

Minimum Performance and Service Criteria for Medicare Part D

- 1. Terms and Conditions.** In addition to the other terms and conditions of the Pharmacy Participation Agreement (“Agreement”), the following provisions shall apply to any services provided under this Agreement in connection with the Medicare Advantage Program, the Medicare Part D Program, or other CMS Medicare programs, as defined below (collectively, the “Medicare Programs”). In the event that there is any conflict between this Exhibit C and the Agreement, with regard to services for the Medicare Programs, this Exhibit shall control.
- 2. Average Wholesale Price or “AWP”** means the average wholesale price of a Prescription Drug Service as determined by the Medispan pricing source at the time a claim is processed, as established in Prime’s price file and updated no less frequently than once every seven days, beginning with an initial update on January 1st of each year. In the event Prime elects to change its Pricing Source for determination of Prescription Drug Service pricing or Prime’s Pricing Source discontinues to publish drug pricing information, Prime shall publicize the new Pricing Source by posting the new source on its website at least 30-days in advance of such change and/or shall communicate its revised Pricing Source to Pharmacy via the notice provisions allowed in the Agreement.
- 3. Dispensing Fee** means costs that are incurred at the point of sale and pay for costs in excess of the ingredient cost of a covered Part D Drug each time a covered Part D Drug is dispensed. Dispensing Fees only include the pharmacy costs associated with ensuring that possession of the appropriate covered drug is transferred to a Subscriber. Pharmacy costs include, but are not limited to, any reasonable costs associated with a pharmacist’s time in checking the computer for information about an individual’s coverage, performing quality assurance activities consistent with a medication therapy management program, measurement or mixing of the covered Part D Drug, filling the container, physically providing the completed prescription to the Subscriber, delivery, special packaging, and salaries of pharmacists and other pharmacy workers as well as the costs associated with maintaining the facility and acquiring and maintaining technology and equipment necessary to operate the pharmacy. Dispensing Fees do not include administrative costs incurred by the Part D plan in the operation of the Part D benefit, including systems costs for interfacing with pharmacies.
- 4. Valid Prescription** means a prescription that complies with all applicable state laws in which the Pharmacy is located that constitutes a valid prescription. Part D Drug products or items that require a prescription may only be dispensed by the Pharmacy when the Pharmacy has a valid prescription issued by a Prescribing Provider. As of the CMS compliance date, Pharmacy must include a physician who has an active and valid National Provider Identifier (NPI), is enrolled in Medicare in an approved status or has a valid opt-out affidavit on file with an A/B Medicare Administrative Contractor
- 5. Part D Drug** means a drug that may be dispensed only upon a Valid Prescription; a biological product; insulin; medical supplies associated with the injection of insulin; vaccine; supplies directly associated with delivering insulin into the body; a combination product approved and regulated by the FDA as a drug, vaccine or biologic in accordance with 42 C.F.R.§423.100. A Part D drug does not include medical foods, defined as a food that is formulated to be consumed or administered enterally under the supervision of a physician and which is intended for the specific dietary management of a disease or condition for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation, and that are not regulated as drugs under Section 505 of the Federal Food, Drug and Cosmetic Act.

6. **Record Retention and Right to Inspect.** Subject to the Freedom of Information Act (FOIA) or HIPAA, at no charge to Prime or Benefit Sponsors, Pharmacy shall retain and agrees that Prime, Benefit Sponsor, HHS, the Comptroller General of the U.S. Government Accountability Office (“Comptroller General”), CMS or their designees shall have the right to audit, evaluate and inspect, any pertinent books, contracts, medical records, patient care documentation and/or any other documents related to this Agreement or as each may deem necessary to enforce this Agreement or its contract between or with any of the others. Such obligation to retain and right to inspect, evaluate and audit such pertinent information shall extend for a period of ten (10) years following the date of service, last date of this Agreement, or until the completion of the audit, whichever is later unless the time frame is extended for reasons specified by regulation or as provided below. Pharmacy agrees to make available, for the purposes specified in this Section, its physical facilities and equipment, all records relating to Subscribers, and any additional relevant information that Prime, Benefit Sponsor, CMS, HHS, the Comptroller General, or their designees may require. Pharmacy agrees CMS or its designees shall have direct, on-site access to Pharmacy’s records described in this section. Further, Pharmacy agrees to provide directly to Prime, Benefit Sponsor or CMS or its designee, upon request, books, contracts, records including medical records, and documentation relating to the Part D program. In the event that Pharmacy is contacted directly by CMS, HHS or the Comptroller General requesting access to or audit of books, contracts, records, or other documents relating to Prime Part D claims or administration of other aspects of the Part D program that Pharmacy shall provide timely notice to Prime of such request prior to providing the requested access to CMS, HHS or the Comptroller General via e-mail to pharmacyops@primetherapeutics.com. The terms of this Section shall survive the termination of this Agreement.
- 6.1 If Prime or Benefit Sponsor notifies Pharmacy that CMS has determined that there is a special need to retain a particular record or group of records for a longer period of time, Pharmacy shall comply with CMS’s determination.
- 6.2 If there has been a termination, dispute, or allegation of fraud or similar fault by Pharmacy, Prime or Benefit Sponsor, the obligation in this Section shall be extended to ten (10) years from the date of any resulting final resolution of the termination, dispute, fraud or similar fault.
- 6.3 If CMS determines that there is a reasonable possibility of fraud or similar fault on the part of Pharmacy, Prime or Benefit Sponsor, CMS may inspect, evaluate and audit the records of Pharmacy at any time.
7. **Employer Group/Union-Sponsored Waiver Plans (“EGWP”).** For purposes of clarification, but without imposing any additional obligations on Pharmacy, all claims submitted by Pharmacy under an EGWP claim (which may also include non-Part D drugs, as permitted by the applicable Benefit Plan) shall be adjudicated in accordance with the applicable terms of the Agreement and paid in accordance with the applicable Exhibit B(s), the Prime Medicare Program Network(s) Rate and Terms Exhibit(s), to the Agreement.
8. **Confidentiality and Enrollee Record Requirements.** Pharmacy shall maintain any health or enrollment information regarding Subscribers in an accurate and timely manner and shall provide timely access by the Subscribers to the records and information that pertains to them. Pharmacy shall safeguard the privacy of the information that identifies a particular Subscriber and shall abide by all applicable federal and state law or regulation regarding such confidentiality including, without limitation, the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, and 42 C.F.R. § 423.136. Pharmacy shall release such information only in accordance with Prime policies and procedures, applicable federal or state law, or as required pursuant to valid court orders or subpoenas.

9. **Prompt Payment.** Payor shall pay Pharmacy for Covered Services rendered to Subscribers in accordance with the Agreement, including the applicable Exhibit B(s), the Prime Medicare Program Network(s) Rate and Terms Exhibit(s), to the Agreement. Any clean claim, as defined in 42 C.F.R. 422.500 shall be paid within fourteen (14) days for electronic claims and within thirty (30) days of receipt for claims submitted otherwise. Payment shall be issued by Prime to such address as may be designated by Pharmacy, and Prime shall pay interest on any clean claim not paid within the stated time period. In the event either party determines a claim was processed under the wrong Subscriber or wrong benefit plan, Pharmacy will immediately reverse the claim. In the event of an audit in which it is determined Pharmacy has violated the Provider Manual in processing certain claims, Prime may require Pharmacy to reimburse Prime or Benefit Sponsor, for payments received on those claims, without reversing and/or reprocessing the claim.
10. **Copayments.** Pharmacy shall charge Subscribers only the applicable Copayment pursuant to Subscriber's Benefit Plan. In determining the applicable Copayment, Pharmacy shall take into account any subsidy for which the Subscriber is eligible under 42 C.F.R. § 423.771 to 423.800. Pharmacy shall submit all claims for Prescription Drugs Services electronically online unless, to the extent allowed by 42 C.F.R. 423.120(c) (3), the Subscriber expressly requests that a particular claim not be submitted.
11. **Access to Negotiated Prices.** Pharmacy shall provide Subscribers access to negotiated prices for all drugs on the Drug Formulary, even when Subscriber is not entitled to any benefit under the terms of the Medicare Programs Benefit Plan.
12. **Hold Harmless.**
 - 12.1 Pharmacy agrees that in no event, including but not limited to non-payment by Prime or Benefit Sponsor, insolvency of Prime or Benefit Sponsor, or breach of this Agreement, shall Pharmacy bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against Subscribers or persons other than Prime acting on their behalf for Covered Services. In the event that an audit or investigation reveals that a Subscriber has been charged for such amounts, such amounts shall be promptly refunded to Subscriber by Pharmacy or, in the sole discretion of Pharmacy, credited against amounts due to Pharmacy from Subscriber. This provision shall not prohibit collection of Copayments.
 - 12.2 Pharmacy further agrees that (i) this provision shall survive the termination of this Agreement regardless of the cause giving rise to termination and shall be construed to be for the benefit of the Subscriber; and (ii) this provision supersedes any oral or written contrary agreement now existing or hereafter entered into between Pharmacy and the Subscriber or persons acting on their behalf.
13. **Continuation of Benefits.** To the extent required by applicable law or regulation, Pharmacy shall continue to provide services to Subscribers for the duration of the applicable contract between CMS and the respective Benefit Sponsors, and with respect to Subscribers who are hospitalized on the date that the applicable Benefit Sponsor's agreement with CMS terminates or expires, or if the Benefit Sponsor becomes insolvent, through the date of such Subscriber's discharge.
14. **Compliance with Federal and State Laws.** Pharmacy shall comply with all laws, regulations and guidance applicable to individuals and entities receiving federal funds and all other applicable Federal and State laws and regulations and governmental issuances including, but not limited to, the Social Security Act, the regulations governing participation in the Medicare Programs, all CMS guidance and instructions, Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act and the Rehabilitation Act of 1973. Pharmacy represents and warrants that it will contractually obligate any third party contractor or service provider to comply with all relevant laws, regulations and CMS guidance.

15. **Potential Fraud, Waste and Abuse.** Pharmacy shall report to Prime any suspected potential fraud, waste or abuse by a Subscriber or any other individual or entity who impinges on any federal government program. Examples of fraud, waste and abuse include, but are not limited to, identity theft, prescription forging or altering, prescription diversion and inappropriate use, or other attempts to defraud federal government programs.
16. **Auto Refill Programs.** Mail and retail pharmacies offering delivery services may offer a voluntary auto-ship program. Pharmacies offering a voluntary auto-ship program must follow the auto-ship terms and conditions outlined in the Provider Manual. In addition, Pharmacy must provide a full refund for any Prescription Drug Service dispensed under an auto-ship program that is not wanted by the Covered Person for any reason. The full refund must be applied for both new Prescription Drug Services ordered by the Prescriber and auto-shipped refills. Pharmacy cannot require a Covered Person to return unwanted Prescription Drug Services as a condition for a refund.
17. **Exclusion of Certain Persons.** Pharmacy hereby represents and warrants that Pharmacy does not currently and shall not in the future, employ or contract with any individual or entity excluded from participation in any federal government program under section 1128 or 1128A of the Social Security Act, or with any entity that employs or contracts with such an individual for the performance of any of its responsibilities under this Agreement. Pharmacy shall have a continuing obligation to review the HHS OIG List of Excluded Individuals and Entities (LEIE list) and the General Service Administration (GSA) Excluded Parties Lists System (EPLS) on a monthly basis that it does not employ or contract with any individual or entity excluded from participation in federal government programs. In the event that Pharmacy becomes aware of such an excluded or debarred individual or entity, it shall notify Prime within twenty-four (24) hours of discovery of the excluded or debarred individual or entity, and Pharmacy shall terminate its relationship immediately with such individual or entity.
18. **Monitoring and Approval Rights.** Pharmacy acknowledges and agrees that Prime and each Benefit Sponsor under the Medicare Advantage Program or the Medicare Part D Program are responsible to CMS for the composition of its pharmacy network and that Prime and each such Benefit Sponsor shall monitor on an ongoing basis, the performance of Pharmacy under this Agreement, that Pharmacy shall perform its obligations under this Agreement consistent with Benefit Sponsor's contract with CMS, and that Prime and each Benefit Sponsor retain the right, at its own discretion or as directed by CMS, to approve, suspend or terminate this Agreement if it determines the Pharmacy has not performed satisfactorily as it relates to that Benefit Plan.
19. **Data Collection Requirements.** Pharmacy acknowledges that Prime and/or Benefit Sponsor are required by CMS to maintain a health information system that collects, analyzes and integrates all data necessary to compile, evaluate and report certain statistical data related to costs, utilization and quality. Pharmacy shall submit to Prime or Prime's designee in the form and within the time frames prescribed by Prime, all risk adjustment and encounter data as may be required for Prime to fulfill its obligations to Benefit Sponsors. Prime reserves the right, upon notice to Pharmacy, to adopt a schedule of financial penalties to be imposed on Pharmacy at Prime's option for failure to submit complete and accurate data.
20. **Price Disclosure Obligations of Pharmacy.** Pharmacy shall inform a Subscriber at the time of delivery of the drug of (i) any differential between the discounted ingredient cost plus dispensing fee of the Covered Service, and (ii) the price of the lowest-priced generic alternative available (not limited to those generics on the Drug Formulary) that is therapeutically equivalent and bioequivalent, and available at the Pharmacy. Pharmacy shall also inform Benefit Sponsor of the lowest-priced, generically equivalent drug, if one exists for the Subscriber's Benefit Plan, as well as any associated differential in price.
21. **Real-Time Adjudication.** Pharmacy shall use a real-time POS claims adjudication system, as specified by Prime.

22. **Subcontractors.** To the extent that Pharmacy contracts with a subcontractor to perform any of its obligations under this Agreement, Pharmacy shall contractually bind such subcontractor to perform its obligations in a manner consistent with this Agreement.
23. **Delegation of Duties.** The parties hereto acknowledge that Prime oversees and is accountable to the Benefit Sponsor and CMS for certain functions and responsibilities described in the Medicare Programs, as applicable. In the event that Prime delegates to Pharmacy any function or responsibility imposed pursuant to Prime's Medicare Programs contract(s) with Benefit Sponsor, such delegation shall be subject to the regulations governing participation in such Medicare Programs, including all CMS guidance and instructions.
24. **Minimum Standards.** Pharmacy agrees to comply with the minimum performance and service criteria contained in this Exhibit C, if applicable, to this Agreement.
25. **Notice Requirement.** Pharmacy understands and agrees that Benefit Sponsor or Benefit Sponsor's agent will arrange with Pharmacy to distribute notices regarding coverage determination. Pharmacy agrees to distribute such notices in a timely manner as required by the Sponsor or its agent. These notices shall instruct Subscribers to contact their plans to obtain a coverage determination or request an exception if Subscribers disagree with the information provided by Pharmacy.
26. **Training.** Pharmacy shall ensure Pharmacy staff receives compliance training and education in accordance with applicable CMS regulations and guidance. Pharmacy agrees to provide Prime such evidence of training and education as Prime may reasonably request, pursuant to applicable CMS regulations and guidance.
27. **CMS Best Available Evidence ("BAE") Policy.** The parties acknowledge and agree that CMS provides the official determination of Subscribers' eligibility, including Low Income Subsidy ("LIS") status, and that the parties must process claims in accordance with CMS eligibility information transmitted to Pharmacy via the POS system. CMS has established a Best Available Evidence ("BAE") policy to apply in the event Pharmacy or Subscriber believes the CMS eligibility information pertaining to the Subscriber's LIS status is incorrect. In such event, Pharmacy or Subscriber may provide such BAE documentation to Prime as required by CMS. Upon receiving BAE, Prime will timely submit the appropriate documentation to CMS. While Prime is obligated to accept BAE submitted by Pharmacy or Subscriber, in no circumstances does Prime or a Benefit Sponsor have an obligation to affirmatively seek or obtain from other sources BAE not provided by Pharmacy or Subscriber. If the BAE documentation provided by Pharmacy or Subscriber satisfies the CMS BAE requirements for LIS-level correction, Prime will update Subscriber's eligibility information in the time and manner required by CMS. Pharmacy further agrees to comply with any supplemental instructions provided by Prime regarding the BAE submission process or the co-pay collection attestation process as communicated to Pharmacy via the Prime website, Provider Manual, or otherwise.