union-only group Part D benefits 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). Cost Plan 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).

- (d) Cost Plan Sponsor agrees that any additional non-Medicare Part D prescription drug 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”).
- 2. Cost Plan Sponsor agrees enrollees of employer/union-only group Part D benefits will not be permitted to make payment of premiums through withholding from the enrollee’s Social Security, Railroad Retirement Board, or Office of Personnel Management benefit payment.
- 3. Cost Plan 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, Cost Plan 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 Part D benefit 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 (including any Part A/B 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 (including any Part A/B 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 (including any Part A/B premium) must be returned directly to CMS. Similarly, if there is no monthly premium (including any Part A/B 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 the Cost Plan Sponsor, the employer/union, or the beneficiary (or the subscriber/participant, if applicable).
- (e) If the Cost Plan 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) The Cost Plan Sponsor and the employer/union may agree that the employer/union will be responsible for reducing up-front the premium (including any Part A/B 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 (including any Part A/B premium) paid by the enrollee (or, the subscriber/participant, if applicable), the Cost Plan 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 (including any Part A/B premium) contribution previously collected from the enrollee (or subscriber/participant, if applicable). The employer/union is required to complete the refund on behalf of the Cost Plan Sponsor within forty-five (45) days of the date the Cost Plan 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 Part D 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 Cost Plan as compared to enrolling in another Part D plan with a monthly beneficiary premium equal to or below the low income premium subsidy amount.
4. For non-calendar year employer/union-only group Part D benefits, Cost Plan 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, bids and other submissions to CMS must be submitted on a calendar year basis;
  - (b) The employer/union-only group Part D benefit must at least be 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 Part D benefit will meet this standard if it 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 Cost Plan 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 Part D benefit 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.
- 5. Cost Sponsor agrees to maintain administrative and management capabilities sufficient for the organization to organize, implement, and control the financial, communication, benefit administration, and quality assurance activities related to the delivery of Part D services as required by 42 CFR §423.505(b)(25).
  - 6. Cost Sponsor agrees to provide applicable beneficiaries applicable discounts on applicable drugs in accordance with the requirements of 42 CFR Part 423 Subpart W.

#### C. DISSEMINATION OF PLAN INFORMATION

- 1. Except as provided in subsection 2 of this section, CMS agrees that with respect to any employer/union-only group Part D benefits, Cost Plan 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. Cost Plan Sponsor will be subject to all other dissemination requirements contained in 42 CFR §423.128 and that are conditions on any 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 Part D benefit 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. Cost Plan 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.
- 3. Cost Plan Sponsor 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)(ii).

#### D. PAYMENT TO COST PLAN 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) Cost Plan Sponsor is not required to submit a Part D bid and will receive a monthly direct subsidy for each employer/union-only group plan enrollee equal to the amount of the national average monthly bid amount (not its approved standardized bid), 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 Part D benefit, 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) Cost Plan Sponsor agrees that the risk-sharing payment adjustment described in 42 CFR §423.336 is not applicable for any employer/union-only group plan enrollee.
  - (c) Cost Plan 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 plan 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) Cost Plan Sponsor acknowledges that it will not receive reinsurance payments under 42 CFR §423.329(c).

#### E. FORMULARIES AND PHARMACY ACCESS

1. Cost Plan Sponsor agrees to utilize, as the formulary for any employer/union-only group Part D benefit, a base formulary that has received approval from CMS, in accordance with CMS formulary guidance, for use in a non-group optional supplemental Part D benefit offered by Cost Plan Sponsor under a non-group cost plan. Except as set forth in 42 CFR §423.120(b) and sub-regulatory guidance, Cost Plan Sponsor may not modify the approved base formulary used for any optional supplemental Part D benefit offered under an employer/union-only group Part D benefit 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.

2. For any employer/union-only group Part D benefit, Cost Plan 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 Part D benefit's pharmacy network is sufficient to meet the needs of its enrollees throughout the employer/union-only group Part D benefit's service area, as determined by CMS. CMS may periodically review the adequacy of the employer/union-only group Part D benefit's pharmacy network and require the employer/union-only group Part D benefit to expand access if CMS determines that such expansion is necessary in order to ensure that the employer/union-only group Part D benefit's network is sufficient to meet the needs of its enrollees. 42 CFR §417.416(e)

F. COST PLAN SPONSOR REIMBURSEMENT TO PHARMACIES (42 CFR §§423.505(b)(21), 423.520)

1. If a Cost Plan Sponsor uses a standard for reimbursement of pharmacies based on the cost of a drug, Cost Plan 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, Cost Plan 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. Cost Plan 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. Cost Plan 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 Cost Plan Sponsor for reimbursement.

G. PUBLIC HEALTH SERVICE ACT

Pursuant to §13112 of the American Recovery and Reinvestment Act of 2009 (ARRA), the Cost Plan 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 THE COST PLAN 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