

Tony Evers  
Governor

Andrea Palm  
Secretary



**State of Wisconsin**  
Department of Health Services

**DIVISION OF MEDICAID SERVICES**

DRUG REBATE PROGRAM  
313 BLETTNER BLVD  
MADISON WI 53784

Telephone: 800-947-9627  
Fax: 608-221-4567  
TTY: 711

Dear Manufacturer:

Thank you for your interest in participating in a drug rebate program for Wisconsin SeniorCare. SeniorCare began on September 1, 2002, and your signed rebate agreement is needed to ensure that drugs you produce are available to thousands of Wisconsin seniors in need of the prescription drug assistance offered by SeniorCare.

**Overview of SeniorCare**

Beginning September 1, 2002, the State of Wisconsin's SeniorCare Prescription Drug Assistance Program began offering assistance for individuals who are (1) state residents, (2) at least 65 years of age, (3) not enrolled in the state's medical assistance program, (4) at specific income limits based on the Federal Poverty Levels (FPL), and (5) paying a program enrollment fee. The Program is a health care benefits assistance program, which is described in Wis. Stat. § 49.688.

Wis. Stat. § 49.688 requires that in order for the state to provide coverage of the drugs manufacturers produce that are prescribed for members who meet the criteria of this program, manufacturers must enter into a rebate agreement and agree to make quarterly rebate payments for each prescription drug dispensed and for which the program has made a payment under the SeniorCare Prescription Drug Assistance Program.

On July 1, 2002, the Wisconsin Department of Health Services (DHS) received approval from the Centers for Medicare and Medicaid Services (CMS) to operate SeniorCare as a Medicaid 1115 Demonstration Project for SeniorCare members with incomes at or below 200 percent of the FPL. As a manufacturer who participates in the national Medicaid Drug Rebate Program, your existing Medicaid Rebate Agreement will apply for those members who are covered by the Medicaid demonstration project.

Some SeniorCare members are not covered by the demonstration project because their income is slightly above 200 percent of the FPL. According to state law, in order for SeniorCare to provide these seniors with needed prescription drugs that are produced by your company, a signed rebate agreement is needed. The agreement is modeled after the national Medicaid rebate agreement and will be used for rebates on drugs purchased for members of SeniorCare that are not covered by the demonstration project.

In order to facilitate your participation, the following are answers to commonly asked questions about Wisconsin SeniorCare that you may find helpful.

Rebates will be claimed only when SeniorCare has made a payment, i.e., rebates will not be required for drugs paid for solely by members during the SeniorCare member's spenddown or deductible period.

The SeniorCare program for members with incomes greater than 200 percent of the FPL is a State Pharmaceutical Benefit Program (SPAP) funded solely by Wisconsin State General Purpose Revenue, member cost sharing, and manufacturer rebate revenue; no federal dollars are received

for these income level members. CMS has confirmed to the Wisconsin Division of Medicaid Services that this portion of SeniorCare qualifies as an SPAP.

Some SeniorCare members with higher incomes have to meet a spenddown and a deductible before SeniorCare will make payment for covered services. Only SeniorCare-covered drugs can be used to meet the member's spenddown and deductible. Other medical costs, such as physician office visits or hospital services, do not apply to the SeniorCare spenddown or deductible.

SeniorCare allows members who have other insurance to enroll; however, SeniorCare will coordinate benefits with other payers by requesting providers to bill other payers prior to billing SeniorCare.

**SeniorCare Rebate Agreement**

Before you choose to participate, please read the rebate agreement in its entirety. This is a standard rebate agreement being offered to all manufacturers who are currently participating in the national Medicaid Drug Rebate Program. You may not alter, modify, or otherwise change the agreement.

If you have any questions, click the Contact a Drug Rebate Analyst link on the Drug Rebate Manufacturer home page of the ForwardHealth Portal.

Thank you for your participation in Wisconsin's SeniorCare Prescription Drug Assistance Program.

Sincerely,



Medicaid Director

Enclosure

F-13183A (09/2017)

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## **SENIORCARE REBATE AGREEMENT**

### **SeniorCare Rebate Agreement Between Wisconsin Department of Health Services and The Manufacturer**

This rebate agreement (Agreement) is made and entered into by and between the Manufacturer identified in this Agreement and the State of Wisconsin, Department of Health Services (DHS), for its Wisconsin SeniorCare Prescription Drug Assistance Program (Program). DHS and the Manufacturer may be referred to collectively herein as the "Parties."

#### **BACKGROUND**

Wisconsin began a prescription drug program for the elderly effective September 1, 2002, which offers assistance for individuals who are (1) state residents, (2) at least 65 years of age, (3) not enrolled in the state's medical assistance program, (4) at specific income limits based on the federal poverty levels (FPLs), and (5) paying a program enrollment fee. The Program is a health care benefits assistance program, which is described in Wis. Stat. § 49.688.

The Program qualifies as a State Pharmaceutical Assistance Program (SPAP) according to the Centers for Medicare and Medicaid Services (CMS) and any rebates paid under the Program can be excluded from the Best Price and Average Manufacturers Price calculations.

Under the terms of this Agreement, the Manufacturer agrees to provide the Program with rebate payments associated with the prescription drugs dispensed to participants for which the Program has made a payment. The Program is statutorily authorized to cover drugs manufactured by drug manufacturers that have entered into an agreement and to use the rebated funds to assist the Program.

In order for the Manufacturer to enter into a rebate agreement for Wisconsin SeniorCare, the Manufacturer must also have entered into a rebate agreement with the national Medicaid Drug Rebate Program.

This Agreement applies to prescription drugs provided to participants of SeniorCare with incomes above 200 percent of the FPL. The national Medicaid Drug Rebate Program will cover SeniorCare participants with incomes at or below 200 percent of the FPL under the Manufacturer's existing Medicaid rebate agreement with CMS.

Under the terms of this Agreement, the Program will utilize the identical drug rebate terms, definitions, dispute resolution, and reporting guidelines used by the national Medicaid Drug Rebate Program unless otherwise specified.

## 1. Manufacturer's Responsibilities

- 1.1 Following receipt of separately identified SeniorCare Drug Rebate Program quarterly invoices indicating pharmacy reimbursement utilization data by National Drug Code (NDC) during the prior quarter, the Manufacturer will make a rebate payment within the same timeframes as the national Medicaid Drug Rebate Program. The Manufacturer shall identify and remit separate rebate payments directly to Wisconsin DHS to the address indicated on the State of Wisconsin's SeniorCare Drug Rebate invoices or via the secure Drug Rebate Manufacturer area of the ForwardHealth Portal ([www.forwardhealth.wi.gov/](http://www.forwardhealth.wi.gov/)) developed and maintained by the Program under section 2.4 of this Agreement.
- 1.2 The Manufacturer agrees to allow DHS to access and use information included on the CMS quarterly Medicaid Rebate Program file that is necessary for the creation of invoices for the Program. Any information about the Manufacturer that the Program obtains from the CMS file will be treated as confidential and will not be used or disclosed by the Program except in connection with this Agreement.
- 1.3 The rebate per unit (RPU) used by the Program to determine the rebate amount due shall be identical to the RPU included in DHS's quarterly national Medicaid Drug Rebate Program file received from CMS during that same quarterly period. If the actual RPU is different from the one invoiced by the Program, the Manufacturer must change the RPU and report the correct RPU to DHS.
- 1.4 The Manufacturer understands that payment of rebates as required under section 1.1 of this Agreement is a condition of coverage of the Manufacturer's drugs under the Program.
- 1.5 For each quarterly rebate payment, the Manufacturer is required to separately document the Program rebates from the national Medicaid Drug Rebate Program rebates using the Medicaid Drug Rebate Program-mandated Reconciliation of State Invoice form, CMS-304. For explanation of any adjusted rebate payments to the Program Prior Quarter Adjustment Statement form, CMS-304a, must be used.
- 1.6 Payment of Rebates: Subject to the Manufacturer's right to offset any requested Rebate and the Manufacturer's right to dispute product utilization amounts pursuant to section 1.5 of this Agreement, payment of any Rebate shall become due 30 days after receipt

by the Manufacturer of the DHS invoice from the Program. Interest on unpaid rebates begins accruing 38 days after whichever date comes first: the postmark date of a DHS paper invoice, the date of an emailed invoice, or the date of an emailed notification that an invoice is ready to be downloaded. The manufacturer is required to continue to make a rebate payment on all the covered drugs for which claims have been paid while the agreement is in force.

- 1.7 If the Manufacturer questions quarterly invoiced units received from the Program, the Manufacturer can only withhold payment for the disputed units and must pay rebates for all undisputed units. After receipt of the Manufacturer's dispute, the dispute resolution process is initiated between DHS and the Manufacturer and will be conducted using the same dispute resolution procedures and timeframes as indicated in the Best Practices Guide for Dispute Resolution under the national Medicaid Drug Rebate Program.

## 2. Program Responsibilities

- 2.1 The Program shall provide coverage of program-covered drugs and drug products manufactured by the Manufacturer that has entered into this Agreement.
- 2.2 The Program shall furnish separate quarterly invoices to Manufacturers within the same timeframes as required under the national Medicaid Drug Rebate Program and in the same format as specified under the national Medicaid Drug Rebate Program using the Medicaid Drug Rebate Invoice form, CMS-R-144. The Program will create invoices for labelers identified by the manufacturer's labeler codes indicated in the Wisconsin Drug Rebate Labeler Attachment included with this Agreement. Invoices will be submitted using the labeler invoice contact name and address included in the DHS's quarterly national Medicaid Drug Rebate Program file received from CMS or via the secure Drug Rebate Manufacturer area of the Portal developed and maintained by the Program under section 2.4 of this Agreement.
- 2.3 The Program shall keep and maintain records to ensure the accuracy of the dispenser level data and the information contained in each invoice submitted to the Manufacturer. Upon request, the Manufacturer will be allowed to review this information as it relates to the Program. However, under no circumstances will the Program be required to disclose information contrary to applicable law or in violation of patient confidentiality.
- 2.4 The Program may make available a secure drug manufacturer Portal to DHS-approved manufacturers to enhance electronic rebate collections, operations, and invoicing processes that may be used by the Manufacturer and the Program for all drug rebate invoicing activities and other information and notices transmitted between the Parties under the terms of this Agreement.

### 3. Agreement Duration – Nonrenewal and Termination

- 3.1 This Agreement shall become effective upon the date both Parties have signed the Agreement. Rebates will begin to accrue on eligible utilization beginning on the effective date of this agreement, even if copies of signed Agreements are not received until after that date. The Agreement shall continue to be in effect unless otherwise terminated by either Party or the Manufacturer is terminated by CMS from the national Medicaid Drug Rebate Program.
- 3.2 This Agreement shall be effective for an initial period of one year and will automatically be renewed for additional successive terms of one year unless the Manufacturer or DHS gives written notice of intent not to renew this Agreement at least 90 days before the end of the current period.
- 3.3 Upon written notice, either Party may terminate this Agreement for any reason. The effective date of termination will be effective the first day of the first calendar quarter, beginning 60 days after notice requesting termination, or the ending date of the term of the Agreement if the 90-day notice has been given, whichever date is later.

A written notice for termination of this Agreement must be sent in writing or transmitted via the secure Drug Rebate Manufacturer area of the Portal developed and maintained by the Program under section 2.4 of this Agreement. Written notices shall be mailed to the following address:

Wisconsin SeniorCare Drug Rebate Unit  
313 Blettner Blvd  
Madison WI 53784

- 3.4 In the event of a violation of the terms and provisions of this Agreement by either Party, written notice to the other Party alleging the violation shall be given. If the violation is not resolved within 30 days following receipt of the notice, the nonviolating Party may terminate this Agreement immediately upon written notice. However, any nonrenewal or termination will not affect rebates due on drugs that were dispensed prior to the effective date of termination.

Any written notice required to be given by the Manufacturer regarding violation of terms and provisions of this Agreement must be sent in writing to the following address:

Wisconsin SeniorCare Drug Rebate Unit  
313 Blettner Blvd  
Madison WI 53784

#### 4. Miscellaneous

4.1 This Agreement is intended to comply fully with all applicable State of Wisconsin laws and regulations. In the event that this Agreement or any transactions included in this Agreement are determined by either Party not to be in compliance, the Manufacturer and DHS shall negotiate in good faith to modify the terms and provisions of this Agreement to remedy any prior and future noncompliance. This Agreement will not be altered, except by an amendment in writing signed by both Parties. No person is authorized to alter or vary the terms unless the alteration appears by a written amendment that is signed by duly appointed representatives of DHS and the Manufacturer.

If compliance cannot be achieved, either Party may elect to terminate this Agreement and neither Party shall have any further rights or obligations thereafter. However, if possible, Manufacturer and DHS shall take all possible action to remedy any noncompliance.

4.2 To enter into this Agreement and to perform its obligations, each Party represents and warrants that it has full power and authority to enter into this Agreement and to perform all of its obligations. The execution, delivery, and performance of this Agreement have been duly and validly authorized and approved by all necessary action, and the Agreement is a binding obligation, enforceable by each Party against the other. The execution, delivery, and performance of this document by the Parties does not violate, contravene, or conflict with any law or regulation of the State of Wisconsin or any agreement to which DHS may be a party.

4.3 The Program has not and will not permit the resale of drugs for which rebates are sought to other providers or for use by persons who are not Program beneficiaries.

4.4 This Agreement constitutes the entire understanding between the Parties with respect to the transactions contemplated and supercedes all prior written or oral agreements, commitments, or understandings with respect to the matters provided for herein.

4.5 This Agreement, the rights and obligations of the Parties hereto, and any claims or disputes relating thereto shall be governed by and construed in accordance with the laws of the State of Wisconsin (but not including the choice of law rules thereof). The location of any petition brought under this Agreement will be Dane County, Wisconsin.

4.6 Agreement to conduct transaction by electronic means. The Parties to this Agreement agree that this Agreement and all transactions under this Agreement are subject to the Uniform Electronic Transactions Act, Wis. Stat. ch. 137, subch. II, and agree that any transactions under this Agreement conducted by electronic means will be conducted within the meaning of Wis. Stat. § 137.13. Without limitation by way of enumeration,

this Agreement to allow transactions conducted by electronic means includes agreements that:

- i. An electronic signature satisfies any requirement that a signature be affixed to this Agreement or any other document under this Agreement, within meaning of Wis. Stat. § 137.15(4);
  - ii. Any requirement that a Party send or deliver information in writing to another Party is satisfied if the information is provided, sent, or delivered in an electronic record capable of retention by the recipient at the time of receipt, within the meaning of Wis. Stat. § 137.16(1);
  - iii. Any electronic signature purporting to be by any representative of either Party was created by the act of that person and is attributable to that person, within the meaning of Wis. Stat. § 137.17;
  - iv. Any requirement that a record be retained is satisfied by retaining the information set forth in the record as an electronic record that accurately reflects the information set forth in the record after it was first generated in its final form, and remains accessible for later reference, within the meaning of Wis. Stat. § 137.20;
  - v. An electronic record is sent when it is addressed properly or otherwise directed properly to the secure Drug Rebate Manufacturer area of the Portal developed and maintained by the Program under section 2.4 of this Agreement, and is in a form capable of being processed by that system; an electronic record is received when it enters the secure Drug Rebate Manufacturer area of the Portal developed and maintained by the Program under section 2.4 of this Agreement and is in a form capable of being processed by that system, within the meaning of Wis. Stat. § 137.23.
- 4.7 This Agreement is subject to any changes in the Medicaid statutes or regulations that affect the national Medicaid Drug Rebate Program.
- 4.8 The headings of the sections in this Agreement are inserted for convenience of reference only and are not intended to be a part of or affect the meaning or interpretation.



**SIGNATURES**

For the Administrator of the Department of Health Services  
SeniorCare Prescription Drug Assistance Rebate Program  
State of Wisconsin

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**SIGNATURE** – Administrator  
Division of Medicaid Services  
Department of Health Services

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Date Signed

**ACCEPTED FOR THE MANUFACTURER – LABELER CODE**

I certify that I have made no alterations, amendments, or other changes to this Rebate Agreement.

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**SIGNATURE** – Manufacturer

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Date Signed

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Name (Print)

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Title

Please indicate all labeler codes that are to be covered by this Agreement on the Wisconsin SeniorCare Drug Rebate Labeler Attachment, F-13184. Manufacturers with access to the secure Drug Rebate Manufacturer area of the Portal developed and maintained by the Program under section 2.4 of this Agreement should submit the electronically signed rebate agreement and completed attachment via the Portal. Non-Portal users may return the signed rebate agreement and completed attachment by certified or registered mail to the address indicated on the attachment.

F-13182 (09/2017)

