

# Medicare Advantage and Part D Broker 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 Empire Blue Cross Blue Shield and applicable affiliates or clients requiring the services described herein (herein referred to as "Empire") and Entity Producer. These provisions shall only apply to services provided by Entity Producer to or for Empire'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 Empire'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 Empire 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 Empire's proprietary, confidential, or privileged information, including, but not limited to, information concerning Empire's members. Entity Producer agrees that, among other items of information, the identify of, and all other information regarding or relating to any of Empire's customers is confidential. Entity Producer agrees to treat such information as confidential and proprietary information of Empire, and all such information shall be used by Entity Producer only as authorized and directed by Empire pursuant to this Agreement, and shall not be released to any other person or entity under any circumstances without express written approval of Empire. 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 Empire 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

## Medicare Advantage / Part D Regulatory Exhibit (Continued)

Department of Health and Human Services (HHS), the Comptroller General, or their designees have the right to inspect, evaluate and audit any pertinent contracts, books, documents, papers, and records of Entity Producer, or its subcontractors or transferees involving transactions related to Empire'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 relating to Empire'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 Empire. 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 Empire's Medicare Advantage and Medicare Part D enrollees will be consistent with and will comply with Empire's Medicare Advantage and/or Part D contractual obligations.
- 7. Compliance Program.** Empire maintains an effective Compliance Program and Standards of Business Conduct, and requires its employees to act in accordance therewith. Empire 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

## Medicare Advantage / Part D Regulatory Exhibit (Continued)

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/epls>) 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 Empire of such ineligible person status and (2) within ten days of such notice, remove such individual from responsibility for, or involvement with, Empire's business operations related to this Medicare Advantage and Medicare Part D attachment.

Empire 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.

- 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, Empire 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, Empire may, at its discretion, cancel the activity and be relieved of any related obligations under the terms of the Agreement. If Empire 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, Empire or Entity Producer may request to renegotiate such terms.
- 11. Oversight Responsibility.** Entity Producer acknowledges that Empire shall oversee and monitor Entity Producer's performance of its responsibilities set forth in this Agreement on an ongoing basis and that Empire is ultimately responsible to CMS for the performance of such services. Entity Producer further acknowledges that Empire 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.

## Medicare Advantage / Part D Regulatory Exhibit (Continued)

- 12. Revocation.** Entity Producer agrees that Empire has the right to revoke this agreement if CMS or Empire 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 Empire'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 Empire 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. Empire 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 Empire, insolvency of Empire 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 Empire 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 Empire's behalf made in accordance with the terms of the Medicare Advantage and/or Part D enrollee's benefits.
- 15. Prohibition of Payment/Gifts/Incentives to Beneficiaries.** Entity Producer shall not provide or offer gifts or payments to a Medicare Advantage and/or Part D enrollee as an inducement to enroll in an Empire Medicare Advantage and/or Part D Product. Notwithstanding this section, Entity Producer may provide an individual eligible for Medicare Advantage and/or Part D a gift of nominal value, so long as the gift is provided whether or not the individual enrolls in the plan. For purposes of this Agreement, nominal value is defined as an item having little or no resale value and which cannot be readily converted into cash. Generally nominal value gifts are worth less than \$15.00. In addition, while Entity Producer may describe legitimate benefits the individual eligible for Medicare Advantage and/or Part D may receive, Entity Producer is prohibited from offering or giving rebates, dividends or any other incentives, especially those that in any way compensate for lowered utilization of health services by such eligible individual. This includes, but is not limited to the fact the Entity Producer may not tie lowered or reduced premium costs for the Medicare Advantage and/or Part D enrollee to their decreased utilization of health services.

## Medicare Advantage / Part D Regulatory Exhibit (Continued)

- 16. Unsolicited Contacts.** Entity Producer may not do any of the following:
- a. Place any outbound marketing calls to Members or to beneficiaries unless the beneficiary requested the call;
  - b. Place calls to former Members who have disenrolled or to current Members who are in the process of voluntarily disenrolling, to market plans or products;
  - c. Place calls to Members or beneficiaries to confirm receipt of mailed information, unless otherwise set forth herein;
  - d. Place calls to Members or beneficiaries to confirm acceptance of appointments made by third parties or independent agents;
  - e. Approach Members or beneficiaries in common areas (i.e. parking lots, hallways, lobbies, etc.)
  - f. Place calls or visit Members or beneficiaries who attended a sales event, unless the Member or beneficiary gave express permission at the event for a follow-up visit or call
- 16.1 Entity Producer may do the following:
- a. Place a call to a Member or beneficiary that they enrolled into an Empire Medicare Advantage and/or Part D plan as long as the Member remains enrolled with the Empire plan; or
  - b. Place a call to a beneficiary who has expressly given permission for Entity Producer to contact them, for example by filling out a business reply card or asking a Customer Service Representative of Empire to have an Entity Producer contact them. This permission by the beneficiary applies only to Empire Medicare Advantage and/or Part D plans for the duration of that transaction or as otherwise indicated by the beneficiary.
- 16.2 **Outbound Scripts.** Any and all outbound scripts utilized by Entity Producer to contact beneficiaries on behalf of Empire must be submitted to Empire and to ultimately to CMS for review and approval prior to use in the marketplace. In addition, when conducting outbound calls, Entity Producer must ensure the scripts include a privacy statement clarifying that the beneficiary is not required to provide any information to Empire or Entity Producer and that the information provided will in no way affect the beneficiary's membership in the Medicare Advantage and/or Part D Plan.
- 17. Cross Selling is Prohibited.** Entity Producer understands and agrees that marketing non-health care related products (such as annuities and life insurance) to prospective enrollees during any Medicare Advantage and/or Part D sales activity or presentation is considered cross selling and is strictly prohibited.

## Medicare Advantage / Part D Regulatory Exhibit (Continued)

- 18. Scope of Entity Producer Appointments with Beneficiaries.** Entity Producer must clearly identify the types of products that will be discussed before marketing to a potential enrollee beneficiary and the beneficiary must agree to the scope of the appointment and such agreement must be documented by Entity Producer. For example, if a beneficiary attends a sales presentation and schedules an appointment, the Entity Producer must obtain written documentation signed by the beneficiary agreeing to the products that will be discussed during the appointment. In addition, appointments that are made by Entity Producer over the phone must be recorded in order to provide adequate documentation. Entity Producer will maintain the required documentation providing the scope of the appointment and will provide such documentation to Empire upon request. Entity Producer further agrees that additional products may not be discussed unless the beneficiary requests the information and any additional lines of business that are not identified prior to the in-home appointment will require a separate appointment. Separate appointments cannot be re-scheduled until forty-eight (48) hours after the initial appointment. Entity Producer may, however, leave Empire materials during the initial appointment so long as enrollment applications are not left with potential enrollees.
- 19. Marketing in Health Care Settings.** Entity Producer is prohibited from conducting sales presentations and distributing and/or accepting enrollment applications in areas where patients primarily intend to receive health care services. These restricted areas generally include, but are not limited to, waiting rooms, exam rooms, hospital patient rooms, dialysis centers, and pharmacy counter areas (where patients wait for services or interact with pharmacy providers and obtain medication). Entity Producer may, however, conduct sales and marketing activities only in common areas of health care settings. Common areas include areas such as hospital or nursing home cafeterias, community or recreational rooms, conference rooms and space in a pharmacy outside of the area where patients wait for services or interact with pharmacy providers and obtain medication. For beneficiaries residing in long term care facilities, Entity Producer may only schedule an appointment if the beneficiary requested it.
- 20. Sales/Marketing Prohibited at Educational Events.** Entity Producer may not include sales activities, including but not limited to distribution of marketing materials or distribution or collection of Empire Medicare Advantage and/or Part D enrollment applications at educational events. Moreover, Entity Producer must include the following disclaimer on all materials advertising an educational event: “educational only and information regarding the a Medicare Advantage and/or Part D plan will not be available.” An educational event is one that is sponsored by a health insurance plan or by outside entities and are promoted to be educational in nature and have multiple vendors, such as health

## Medicare Advantage / Part D Regulatory Exhibit (Continued)

information fairs, conference expositions, state- or community-sponsored events.

- 21. Prohibition on the Provision of Meals.** Entity Producer may not provide meals or subsidize meals for any prospective enrollee of a Medicare Advantage or Part D plan at any event or meeting at which plan benefits are being discussed and/or plan materials are being distributed. Entity Producer may provide refreshments and light snacks so long as the items provided could not be reasonably considered a meal and/or that multiple items are not being bundled and provided as if a meal. The following light snacks could generally be considered acceptable: fruit, raw vegetables, pastries, cookies or other small dessert items, crackers, muffins, cheese, chips, yogurt or nuts.
- 22.** 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 Empire. The person may be compensated based on your enrollment in a plan.”
- 23.** 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.
- 24.** 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.
- 25.** Irrespective of any conflicting term or provision, Empire 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 Empire (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.
- 26.** Consistent with CMS guidance, Entity Producer agrees that Empire may withhold or withdraw payment if a Medicare Advantage and/or Medicare Part D beneficiary dis-enrolls in an unreasonably short time frame (i.e., rapid dis-enrollment). An “unreasonably short time frame” is defined as less than 60 days after enrollment but may be a longer time period if Empire reasonably determines it to be a longer period of time.

**Medicare Advantage / Part D Regulatory Exhibit (Continued)**

**27. 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.

Empire BlueCross BlueShield

\_\_\_\_\_  
By (Agent Signature) & Date



\_\_\_\_\_  
Title/Organization

Robert Smith, Staff VP  
Senior Sales & Service  
September 1, 2009

\_\_\_\_\_  
Agent Name (Please print)

\_\_\_\_\_  
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**

Robert Smith, P.O. Box 9232, Oxnard, CA 93031-9831