

Medicare Advantage and Part D Broker Certification Contract Addendum

Attachment 1

Medicare Advantage and Medicare Part D Regulatory Exhibit

The following Medicare Advantage and Medicare Part D terms and conditions shall be incorporated into the Business Entity Insurance Producer Agreement between Blue Cross of California and applicable affiliates or clients requiring the services described herein (herein referred to as “BCC”) and Entity Producer. These provisions shall only apply to services provided by Entity Producer to or for BCC’s Medicare Advantage and/or Medicare Part D plans in accordance with and pursuant to the Medicare Modernization Act of 2003 (MMA) (Social Security Act Section 1860D-1 through 1860D-41), any subsequent amendments to the MMA and applicable regulations. In the event that there is a conflict between the attached Agreement and these Medicare Advantage and Medicare Part D terms and conditions, the Medicare Advantage and Medicare Part D terms and conditions shall control, but only as they relate to services provided to Covered Individuals enrolled in BCC’s Medicare Advantage and/or Medicare Part D plans.

- 1. Federal Funds.** Consistent with, but not limited to, 42 C.F.R. 423.100, Entity Producer acknowledges that payments Entity Producer receives from BCC to provide services to Medicare Advantage or Part D enrollees, are, in whole or part, from Federal funds. Therefore, Entity Producer and any of its subcontractors may be subject to certain laws that are applicable to individuals and entities receiving Federal funds.
- 2. Confidential Information.** Entity Producer recognizes that in the performance of its obligations under this Agreement it may be party to BCC’s proprietary, confidential, or privileged information, including, but not limited to, information concerning BCC’s members. Entity Producer agrees that, among other items of information, the identify of, and all other information regarding or relating to any of BCC’s customers is confidential. Entity Producer agrees to treat such information as confidential and proprietary information of BCC, and all such information shall be used by Entity Producer only as authorized and directed by BCC pursuant to this Agreement, and shall not be released to any other person or entity under any circumstances without excess written approval of BCC. During and after the term of this Agreement, Entity Producer shall not disclose or use any of the information described in this Section for a purpose unrelated to the terms and obligations of this Agreement. Further, Entity Producer agrees to abide by all Federal and State laws regarding confidentiality and disclosure of Medicare Part D enrollee information. In addition, Entity Producer agrees to abide by the confidentiality requirements established by BCC and CMS for the Medicare Advantage and/or Medicare Part D program.
- 3. Inspection of Books and Records.** In accordance with, but not limited to, 42 C.F.R. 423.505(i) and/or 422.504(i), Entity Producer acknowledges that the Department of Health and Human Services (HHS), the Comptroller General, or their designees have the right to inspect any pertinent contracts, books, documents, papers, and records of Entity Producer, or its subcontractors or transferees involving transactions related to BCC’s Medicare Advantage and/or Medicare Part D contract through ten (10) years from the final date of the contract period 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, Entity Producer agrees to make available Entity Producer’s premises, physical facilities and equipment, records

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relating to BCC's Medicare Advantage and/or Medicare Part D enrollees, and any additional relevant information that CMS may require.

- 4. Independent Status.** Entity Producer is an independent contractor and nothing contained in this Agreement shall be construed or implied to create an agency, partnership, joint venture, or employer and employee relationship between Entity Producer and BCC. At no time shall either party make commitments or incur any charges or expenses for or in the name of the other party except as otherwise permitted by this Agreement.
- 5. Subcontractors.** In accordance with, but not limited to, 42 C.F.R. 423.505(i)(3) and/or 422.504(i)(3)(ii), Entity Producer agrees that if Entity Producer enters into subcontracts to perform services under the terms of the Agreement, Entity Producer's subcontractors shall include an agreement by the subcontractor to comply with all of the Entity Producer's obligations in this Medicare Advantage and Part D Regulatory Exhibit and applicable terms in the Agreement.
- 6. Federal and State Laws.** Consistent with, but not limited to, 42 C.F.R. 423.505(i)(4) & 423.505(i)(3)(iii), and/or 422.504(i)(4) & 422.504(i)(3)(iii), Entity Producer agrees to comply, and to require any of its subcontractors to comply, with all applicable Federal and State laws, regulations, CMS instructions, and policies relevant to the activities to be performed under the Agreement, including but not limited to, CMS Medicare Advantage and/or Medicare Part D marketing guidelines, and any requirements for CMS prior approval of materials. Further, Entity Producer agrees that any services provided by the Entity Producer or its subcontractors to BCC's Medicare Advantage and Medicare Part D enrollees will be consistent with and will comply with BCC's Medicare Advantage and/or Part D contractual obligations.
- 7. Compliance Program.** BCC maintains an effective Compliance Program and Standards of Business Conduct, and requires its employees to act in accordance therewith. BCC will provide a copy of its then current Standards of Business Conduct to Entity Producer upon request.
- 8. Ineligible Persons.** Entity Producer warrants and represents that at the time of entering into this Agreement and/or when providing services to or for the benefit of Medicare Advantage and/or Medicare Part D members, neither he/she/it nor any of his/her/its employees, contractors, subcontractors or agents are ineligible persons identified on the General Services Administrations' List of Parties Excluded from Federal Programs (available through the internet at <http://www.arnet.gov/epl>) and the HHS/OIG List of Excluded Individuals/Entities (available through the internet at <http://www.dhhs.gov/progorg/oig>); or any subsequently provided or updated source that provides such information. In the event Entity Producer or any employees, subcontractors or agents thereof becomes an ineligible person after entering into this Agreement or otherwise fails to disclose his/her ineligible person status, Entity Producer shall have an obligation to (1) immediately notify the BCC of such ineligible person status and (2) within ten days of such notice, remove such individual from responsibility for, or involvement with, the BCC's business operations related to this Medicare Advantage and Medicare Part D attachment.

The BCC retains the right to provide notice of immediate termination of the Agreement to Entity Producer in the event it receives notice of Entity Producer's ineligible person status.

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- 9. Illegal Remunerations.** Entity Producer specifically represents and warrants that activities to be performed under the Agreement are not considered illegal remunerations (including kickbacks, bribes or rebates) as defined in § 1128B(b) of the Social Security Act.
- 10. Termination-Regulatory Issues.** In accordance with, but not limited to, 42 C.F.R. 423.505(i)(5) and/or 422.504(i)(5), if during the term of the Agreement, the BCC concludes that it is necessary to cancel any of the activities to be performed under this Agreement in order to comply with Federal or State laws, regulations, or policies, the BCC may, at its discretion, cancel the activity and be relieved of any related obligations under the terms of the Agreement. If the BCC or Entity Producer concludes that it is necessary to reorganize or restructure any of the activities to be performed under this Agreement in order to comply with Federal or State laws, regulations, or policies, the BCC or Entity Producer may request to renegotiate such terms.
- 11. Oversight Responsibility.** Entity Producer acknowledges that the BCC shall oversee and monitor Entity Producer's performance of its responsibilities set forth in this Agreement on an ongoing basis and that the BCC is ultimately responsible to CMS for the performance of such services. Entity Producer further acknowledges that the BCC shall oversee and is accountable to CMS for the functions and responsibilities described in the Medicare Part D regulatory standards and ultimately responsible to CMS for the performance of all services.
- 12. Revocation.** Entity Producer agrees that the BCC has the right to revoke this agreement if CMS or the BCC determines that Entity Producer has not performed the services satisfactorily and/or if requisite reporting and disclosure requirements are not otherwise fully met in a timely manner. Such revocation shall be consistent with the termination provisions of the Agreement.
- 13. Approval of Materials.** Any printed materials, including but not limited to letters to the BCC's members, brochures, advertisements, telemarketing scripts, packaging prepared or produced by Entity Producer or any of its subcontractors pursuant to this Agreement must be submitted to the BCC for review and approval at each planning stage (*i.e.*, creative, copy, mechanicals, blue lines, etc.) to assure compliance with Federal, state, and Blue Cross/Blue Shield Association guidelines. The BCC agrees its approval will not be unreasonably withheld or delayed.
- 14. Hold Harmless.** In accordance with, but not limited to, 42 C.F.R. 423.505(i) and 423.505(g), and/or 422.504(i)(3) and 422.504(g)(1) and (2), both parties agree that in no event, including but not limited to non-payment by BCC, insolvency of BCC or breach of the Agreement, shall Entity Producer bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against a Medicare Advantage and/or Medicare Part D Covered Individual or persons other than the BCC acting on their behalf for Covered Services provided pursuant to the Agreement. This provision does not prohibit the collection of supplemental charges or Copayments on BCC's behalf made in accordance with the terms of the Medicare Advantage and/or Part D enrollee's benefits.
- 15.** Entity Producer must provide the following disclosure or a substantially similar disclosure, prior to enrollment or at the time of enrollment, in writing, to a potential enrollee:
"The person that is discussing plan options with you is either employed by or contracted with Blue Cross of CA. The person may be compensated based on your enrollment in a plan."

Medicare Advantage / Part D Regulatory Exhibit (Continued)

- 16. Entity Producer warrants and represents that it is properly licensed, certified, and/or registered under applicable state laws to sell and/or market Medicare Advantage and/or Medicare Part D products.
- 17. Entity Producer is prohibited from employing discriminatory practices that preferentially enroll healthier beneficiaries, mislead beneficiaries or churn beneficiaries between Medicare Advantage and/or Medicare Part D plans. Entity Producer agrees to implement policies, procedures and monitoring activities that are consistent with these concepts noted in this provision.
- 18. Irrespective of any conflicting term or provision, BCC shall not pay Entity Producer a Medicare Advantage and/or Medicare Part D commission rate that is based upon the value of the Medicare Advantage and/or Medicare Part D business generated for BCC (i.e., profitability of the book of business). Entity Producer reimbursement for Medicare Advantage and/or Medicare Part D business shall not be tied or linked to a beneficiary's health risk profile.
- 19. Consistent with CMS guidance, Entity Producer agrees that BCC may withhold or withdraw payment if a Medicare Advantage and/or Medicare Part D beneficiary disenrolls in an unreasonably short time frame (i.e., rapid disenrollment). An "unreasonably short time frame" is defined as less than 60 days after enrollment but may be a longer time period if BCC reasonably determines it to be a longer period of time.
- 20. **Contracting Authority.** Each party to this Agreement warrants that it has full power and authority to enter into this Agreement and the person signing this Agreement on behalf of either party warrants that he/she has been duly authorized and empowered to enter into this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective for the term set forth herein.

By (Agent Signature) & Date

BLUE CROSS OF CALIFORNIA

Title/Organization



Agent Name (Please print)

Mark Alimisis, Staff VP
Senior Sales & Service

Agent Writing # (Tax ID#)

Agency tax ID# (if appl)

Social Security #

Business Address (Street, City, State, Zip)

Email Address

Agent Phone #

Agent Fax #

Please mail or fax the completed page to 1-805-376-9741 or

Mark Alimisis, P.O. Box 9232, Oxnard, CA 93031-9831.