

**2009 INITIAL APPLICATION FOR  
EMPLOYER/UNION DIRECT CONTRACT  
PRIVATE FEE-FOR-SERVICE (PFFS)  
MEDICARE ADVANTAGE ORGANIZATION**

**January \_\_, 2008**

PUBLIC REPORTING BURDEN: According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0938-0935. The time required to complete this information collection is estimated to average 37 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: CMS, 7500 Security Boulevard, C4-26-05, Baltimore, Maryland 21244-1850.

**BACKGROUND:**

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) provides employers and unions with a number of options for providing medical and prescription drug coverage to their Medicare-eligible employees, members, and retirees. Under the MMA, those options include making special arrangements with Medicare Advantage Organizations (MAOs) and Section 1876 Cost Plans to purchase customized benefits, including drug benefits, for their members; purchasing benefits from sponsors of standalone prescription drug plans (PDPs); and directly contracting with CMS to become a Direct Contract PFFS MAO or PDP sponsor themselves. Each of these approaches involves the use of CMS waivers authorized under Section 1857(i) or 1860D-22(b) of the SSA. Under this authority, CMS may waive or modify requirements that “hinder the design of, the offering of, or the enrollment in” employer or union-sponsored group plans.

***Which Applicants Should Complete This Application?***

This application is to be used by employers or unions seeking to directly contract with CMS to become Private Fee-For-Service Medicare Advantage Organizations (“Direct Contract PFFS MAOs”) for their Medicare eligible active employees and/or retirees. Please follow the application instructions below and submit the required material in support of your application to offer a Direct Contract PFFS MAO.

**APPLICATION INSTRUCTIONS:**

Applications must be submitted by March \_\_, 2008, by all employers or unions seeking to offer a Direct Contract PFFS MAO.

***Which Application Materials Must Be Submitted and How Must These Materials Be Submitted?***

All Direct Contract PFFS MAO Applicants must complete and submit the following:

- (1) The *2009 Medicare Advantage Application*. This portion of the application is submitted electronically through the Health Plan Management System (HPMS).
- (2) The 2009 Part C Financial Solvency & Capital Adequacy Documentation for Direct Contract PFFS MAO Applicants (Appendix I of this application). This portion of the application is submitted in hard copy in accordance with the instructions below.
- (3) The 2009 Direct Contract PFFS MAO Attestations. This portion of the application is submitted electronically through HPMS. A copy of these attestations is included with this application (Appendix II).
- (4) The 2009 Request for Additional Waiver/Modification of Requirements (Optional) (Appendix III of this application). This portion of the application is submitted in hard copy in accordance with the instructions below. This submission is optional and should only be submitted if the Direct Contract PFFS MAO applicant is seeking new waivers or modifications of CMS requirements.

All of the above enumerated submissions will comprise a completed application for new Direct Contract PFFS MAO Applicants. Failure to complete and submit item numbers 1 through 3 above will result in a denial of the Direct Contract PFFS MAO application (item number 4 is optional as noted above).

**Please note that in addition to this application, all Direct Contract PFFS MAOs seeking to directly contract to offer Part D coverage (i.e., PFFS MA-PDs) must also complete the *2009 Solicitation for Applications for New Medicare Advantage Prescription Drug Plan (MA-PD) Sponsors* and the *2009 Solicitation for Applications for New Employer/Union Direct Contract Medicare Advantage Prescription Drug Plan (MA-PD) Sponsors*.**

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***Using HPMS to Submit Application Materials***

In order to submit the electronic portions of this application through HPMS (item number 1 and item number 3 above), please log on to HPMS and follow the instructions. To complete these application materials, please access the following link in HPMS:

Contract Management > Contract Management > Select Contract Number > Online Applications

***Instructions for Submitting Hard Copy Application Materials***

Please submit two (2) copies of all required hard copy application materials for Appendix I (Part C Financial Solvency & Capital Adequacy Documentation for Direct Contract PFFS MAO Applicants) and any materials for Appendix III (Request for Additional Waiver/Modification of Requirements (Optional)) to the following address:

Centers for Medicare & Medicaid Services (CMS)  
Mail Stop: C1-22-06  
ATTN: 2009 Direct Contract PFFS MAO Application (Appendix I and III)  
(Contract #: EXXXX)  
7500 Security Blvd.  
Baltimore, MD 21244-1850

**Please note: In addition to these hard copy submissions, the Applicant is also required to enclose with this submission a duplicate electronic copy of all of these materials on a CD.**

**EGWP SERVICE AREA REQUIREMENTS:**

New Direct Contract PFFS MAO Applicants will be able to enter their service areas directly into HPMS during the application process.

In general, MAOs can only cover beneficiaries in the service areas in which they are licensed and approved by CMS to offer benefits. CMS has waived these requirements for Direct Contract MAOs. Direct Contract PFFS MAO Applicants can extend coverage to all of their Medicare-eligible actives/retirees, regardless of whether they reside in one or more MAO regions in the nation. In order to provide coverage to retirees wherever they reside, Direct Contract PFFS MAO Applicants must set their service area to include all areas where retirees may reside during the plan year (**no mid-year service area expansions will be permitted**).

Direct Contract PFFS MAOs that offer Part D coverage (i.e., MA-PDs) will be required to submit pharmacy access information for the entire defined service area during the application process and demonstrate sufficient access in these areas in accordance with employer group waiver pharmacy access policy.

## Appendix I

### Part C Financial Solvency & Capital Adequacy Documentation For Direct Contract PFFS MAO Applicants

Background and Instructions:

An MAO generally must be licensed by at least one state as a risk-bearing entity (42 CFR 422.400). CMS has waived the requirement for Direct Contract PFFS MAOs. Direct Contract PFFS MAOs are not required to be licensed, but must meet CMS Medicare Advantage Part C financial solvency and capital adequacy requirements. Each Direct Contract PFFS MAO Applicant must demonstrate that it meets the financial solvency requirements set forth in this Appendix and provide all required information set forth below. CMS may in its discretion approve, on a case-by-case basis, waivers of such requirements upon a demonstration from the Direct Contract PFFS MAO that its fiscal soundness is commensurate with its financial risk and that through other means the entity can assure that claims for benefits paid for by CMS and beneficiaries will be covered. In all cases, CMS will require that the employer's/union's contracts and sub-contracts provide beneficiary hold harmless provisions.

The information required in this Appendix must be submitted in hardcopy submission in accordance with the instructions above.

#### I. EMPLOYER/UNION ORGANIZATIONAL INFORMATION

A. Complete the information in the table below.

INDENTIFY YOUR ORGANIZATION BY PROVIDING THE FOLLOWING INFORMATION:	
Type of DIRECT CONTRACT MEDICARE ADVANTAGE PLAN requested (Check all that apply):	
Open Access (Non-Network) PFFS Plan <input type="checkbox"/>	
Contracted Network PFFS Plan <input type="checkbox"/>	
Organization's Full Legal Name:	
Full Address Of Your Organization's Headquarters (Street, City, State, Zip):	
Tax Status: For Profit <input type="checkbox"/>	Not For Profit <input type="checkbox"/>
Is Applicant Subject To ERISA? Yes <input type="checkbox"/> No <input type="checkbox"/>	
Type Of Entity (Check All That Apply) :	
Employer <input type="checkbox"/> Labor Union <input type="checkbox"/> Fund Established by One or More Employers or Labor Organizations <input type="checkbox"/> Government <input type="checkbox"/> Church Group <input type="checkbox"/>	
Publicly-Traded Corporation <input type="checkbox"/> Privately-Held Corporation <input type="checkbox"/> Other (list Type) _____	
Name of Your Organization's Parent Organization, if any:	
State in Which your Organization is Incorporated or Otherwise Organized to do Business:	

B. Summary Description

Briefly describe the organization in terms of its history and its present operations. Cite significant aspects of its current financial, general management, and health services delivery activities. Please include the following:

- A. The extent of the current Medicare population served by the Applicant, if any, and the maximum number of Medicare beneficiaries that could be served as a Direct Contract PFFS MAO.
- B. The manner in which benefits are currently provided to the current Medicare population served by the Applicant, if any, the number of beneficiaries in each employer sponsored group option currently made available by Direct Contract PFFS MAO Applicant and how these options are currently funded (self funded or fully insured).
- C. The current benefit design for each of the options described in B above, including premium contributions made by the employer and/or the retiree, deductible, co-payments, or co-insurance, etc. (Applicant may attach a summary plan description of its benefits or other relevant materials describing these benefits.)
- D. Information about other Medicare contracts held by the Applicant, (i.e., 1876, fee for service, PPO, etc.). Provide the names and contact information for all CMS personnel with whom Applicant works on their other Medicare contract(s).
- E. The factors that are most important to Applicant in considering to apply to become a Direct Contract PFFS MAO for its retirees and how becoming a Direct Contract PFFS MAO will benefit the Applicant and its retirees.

C. If the Applicant is a state agency, labor organization, or a trust established by one or more employers or labor organizations, Applicant must provide the required information listed below:

State Agencies:

If Applicant is a state agency, instrumentality or subdivision, please provide the relationship between the entity that is named as the Direct Contract PFFS MAO Applicant and the state or commonwealth with respect to which the Direct Contract PFFS MAO Applicant is an agency, instrumentality or subdivision. Also, Applicant must provide the source of Applicant's revenues, including whether Applicant receives appropriations and/or has the authority to issue debt.

Labor Organizations:

If Applicant is a labor organization including a fund or trust, please provide the relationship (if any) between Applicant and any other related labor organizations such as regional, local or international unions, or welfare funds sponsored by such related labor organizations. If Applicant is a jointly trustee Taft-Hartley fund, please include the names and titles of labor-appointed and management-appointed trustees.

Trusts:

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If Applicant is a trust such as a voluntary employee beneficiary association under Section 501(c)(9) of the Internal Revenue Code, please provide the names of the individual trustees and the bank, trust company or other financial institution that has custody of Applicant's assets.

### D. Policymaking Body (42 CFR 422.503(b)(4)(i)-(iii))

In general, an entity seeking to contract with CMS as a Direct Contract PFFS MAO must have policymaking bodies exercising oversight and control to ensure actions are in the best interest of the organization and its enrollees, appropriate personnel and systems relating to medical services, administration and management, and an executive manager whose appointment and removal are under the control of the policymaking body.

An employer or union directly contracting with CMS as a Direct Contract PFFS MAO may be subject to other, potentially different standards governing its management and operations, such as ERISA fiduciary requirements, state law standards, and certain oversight standards created under the Sarbanes-Oxley Act. In most cases, they will also contract with outside vendors (i.e., business associates) to provide health benefit plan services. To reflect these issues and avoid imposing additional (and potentially conflicting) government oversight that may hinder employers and unions from considering applying to offer Direct Contract MA Plans, the management and operations requirements under 42 CFR 422.503(b)(4)(i)-(iii) are waived if the employer or union (or to the extent applicable, the business associate with which it contracts for health benefit plan services) is subject to ERISA fiduciary requirements or similar state or federal laws and standards. However, such entities (or their business associates) are not relieved from the record retention standards applicable to other MA Organizations. In accordance with the terms of this waiver, please provide the following information:

- A. List the members of the organization's policymaking body (name, position, address, telephone number, occupation, term of office and term expiration date). Indicate whether any of the members are employees of the Applicant.
- B. If the Applicant is a line of business versus a legal entity, does the Board of Directors of the corporation serve as the policymaking body of the organization? If not, describe the policymaking body and its relationship to the corporate Board.
- C. Does the Federal Government or a State regulate the composition of the policymaking body? If yes, please identify all Federal and State regulations that govern your policymaking body (e.g., ERISA).

## II. FINANCIAL SOLVENCY

- A. Please provide a copy of the Applicant's most recent independently certified audited statements.
- B. Please submit an attestation signed by the Chairman of the Board, Chief Executive Officer and Chief Financial Officer or Trustee or other Equivalent Official attesting to the following:



1. The Applicant will maintain a fiscally sound operation and will notify CMS within 10 business days if it becomes fiscally unsound during the contract period.
2. The Applicant is in compliance with all applicable Federal and State requirements and is not under any type of supervision, corrective action plan, or special monitoring by the Federal or State government state regulator. **NOTE: If the Applicant cannot attest to this compliance, a written statement of the reasons must be provided.**

### III. FINANCIAL DOCUMENTATION

#### A. Minimum Net Worth at the Time of Application - Documentation of Minimum Net Worth

At the time of application, the Applicant must demonstrate financial solvency through furnishing two years of independently audited financial statements to CMS. These financial statements must demonstrate a required minimum net worth at the time of application of the greater of \$3.0 Million **or** the number of expected individuals to be covered under the Direct Contract PFFS MAO Plan times (X) \$800.00. Complete the following:

1. Minimum Net Worth: \$ \_\_\_\_\_
2. Number of expected individuals to be covered under the Direct Contract PFFS MAO Plan times (X) \$800.00 = \$ \_\_\_\_\_.

**NOTE: In addition to the requirements in this Appendix, if the Direct Contract PFFS MAO Applicant is also applying to offer a Direct Contract PFFS MAO that provides Part D coverage (i.e., MA-PD), it must complete and submit the corresponding Direct Contract MA-PD application with this application and meet the Part D Minimum Net Worth requirements stated in the separate Direct Contract MA-PD application.**

If the Applicant has not been in operation at least twelve months, it may choose to: 1) obtain independently audited financial statements for a shorter time period; or 2) demonstrate that it has the minimum net worth through presentation of un-audited financial statements that contain sufficient detail to allow CMS to verify the validity of the financial presentation. The un-audited financial statements must be accompanied by an actuarial opinion from a qualified actuary regarding the assumptions and methods used in determining loss reserves, actuarial liabilities and related items.

A “qualified actuary” for purposes of this application means a member in good standing of the American Academy of Actuaries, a person recognized by the Academy as qualified for membership, or a person who has otherwise demonstrated competency in the field of actuarial science and is satisfactory to CMS.

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If the Direct Contract PFFS MAO Applicant's auditor is not one of the 10 largest national accounting firms in accordance with the list of the 100 largest public accounting firms published by the CCH Public Accounting Report, the Applicant should enclose proof of the auditor's good standing from the relevant state board of accountancy.

### **B. Minimum Net Worth On and After Effective Date of Contract**

The Applicant must have net worth as of the effective date of the **greater** of the following financial thresholds; \$3.0 Million; or, an amount equal to eight percent of annual health care expenditures, using the most recent financial statements filed with CMS; or the number of expected individuals to be covered under the Direct Contract PFFS MAO times (X) \$800.00.

### **C. Liquidity at the Time of Application (\$1.5 Million)**

The Applicant must have sufficient cash flow to meet its financial obligations as they become due. The amount of the minimum net worth requirement to be met by cash or cash equivalents is \$1.5 Million. Cash equivalents are short-term highly liquid investments that can be readily converted to cash. To be classified as cash equivalents, investments must have a maturity date not longer than 3 months from the date of purchase.

**NOTE: In addition to the requirements in this Appendix, if the Direct Contract PFFS MAO Applicant is also applying to offer a Direct Contract MA PFFS Plan that provides Part D coverage (i.e., MA-PD), it must complete and submit the corresponding Direct Contract MA-PD application with this application and meet the Part D Liquidity requirements stated in the separate Direct Contract MA-PD application.**

### **D. Liquidity On and After Effective Date of Contract**

After the effective date of the contract, an Applicant must maintain the **greater** of \$1.5 Million **or** 40 percent of the minimum net worth requirement outlined in Section III.B above in cash or cash equivalents.

In determining the ability of an Applicant to meet the requirements of this paragraph D, CMS will consider the following:

1. The timeliness of payment;
2. The extent to which the current ratio is maintained at 1:1 or greater, or whether there is a change in the current ratio over a period of time; and
3. The availability of outside financial resources.

CMS may apply the following corresponding corrective remedies:

1. If a Direct Contract PFFS MAO fails to pay obligations as they become due, CMS will require the Direct Contract PFFS MAO to initiate corrective action to pay all overdue obligations.

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2. CMS may require the Direct Contract PFFS MAO to initiate corrective action if any of the following are evident:
  - (a) The current ratio declines significantly; or
  - (b) A continued downward trend in the current ratio. The corrective action may include a change in the distribution of assets, a reduction of liabilities, or alternative arrangements to secure additional funding to restore the current ratio to at least 1:1.
3. If there is a change in the availability of outside resources, CMS will require the Direct Contract PFFS MAO to obtain funding from alternative financial resources.

### **E. Methods of Accounting**

A Direct Contract PFFS MAO Applicant generally must use the standards of Generally Accepted Accounting Principles (GAAP). Generally Accepted Accounting Principles (GAAP) are those accounting principles or practices prescribed or permitted by the Financial Accounting Standards Board. However, a Direct Contract PFFS MAO whose audited financial statements are prepared using accounting principles or practices other than GAAP, such as a governmental entity that reports in accordance with the principles promulgated by the Governmental Accounting Standards Board (GASB), may utilize such alternative standard.

### **F. Bonding and Insurance**

An Applicant may request a waiver in writing of the bonding and/or insurance requirements set forth at 42 CFR 422.503(b)(4)(iv) and (v). Relevant considerations will include demonstration that either or both of the foregoing requirements are unnecessary based on the entity's individualized circumstances, including maintenance of similar coverage pursuant to other law, such as the bonding requirement at ERISA Section 412. If the waiver request is based on the existence of alternative coverage, the Applicant must describe such alternative coverage and enclose proof of the existence of such coverage.

### **G. Additional Information**

A Direct Contract PFFS MAO Applicant must furnish the following financial information to CMS to the extent applicable:

1. **Self-Insurance/Self Funding-** If the Direct Contract PFFS MAO Applicant's PFFS Plan(s) will be self-insured or self-funded, it must forward proof of stop-loss coverage (if any) through copies of policy declarations.
2. **Trust-** If the Direct Contract PFFS MAO Applicant maintains one or more trusts with respect to its health plan(s), a copy of the trust documents, and if the trust is intended to meet the requirements of Section 501(c)(9) of the Internal Revenue Code, the most recent IRS approval letter.
3. **Forms 5500 and M-1-** The two most recent annual reports on Forms 5500 and M-1 (to the extent applicable) for the Direct Contract PFFS MAO Applicant's

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health plans that cover prescription drugs for individuals who are Part D eligible.

4. **ERISA Section 411(a) Attestation-** The Direct Contract PFFS MAO (including a Direct Contract PFFS MAO that is exempt from ERISA) must provide a signed attestation that no person serves as a fiduciary, administrator, trustee, custodian, counsel, agent, employee, consultant, adviser or in any capacity that involves decision-making authority, custody, or control of the assets or property of any employee benefit plan sponsored by the Direct Contract PFFS MAO Applicant if he or she has been convicted of, or has been imprisoned as a result of his or her conviction of, one of the felonies set forth in ERISA Section 411(a), for 13 years after such conviction or imprisonment (whichever is later).
5. **Defined Benefit Pension Plan-** If the Direct Contract PFFS MAO Applicant sponsors one or more defined benefit pension plans (within the meaning of ERISA Section 3(35)) that is subject to the requirements of Title IV of ERISA, the latest actuarial report for each such plan.
6. **Multi-Employer Pension Plan-** If the Direct Contract PFFS MAO Applicant is a contributing employer with respect to one or more multi-employer pension plans within the meaning of ERISA Section 3(37), the latest estimate of contingent withdrawal liability.
7. **Tax-Exempt Direct Contract PFFS MAOs Only-** a copy of the most recent IRS tax-exemption.

## IV. INSOLVENCY REQUIREMENTS

### A. Hold Harmless and Continuation of Coverage/Benefits.

The Direct Contract PFFS MAO shall be subject to the same hold harmless and continuation of coverage/benefit requirements as other Medicare Advantage contractors.

### B. Deposit Requirements - Deposit at the Time of Application

A Direct Contract PFFS MAO generally must forward confirmation of its establishment and maintenance of a deposit of at least \$1.0 Million to be held in accordance with CMS requirements by a qualified U. S. Financial Institution. A “qualified financial institution” means an institution that:

1. Is organized or (in the case of a U.S. office of a foreign banking organization) licensed, under the laws of the United States or any state thereof; and
2. Is regulated, supervised, and examined by the U.S. Federal or State authorities having regulatory authority over banks and trust companies.

The purpose of this deposit is to help assure continuation of services, protect the interest of Medicare enrollees, and pay costs associated with any receivership or liquidation. The deposit may be used to satisfy the minimum net worth requirement set forth in Section III above.

A Direct Contract PFFS MAO may request a waiver in writing of this requirement.

**NOTE: In addition to the requirements in this Appendix, if the Direct Contract PFFS MAO is also applying to offer a Direct Contract MA PFFS Plan that provides Part D coverage (i.e., MA-PD), it must complete and submit the corresponding Direct Contract MA-PD application with this application and meet the Part D Deposit requirements stated in the separate Direct Contract MA-PD application.**

### **Deposit On and After Effective Date of Contract**

Based on the most recent financial statements filed with CMS, CMS will determine the adequacy of the deposit under this Section and inform the Direct Contract PFFS MAO as to the necessity for any increased deposit. Factors CMS will consider shall include the total amount of health care expenditures during the applicable period, the amount of expenditures that are uncovered, and the length of time necessary to pay claims.

### **Rules Concerning Deposit**

1. The deposit must be held in trust and restricted for CMS' use in the event of insolvency to pay related costs and/or to help assure continuation of services.
2. All income from the deposit are considered assets of the Direct Contract PFFS MAO and may be withdrawn from the deposit upon CMS' approval, such approval to not be unreasonably withheld.
3. On prior written approval from CMS, a Direct Contract PFFS MAO that has made a deposit under this Section may withdraw such deposit or any part thereof if:
  - (a) a substitute deposit of cash or securities of equal amount and value is made;
  - (b) the fair market value of the assets held in trust exceeds the required amount for the deposit; or
  - (c) the required deposit is reduced or eliminated.

## **V. GUARANTEES (only applies to an Applicant that utilizes a Guarantor)**

### **A. General policy**

The Direct Contract PFFS MAO, or the legal entity of which the Direct Contract PFFS MAO is a component, may apply to CMS to use the financial resources of a Guarantor for the purpose of meeting the requirements of a Direct Contract PFFS MAO set forth above. CMS has the sole discretion to approve or deny the use of a Guarantor.

### **B. Request to Use a Guarantor**

To apply to use the financial resources of a Guarantor, a Direct Contract PFFS MAO must submit to CMS:

1. Documentation that the Guarantor meets the requirements for a Guarantor under paragraph (C) of this section; and
2. The Guarantor's independently audited financial statements for the current year-to-date and for the two most recent fiscal years. The financial statements must include the Guarantor's balance sheets, profit and loss statements, and cash flow statements.

### **C. Requirements for Guarantor**

To serve as a Guarantor, an organization must meet the following requirements:

1. Is a legal entity authorized to conduct business within a State of the United States.
2. Not be under Federal or State bankruptcy or rehabilitation proceedings.
3. Have a net worth (not including other guarantees, intangibles and restricted reserves) equal to three times the amount of the Direct Contract PFFS MAO guarantee.
4. If a State insurance commissioner or other State official with authority for risk-bearing entities regulates the Guarantor, it must meet the net worth requirement in Section III above with all guarantees and all investments in and loans to organizations covered by guarantees excluded from its assets.
5. If the Guarantor is not regulated by a State insurance commissioner or other similar State official, it must meet the net worth requirement in Section III above with all guarantees and all investments in and loans to organizations covered by a guarantee and to related parties (subsidiaries and affiliates) excluded from its assets.

### **D. Guarantee Document**

If the guarantee request is approved, a Direct Contract PFFS MAO must submit to CMS a written guarantee document signed by an appropriate Guarantor. The guarantee document must:

1. State the financial obligation covered by the guarantee;
2. Agree to:
  - (a) Unconditionally fulfill the financial obligation covered by the guarantee; and
  - (b) Not subordinate the guarantee to any other claim on the resources of the Guarantor;
3. Declare that the Guarantor must act on a timely basis, in any case not more than 5 business days, to satisfy the financial obligation covered by the guarantee; and
4. Meet any other conditions as CMS may establish from time to time.

**E. Ongoing Guarantee Reporting Requirements**

A Direct Contract PFFS MAO must submit to CMS the current internal financial statements and annual audited financial statements of the Guarantor according to the schedule, manner, and form that CMS requires.

**F. Modification, Substitution, and Termination of a Guarantee**

A Direct Contract PFFS MAO cannot modify, substitute or terminate a guarantee unless the Direct Contract PFFS MAO:

1. Requests CMS's approval at least 90 days before the proposed effective date of the modification, substitution, or termination;
2. Demonstrates to CMS's satisfaction that the modification, substitution, or termination will not result in insolvency of the Direct Contract PFFS MAO; and
3. Demonstrates how the Direct Contract PFFS MAO will meet the requirements of this Section.

**G. Nullification**

If at any time the Guarantor or the guarantee ceases to meet the requirements of this section, CMS will notify the Direct Contract PFFS MAO that it ceases to recognize the guarantee document. In the event of this nullification, a Direct Contract PFFS MAO must:

1. Meet the applicable requirements of this section within 15 business days; and
2. If required by CMS, meet a portion of the applicable requirements in less than the 15 business days in paragraph (G.1.) of this section.

**VI. ONGOING FINANCIAL SOLVENCY/CAPITAL ADEQUACY REPORTING REQUIREMENTS**

An approved Direct Contract PFFS MAO is required to update the financial information set forth in Sections III and IV above to CMS on an ongoing basis. The schedule, manner, form and type of reporting, will be in accordance with CMS requirements.

## Appendix II

### Direct Contract PFFS MAO Attestations For Contract \_\_\_\_\_

#### 1. EGWP SERVICE AREA REQUIREMENTS

In general, MAOs can only cover beneficiaries in the service areas in which they are licensed and approved by CMS to offer benefits. CMS has waived these requirements for Direct Contract MAOs. Direct Contract PFFS MAO Applicants can extend coverage to all of their Medicare-eligible actives/retirees, regardless of whether they reside in one or more other MAO regions in the nation. In order to provide coverage to retirees wherever they reside, Direct Contract PFFS MAOs must set their service area to include all areas where retirees may reside during the plan year (**no mid-year service area expansions will be permitted**).

Direct Contract PFFS MAOs that offer Part D (i.e., MA-PDs) will be required to submit pharmacy access information for the entire defined service area during the application process and demonstrate sufficient access in these areas in accordance with employer group waiver pharmacy access policy.

I certify that I am an authorized representative, officer, chief executive officer, or general partner of the business organization that is applying for qualification to offer Direct Contract PFFS MAO plan. I have read, understand, and agree to comply with the above statement about service areas. If I need further information, I will contact one of the individuals listed in the instructions for this application.

{Entity MUST complete for a complete application.}

#### 2. CERTIFICATION

All provisions of the *2009 Medicare Advantage Application* apply to all plan benefit packages offered by Direct Contract PFFS MAO except where the provisions are specifically modified and/or superseded by particular employer/union-only group waiver guidance, including those waivers/modifications set forth below (specific sections of the *2009 Medicare Advantage Application* that have been waived or modified for new Direct Contract PFFS MAOs are noted in parentheses).

**I, the undersigned, certify to the following:**

- 1) Applicant is applying to offer new employer/union Direct Contract PFFS plans and agrees to be subject to and comply with all CMS employer/union-only group waiver guidance.
- 2) Applicant understands and agrees that it must complete and submit the *2009 Medicare Advantage Application* in addition to this *2009 Initial Application for Employer/Union Direct Contract PFFS Medicare Advantage Organization* application in its entirety. The *2009 Medicare Advantage Application* along with Appendix I (Part C Financial Solvency & Capital Adequacy Documentation for Direct Contract PFFS MAO Applicants) and Appendix III (Request for Additional Waiver/Modification of Requirements (Optional))



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of the 2009 Initial Application for Employer/Union Direct Contract PFFS Medicare Advantage Organization and this attestation (Appendix II) comprise a new Direct Contract PFFS MAO Applicant's entire application.

3) In general, a MA Organization must be organized and licensed under State law as a risk-bearing entity eligible to offer health insurance or health benefits coverage in each State in which it offers coverage (42 CFR 422.400). However, CMS has waived the state licensing requirement for all Direct Contract PFFS MAOs. As a condition of this waiver, Applicant understands that CMS will require such entities to meet the financial solvency and capital adequacy standards contained in Appendix I of this application. (*Section 1.3 of the 2009 Medicare Advantage Application*)

4) Applicant agrees to restrict enrollment in its Direct Contract PFFS plans to those Medicare eligible individuals eligible for the employer's/union's employment-based group coverage. (*Section 1.13.2.A.2 of the 2009 Medicare Advantage Application*)

5) In general, MAOs must meet minimum enrollment standards as set forth in 42 CFR 422.514(a). Applicant understands that it will not be subject to the minimum enrollment requirements set forth in 42 CFR 422.514(a). (*Section 1.14 of the 2009 Medicare Advantage Application*)

6) Applicant understands that dissemination/disclosure materials for its Direct Contract PFFS plans are not subject to the requirements contained in 42 CFR 422.80 to be submitted for review and approval by CMS prior to use. However, Applicant agrees that it will submit these materials to CMS at the time of use in accordance with the procedures outlined in Chapter 9 of the Medicare Managed Care Manual (MMCM). Applicant also understands that CMS reserves the right to review these materials in the event of beneficiary complaints or for any other reason it determines to ensure the information accurately and adequately informs Medicare beneficiaries about their rights and obligations under the plan. (*Section 1.13.1.1 of the 2009 Medicare Advantage Application*)

7) Applicant understands that its Direct Contract PFFS plans will not be subject to the requirements regarding the timing for issuance of certain disclosure materials, such as the Annual Notice of Change/ Evidence of Coverage (ANOC/EOC), Summary of Benefits (SB), Formulary, and LIS rider when an employer's or union's open enrollment period does not correspond to Medicare's Annual Coordinated Election Period. For these employers and unions, the timing for issuance of the above disclosure materials should be appropriately based on the employer/union sponsor's open enrollment period. For example, the Annual Notice of Change/Evidence of Coverage (ANOC/EOC), Summary of Benefits (SB), LIS rider, and Formulary are required to be received by beneficiaries no later than 15 days before the beginning of the employer/union group health plan's open enrollment period. The timing for other disclosure materials that are based on the start of the Medicare plan (i.e., calendar) year should be appropriately based on the employer/union sponsor's plan year. (*Section 1.13.1.7 of the 2009 Medicare Advantage Application*)

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- 8) Applicant understands that the dissemination/disclosure requirements set forth in 42 CFR 422.111 will not apply to its Direct Contract PFFS plans when the employer/union sponsor is subject to alternative disclosure requirements (e.g., the Employee Retirement Income Security Act of 1974 (“ERISA”)) and complies with such alternative requirements. Applicant agrees to comply with the requirements for this waiver contained in employer/union-only group waiver guidance, including those requirements contained in Chapter 9 of the MMCM. (*Sections 1.13.1.1-2 of the 2009 Medicare Advantage Application*)
- 9) Applicant understands that its Direct Contract PFFS plans will not be subject to the MA beneficiary customer service call center hours and call center performance requirements. Applicant attests that it will ensure that a sufficient mechanism is available to respond to beneficiary inquiries and will provide customer service call center services to these members during normal business hours. However, CMS may review the adequacy of these call center hours and potentially require expanded beneficiary customer service call center hours in the event of beneficiary complaints or for other reasons in order to ensure that the entity’s customer service call center hours are sufficient to meet the needs of its enrollee population. (*Section 1.13.1.5 of the 2009 Medicare Advantage Application*)
- 10) Applicant understands that its Direct Contract PFFS plans will not be subject to the requirements contained in 42 CFR 422.64 to submit information to CMS, including the requirements to submit information (e.g., pricing and provider network information) to be publicly reported on [www.medicare.gov](http://www.medicare.gov) (Medicare Options Compare).
- 11) Applicant understands that the management and operations requirements of 42 CFR 422.503(b)(4)(i)-(iii) are waived if the employer or union (or to the extent applicable, the business associate with which it contracts for benefit services) is subject to ERISA fiduciary requirements or similar state or federal law standards. However, such entities (or their business associates) are not relieved from the record retention standards applicable to other MAOs set forth in 42 CFR 422.504(d). (*Sections 1.2.8-10 of the 2009 Medicare Advantage Application*)
- 12) In general, MA plan Sponsors must report certain information to CMS, to their enrollees, and to the general public (such as the cost of their operations and financial statements) under 42 CFR 422.516(a). Applicant understands that in order to avoid imposing additional and possibly conflicting public disclosure obligations that would hinder the offering of employer sponsored group plans, CMS will modify these reporting requirements for Direct Contract PFFS MAOs to allow information be reported to enrollees and to the general public to the extent required by other law (including ERISA or securities laws), or by contract.
- 13) In general, MAOs are not permitted to enroll beneficiaries who do not meet the MA eligibility requirements of 42 CFR 422.50(a), which include the requirement to be entitled to Medicare Part A. (42 CFR 422.50(a)(1)). Applicant understands that under certain circumstances, as outlined in section 30.1.4 of Chapter 9 of the MMCM, Direct Contract PFFS MAOs are permitted to enroll beneficiaries who are not entitled to

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Medicare Part A into Part B-only plan benefit packages. (*Section 1.13.2.A.3 of the 2009 Medicare Advantage Application*)

14) In general, MAOs are not permitted to enroll beneficiaries who have end-stage renal disease (ESRD). Applicant understands that under certain circumstances, as outlined in section 20.2.3 of Chapter 2 of the MMCM, Direct Contract PFFS MAOs are permitted to enroll beneficiaries who have ESRD. (*Section 1.13.2.A.3 of the 2009 Medicare Advantage Application*)

15) This Certification is deemed to incorporate any changes that are required by statute to be implemented during the term of the contract, and any regulations and policies implementing or interpreting such statutory provisions.

16) I have read the contents of the completed application and the information contained herein is true, correct, and complete. If I become aware that any information in this application is not true, correct, or complete, I agree to notify CMS immediately and in writing.

17) I authorize CMS to verify the information contained herein. I agree to notify CMS in writing of any changes that may jeopardize my ability to meet the qualifications stated in this application prior to such change or within 30 days of the effective date of such change. I understand that such a change may result in termination of the approval.

18) I understand that in accordance with 18 U.S.C. § 1001, any omission, misrepresentation or falsification of any information contained in this application or contained in any communication supplying information to CMS to complete or clarify this application may be punishable by criminal, civil, or other administrative actions including revocation of approval, fines, and/or imprisonment under Federal law.

19) I acknowledge that I am aware that there is operational policy guidance, including the forthcoming 2009 Call Letter, relevant to this application that is posted on the CMS website and that it is continually updated. Organizations submitting an application in response to this solicitation acknowledge that they will comply with such guidance should they be approved to offer employer/union-only group waiver plans in association with the organization's Medicare Advantage Contract with CMS.

I certify that I am an authorized representative, officer, chief executive officer, or general partner of the business organization that is applying for qualification to offer Direct Contract PFFS MAO plan. I have read and agree to comply with the above certifications.

{Entity MUST check box for a complete application.}

### Appendix III (Optional)

#### **REQUEST FOR ADDITIONAL WAIVER/MODIFICATION OF REQUIREMENTS:**

As a part of the application process, Applicants may submit individual waiver/modification requests to CMS. The Applicant should submit these additional waiver/modifications via hard copy submissions in accordance with the instructions above.

These requests must be identified as requests for additional waivers/modifications and must fully address the following items:

- Specific provisions of existing statutory, regulatory, and/or CMS policy requirement(s) the entity is requesting to be waived/modified (please identify the specific requirement (e.g., “42 CFR 422.66,” or “Section 40.4 of Chapter 2 of the Medicare Managed Care Manual (MMCM)”) and whether you are requesting a waiver or a modification of these requirements);
- How the particular requirements hinder the design of, the offering of, or the enrollment in, the employer-sponsored group plan;
- Detailed description of the waiver/modification requested including how the waiver/modification will remedy the impediment (i.e., hindrance) to the design of, the offering of, or the enrollment in, the employer-sponsored group plan;
- Other details specific to the particular waiver/modification that would assist CMS in the evaluation of the request; and
- Contact information (contract number, name, position, phone, fax and email address) of the person who is available to answer inquiries about the waiver/modification request.

**ASSISTANCE:**

If you have any questions about this application, please contact:

Julian Nadolny by email at [Julian.Nadolny@cms.hhs.gov](mailto:Julian.Nadolny@cms.hhs.gov) or by phone at 410-786-2274.

Usree Bandyopadhyay by email at [Usree.Bandyopadhyay@cms.hhs.gov](mailto:Usree.Bandyopadhyay@cms.hhs.gov) or by phone at 410-786-6650.