

CONSOLIDATED APPROPRIATIONS ACT OF 2021 REPORTING SERVICES AGREEMENT

This Consolidated Appropriations Act of 2021 Reporting Services Agreement (the “**Agreement**”) is by and between Express Scripts, Inc. (“**PBM**”) and the Employees Retirement System of Texas (“**ERS**”), effective as of the date of ERS’ execution of this Agreement (the “**Effective Date**”), and shall supplement and be incorporated into the Contractual Agreement between PBM and ERS to provide Pharmacy Benefits Management Services for the HealthSelect of Texas Prescription Drug Programs and the HealthSelect Medicare Rx Prescription Drug Program under the Texas Employees Group Benefits Program, effective December 7, 2022, as amended, together with any Exhibits attached hereto (the “**Contract**”).

This Agreement is entered into by and between PBM and ERS in order for PBM to support ERS in complying with the attestation and reporting requirements of Section 201 of Title II of Division BB of the Consolidated Appropriations Act of 2021 (“**Section 201 of the CAA**”) and Section 204 of Title II of Division BB of the Consolidated Appropriations Act of 2021 (“**Section 204 of the CAA**”) as described herein.

WHEREAS, Section 201 of the CAA requires insurance companies and employer-based health plans to submit to CMS, as the designated collector on behalf of certain federal departments, a Gag Clause Prohibition Compliance Attestation (“**GCPCA**”).

WHEREAS, Section 204 of the CAA requires insurance companies and employer-based health plans to submit certain data about prescription drugs and health care spending to CMS, as the designated data collector on behalf of certain federal departments, in the form of a Prescription Drug Data Collection Report.

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **GAG CLAUSE ATTESTATION AND PRESCRIPTION DRUG REPORTING SERVICES.** (collectively the “**CAA Services**”). PBM will cooperate with ERS in support of ERS’ obligations as necessary to comply with applicable health plan and health insurance issuers attestation and reporting requirements for gag clause prohibition compliance, and prescription drug reporting set forth in Sections 201 and 204 of the CAA, and their respective implementing regulations, as amended and supplemented, with respect to all relevant reporting periods applicable to the PBM Services provided by PBM to ERS under the Contract.

As applicable and in consultation with ERS, PBM shall compile and provide necessary information to ERS in order for ERS to submit ERS’ GCPCA to CMS on behalf of the HealthSelect of Texas Prescription Drug Program and Consumer Directed HealthSelect Prescription Drug Program (together the “**HealthSelect Plans**”). The PBM shall deliver the gag clause attestation information to ERS no later than December 1, 2024, for the compliance period beginning January 1, 2024 and ending December 1, 2024. PBM shall deliver the gag clause attestation information to ERS no later than December 1st of each compliance period thereafter that began on December 1st of the previous year. Without regard to the termination of the Contract, PBM shall provide the necessary information to ERS in order for ERS to submit ERS’ GCPCA that will include the period from the last GCPCA compliance period through the end of the Contract term. PBM shall deliver the information including this compliance period to ERS no later than 90 days after the end of the Contract term.

PBM shall compile and submit reports to CMS on behalf of ERS and the HealthSelect Plans in compliance with Section 204 of the CAA and as further described below. At no additional charge to ERS, PBM shall perform its duties and obligations under this Agreement in providing the CAA Services to ERS in a timely fashion and in a careful, diligent and prudent manner, in conformance with applicable industry standards and applicable law.

2. **REQUIRED DATA FROM ERS.** ERS agrees to provide PBM with relevant ERS information and such other data as necessary to facilitate the CAA Services provided by PBM pursuant to Sections 201 and 204 of the CAA and their implementing regulations, as amended and supplemented. ERS

acknowledges that PBM will not be responsible for accuracy and completeness of ERS information provided by ERS or any liability arising from ERS' failure to provide PBM with updated and correct information, except to the extent due to the negligence, willful misconduct or intentional fraud by PBM. ERS is responsible for timely notifying PBM of any changes in the event any ERS-provided information changes during or after PBM receives the initial data from ERS. Performance of the CAA Services is conditioned upon ERS' timely and accurate submission of information and any updates to information to PBM.

3. **DATA AGGREGATION.** In support of ERS' obligations to report aggregated data in accordance with Section 204 of the CAA, PBM will create and timely submit accurate and complete aggregated prescription drug elements and pertinent prescription drug pricing (e.g., D3 – D8) and assist with preparation of narrative responses. ERS agrees to provide PBM with sufficient information in a crosswalk to comply with aggregation restrictions required for prescription drug data. In the event CMS provides further guidance on aggregating medical data and prescription drug data under Section 204 of CAA, the parties will mutually agree on a modification to the CAA Services.
4. **REPORTING OF PRESCRIPTION DRUG DATA.** PBM will timely report all complete and accurate data elements applicable to prescription drug data as required by Section 204 of the CAA, including but not limited to the Top 50 Most Frequent Brand Drugs, Top 50 Most Costly Drugs, and Top 50 Drugs by Spending Increase. PBM will confirm submission of the RxDC Report to ERS within ten (10) business days of completion.
5. **RECORDS RETENTION FOR CAA SERVICES.** In accordance with applicable law, PBM will retain reports and all relevant supporting documentation directly related to the performance of the CAA Services for ERS for a period of seven (7) years following the termination of the Contract, or for a shorter or longer time period if required of PBM by applicable law.

The undersigned duly authorized representatives have executed this Agreement as of the date indicated below.

EXPRESS SCRIPTS, INC.

By:

Frank Gentilella

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Frank Gentilella

Vice President and General Manager, Special Markets

Date: 12/1/2023

EMPLOYEES RETIREMENT SYSTEM OF TEXAS

By:

Porter Wilson

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Porter Wilson

Executive Director

Date: 12/7/2023