

Attachment A

Proposed Changes to Standard 2017 Experience-Rated HMO Health Benefits Contract

NOTE: New and revised language is underlined in blue and language to be deleted is ~~struck-out in red~~.

Standards for Pharmacy Benefit Management Company (PBM)

1. SECTION 1.28 STANDARDS FOR PHARMACY BENEFIT MANAGEMENT COMPANY (PBM)

Subsection (a) (7) was amended. The current contract language states that all information marked as proprietary would be protected from FOIA release. The contract language has been revised to properly reference the protection of documents consistent with OPM's FOIA regulations.

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(a) Transparency Standards

(1) The PBM is not majority-owned or majority-controlled by a pharmaceutical manufacturing company. The PBM must disclose to the Carrier and OPM the name of any entity that has a majority ownership interest in or majority control over the PBM.

(2) The PBM agrees to provide pass-through transparent pricing based on the PBM's cost for drugs (as described below) in which the Carrier receives the value of the PBM's negotiated discounts, rebates, credits or other financial benefits.

(i) The PBM shall charge the Carrier no more than the amount it pays the pharmacies in its retail network for brand and generic drugs plus a dispensing fee.

(ii) The PBM shall charge the Carrier the cost of drugs at mail order pharmacies based on the actual cost, plus a dispensing fee. Costs shall not be based on industry benchmarks; for example, Average Acquisition Cost (AAC) or Wholesale Acquisition Cost (WAC).

(iii) The PBM, or any other entity that negotiates and collects Manufacturer Payments allocable to the Carrier, agrees to credit to the Carrier either as a price reduction or by cash refund the value of all Manufacturer Payments properly allocated to the Carrier. Manufacturer Payments are any and all compensation, financial benefits, or remuneration the PBM receives from a pharmaceutical manufacturer, including but not limited to, discounts; credits; rebates, regardless of how categorized; market share incentives, chargebacks, commissions, and administrative or management fees. Manufacturer payments also include any fees received for sales of utilization data to a pharmaceutical manufacturer.

(3) The PBM must identify sources of profit to the Carrier and OPM as it relates to the FEHB contract.

(4) The PBM's administrative fees, such as dispensing fees, must be clearly identified to retail claims, mail claims and clinical programs, if applicable. The PBM must agree to disclose each administrative fee to the Carrier and OPM.

(5) The PBM, or any other entity that negotiates and collects Manufacturer Payments allocable to the Plan, will provide the Carrier with quarterly and annual Manufacturer Payment Reports identifying the following information. This information shall be presented for both the total of all prescription drugs dispensed through the PBM, acting as a mail order pharmacy, and its retail network and in the aggregate for the 25 brand name drugs that represent the greatest cost to the Carrier or such number of brand name drugs that together represent 75 percent of the total cost to the Carrier, whichever is the greater number:

- (i) the dollar amount of Total Product Revenue for the reporting period, with respect to the PBM's entire client base. Total Product Revenue is the PBM's net revenue which consists of sales of prescription drugs to clients, either through retail networks or PBM-owned or controlled mail order pharmacies. Net revenue is recognized at the prescription price negotiated with clients and associated administrative fees;
- (ii) the dollar amount of total drug expenditures for the Plan;
- (iii) the dollar amount of all Manufacturer Payments earned by the PBM for the reporting period;
- (iv) the Manufacturer Payments that have been (1) earned but not billed (2) billed and (3) paid to the PBM based on the drugs dispensed to the Plan members during the past year.
- (v) the percentage of all Manufacturer Payments earned by the PBM for the reporting period that were Manufacturer Formulary Payments, which are payments the PBM receives from a manufacturer in return for formulary placement and/or access, or payments that are characterized as "formulary" or "base" rebates or payments pursuant to the PBM's agreements with pharmaceutical manufacturers;
- (vi) the percentage of all Manufacturer Payments received by the PBM during the reporting period that were Manufacturer Additional Payments, which are all Manufacturer Payments other than Manufacturer Formulary Payments.

(6) The PBM agrees to provide the Carrier, at least annually, with all financial and utilization information requested by the Carrier relating to the provision of benefits to eligible Enrollees through the PBM and all financial and utilization information relating to services provided to the Carrier.

(7) ~~The Carrier shall provide~~ OPM reserves the right to review and receive any information and/or documents ~~it the Carrier~~ receives from the PBM, including a copy of its contract with the PBM. ~~to OPM.~~ A PBM providing information to a Carrier under this subsection may designate mark that information as confidential commercial information. The Carrier, in its contract with the PBM shall effectuate the PBM's consent to the disclosure of this information to OPM. OPM shall ~~treat~~ handle ~~such designated~~ the information in accordance with ~~as confidential under~~ 5 CFR §-294.112.

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Large Provider Agreements

2. SECTION 2.15

LARGE PROVIDER AGREEMENTS (OCT 2005) (FEHBAR 1652.204-74)

Subsection (a) (3) was amended. The current contract language states that all information marked as proprietary would be protected from FOIA release. The contract language has been revised to properly reference the protection of documents consistent with OPM's FOIA regulations.

(a) Notification and Information Requirements. (1) The experience-rated Carrier must provide notice to the Contracting Officer of its intent to enter into or to make a significant modification of a Large Provider Agreement:

(i) Not less than 60 days before entering into any Large Provider Agreement; and
(ii) Not less than 60 days before exercising a renewal or other option, or significant modification to a Large Provider Agreement, when such action would result in total costs to the FEHB Program of an additional 20 percent or more above the existing contract. However, if a Carrier is exercising a simple renewal or other option contemplated by a Large Provider Agreement that OPM previously reviewed, and there are no significant changes, then a statement to the effect that the renewal or other option is being exercised along with the dollar amount is sufficient notice.

(2) The Carrier's notification to the Contracting Officer must be in writing and must, at a minimum:

(i) Describe the supplies and/or services the proposed provider agreement will require;
(ii) Identify the proposed basis for reimbursement;
(iii) Identify the proposed provider agreement, explain why the Carrier selected the proposed provider, and what contracting method it used, where applicable, including the kind of competition obtained;
(iv) Describe the methodology the Carrier used to compute the provider's profit; and,
(v) Describe provider risk provisions.

(3) The Contracting Officer may request from the Carrier any additional information on a proposed provider agreement and its terms and conditions prior to a provider award and during the performance of the agreement. [The carrier may mark any information it deems confidential commercial information, and OPM will handle information so designated in accordance with relevant procedures set forth at 5 CFR 294.](#)

(4) Within 30 days of receiving the Carrier's notification, the Contracting Officer will give the Carrier either written comments or written notice that there will be no comments. If the Contracting Officer comments, the Carrier must respond in writing within 10 calendar days, and explain how it intends to address any concerns.

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Termination of Coverage and Conversion

3. SECTION 2.4 TERMINATION OF COVERAGE AND CONVERSION PRIVILEGES (JAN 2014 2017)

Subsections (b), (c), and (d) were amended. The conversion language was changed to require carriers to provide assistance to terminating enrollees who choose to enroll in a guaranteed issue individual conversion policy. Subsection (e) was removed.

(a) A Member's coverage is terminated as specified in regulations issued by the OPM. Benefits after termination of coverage are as specified in the regulations.

(b) A Member is entitled to a temporary continuation of coverage ~~or an extension of coverage~~ under the conditions and to the extent specified in the regulations ~~or an extension of coverage under the conditions and to the extent specified below.~~

(c) A Member whose coverage hereunder has terminated is entitled, upon application within the times and under the conditions specified in regulations, to obtain assistance from the Carrier for enrollment in a guaranteed issue non-group contract available in the Carrier's service area. In the event this 31-day temporary extension period provides insufficient opportunity for the Member to obtain non-group coverage with an effective date commencing before or immediately upon termination of group coverage, the carrier may, on a case-by-case basis, provide an additional extension of coverage not to exceed 60 days as appropriate to avoid an interruption in coverage. The Member must explain the circumstances for seeking additional extension, and the carrier must notify the Contracting Officer of any extension granted, or obtain prior approval of any request for an extension request that the carrier intends to deny. ~~regularly offered for the purpose of conversion from the contract or similar contracts, such as enrollment in a health plan available in an Affordable Care Act health insurance exchange. Accordingly, the Carrier shall offer the terminating Member either (1) a conversion contract in compliance with 5 U.S.C., chapter 89, and regulations issued thereunder, or (2) assistance in obtaining, without evidence of good health, health benefits coverage inside or outside the Affordable Care Act's health insurance exchanges that satisfies the requirement of 5 U.S.C. § 8902(h).~~

(d) Costs associated with the additional extension of coverage not to exceed 60 days are allowable cost under the contract. Costs associated with writing or providing benefits under conversion contracts shall not be an allowable cost of this contract.

~~(e) The Carrier shall maintain on file with OPM copies of the conversion policies offered to persons whose coverage under this contract terminates and advise OPM promptly of any changes in the policies. The Contracting Officer may waive this requirement where because of the large number of different conversion policies offered by the Carrier it would be impractical to maintain a complete up-to-date file of all policies. In this case the Carrier shall submit a representative sample of the general types of policies offered and provide copies of specific policies on demand.~~

New FAR Clause

4. SECTION 5.72 BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (JUN 2016) (FAR 52.204-21)

(a) Definitions. As used in this clause— Covered contractor information system means an information system that is owned or operated by a contractor that processes, stores, or transmits Federal contract information.

Federal contract information means information, not intended for public release, that is provided by or generated for the Government under a contract to develop or deliver a product or service to the Government, but not including information provided by the Government to the public (such as on public Web sites) or simple transactional information, such as necessary to process payments.

Information means any communication or representation of knowledge such as facts, data, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual (Committee on National Security Systems Instruction (CNSSI) 4009).

Information system means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information (44 U.S.C. 3502).

Safeguarding means measures or controls that are prescribed to protect information systems.

(b) Safeguarding requirements and procedures.

(1) The Contractor shall apply the following basic safeguarding requirements and procedures to protect covered contractor information systems. Requirements and procedures for basic safeguarding of covered contractor information systems shall include, at a minimum, the following security controls:

(i) Limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems).

(ii) Limit information system access to the types of transactions and functions that authorized users are permitted to execute.

(iii) Verify and control/limit connections to and use of external information systems.

(iv) Control information posted or processed on publicly accessible information systems.

(v) Identify information system users, processes acting on behalf of users, or devices.

(vi) Authenticate (or verify) the identities of those users, processes, or devices, as a prerequisite to allowing access to organizational information systems.

(vii) Sanitize or destroy information system media containing Federal Contract Information before disposal or release for reuse.

(viii) Limit physical access to organizational information systems, equipment, and the respective operating environments to authorized individuals.

(ix) Escort visitors and monitor visitor activity; maintain audit logs of physical access; and control and manage physical access devices.

(x) Monitor, control, and protect organizational communications (i.e., information transmitted or received by organizational information systems) at the external boundaries and key internal boundaries of the information systems.

(xi) Implement subnetworks for publicly accessible system components that are physically or logically separated from internal networks.

(xii) Identify, report, and correct information and information system flaws in a timely manner.

(xiii) Provide protection from malicious code at appropriate locations within organizational information systems.

(xiv) Update malicious code protection mechanisms when new releases are available.

(xv) Perform periodic scans of the information system and real-time scans of files from external sources as files are downloaded, opened, or executed.

(2) Other requirements. This clause does not relieve the Contractor of any other specific safeguarding requirements specified by Federal agencies and departments relating to covered contractor information systems generally or other Federal safeguarding requirements for controlled unclassified information (CUI) as established by Executive Order 13556.

(c) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (c), in subcontracts under this contract (including subcontracts for the acquisition of commercial items, other than commercially available off-the-shelf items), in which the subcontractor may have Federal contract information residing in or transiting through its information system.

Minor and Technical Changes

5. SECTION 5.34 INTEREST (MAY ~~2010~~ 2014) (FAR 52.232-17)

6. SECTION 5.55 EMPLOYMENT REPORTS ON VETERANS (~~OCT 2015~~ FEB 2016) (FAR 52.222-37)

(a) Definitions. As used in this clause, “~~Armed Forces service medal~~ active duty wartime or campaign veteran,” “disabled veteran,” “~~active duty wartime or campaign badge~~ protected veteran,” and “recently separated veteran,” have the meanings given in FAR 22.1301.

(b) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on—

(1) The total number of employees in the contractor’s workforce, by job category and hiring location, who are ~~disabled veterans, other~~ protected veterans (i.e., active duty wartime or

campaign badge veterans), Armed Forces service medal veterans, [disabled veterans](#) and recently separated veterans).

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of ~~disabled veterans, other~~ protected veterans (i.e., active duty wartime or campaign badge veterans), Armed Forces service medal veterans, [disabled veterans](#), and recently separated veterans); and

(3) The maximum number and minimum number of employees of the Contractor or subcontractor at each hiring location during the period covered by the report.

(c) The Contractor shall report the above items by ~~completing~~ [filing](#) the Form VETS-~~100A4212~~, entitled “Federal Contractor Veterans’ Employment Report” (see VETS-~~100A4212~~ [Federal Contractor Reporting](#)” and [Filing Your VETS-4215 Report](#))-” at <http://www.dol.gov/vets/vets4212.htm>)”

(d) The Contractor shall submit VETS-~~100A4212~~ Reports no later than September 30 of each year.

(e) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall reflect total new hires, and maximum and minimum number of employees, during the most recent 12-month period preceding the ending date selected for the report. Contractors may select an ending date—

(1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or

(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(f) The number of veterans reported must be based on data known to the contractor when completing the VETS-~~100A4212~~. The contractor’s knowledge of veterans status may be obtained in a variety of ways, including an invitation to applicants to self-identify (in accordance with 41 CFR 60–300.42), voluntary self-disclosure by employees, or actual knowledge of veteran status by the contractor. This paragraph does not relieve an employer of liability for discrimination under 38 U.S.C. 4212.

(g) The Contractor shall insert the terms of this clause in subcontracts of \$150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

7. SECTION 5.60 SUBCONTRACTS FOR COMMERCIAL ITEMS (~~OCT 2015~~ JUN 2016) (FAR 52.244-6)

(a) Definitions. As used in this clause —

“Commercial item” ~~and~~ [“commercially available off-the-shelf items”](#) ~~has~~ [have](#) the meanings contained in Federal Acquisition Regulation 2.101, Definitions.

“Subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or ~~nondevelopmental~~ non-developmental items as components of items to be supplied under this contract.

(c)(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015) (41 U.S.C. 3509), if the subcontract exceeds \$5.5 million and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

(ii) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (~~JUN~~ Jun 2010) (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.

(iii) 52.204-21, Basic Safeguarding of Covered Contractor Information Systems (June, 2016), other than subcontracts for commercially available off-the-shelf items, if flow down is required in accordance with paragraph (c) of FAR clause 52.204-21. ~~52.219-8, Utilization of Small Business Concerns (OCT 2014) (15 U.S.C. 637(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$7000,000 \$700,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.~~

(iv) 52.222-21 Prohibition of Segregated Facilities (Apr 2015)

(v) 52.222-26, Equal Opportunity (Apr 2015) (E.O. 11246).

(vi) 52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C. 4212(a)).

(vii) 52.222-36, Equal Opportunity for Workers with Disabilities (~~JUL~~ Jul 2014) (29 U.S.C. 793).

(viii) 52.222-37, Employment Reports on Veterans (~~Oct 2015~~ Feb 2016) (38 U.S.C. 4212).

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8. APPENDIX C FEHB Supplemental Literature Guidelines (RV JAN 2016)

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b) RATE PRESENTATIONS

Under the FEHBP there are only three categories of enrollment, Self Only, Self Plus One, and Self and Family. For most enrollments, the premium for each enrollee's enrollment is shared between the enrollee and the Government or Tribal Employer. The Government or Tribal Employer contribution is based on the formula provided in the FEHB law. Deductions for most enrollees' share, along with the Government's contribution or Tribal Employer's contribution, are made in accordance with the schedule on which the employee, Tribal Employee, or annuitant's (retiree) salary or annuitant check is issued by the Enrollee's agency, Tribal Employer, or ~~retiree's~~ annuitant's retirement system. Most employees are paid biweekly. Annuitants are issued monthly checks.

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FEHB Plan Performance Assessment

9. Appendix G FEHB Plan Performance Carrier Letter. We added Carrier Letter 2016-02 regarding FEHB plan performance as Appendix G (see attachments).