



SUMMARY:
**MedicalRx Specialty Provider Network Agreement
with OptumRx, Inc.**

Note that this summary is based on, and specific to, the draft OptumRx Agreement included with these materials. All agreements for participation in the OptumRx network may not be identical. As such, this summary may not address the specific features of an OptumRx Agreement you may be considering. In addition, the content below represents an objective summary of key terms in the OptumRx agreement, but in no way represents an opinion by the Coalition of State Rheumatology Organizations (“CSRO”) as to any specific term or CSRO’s views on whether to accept or decline a proposal from OptumRx.

Each practice should consult with its advisors and make its own, independent assessment and decision on whether to join the OptumRx network. Each practice should also avoid sharing its decision on whether to join the OptumRx network with CSRO or other practices. Note that if independent practices discuss the terms of the draft OptumRx Agreement, particularly the reimbursement rates, with each other or coordinate their responses to OptumRx, such activities could raise antitrust concerns.

1. **General.** The MedicalRx Specialty Provider Network Agreement (“Agreement”) between a practice (referred to in the Agreement as “Company”) and OptumRx, Inc. (“Optum”) is for the Company’s participation in the network of third-party payor (referred to in the Agreement as “Clients”) benefit plans administered through Optum. By joining the Optum network, a Company will be reimbursed for Specialty Drugs and other products and services provided to Client “Members” according to the Specialty Compensation Exhibit, which applies a discount to the Average Wholesale Price (“AWP”).

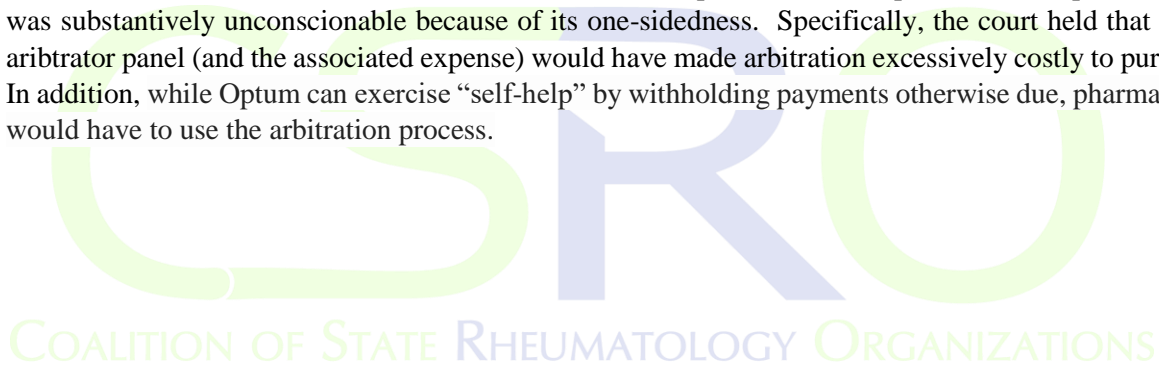
Under the arrangement, Companies directly order, purchase and store the drug, meaning that stocks of drugs will be on hand and may enhance patient convenience. In this respect, the Optum approach contrasts with “white bagging” or “brown bagging,” where the medication is received from a specialty pharmacy or brought by the patient. A depiction of the arrangement is attached as [Attachment 1](#).

2. **Rebates and Transparency.** Under [Section 3.3.7](#), a Company must disclose to Optum the ways it receives money from pharmaceutical manufacturers and how it will pass along rebates to Optum. Similarly, [Section 3.12.5](#) requires Company to provide Optum with a wide scope of information including “reports, data, or other information, including, but not limited to, coupon reporting, which [Optum] may reasonably request...” [Section 3.3.8](#) entitles Optum to any “Rebate” (such as credits, fees or other incentives) that a Company stands to receive from a manufacturer for drugs administered to a Member. While the acquisition and storage of the drug by a practice may be similar to the “buy-and-bill” model, the Agreement would require a Company to pass along rebates and incentives to Optum.
3. **Term and Termination.** The Agreement does not have a defined duration, but allows either party to terminate without cause. For Optum to terminate without cause, it must provide at least 30 days’ notice. For Company to terminate without cause, it must provide at least 180 days’ notice. See [Section 5.2.1](#). The Agreement also includes termination upon 60 days’ notice following an uncured breach by either party, together with a host of events under [Section 5.2.3](#) that would allow Optum to terminate

immediately. Note that these events include violation of Optum policies and procedures (including the provider manual), and a Company would not have an opportunity to cure.

4. Rises in Drug Prices. When the market price of a drug is equal to or exceeds to AWP (resulting in increased acquisition costs to a Company), a Company is reimbursed at the rate set forth in the Specialty Compensation Exhibit. In this situation, the Company may request to negotiate an interim rate, but without a promise from Optum to participate in any negotiation. See Section 3.3.10.
5. Change of Ownership Transactions. Under Section 3.4.3, if a Company acquires or is acquired by another Optum network participant, the Company and the other Optum network participant would continue under each one's separate Optum agreement. This reduces gamesmanship in transactions designed to leverage better rates held by one party relative to the other. Significantly, Section 3.4.4 prohibits the transfer of assets (for example, through a sale or other consolidation) that would result in services being billed by another entity.
6. Credentialing. Each Company is responsible for credentialing providers. In addition, Section 3.4.6 gives Optum rights to all records of a Company relating to a provider's credentialing and services. Optum can choose between reviewing the records on site or have copies sent.
7. Eligibility Verification. Members' eligibility must be confirmed before dispensing using the point-of-sale ("POS") system designated by Optum. Section 3.3.2 does not require Optum to confirm eligibility within a specific timeframe.
8. Provider Manual. Many of the rules associated with the arrangement are set forth in Optum's provider manual, which is binding on Companies, and which may be amended unilaterally by Optum under Section 3.14 with changes taking effect immediately without notice to a Company (See Section 11.2(a)).
9. Amendments to the Agreement. Similarly, Optum may unilaterally amend the Agreement "for any reason" by providing at least 30 days prior written notice under Section 11.2(a).
10. Delegation. Some providers engage the assistance of third parties to assist in management or operations, such as acquisition or storage functions. Section 3.13 prohibits delegation of any kind unless approved by Optum in writing. Optum will not consent without being provided a copy of the agreement with the third party, which must include provisions that would result in immediate termination if Optum withdrew its approval. Companies considering the Agreement with Optum should review their current arrangements to identify whether they would be implicated by this provision and prepare to discuss the arrangement with Optum to secure necessary approval.
11. Recoupment. The Agreement allows Optum to unilaterally recoup overpayments (including ones in dispute) against future payments, without having to adjudicate claim disputes. For example, see Section 4.4. Note that a Company would need to defer to the arbitration process to pursue any claims in dispute.
12. No Transfer of Prescriptions. Section 3.11 prohibits encouragement of a Member to have a prescription filled elsewhere, without exception for whether a particular drug is in stock.

13. Insurance. Section 7.1 requires a Company to carry professional liability coverage and commercial general liability coverage, each with at least \$5 million per occurrence and aggregate limits. These limits exceed customary amounts in some jurisdictions, so Companies should evaluate what additional coverage may be necessary in order to join the Optum network.
14. Confidentiality. Section 8.2 lays out the Company’s responsibility to maintain the confidentiality of Optum’s proprietary and confidential information. There is no corresponding obligation of Optum to preserve the confidentiality of the various information it will have access to, such as claims data, drug pricing and rebate information.
15. Indemnification. Section 6 includes mutual indemnities, but note that the indemnification to be provided by a Company is greater than what Optum provides because a Company’s obligation extends to “acts and omissions,” whereas Optum’s indemnity applies only if it breaches the Agreement. Acts and omissions are not necessarily limited to “negligent” or “intentional” acts or omissions, and may include acts and omissions that do not give rise to a breach.
16. Arbitration. Disputes are to be resolved in accordance with the arbitration process outlined in Section 10. Note that a California court concluded that a similar Optum arbitration provision with pharmacies was substantively unconscionable because of its one-sidedness. Specifically, the court held that a 3-arbitrator panel (and the associated expense) would have made arbitration excessively costly to pursue. In addition, while Optum can exercise “self-help” by withholding payments otherwise due, pharmacies would have to use the arbitration process.



Overview of MedicalRx Specialty Provider Network Agreement

