

**Supporting Statement Part A**  
**Solicitation for Applications for Medicare Prescription Drug Plan 2017 Contracts**  
**CMS-10137, OMB 0938-0936**

**Background**

The Medicare Prescription Drug Benefit program was established by section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) and is codified in section 1860D of the Social Security Act (the Act). Section 101 of the MMA amended Title XVIII of the Social Security Act by redesignating Part D as Part E and inserting a new Part D, which establishes the voluntary Prescription Drug Benefit Program (“Part D”). The MMA was amended on July 15, 2008 by the enactment of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA), on March 23, 2010 by the enactment of the Patient Protection and Affordable Care Act and on March 30, 2010 by the enactment the Health Care and Education Reconciliation Act of 2010 (collectively the Affordable Care Act).

Coverage for the prescription drug benefit is provided through contracted prescription drug plans (PDPs) or through Medicare Advantage (MA) plans that offer integrated prescription drug and health care coverage (MA-PD plans). Cost Plans that are regulated under Section 1876 of the Social Security Act, and Employer Group Waiver Plans (EGWP) may also provide a Part D benefit. Organizations wishing to provide services under the Prescription Drug Benefit Program must complete an application, negotiate rates, and receive final approval from CMS. Existing Part D Sponsors may also expand their contracted service area by completing the Service Area Expansion (SAE) application.

**A. Justification**

**1. Need and Legal Basis**

Collection of this information is mandated in Part D of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) in Subpart 3. The application requirements are codified in Subpart K of 42 CFR 423 entitled “*Application Procedures and Contracts with PDP Sponsors.*”

Effective January 1, 2006, the Part D program established an optional prescription drug benefit for individuals who are entitled to Medicare Part A or enrolled in Part B. In general, coverage for the prescription drug benefit is provided through PDPs that offer drug-only coverage, or through MA organizations that offer integrated prescription drug and health care coverage (MA-PD plans). PDPs must offer a basic drug benefit. Medicare Advantage Coordinated Care Plans (MA-CCPs) must offer either a basic benefit or may offer broader coverage for no additional cost. Medicare Advantage Private Fee for Service Plans (MA-PFFS) may choose to offer a Part D benefit. Cost Plans that are regulated under Section 1876 of the Social Security Act, and Employer Group Plans may also provide a Part D benefit. If any of the contracting organizations meet basic requirements, they may also offer supplemental benefits through enhanced alternative coverage for an additional premium.

Applicants may offer either a PDP or MA-PD plan with a service area covering the nation (i.e., offering a plan in every region) or covering a limited number of regions. MA-PD and Cost Plan applicants may offer local plans.

There are 34 PDP regions and 26 MA regions in which PDPs or regional MA-PDs may be offered respectively. The MMA requires that each region have at least two Medicare prescription drug plans from which to choose, and at least one of those must be a PDP.

Requirements for contracting with Part D Sponsors are defined in Part 423 of 42 C.F.R.

This clearance request is for the information collected to ensure applicant compliance with CMS requirements and to gather data used to support determination of contract awards.

## **2. Information Users**

The information will be collected under the solicitation of proposals from PDP, MA-PD, Cost Plan, PACE, and EGWP applicants. The collected information will be used by CMS to: (1) ensure that applicants meet CMS requirements, (2) support the determination of contract awards.

## **3. Use of Information Technology**

Applicants are asked to complete the application through CMS' online Health Plan Management System (HPMS). This will entail clicking checkboxes, completing some minor text fields electronically, and uploading certain supporting documentation. Applicants are not asked to provide any documentation by CD or hardcopy.

## **4. Duplication of Efforts**

This form does not duplicate any information currently collected. It contains information essential to the operation and implementation of the Medicare Prescription Drug Benefit program. It is the only standardized mechanism available to record data from organizations interested in contracting with CMS.

## **5. Small Businesses**

The collection of information will have a minimal impact on small businesses or other small organizational entities since the applicants must possess an insurance license and be able to accept risk. Generally, state statutory licensure requirements effectively prevent small organizations from accepting the level of risk needed to provide the pharmacy benefits required in the Medicare Prescription Drug Benefit Program.

## **6. Less Frequent Collection**

CMS is currently required by statute to provide an opportunity for organizations to apply for new or expanded contracts annually, so CMS cannot reduce the frequency of this collection. If this information is not collected CMS will have no mechanism to: (1) ensure that applicants meet CMS requirements, (2) to support determination of new or expanding contract awards.

## **7. Special Circumstances**

Each applicant is required to enter and maintain data HPMS. Prompt entry and ongoing maintenance of these data in HPMS will facilitate the tracking of the applicant's application throughout the review process. If the applicant is awarded a contract after negotiation, the collected information will be used for frequent communications. Applicants are expected to ensure the accuracy of the collected information on an ongoing basis.

## **8. Federal Register Notice/Outside Consultation**

The 60-day Federal Register notice published on July 7, 2015 (80 FR 38692). Comments were received and are attached to this package along with our response. While we revised the application so respondents can answer "yes" to one of two attestations, none of the comments resulted in any burden adjustments.

## **9. Payment/Gift To Respondent**

There are no payments or gifts associated with this collection.

## **10. Confidentiality**

Consistent with federal government and CMS policies, CMS will protect the confidentiality of the requested proprietary information. Specifically, only information within a submitted application (or attachments thereto) that constitutes a trade secret, privileged or confidential information, (as such terms are interpreted under the Freedom of Information Act and applicable case law), and is clearly labeled as such by the Applicant, and which includes an explanation of how it meets one of the exceptions specified in 45 CFR Part 5, will be protected from release by CMS under 5 U.S.C. § 552(b) (4). Information not labeled as trade secret, privileged, or confidential or not including an explanation of why it meets one of the FOIA exceptions in 45 CFR Part 5 will not be withheld from release under 5 U.S.C. § 552(b)(4).

## 11. Sensitive Questions

Other than the labeled information noted above in section 10, there are no sensitive questions included in the information request.

## 12. Burden Estimate (Total Hours & Wages) update

### 12.1 Wages

To derive average costs, we used data from the U.S. Bureau of Labor Statistics' May 2014 National Occupational Employment and Wage Estimates for all salary estimates ([http://www.bls.gov/oes/current/oes\\_nat.htm](http://www.bls.gov/oes/current/oes_nat.htm)). In this regard, the following table presents the mean hourly wage, the cost of fringe benefits (calculated at 100 percent of salary), and the adjusted hourly wage.

| Occupation Title    | Occupation Code | Mean Hourly Wage (\$/hr) | Fringe Benefit (\$/hr) | Adjusted Hourly Wage (\$/hr) |
|---------------------|-----------------|--------------------------|------------------------|------------------------------|
| Compliance Officers | 13-1041         | 32.69                    | 32.69                  | 65.38                        |

As indicated, we are adjusting our employee hourly wage estimates by a factor of 100 percent. This is necessarily a rough adjustment, both because fringe benefits and overhead costs vary significantly from employer to employer, and because methods of estimating these costs vary widely from study to study. Nonetheless, there is no practical alternative and we believe that doubling the hourly wage to estimate total cost is a reasonably accurate estimation method.

### 12.2 Requirements and Associated Burden Estimates

Tables 1 and 2 provide an estimate of the total hours and costs by activity related to the application processes. The burden hours represent the time it takes for an applicant to complete the Part D solicitation and not the time that applicants spend drafting and negotiating contracts with downstream and related entities to perform key Part D functions on their behalf.

Our estimates include the review of application instructions and completion of the application. The completion of the application encompasses completing attestations and uploading supporting documentation. Overall, the estimated hour burden for completion of the prescription drug applications is 2,109 hours for 230 respondents.

**Table 1**  
**Summary of Hour Burden by Type of Applicant and Process**

| Hours Estimate         |           |            |            |           |             |                      |              |              |
|------------------------|-----------|------------|------------|-----------|-------------|----------------------|--------------|--------------|
| Activity               | PDP       | MA-PD      | Cost Plans | PACE      | Direct EGWP | 800 Series Only EGWP | SAE          | Total Hours  |
| Review of Instructions | 31        | 168        | 1          | 3         | 2           | 2                    | 343          | 550          |
| Complete Application   | 58        | 394        | 9          | 27        | 0           | 13                   | 1,057        | 1,559        |
| <b>Total All</b>       | <b>89</b> | <b>562</b> | <b>10</b>  | <b>30</b> | <b>2</b>    | <b>15</b>            | <b>1,400</b> | <b>2,109</b> |

**Table 2**  
**Summary of Wage Burden by Type of Applicant and Process**

| Wages Estimate         |                |                 |              |                |              |                      |                 |                  |
|------------------------|----------------|-----------------|--------------|----------------|--------------|----------------------|-----------------|------------------|
| Activity               | PDP            | MA-PD           | Cost Plans   | PACE           | Direct EGWP  | 800 Series Only EGWP | SAE             | Total Wages      |
| Review of Instructions | \$2,027        | \$10,984        | \$65         | \$196          | \$131        | \$131                | \$22,425        | \$35,959         |
| Complete Application   | \$3,792        | \$25,760        | \$588        | \$1,765        | \$0          | \$850                | \$69,107        | \$101,862        |
| <b>Total All</b>       | <b>\$5,819</b> | <b>\$36,744</b> | <b>\$653</b> | <b>\$1,961</b> | <b>\$131</b> | <b>\$981</b>         | <b>\$91,532</b> | <b>\$137,821</b> |

**Table 3**  
**Summary of Burden Hours per Application by Type of Application For Applicants who Complete the Application**  
(Includes Both Review of Instructions and Completion of Application)

| Type of Part D Application                | 2016 Burden Estimates per Applicant (rounded to nearest quarter hour) | 2016 Estimated Number of Applicants | 2017 Burden Estimates per Applicant (rounded to nearest quarter hour) | 2017 Estimated Number of Applicants |
|---|---|-------------------------------------|---|-------------------------------------|
| PDP Initial Applications                  | 13.00   | 6                                   | 13.25   | 5                                   |
| MA-PD Initial Applications                | 10.25   | 53                                  | 10.25   | 43                                  |
| Cost Plan Initial Applications            | 10.25   | 1                                   | 10.25   | 1                                   |
| PACE Initial Applications                 | 10.00   | 3                                   | 10.00   | 3                                   |
| Direct EGWP Initial Applications          | 14.25   | 0                                   | 14.25   | 0                                   |
| 800 Series Only EGWP Initial Applications | 14.25   | 1                                   | 14.25   | 1                                   |
| Service Area Expansions (All              | 8.75  | 175                                 | 8.00  | 177                                 |

|                 |  |  |  |  |
|-----------------|--|--|--|--|
| Contract Types) |  |  |  |  |
|-----------------|--|--|--|--|

**Table 4**  
**Summary of Burden Hours per Notice of Intent to Apply for Entities that Submit Notices but Do Not File Applications**  
(Includes only Review of Instructions)

| <b>Type of Part D Application</b>            | <b>2016 Burden Estimates per Applicant (rounded to nearest quarter hour)</b> | <b>2016 Estimated Number of Applicants</b> | <b>2017 Burden Estimates (rounded to nearest quarter hour)</b> | <b>2017 Estimated Number of Applicants</b> |
|--|--|--|--|--|
| PDP Initial Applications                     | 1  | 25   | 1  | 26   |
| MA-PD Initial Applications                   | 1  | 125  | 1  | 125  |
| Cost Plan Initial Applications               | 1  | 0  | 1  | 0  |
| PACE Initial Applications                    | 1  | 0  | 1  | 0  |
| Direct EGWP Initial Applications             | 1  | 2  | 1  | 2  |
| 800 Series Only EGWP Initial Applications    | 1  | 1  | 1  | 1  |
| Service Area Expansions (All Contract Types) | 1  | 168  | 1  | 166  |

**12.3 Information Collection Attachments**

Medicare Part D Application for New PACE Organizations 2016 Contract Year

Solicitation for Applications for Medicare Prescription Drug Plan 2017 Contracts

**12.4 Supporting Statement Attachments**

Attachment 1: Summary of Medicare Part D Regulatory Requirements Waived for Medicare Advantage Prescription Drug (MA-PD) Applicants

Attachment 2: Summary of Part D Application Requirements Fulfilled under Part C for Cost Plan Prescription Drug Applicants

Attachment 3: Summary of Part D Application Requirements Waived or Modified for Employer/Union-Only Group Waiver Plan (EGWP) Applicants

Attachment 4: Summary of PDP Application Requirements Waived for PACE Prescription Drug Applicants

### **13. Capital Costs (Maintenance of Capital Costs)**

We do not anticipate that additional capital costs are incurred. CMS requirements do not require the acquisition of new systems or the development of new technology to complete the application. CMS anticipates that all qualified applicants maintain systems for maintenance of their pharmacy network contracts, pharmacy benefits, and financial records.

System requirements for submitting HPMS applicant information are minimal. PDPs will need the following to access HPMS: (1) Internet or Medicare Data Communications Network (MDCN) connectivity, (2) use of a Microsoft Internet Explorer web browser (version 5.1 or higher) with 128-bit encryption, and (3) a CMS-issued user ID and password with access rights to HPMS for each user within the PDP organization who will require such access. CMS anticipates that all qualified applicants meet these systems requirements and will not incur additional capital costs.

### **14. Cost to Federal Government**

The estimated cost for preparation, review, and evaluation of the prescription drug applications is approximately \$140,000.00. This estimated cost is based on the budgeted amount for application review and support and is inclusive of wages, operational expenses (equipment, overhead, and support staff), and other expenses incurred in the application effort. Due to increased efficiencies in the application review process, the cost to the Federal Government remains unchanged from 2013.

### **15. Changes to Burden**

We have adjusted our cost estimates by using the most recent BLS wage estimates.

Overall, the estimated hour burden for completion of the prescription drug applications is 2,109 hours. This is an 84 hour decrease from the 2016 prescription drug application. Based on prior years' experience CMS has determined that the estimated the number of 2017 applicants should be adjusted by -9 to properly reflect the decrease in MA-PD organizations seeking to apply to contract with CMS. Specifically, CMS estimates that for 2017 there will be as many applications as were actually received for 2016, and the majority of those received will be expansions of existing contracts, which require 60% fewer hours to complete.

The overall estimated paperwork burden is decreased for PDP, MA-PD, Cost Plan, PACE, EGWP Plan, and SAE applicants because of the decrease in the estimated number of applicants. The burden per applicant has increased slightly for initial applicants because of the addition of one to three attestations, depending on application type.

### **16. Publication and Tabulation Dates**

This information is not published or tabulated.

### **17. Expiration Date**

CMS would like to display the expiration date.

**18. Certification Statement**

There are no exceptions to the certification statement.

**C. Collection of Information Employing Statistical Methods**

There have been no statistical methods employed in this collection.

**Attachment 1**

**Summary of Medicare Part D Regulatory Requirements Waived for Medicare Advantage Prescription Drug (MA-PD) Applicants**

This table summarizes the Medicare Part D regulatory provisions that are waived for MA-PD applicants, primarily because they are duplicative of Medicare Part C regulatory requirements. This table demonstrates why the Part D application burden is reduced for MA-PD applicants compared to stand-alone PDP applicants.

| <b>Part D Regulation</b>   | <b>Regulatory Requirement(s) Description</b>  | <b>Basis for Waiver</b>   |
|--|---|---|
| 42 CFR 423 Subpart I, excepting 42 CFR §423.440 ( <b>which concerns Federal preemption of State law and prohibition of State premium taxes</b> ) | Licensure and Solvency – Applicant must be licensed to bear risk in the State in which it intends to operate or apply for a licensure waiver and meet CMS solvency standards. | Duplicative of MA Organization requirements for licensure and solvency under 42 CFR §422.6 (i); 42 CFR §422.400; and 42 CFR §422.501).  |
| 42 CFR §423.153(b) &(d)<br><b>Waiver applies to MA-PFFS only</b>   | Utilization Management – Applicant must have a cost effective utilization management system.  | Waiver stated in regulations at 42 CFR §423.153 (e) excuses MA PFFS organizations from meeting the utilization management requirements specified in 42 CFR §423.153 (b).  |
| 42 CFR §423.153(b) &(d)<br><b>Waiver applies to MA-PFFS only</b>   | Medication Therapy Management Program – Applicant must have a program to manage medication therapy to optimize outcomes, reduce adverse drug interactions.                    | Waiver stated in regulations at 42 CFR §423.153 (e) excuses MA PFFS organizations from meeting Medication Therapy Management Program requirements specified in 42 CFR §423.155.   |
| 42 CFR §423.112 (a)  | Service Area – Applicant must offer a Part D plan that serves at least an entire PDP region.  | Conflicts with MA regulations (42 CFR §422.2) that allow MA organizations to offer local MA plans (i.e., plans that serve less than an entire state).   |
| 42 CFR §423.120 (a)(7) (i)<br><b>Waiver applies only to MA-PDs that operate their own pharmacies</b>   | Pharmacy Network – Applicant must offer its Part D plan benefit through a contracted retail pharmacy network that meets CMS convenient access standards.                      | Waiver stated in regulations at 42 CFR §423.120(a)(7) (i) excuses from the CMS convenient access standards those MA organizations that administer their Part D benefit through pharmacies owned by the MA organization if that organization’s pharmacy network access is comparable to the CMS convenient access standards .  |
| 42 CFR §423.120(a)(7) (ii)<br><b>Waiver applies to MA-PFFS plan that provides access through all pharmacies.</b>                                 | Pharmacy Network – Applicant must offer its Part D plan benefit through a contracted retail pharmacy network that meets CMS convenient access standards                       | Waiver stated in regulations at 42 CFR §423.120 (a) (7) (ii) excuses from the CMS convenient access standards those MA-PFFS organizations that offer a qualified prescription drug coverage, and provide plan enrollees with access to covered Part D drugs dispensed at all pharmacies, without regard to whether they are contracted network pharmacies and without charging cost-sharing in excess of the requirements for qualified prescription drug coverage. |
| 42 CFR §423.120(a)(8) (i)<br><b>Waiver applies only to MA-PDs that operate their own pharmacies</b>  | Pharmacy Network – Applicant must offer its Part D benefit through any willing pharmacy that agrees to meet reasonable and relevant standard network terms and conditions.    | Waiver promotes the coordination of Parts C and D benefits. Excuses from CMS any willing pharmacy requirement those MA organizations that administer their Part D benefit through pharmacies owned by the MA organization and dispense at least 98% of all prescriptions through pharmacies owned and operated by   |

| Part D Regulation   | Regulatory Requirement(s) Description  | Basis for Waiver  |
|---|--|---|
|   |  | Applicant.  |
| 42CFR §423.34<br>42 CFR §423.36<br>42 CFR §423.38<br>42 CFR §423.42<br>42 CFR §423.44 | Enrollment and Eligibility – Applicant agrees to accept Part D plan enrollments and determine Part D plan eligibility consistent with Part D program requirements. | Duplicative of MA requirements under 42 CFR 422 Subpart B - Eligibility, Election, and Enrollment. MA organizations will conduct enrollment and determine eligibility consistent with MA program requirements. These requirements mirror those stated in the Part D regulation. |
| 42 CFR §423.514(b) and (c)  | Reporting Requirements – Applicant must report information concerning significant business transactions.   | Duplicative of MA requirements for reporting significant transactions under 42 CFR §422.500 and 42 CFR §422.516(b) and (c) and requirements for providing annual financial statements.  |
| 42 CFR §423.514(e)  | Reporting Requirements – Applicant must notify CMS of any loans or any other special arrangements it makes with contractors, subcontractors, and related entities. | Duplicative of MA requirement for reporting loans or special arrangements under 42 CFR §422.516(e).   |
| 42 CFR §423.512   | Experience and Capabilities – Applicant must reach the minimum enrollment standard within the first year it offers a Part D benefit.                               | Conflicts with MA regulation that permits three years to achieve the minimum enrollment level.  |

**Attachment 2**

**Summary of Part D Application Requirements Fulfilled under Part C for  
Cost Plan Prescription Drug Applicants**

This table summarizes the Part D application requirements that are fulfilled for cost plans applying to offer Part D benefits for the first time. These requirements were fulfilled as part of their existing contracts with CMS. This table indicates why the Part D application burden is reduced for cost plan applicants compared to stand-alone PDP applicants.

| <b>Part D Regulation Waived</b>  | <b>Regulatory Requirement(s) Description</b>  | <b>Basis and Rationale</b>   |
|--|---|--|
| 42 CFR 423 Subpart I, excepting 42 CFR §423.440 ( which concerns Federal preemption of State law and prohibition of State premium taxes) | Licensure and Solvency – Applicant must be licensed to bear risk in the State in which it intends to operate or apply for a licensure waiver and meet CMS solvency standards. | Duplicative of Cost Plan requirements for licensure and solvency under 42 CFR §417.404 (General requirements) and 42 CFR §417.407 (Requirements for a Competitive Medical Plan (CMP)). All Cost Plans are State licensed in some manner or have authority to offer a Cost Plan in all states in which they operate.  |
| 42 CFR §423.112 (a)  | Service Area – Applicant must offer a Part D plan that serves at least an entire PDP region.  | Conflicts with Cost Plan regulations (42 CFR §417.1) defining the service area for HMOs and CMPs offering Medicare reasonable Cost Plans.  |
| 42 CFR §423.120(a)(3)<br><i>Waiver applies only to Cost contractors that operate their own pharmacies</i>                                | Pharmacy Network – Applicant must offer its Part D plan benefit through a contracted retail pharmacy network that meets CMS standards for convenient access.                  | Waiver stated in regulations at 42 CFR §423.120(a)(7) (i) excuses from the CMS standards for convenient access those Cost contractors that administer their Part D benefit through pharmacies owned by the Cost contractor if that organization’s pharmacy network access is comparable to the CMS convenient access standards . <i>{Note: Applicants will be expected to provide comparable information in the application for organizational pharmacies}</i> |
| 42 CFR §423.120(a)(8)(i)<br><i>Waiver applies only to Cost contractors that operate their own pharmacies</i>                             | Pharmacy Network – Applicant must offer its Part D benefit through any willing pharmacy that agrees to meet reasonable and relevant standard network terms and conditions.    | Waiver promotes the coordination of Parts C and D benefits. Excuses from CMS any willing pharmacy requirement those Cost contractors that administer their Part D benefit through pharmacies owned by the Cost contractor and dispense at least 98% of all prescriptions through pharmacies owned and operated by Applicant.   |

**Attachment 3**

**Summary of Part D Application Requirements Waived or Modified for Employer/Union-Only Group Waiver Plan (EGWP) Applicants**

This table provides a summary of the regulatory requirements waived or modified for applicants applying to offer Part D plans solely in the employer market. This demonstrates why applicants applying to offer EGWP-only plans have a lower Part D application burden than those applying to offer individual market plans.

| <b>Part D Regulation</b>                          | <b>Type of EGWP Applicant Waiver or Modification Applies To</b>  | <b>Application Requirement(s) Description</b>   | <b>Waiver/Modification</b>  |
|---|--|---|---|
| 42 CFR §423.104(b)                                | Direct Contract PDP<br>Direct Contract MA-PD<br><br>“800 Series” PDP<br>“800 Series” MAO<br>“800 Series” Cost PD | <u>Enrollment</u> : Applicant will permit the enrollment of all Medicare beneficiaries that reside in the service area.   | The requirement to enroll all beneficiaries residing in service area is waived for all EGWP applicants. Enrollment in these plans is restricted to the employer/union plan sponsor’s retirees.  |
| 42 CFR §423.120(a) (1)                            | Direct Contract PDP<br>Direct Contract MA-PD<br><br>“800 Series” PDP<br>“800 Series” MAO<br>“800 Series” Cost PD | <u>Retail Pharmacy Access</u> : Applicant agrees to meet the “TRICARE” retail pharmacy access standards defined in 42 CFR §423.120(a).  | EGWP applicants are required to submit retail pharmacy access for review in the same manner as individual plans but are not held to the same “TRICARE” measurement standards as individual plans. EGWPs are required to attest that their retail networks are sufficient to meet the needs of its retiree population, and that CMS reserves the right to review the adequacy of the networks and potentially require expanded access. |
| 42 CFR §423.50(a)                                 | Direct Contract PDP<br>Direct Contract MA-PD<br><br>“800 Series” PDP<br>“800 Series” MAO<br>“800 Series” Cost PD | <u>Prior Review and Approval of Dissemination Materials</u> : Applicant must submit all marketing/dissemination materials for CMS prior review and approval.  | EGWP applicants are waived from the requirement for prior review and approval requirements of beneficiary dissemination materials. EGWPs must provide informational copies of dissemination materials to CMS at time of use in accordance with the specific requirements that apply to these applicants.  |
| 42 CFR §423.128;<br>Medicare Marketing Guidelines | Direct Contract PDP<br>Direct Contract MA-PD<br><br>“800 Series” PDP<br>“800 Series” MAO<br>“800 Series” Cost PD | <u>Timing of Certain Dissemination Materials</u> : Annual Notice of Change (ANOC) Summary of Benefits (SB), and Formulary Materials must be mailed to beneficiaries by October 31 <sup>st</sup> of each year (15 days before annual coordinated election period). | These rules have been modified for all EGWP applicants when the employer or union sponsor has an open enrollment period that does not correspond with Medicare’s annual open coordinated election period. In these cases, the materials must be sent at least 15 days before the beginning of the employer or union sponsor’s annual open enrollment period.  |

| <b>Part D Regulation</b>  | <b>Type of EGWP Applicant Waiver or Modification Applies To</b>  | <b>Application Requirement(s) Description</b>   | <b>Waiver/Modification</b>   |
|---------------------------|--|---|--|
| 42 CFR §423.128(d) (2)    | “800 Series” PDP<br>“800 Series” MAO<br>“800 Series” Cost PD   | <u>Internet Website:</u> Applicants are required to provide specific Information via an Internet website.   | The requirement to post “800 Series” plan information on the Applicant’s internet plan website has been waived. These plans are not open to general enrollment and the posting of this information usually takes place on a separate website or on a website provided by the employer or union group plan sponsor. |
| 42 CFR §423.48            | Direct Contract PDP<br>Direct Contract MA-PD<br><br>“800 Series” PDP<br>“800 Series” MAO<br>“800 Series” Cost PD | <u>CMS Reporting Requirements Re: Information About Part D:</u> Applicants are required to submit certain information to CMS such as pricing and pharmacy network information to be publicly reported to beneficiaries on <a href="http://www.medicare.gov">www.medicare.gov</a> to make informed enrollment decisions. | These requirements have been waived for all EGWPs. These plans are not open to general enrollment and thus this information would be inapplicable and confusing to Medicare beneficiaries.   |
| 42 CFR §423.265           | Direct Contract PDP<br>Direct Contract MA-PD<br><br>“800 Series” PDP<br>“800 Series” MAO<br>“800 Series” Cost PD | <u>Part D Bid Submission:</u> All applicants are required to submit a Part D bid and to receive approval from CMS for the bid.  | The requirement to submit a Part D bid (i.e., Bid Pricing Tool) has been waived for all Part D EGWPs beginning in 2008.  |
| 42 CFR §423.272(b) (3)(i) | Direct Contract PDP<br>Direct Contract MA-PD<br><br>“800 Series” PDP<br>“800 Series” MAO<br>“800 Series” Cost PD | <u>Meaningful Differences: All Applicants are required to submit plan offerings that represent meaningful differences to beneficiaries with respect to benefit packages and plan cost structures.</u>   | The requirement to have meaningful differences in plan offerings by the sponsor in the service area has been waived for all EGWPs.   |
| 42 CFR §423.293(a)        | Direct Contract PDP<br>Direct Contract MA-PD<br><br>“800 Series” PDP<br>“800 Series” MAO<br>“800 Series” Cost PD | <u>Premium Withholding Requirements:</u> All applicants are required to allow beneficiaries to request premium withholding from their Social Security check.  | The requirement to offer premium withholding to beneficiaries has been waived for all EGWPs. This option is not available to any EGWP enrollees.   |
| 42 CFR §423.34            | Direct Contract PDP<br>Direct Contract MA-PD<br><br>“800 Series” PDP<br>“800 Series” MAO<br>“800 Series” Cost PD | <u>Auto and Facilitated Enrollment Requirements:</u> Part D applicants must accept auto and facilitated enrollments.  | These requirements are waived for all EGWPs. These plans do not receive auto or facilitated enrollments.   |

| Part D Regulation  | Type of EGWP Applicant Waiver or Modification Applies To   | Application Requirement(s) Description  | Waiver/Modification  |
|--|--|---|--|
| Medicare Marketing Guidelines                                      | Direct Contract PDP<br>Direct Contract MA-PD<br><br>“800 Series” PDP<br>“800 Series” MAO<br>“800 Series” Cost PD | <u>Part D Beneficiary Customer Service Call Center Requirements:</u> Applicants are required to comply with certain beneficiary customer service call center hour and performance requirements.                         | These service call center hours and performance requirements are waived for all EGWP applicants. EGWPs must provide beneficiary customer call center services during normal business hours. CMS may require expanded call center hours in the event of beneficiary complaints or for other reasons to ensure hours are sufficient to meet the needs of beneficiaries.  |
| 42 CFR §423.401(a)(1); §423.504(b)(2); §422.400(a); §422.503(b)(2) | Direct Contract PDP<br>Direct Contract MA-PD   | <u>Licensure and Financial Solvency:</u> Applicant must be licensed under State law as a risk bearing entity eligible to offer health benefits coverage in each State in which the benefits are offered.                | Direct Contract EGWPs are not required to be licensed as they are providing benefits solely to their retirees. However, in exchange for the waiver of licensing requirements, Direct Contract EGWPs are required to meet certain ongoing Part C and/or Part D financial solvency and capital adequacy requirements. These requirements demonstrate that the entity’s 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. |
| 42 CFR §423.504(b)(4)(i)-(iii)                                     | Direct Contract PDP<br>Direct Contract MA-PD   | <u>Administrative and Management Requirements:</u> Applicant must comply with certain administrative and management requirements.   | These requirements have been waived for all Direct Contract EGWPs that meet certain requirements. A waiver applies when the Applicant is subject to other administrative and management requirements such as ERISA fiduciary standards or other similar state or federal standards.  |
| 42 CFR §423.514(a)   | Direct Contract PDP<br>Direct Contract MA-PD   | <u>Reporting Requirements to the Public and Enrollees:</u> Applicants are required to report certain information to CMS, to the public and to enrollees (such as the cost of their operations or financial statements). | This requirement to report to the public and enrollees is waived for Direct Contract EGWPs under certain circumstances. To avoid imposing additional and possible conflicting public disclosure obligations, CMS modified these reporting requirements for Direct EGWPs to allow information to be reported to enrollees and to the general public to the extent required by other law (e.g., ERISA or securities laws) or by contract.  |

| Part D Regulation | Type of EGWP Applicant Waiver or Modification Applies To | Application Requirement(s) Description   | Waiver/Modification   |
|-------------------|--|--|---|
| 42 CFR §423.4     | Direct Contract PDP                                      | <u>Non-Governmental Entity Requirement:</u> Governmental entities are not permitted to be PDP Sponsors | This prohibition is waived for Direct Contract PDPs so that governmental entities (state and local governments and municipalities) may apply to sponsor a PDP for their retirees. |

**Attachment 4**

**Summary of PDP Application Requirements Waived for  
PACE Prescription Drug Applicants**

**PART D WAIVERS**

CMS is authorized to grant waivers of Part D program requirements where such a requirement conflicts with or duplicates a PACE requirement, or where granting such a waiver would improve the PACE Organization’s coordination of PACE and Part D benefits. The following waivers are in effect for all PACE organizations.

| <b><u>Part D Regulation</u></b>  | <b><u>Regulatory Requirement(s)<br/>Description</u></b>  |
|--|--|
| 42 CFR §423.44   | Involuntary disenrollment  |
| 42 CFR §423.48   | Information about Part D   |
| 42 CFR §423.50   | Approval of marketing materials and enrollment forms   |
| 42 CFR §423.104(g)(1)  | Access to negotiated prices  |
| 42 CFR §423.112  | Establishment of PDP service areas   |
| 42 CFR §423.120(a)   | Access to covered Part D drugs   |
| 42 CFR §423.120(c)   | Use of standardized technology   |
| 42 CFR §423.124  | Out-of-network access to covered Part D drugs at out-of-network pharmacies                         |
| 42 CFR §423.128  | Dissemination of Part D plan information   |
| 42 CFR §423.132  | Public disclosure of pharmaceutical prices for equivalent drugs                                    |
| 42 CFR §423.136  | Privacy, confidentiality, and accuracy of enrollee records   |
| 42 CFR §423.153(a)- 42 CFR §423.153(d)   | Drug utilization management, quality assurance, and medication therapy management programs (MTMPs) |
| 42 CFR §423.156  | Consumer satisfaction surveys  |
| 42 CFR §423.159(c), 42 CFR §423.160(a)   | Electronic prescribing   |
| 42 CFR §423.162  | Quality Improvement organization activities  |
| 42 CFR §423.265(b)<br><i>Note: Automatic waiver applies to new or potential organizations that are not operational by the June deadline.</i><br><br><i>Those organizations with effective program agreements must submit a Part D waiver request in the event they are unable to meet the June deadline.</i> | Part D bid submission deadline   |
| 42 CFR §423.401(a)(1)  | Licensure  |
| 42 CFR §423.420  | Solvency standards for non-licensed entities   |
| 42 CFR §423.462  | Medicare secondary payer procedures  |
| 42 CFR §423.464(c)   | Coordination of benefits and user fees   |
| 42 CFR §423.464(f)(2) and 42 CFR §423.464(f)(4)  | Coordination with other prescription drug coverage   |
| 42 CFR §423.502(b)(1)(i-ii)  | Documentation of State licensure or Federal waiver   |
| 42 CFR §423.504(b)(2-3), 42 CFR §423.504(b)(4)(i-v) and (vi)(A-E), and 42 CFR §423.504(d)<br><i>Note: Organizations are required to abide by 42 CFR §423.504(b)(4)(vi)(F-H), 42 CFR §423.504(b)(5), 42 CFR §423.504(c), and 42 CFR §423.504(e)</i>   | Conditions necessary to contract as a Part D plan sponsor  |
| 42 CFR §423.505(a-c) and 42 CFR §423.505(e-i)  | Contract provisions  |

| <b><u>Part D Regulation</u></b>  | <b><u>Regulatory Requirement(s)<br/>Description</u></b>              |
|--|--|
| <i>Note: Organizations are required to abide by 42 CFR §423.505(d and j)</i>                         |  |
| 42 CFR §423.505(k)(6)<br><i>Note: Organizations are required to abide by 42 CFR §423.505(k)(1-5)</i> | Certification for purposes of price compare                          |
| 42 CFR §423.506(a)-(b)<br><i>Note: Organizations are required to abide by 423.506(c)-(e)</i>         | Effective date and term of contract                                  |
| 42 CFR §423.512 – 42 CFR §423.514  | Contracting terms  |
| 42 CFR §423.551-42 CFR §423.552  | Change of ownership or leasing of facilities during term of contract |
| 42 CFR §423.560-42 CFR §423.638  | Grievances, coverage determinations, and appeals                     |
| N/A  | A PDP sponsor is required to be a nongovernmental entity             |