

Medicare Advantage Retrospective Experience Refund Agreement

- Aetna is proposing a Medicare Advantage Retrospective Experience Refund Agreement to The City of New York for the initial 5-year contract period starting 08/01/2023 plus any contract extensions. The initial settlement period would be for the period beginning during August 1, 2023, through December 31, 2024. Subsequent settlements would be on a calendar year basis starting with calendar year 2024. If the contract were to terminate prior to December 31 of any future calendar year, any partial calendar year would be combined with the previous calendar year's settlement.
- This agreement has been designed to accommodate all RFP scenarios, with the Medical Loss Ratio (MLR) thresholds varying based on the average Enrolled Members during the settlement period as displayed in Table 1 below.
- RADV Rule. The issuance by CMS of the RADV Rule on January 30, 2023 (the "RADV Rule"), introduces the risk that Aetna may be required to retrospectively remit revenues to CMS which were paid to Aetna for calendar years of the contract term, because of one or more CMS RADV audits, HHS OIG audits, or other governmental Medicare Advantage risk adjustment audits (collectively, the "Government Audits"). RADV Liabilities (as defined below) are expected to be highly variable by contract year, e.g., the contract may not be audited for several years and then may be audited for a single year with a significant amount due for that year, which is difficult to predict. Due to the wide range of possible Government Audit outcomes by calendar year, Aetna will accumulate any amounts due to the City of New York under this Medicare Advantage Retrospective Experience Refund Agreement (the "Cumulative Gainshare Amounts") in an escrow fund (the "Retrospective Settlement Escrow") towards the cumulative RADV Liabilities for the contract. Aetna will perform cumulative settlements ("Settlement of RADV Liabilities") for each 3-year period over which all Government Audit results have been closed, starting with the January 2024 through December 2026 period, holding the City harmless for any Government Audit results impacting the initial August 2023 through December 2023 period. Aetna shall determine when all Government Audit results for a given 3-year measurement period have been closed and shall notify the City of New York of the Settlement of RADV Liabilities within a reasonable time thereafter. Aetna shall maintain an effective compliance program designed to promote adherence to efficient monitoring and compliance with applicable statutory, regulatory, and Medicare program requirements. Aetna shall provide resources to providers to support accurate coding including education and coding guidance.
- For an example of how a 3-year settlement process would work, if Government Audit results for calendar years 2024 through 2026 are closed by 2030, then the Cumulative Gainshare Amounts corresponding to the contract years from August 2023 through December 2026 will be compared to the cumulative RADV Liabilities from January 2024 through December 2026 in 2030, to determine the net Settlement of RADV Liabilities between Aetna and the City. Due to the lag in Government Audits past any given effective period, all obligations for the Settlement of the RADV Liabilities will continue past termination of the contract.

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- The “RADV Liabilities” for each 3-year measurement period will be determined as follows:
 - If CMS, HHS OIG, or other government agency employs extrapolation in a Government Audit to determine the amount of the remittance for a particular Government Audit of any H contract governing the City of New York Aetna Medicare Advantage membership, the portion of the remittance allocated to the City of New York as a RADV Liability shall be equal to the total remittance multiplied by the ratio of the City of New York CMS revenue for the period audited to the overall total CMS revenue in the applicable H contract for the period audited.
 - If CMS, HHS-OIG, or other government agency does not employ extrapolation to determine the amount of the remittance for a particular Government Audit of the H Contract governing the City of New York, then the RADV Liability allocated to the City of New York shall be based on the methodology employed for the Government Audit.
 - In the event of a dispute with regard to the value of the net RADV liability attributed to the City, the dispute resolution shall proceed according to the specific legislative dispute resolution process set forth in Attachment B.
- If the Retrospective Settlement Escrow is insufficient to cover the cumulative RADV Liabilities at settlement, then the liability shall be carried forward and offset via future year gain share values, premium increases, or direct payments, as agreed by the parties. In the event that any carry-forward liability from a prior settlement period has not been resolved by the time of settlement of the next period, the remaining carry-forward liability from that prior settlement period is immediately due as a direct payment to Aetna within 120 days of the determination of the liability, with the timing of the determination in the case of a value that has been referred to the dispute resolution process involving outside Actuarial firms as set forth in Attachment B begins immediately upon the final determination made by the three external actuarial firms. In the event of a contract termination between the City of New York and Aetna, the City shall reimburse Aetna for any known carry-forward shortfalls within 120 days of receipt of the termination. Additionally, as any new future RADV-related liabilities are determined by CMS that affect any H contracts and time periods under which the City of New York Medicare Advantage plan was active, any RADV Liabilities calculated based on the described methodology above shall be billed to the City and payable within 120 days.
- If the Retrospective Settlement Escrow is more than sufficient to cover the cumulative RADV Liabilities for a 3-year measurement period at settlement, then amounts paid by Aetna to the City of New York can be used for the following:
 - Reduce future MA premiums for members enrolled in Aetna MA plans
 - Reduce Part B premiums for members enrolled in Aetna MA plans
- Separate from the RADV Rule mentioned above, if CMS retroactively adjusts revenues paid to Aetna with respect to City of New York’s Medicare Advantage coverage that is not attributable to a material error or omission by Aetna, impacting the total revenue used in any of Aetna’s

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reconciliations (either preliminary or final), Aetna reserves the right to provide a revised reconciliation based on corrected CMS revenue data. Aetna will adjust any settlement accordingly. If the settlement has already been used as premium credits or paid in cash, City of New York shall reimburse Aetna in an amount necessary to recover the settlement used. Such amounts shall be paid within 120 days of receipt of the reconciliation. The obligations under this paragraph will continue past termination of the contract. For avoidance of doubt, errors or omissions included in this paragraph shall not include errors or omissions directly or indirectly resulting from third-party actions, including but not limited to documentation, claims, or other medical claim data created by providers or vendors.

- Litigation was recently filed by a carrier regarding gain share arrangements with employers offering zero premium Medicare Advantage (MA) plans and compliance with MA regulations and the federal anti-kickback statute (AKS). While CMS recently provided some additional information about the application of its regulations to gain share arrangements, it did not directly address the AKS. Thus, Aetna is seeking an Office of Inspector General (OIG) advisory opinion to obtain clarity relating to gain share arrangements with zero premium group MA plans and the AKS. The terms of any gain share arrangement ultimately agreed upon by Aetna and the City must at all times comply with applicable laws, rules and regulations and must be consistent and comply with the OIG’s advisory opinion, once issued.
- The Retrospective Experience Refund Agreement will be reconciled in aggregate across all City of NY retiree sub-groups covered under Aetna Medicare Advantage plans.

Table 1

Average Enrolled Members	Actual Medicare Advantage Medical Loss Ratio (MLR) compared to MLR Thresholds *	Reconciliation Amount *
Less than 25,000	N/A	There is no Retrospective Experience Refund Agreement with City of NY
25,000 – 49,999	If the Actual MLR < 90.34%, then:	Aetna refunds to City of NY: <ul style="list-style-type: none">• 100% of the difference between the 90.34% and the Actual MLR
50,000 – 99,999	If the Actual MLR < 90.80%, then:	Aetna refunds to City of NY: <ul style="list-style-type: none">• 100% of the difference between the 90.80% and the Actual MLR

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100,000 – 149,999	If the Actual MLR < 91.49%, then:	Aetna refunds to City of NY: <ul style="list-style-type: none"> 100% of the difference between the 91.49% and the Actual MLR
150,000 – 199,999	If the Actual MLR < 91.83%, then:	Aetna refunds to City of NY: <ul style="list-style-type: none"> 100% of the difference between the 91.83% and the Actual MLR
200,000 – 249,999	If the Actual MLR < 92.18%, then:	Aetna refunds to City of NY: <ul style="list-style-type: none"> 100% of the difference between the 92.18% and the Actual MLR
250,000 or greater	If the Actual MLR < 92.52%, then:	Aetna refunds to City of NY: <ul style="list-style-type: none"> 100% of the difference between the 92.52% and the Actual MLR

*** Note: If Bswift is implemented, the MLR Thresholds, e.g., 92.52% for 250,000 or greater average enrolled members, displayed in the chart above, will be decreased by 0.25%, to 92.27%**

- The Actual Medical Loss Ratio (MLR) will be determined as follows:

[Incurred and completed policy year **Claims + Quality Improvement Expense**]

Divided by

[the sum of cumulative total policy period Centers for Medicare and Medicaid Services **(CMS) Revenue** and customer paid **Supplemental Premium** excluding taxes, fees, and assessments such as the PPACA Health Insurer Fee and any related tax gross-up]

Claims are on an incurred basis, including fee-for-service (FFS) and non-FFS claims, as well as a provision for Incurred but Not Reported (IBNR) claims.

Quality Improvement Expense (QIE) includes costs as currently defined for federal minimum MLR purposes. If the definition of QIE under federal minimum MLR rules changes in the future, Aetna reserves the right to review the program parameters.

CMS Revenue includes amounts paid to Aetna by CMS on behalf of City of New York retirees.

Supplemental Premium includes amounts paid to Aetna by City of New York, excluding any amounts to recover actual taxes, fees, and assessments.

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The schedule below will apply to these reconciliations, subject to any extenuating or unforeseen circumstances regarding the timing of CMS reimbursement which may materially affect a premium credit due, e.g., CMS Risk Adjustment Data Validation (RADV) Audits.

Settlement Period	Preliminary Settlement Statement (Based on CMS Revenue received)	Final Settlement Statement (Based on CMS Revenue received)
Beginning on August 1, 2023 through December 31, 2024	April 30, 2025	August 31, 2025
Subsequent Calendar Years	April 30 following the Settlement Period	August 31 following the Settlement Period

Financial Conditions

Aetna reserves the right to review and possibly modify or terminate the reconciliation agreement if any of the following occur during the guarantee period:

- The Retrospective Experience Refund Agreement will apply only if average monthly membership during the policy period exceeds 25,000 lives.
- Failure of City of New York to make required premium payments in accordance with contract provisions.
- Aetna reserves the right to recoup any costs, taxes, governmental fees, or governmental assessments, in response to legislation, regulation or requests of government authorities. Before applying the terms of the Retrospective Experience Refund Agreement, the incremental charges for the taxes, governmental fees, or governmental assessments will be removed from the MLR equation.
- There are legislative, regulatory or CMS changes or enforcement actions that cause a material change to required benefits, funding levels, or the manner and/or cost of providing Medicare Advantage and Part D or PDP coverage. A material change is defined as a change greater than 0.5% to revenue or any new fees, taxes or mandatory operating changes. Any dispute on the impact or implementation of changes under this clause shall be governed by the alternative dispute resolution process set forth in Attachment B.
- Should CMS payment schedules differ materially from what is understood at the time this Agreement is issued, the timing of the reconciliations as stated in this Agreement may be modified or amended to allow Aetna sufficient time to make appropriate calculations.

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- This Retrospective Experience Refund Agreement applies to Medicare Advantage only and does not apply to the Prescription Drug Program (PDP).

Illustrative Example

- Settlement Period: 7/1/21 – 12/31/22
- Assumes 250,000 average members
- Assumes average CMS Revenue of \$1,050 PMPM
- Assumes average Customer Paid Premium of \$0 PMPM
- Assumes Actual MLR = 90.94%
- In this illustrative example, the aggregate amount below the applicable **92.52%** MLR threshold (*) for experience refunds is **\$74.8M**. This amount could be used by the City of New York as specified in this agreement.

		<u>7/2021 - 12/2022 Period</u>	
		<u>\$PMPM</u>	<u>\$M</u>
Average # Lives		250,000	
Revenue			
CMS Revenue		\$1,050.00	\$ 4,725.0
Customer Paid Premium		\$0.00	\$ -
Net Revenue	(a)	\$1,050.00	\$ 4,725.0
Incurred Claims	(b)	\$945.00	\$ 4,252.5
QIE	(c)	\$9.83	\$ 44.2
Actual MLR	[(b)+(c)] / (a)		90.94%
Amount Below 92.52%	[92.52% * (a)] - [(b)+(c)]		\$ 74.8

*** Note: If Bswift is implemented, the MLR Thresholds, e.g., 92.52% for 250,000 or greater average enrolled members, displayed above in Table 1, will be decreased by 0.25%, as previously noted**