Sovereign States Drug Consortium (SSDC)

Offer Contingency Statement

Purpose

The Sovereign States Drug Consortium (SSDC) is a collaborative purchasing organization comprised of 16 state Medicaid programs that collectively solicit and evaluate manufacturer offers for Medicaid Supplemental Rebates and Durable Medical Equipment (DME) rebates. Established in 2006 by its charter states of Iowa, Maine, and Vermont, the SSDC remains the only Medicaid rebate pool organized and governed by participating states.

Unlike other rebate pools, SSDC member states contract directly with manufacturers through their own state-specific Supplemental Rebate Agreements (SRAs). While each SRA is tailored to meet the legal and administrative requirements of the individual state, all agreements are administered in accordance with applicable Centers for Medicare & Medicaid Services (CMS) requirements governing state supplemental rebate programs.

This Contingency Statement establishes the terms and conditions applicable to all manufacturer offers submitted through the SSDC process and serves as a condition of participation in SSDC negotiations.

Manufacturer Certifications and Acknowledgments

By submitting an offer through the SSDC Electronic Rebate Offer Management System (eROMS) or by manual submission, the manufacturer certifies and agrees that:

1. All submitted offer information has been reviewed prior to submission and is complete and accurate.
2. The manufacturer affirms and certifies the accuracy of all values displayed and submitted.
3. The individual submitting the offer is authorized to make and bind the manufacturer to the offer presented.
4. All offers are made with the understanding that the terms and conditions of each participating SSDC member state's Supplemental Rebate Agreement apply.
5. Any agreement resulting from the acceptance of an offer shall be governed by the laws of the applicable SSDC member state.
6. Any legal action arising from such agreement shall be brought exclusively in the courts designated by the applicable state as follows:

- **Delaware:** Superior Court of the State of Delaware, New Castle County, Delaware.

- **Iowa:** Polk County District Court for the State of Iowa, Des Moines, Iowa, or the United States District Court for the Southern District of Iowa, Central Division, Des Moines, Iowa, where jurisdiction is appropriate.
- **Kentucky:** Circuit Court of Franklin County, Frankfort, Kentucky.
- **Louisiana:** Nineteenth Judicial District Court, State of Louisiana.
- **Maine:** Maine Superior Court, Kennebec County, Maine.
- **Mississippi:** Circuit Court of the First Judicial District of Hinds County, Mississippi.
- **North Dakota:** District Court of Burleigh County, North Dakota.
- **Ohio:** Court of competent jurisdiction in Franklin County, Ohio.
- **Oklahoma:** Oklahoma County District Court or the United States District Court for the Western District of Oklahoma.
- **Oregon:** Oregon Circuit Court of Marion County, Oregon.
- **South Dakota:** Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.
- **Utah:** Third District Court, Salt Lake County, Utah.
- **Vermont:** Vermont Superior Court, Washington Civil Division.
- **West Virginia:** Circuit Court of Kanawha County, Charleston, West Virginia, or the United States District Court for the Southern District of West Virginia, Charleston, West Virginia.
- **Wyoming:** Wyoming District Court for the First Judicial District, Laramie County, Wyoming.

7. Any resulting agreement shall be reduced to writing and executed in accordance with the contract terms and requirements published by the applicable state.
8. Unit rebate amounts and offer terms shall be maintained as confidential and disclosed only as permitted by applicable contract provisions and law.

State Participation and Offer Administration

Because each SSDC member state operates under its own SRA, all parties acknowledge and agree to the following provisions:

Contract Term

- Member state supplemental rebate agreements are generally annual contracts effective from **January 1 through December 31** of the applicable contract year.
- Exceptions may apply to approved multi-year offers. In such cases, the contract term shall extend from January 1 of the initial contract year through December 31 of the final contract year covered by the accepted offer.

Eligible Population

- Unless otherwise specified by an individual state's SRA, SSDC supplemental rebate agreements apply to Medicaid populations, including managed care entities that utilize and adhere to fee-for-service Preferred Drug Lists (PDLs).

Confidentiality

- All manufacturer offers, whether accepted or declined, shall be treated as confidential information and shall not be disclosed except as required by law.

Binding Nature of Offers

- Offers accepted by an SSDC member state at the conclusion of negotiations shall become binding upon approval by the state's authorized reviewing authority, including but not limited to the state's Drug Utilization Review Committee, Pharmacy and Therapeutics Committee, Medicaid Director, or designated representative.
- Acceptance by one state shall not obligate acceptance by any other SSDC member state.

Manufacturer Good Standing Requirement

Offers submitted by manufacturers that are not in good standing with any SSDC member state due to rebate payment deficiencies shall not be considered.

For purposes of this provision:

Nonpayment means the failure to pay any federal or state supplemental rebates owed to an SSDC member state during the calendar year in which the offer was effective.

Substantial underpayment means an underpayment that exceeds the lesser of:

- Ten percent (10%) of the rebate amount invoiced by an SSDC member state for any rebate quarter; or
- Fifty Thousand Dollars ($50,000) in aggregate amounts owed to an SSDC member state while the offer was in effect.

Application of State SRAs

- All offers are made with the understanding that the individual terms and conditions of the SSDC Member States' Supplemental Rebate Agreements apply.
- The unit rebate amount is confidential and will only be disclosed in accordance with the contract terms.

Product Tables and Offer Criteria

- Product tables attached to each state's Supplemental Rebate Agreement are managed independently by each member state, and some states do not allow external comments on their contracts.
- Notwithstanding individual state contract formatting limitations, manufacturers and member states agree that all accepted offers shall be administered in accordance with the offer criteria and conditions submitted and accepted during negotiations (including manufacturer language in tier and general offer comments within eROMS).
- Participating states agree to administer their Preferred Drug Lists (PDLs), Preferred Behavioral Pharmacy Agent (PBPA) programs, or other applicable utilization management processes consistent with the accepted offer criteria.
- Failure by either party to adhere to accepted offer criteria may result in contract amendment, removal of affected products from the agreement, disqualification from supplemental rebate eligibility, or other remedies available under the applicable SRA.

Written Exceptions

Exceptions to accepted offer criteria may be approved when mutually agreed upon by the manufacturer and the applicable member state prior to contract execution or implementation. Any such exception must be documented in writing and maintained by the parties' authorized representatives.

Reservation of Rights

The SSDC and its member states reserve the right to interpret, administer, and enforce these provisions consistent with the terms of their respective Supplemental Rebate Agreements, CMS requirements, applicable state and federal laws, and any subsequently issued policy guidance.

Submission of an offer constitutes the manufacturer's acknowledgment, acceptance, and agreement to the provisions contained in this Contingency Statement.