

Medicare Compliance Addendum

To the extent Supplier or Independent Contractor is deemed a first tier, downstream or related entity in accordance with 42 C.F.R. Parts 422 and 423, Supplier or Independent Contractor (the “FDR”) hereby agrees to this Medicare Compliance Addendum (the “Compliance Addendum”). In the event of any conflict or inconsistency between the terms of the Compliance Addendum and the terms of the Agreement or any applicable Medicare Advantage Addendum, the terms of the Compliance Addendum shall apply. Any term not defined herein shall have the meaning set forth in the Agreement.

Customer (the “Plan”) has contracts to administer Medicare Advantage Plans and/or Medicare Part D plans (collectively “Medicare”) for the Centers for Medicare & Medicaid Services (“CMS”) of the U.S. Department of Health and Human Services (“HHS”) to administer Medicare benefits within certain counties. FDR’s performance of the Services under the Agreement shall include the provision of healthcare and or administrative services related to the Plan’s Medicare business. Payment received for FDR’s services, are in whole or in part, from Federal funds.

The Plan is a licensee of the BlueCross Blue Shield Association. As a licensee, we participate in Medicare Advantage Network Sharing. The Plan must ensure that its network sharing providers agree to furnish services to other Licensee Members as well as extend the same contractual terms, including but not limited to negotiated pricing and hold harmless protections, to all Blue Cross and/or Blue Shield Medicare Advantage PPO members and/or Medicare Advantage HMO members for Transplant Facility services, as applicable. The Plan must ensure that its Medicare Advantage PPO and/or HMO Transplant provider network(s) meets CMS standards for accessibility as set forth in 42 C.F.R. §422.112 and CMS’s *Medicare Advantage and Section 1876 Cost Plan Network Adequacy Guidance*, and that its provider and supplier contracts and incorporated procedures include all required Medicare Advantage provisions. The Plan agrees to produce, upon the request by CMS or its designees, governing bodies and participating network plans any books, contracts, records related to the Medicare Advantage program with regard to any Medicare Advantage services furnished or arranged for under the delegated arrangement. This is in accordance with Blue Cross and Blue Shield’s Delegation Oversight Program, as well as CMS and Federal requirements. FDRs are required to support our delegated arrangement.

FDR agrees as follows:

1. Compliance with Medicare Laws, Regulations, and CMS Guidance: FDR agrees to comply with all applicable Medicare laws, regulations, and CMS instructions. Regulations: 42 C.F.R §§ 422.504(i)(4)(v) and 423.505(i)(4)(iv)
2. Medicare Standards of Conduct and Policies and Procedures: FDR agrees to make available Standards of Conduct and policies and procedures to all of its employees who provide administrative services or health care services for the Plan’s Medicare business pursuant to the Agreement at the time of hire and annually thereafter. FDR may either provide (a) the Plan’s Standards of Conduct and policies and procedures to FDR’s employees, or (b) FDR’s own comparable Standards of Conduct and policies and procedures to FDR’s employees. Regulations: Medicare Managed Care Manual (“MMC Manual”), Chapter 21, §§ 50.1.3 and 50.3.1; and Medicare Prescription Drug Benefit Manual (“PDB Manual”), Chapter 9, §§ 50.1.3 and 50.3.1

3. Conflict of Interest: FDR agrees to comply with the Plan's Conflict of Interest Policy or its own Conflict of Interest Policy that complies with CMS requirements. FDR will require its governing body, officers, and senior leadership (as applicable) to sign a conflict of interest at the time of hire and annually thereafter certifying that they are free from any conflict of interest related to Medicare. Regulations: 42 C.F.R. §§ 422.503(b)(4)(vi)(A) and (C) and 423.504(b)(4)(vi)(A), (C) & (F)
4. Fraud, Waste, and Abuse ("FWA") and General Compliance Training: FDR agrees that all of its employees who provide administrative services or health care services for Plan's Medicare business pursuant to the Agreement participate in FWA and general compliance training within 90 days of hire and annually thereafter. Regulations: MMC Manual, Chapter 21, § 50.3.2; PDB Manual, Chapter 9, § 50.3.2; 42 C.F.R. §§ 422.503(b)(4)(vi)(A) and (C) and 423.504(b)(4)(vi)(A), (C) & (F)
5. Reporting Compliance and FWA Concerns: FDR agrees to report compliance or FWA concerns to CMS or the Plan. Reporting should occur within five (5) days of discovery; if there is an immediate impact to beneficiary access to care and/or a financial strain, please report immediately but at least within twenty-four (24) hours. FDR also agrees to inform the Plan within five (5) days of discovery of any pending lawsuits, investigations, audits, or other enforcement actions against FDR by or on behalf of any state or federal government agency related to the Services or the Plan or having a potential impact on the Plan, or of any legal, governmental, or other action or event which may impair FDR's ability to perform any duties or obligations under the Agreement. The Plan has a no-tolerance policy for retaliation or retribution against any employee or FDR for good-faith reporting of FWA. Regulations: 42 C.F.R. §§ 422.503(b)(4)(vi)(D) and 423.504(b)(4)(vi)(D)
6. Enforcement of Disciplinary Standards: FDR agrees to establish and publish its own disciplinary standards, which include its expectation that employees report compliance issues and unethical or illegal behavior. FDR's disciplinary standards must state that any violation of these standards will result in appropriate disciplinary action, up to and including termination of employment. FDR's violation of this provision may result in the Plan's termination of the Agreement. Regulations: 42 C.F.R. §§ 422.503(b)(4)(vi)(E) and 423.504(b)(4)(vi)(E)
7. Exclusion from Participation in Federal Programs: Pursuant to Federal law, FDR certifies that neither it nor any of its employees or governing body members are on any list of excluded individuals or entities, or its equivalent (collectively, "LEIE"), maintained by the: (a) U.S. Treasury Office of Foreign Assets Control (OFAC); (b) Office of Inspector General (OIG); or (c) U.S. General Services Administration (GSA). If an employee or governing body member is on any LEIE, FDR will immediately remove that person from any work related directly or indirectly to any Federal healthcare program. FDR agrees to check the Federal exclusions lists prior to hire and on a monthly basis to ensure that none of its employees have become excluded from participation in Federal programs. The term "employees" includes temporary employees, volunteers, and consultants. If applicable, FDR will establish a process to identify and prevent payment for claims at point-of-sale for any drugs or services prescribed, dispensed or delivered by excluded providers. Regulations: 42 C.F.R. §§ 422.503(b)(4)(vi)(F), 422.752(a)(8), 423.504(b)(4)(vi)(F), and 423.752(a)(6), and 42 C.F.R. § 1001.1901

Exclusion from Participation in Government Programs: FDR shall not employ or contract with any individual or entity who is excluded from participating in Medicare under Sections 1128 or 1128A of the Social Security Act (or with an entity that employs or contracts with such an individual or entity) for the provision of any Medicare Services under this Agreement, including but not limited to, (i) healthcare services; (ii) utilization review; (iii) medical social work; or (iv) administrative services; and must notify Plan immediately if any such excluded individual or entity provides or performs a delegated function on behalf of Plan and other Plans participating in the delegated arrangement. Regulations: 42 C.F.R. §§ 422.224 and 422.752(a)(8)

8. Record Retention: FDR agrees to maintain, or assure the maintenance of timely and accurate medical, financial and administrative records, books and contracts related to services provided or arranged for by the Plan as part of any delegated function, as well as the Plan's contract with CMS. Unless a longer time period is required by applicable statutes or regulations, FDR agrees to maintain such records and any related contracts for ten (10) years from the final date of the Plan's contract with CMS, the delegated arrangement period, or from the date of the completion of any audit, whichever is later, or otherwise as required by CMS.

FDR agrees to comply with any document requests by the Plan pursuant to an audit or to monitor FDR's compliance with the terms of this Agreement or Compliance Addendum. FDR will provide these documents to the Plan without charge. Regulations: 42 C.F.R. §§ 422.504(d), 422.504(e), 422.504(i)(4)(iii), 423.504(d)(2), 423.505(i)(4)(iii)

9. Audit Rights and Access to Records: FDR agrees to allow the Department of Health and Human Services (HHS), CMS, the Comptroller General or their designees, regulatory bodies, the Plan, and Plans participating in the delegated arrangement, to audit, evaluate, collect and inspect and make copies of any books, contracts, computer or other electronic systems, including medical records and patient care documentation, and other records maintained by the FDR pertaining to services related to the Plan's contract with CMS and services rendered to the Members under the delegated arrangement. This right to audit, evaluate, collect, make copies of and inspect any pertinent information for any particular contract period will exist through ten (10) years, from the final date of the contract period, the delegated arrangement period, or from the date of completion of any audit, whichever is later, or otherwise as required by CMS. Regulations: 42 C.F.R §§ 422.504(d), 422.504(e), 422.504(i)(2)(i), 422.504(i)(2)(ii) and 422.504(i)(2)(iv), 422.504(i)(4)(iii), and 423.505(d)(2), 423.505(i)(2), 423.505(i)(2)(ii), 423.505(i)(2)(iv) and 423.505(i)(4)(iii)

FDR's failure to comply with this section could result in referral to law enforcement and/or implementation of corrective action. Regulations: 42 C.F.R. Subpart O

Additionally, HHS, the Comptroller General, or their designees have the right to audit, evaluate, collect, and inspect any such records directly from FDR. For records subject to review, except in exceptional circumstances, CMS will provide notification to Plan that a direct request for information has been initiated. Regulations: 42 C.F.R §§ 422.504(i)(2) and 423.505(i)(2)

10. Hold Harmless: In no event, including, but not limited to, nonpayment by the Plan or the insolvency of the Plan, shall FDR bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against the Plan's Members or persons acting on their behalf, other than the Plan for covered services. This provision shall not prohibit collection of any applicable Coinsurance, Copayments or Deductibles billed in accordance with the terms of the Plan's applicable evidence(s) of coverage. Providers are expected to ensure that pre-authorizations are obtained, if needed and/or referrals are made to contracted providers. If pre-authorization is not obtained as required, the provider may be held liable for costs. Regulations: 42 C.F.R §§ 422.504(g), 422.504(i)(3)(i) and 423.505(g)
11. Provider Credentialing: To the extent applicable, Plan's credentialing process for medical professionals affiliated with, or any credentialing functions delegated to an FDR shall meet all applicable Medicare Advantage credentialing requirements and shall be reviewed and approved by the Plan. The Plan shall have an ongoing right to monitor and audit any credentialing program performed on its behalf. Regulations: 42 C.F.R. §§ 422.504(i)(4)(iv) and (5)
12. Responsibility and Oversight: The Plan maintains ultimate responsibility for adhering to and otherwise complying with all terms and conditions of its contract with CMS and may only delegate activities or functions in a manner consistent with the Plan's contractual obligations to CMS. Regulations: 42 C.F.R. §§ 422.504(i)(1), 422.504(i)(3)(ii), and 422.504(i)(3)(iii), 422.504(i)(4), 423.505(i)(3)(ii) and 423.505(i)(4)
13. Monitoring, Delegation, and Revocation: FDR shall comply with all applicable policies and procedures of the Plan's Medicare Advantage plan. Plan will oversee and monitor FDR's performance on an ongoing basis. The Plan retains the right to approve, suspend, revoke or terminate the delegated arrangement or any such Agreement with FDR if CMS or the Plan determines that FDR has (a) not performed satisfactorily under the terms of the Agreements or Compliance Addendum, (b) failed to maintain compliance, or (c) engaged in FWA or (d) if any of the Plan's reporting and disclosure obligations is not fully met in a timely manner. Regulations: 42 C.F.R §§ 422.504(i)(4)(ii), 422.504(i)(4)(iii), 422.504(i)(5), 423.505(i)(4)(ii), and 423.505(i)(4)(iii)
14. Flow-Down Provision: FDR shall incorporate the terms of this Compliance Addendum into all subcontracts entered into with any downstream or delegated entity that performs any of FDR's obligations under the Agreement or Compliance Addendum. Regulations: 42 C.F.R §§ 422.504(i)(3), 422.504 (i)(4)(v), 423.505 (i)(3)(iii), and 423.505(i)(4)

15. Member Records: All information about a Member shall be treated as confidential so as to comply with all applicable federal, state, and local laws, rules, regulations and Medicare confidentiality and enrollee record accuracy requirements including, (1) abiding by all Federal and State laws regarding confidentiality and disclosure of medical records, or other health and enrollment information, (2) ensuring that medical information is released only in accordance with applicable Federal or State law, or pursuant to court orders or subpoenas, (3) maintaining the records and information in an accurate and timely manner, and (4) ensuring timely access by enrollees to the records and information that pertain to them. In addition, FDR agrees to abide by the Plan's Business Associate Agreement, the CMS and Federal requirements and the confidentiality requirements of the Medicare Advantage Program as set forth in 2 C.F.R. §§ 422.118. Regulations: 42 C.F.R §§ 422.504(a)(13) and 422.118 and 423.505(b)(14)

16. Dual Eligible Members: If FDR is a health care provider, FDR agrees that, for all Members eligible for both Medicare and Medicaid, Members will not be held liable for Medicare Part A and B cost sharing when the State is responsible for paying such amounts. Plan will inform FDR of Medicare and Medicaid benefits and rules for Members eligible for Medicare and Medicaid. FDR may not impose cost-sharing that exceeds the amount of cost-sharing that would be permitted with respect to the individual under Title XIX if the individual were not enrolled in such a plan. Providers will: (1) accept the Plan's payment as payment in full, or (2) bill the appropriate State source. Regulations: 42 C.F.R §§ 422.504(g)(1)(iii), 422.504(i)(3)(i)

17. Prompt Payment: If FDR is a health care provider, Plan's contract or written agreement with FDR shall establish payment terms and include a prompt payment provision. Regulations: 42 C.F.R. §§ 422.520, 422.520(b) & (1) and 422.520(b)(2), 422.504(c), 423.505(i)(3)(v) and 423.520

18. Plan's Contractual Obligations: FDR's services and activities pursuant to the Agreement are consistent and comply with the Plan's contractual obligations. Regulations: 42 C.F.R. §§ 422.504(i)(3)(iii) and 423.505(i)(3)(iii)

19. Downstream Entity and Provider Approval: If the Plan delegates to another organization the selection of providers, contractors or subcontractors, the Plan retains the right to approve, suspend or terminate any such arrangement to furnish services to the Plan's Members. Notwithstanding, this right shall be exercisable only with respect to such Plan's Members and not Members of other Blue Cross or Blue Shield Plans. The Plan further agrees to exercise this right consistently with CMS laws and policies regarding provider participation and when a provider's participation poses a risk to the health or safety of the Plan's Members. Regulations: 42 C.F.R §§ 422.504(i)(5)

20. Amendments Required by Law: If Medicare laws, regulations, or CMS guidance require a change to any provision of this Compliance Addendum, this Compliance Addendum will be deemed amended to conform with the law, regulation, or guidance on the date said requirements become effective. The Plan will make reasonable business efforts to notify FDR of those changes, but in no event does any lack of notice change the applicability of federal law.

21. No-Cause Termination: If FDR is a health care provider, Plan's contract with FDR contains a no-cause termination clause, such clause shall provide for at least sixty (60) days' written notice. FDR must refer to its Participating Provider Agreement for specific termination notice requirements, which shall be in accordance with regulatory requirements. Regulations: 42 C.F.R §§ 422.201(d)(4)
22. Location of Services: FDR agrees that it shall not perform functions offshore, or delegate functions to offshore entities or persons, without obtaining advanced approval in writing from the Plan and demonstrating compliance with CMS guidelines and Plan policies, terms, and conditions. Additionally, in no event shall Plan information, any member information or Protected Health Information leave the United States or be accessible or viewable outside of the United States without strict information security and privacy agreements, oversight and practices in place.
23. Preclusion List: FDR shall ensure that providers will not be eligible for payment from Plan and Plans participating in the delegated arrangement and will be prohibited from pursuing payment from Members if the provider is included on the CMS preclusion list (as defined in 42 C.F.R. § 422.2) after the expiration of the 60-day period specified in 42 C.F.R. § 422.222. The provider will be held financially liable for services, items, and drugs that are furnished, ordered or prescribed after the expiration of such 60-day expiration period. Regulations: 42 C.F.R. §§ 422.222, 422.224 and 422.504(i)(2)(v)
24. Non-Covered Services: If applicable, an FDR that is a health care provider shall not bill Members for items or services that are not covered services unless, prior to furnishing the item or service, FDR requests pre-authorization from Plan and FDR and the Member receive a written denial. FDR acknowledges that CMS guidance states that Advance Beneficiary Notices (ABNs) cannot be used for Medicare Advantage Members. In order to bill such members for non-covered services, FDR must obtain an organization determination as addressed in 42 CFR 422.566.
25. Enrollment Advice: If FDR is a health care provider, FDR shall remain neutral to the extent FDR assists any beneficiary with Medicare enrollment decisions. [Section 60.3 of Chapter 3 of the Medicare Managed Care Manual (CMS Pub. #100-16) known as "The Medicare Communications and Marketing Guidelines" (revised July 20, 2018)].
26. Non-Discrimination: FDR agrees to provide covered services to members without regard to race, ethnicity, national origin, religion, gender, age, mental or physical disability, sexual orientation, genetic information or source of payments. Regulations: MMC Manual, Chapter 4, § 10.5
27. FDR Contracting Requirements: If Plan performs delegated functions as described above, all required Medicare Advantage provisions, including but not limited to those identified at 42 C.F.R. §422.504 and the Medicare Managed Care Manual (MMCM), Chapter 11, Section 100, as amended from time-to-time, apply to FDR contracts. Such contractual requirements are linked for reference <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/mc86c11.pdf>
28. Data and Reporting Requirements: FDR agrees to cooperate with Plan by providing all information necessary for the Plan to meet its Medicare Advantage reporting obligations, including but not limited to, providing data necessary to characterize the context and purpose of each service furnished to Plan Members. Regulations: 42 C.F.R. §§ 422.310, 422.516, 422.2460

29. Enrollee Protection and Continuation of Benefits: In the event of the Plan's insolvency or other cessation of operations, Plan services to its Members, including those delegated to FDR, will continue through the period for which the CMS payment has been paid to the Plan, and services to the Plan's Members confined in an inpatient hospital on the date of insolvency or other cessation of operations will continue until their discharge. Regulations: 42 C.F.R. §§ 422.504(i)(3)(i), 422.504(g), 422.318(c) and 423.505(g)

FDR agrees, that (i) the hold harmless and continuation of benefits provisions above shall survive the termination of the delegated arrangement regardless of the cause giving rise to the termination and shall be construed to be for the benefit of the Plan's Members, and that (ii) these provisions supersede any oral or written contrary agreement now existing or hereafter entered into between the Plans and their Members or persons acting on their behalf that relates to liability for payment for, or continuation of, covered services provided under the terms and conditions of these clauses.

30. 508 Compliance: If FDR supplies a member-facing internet website on behalf of Plan, the website must be compliant with Section 508 of the Rehabilitation Act for web-based technology and information standards for people with disabilities: <http://section508.gov>