



## TEXAS HEALTH AND HUMAN SERVICES COMMISSION

ALBERT HAWKINS  
EXECUTIVE COMMISSIONER

May 26, 2005

RE: Conditions of Participation for Substituting a Program Benefit Proposal for the  
Negotiated Supplemental Rebate

Dear Pharmaceutical Provider:

The Texas Medicaid Supplemental Rebate Program has two major components. The first component involves the negotiation of a supplemental rebate as a requirement of the Health and Human Services Commission's (HHSC) considering your drug(s) for inclusion on the PDL. Provider Synergies has contracted to negotiate these rebates. The second component is contingent upon the first. That is, you must first negotiate a supplemental rebate, and after doing so, you have the choice of participating in the rebate program as negotiated, or developing a Program Benefit Proposal (PBP) that is intended to save HHSC an amount of money at least as much as what the negotiated rebate would be for the period of the contract.

Negotiation of the PBP agreement is the responsibility of HHSC's Division of Financial Services. In anticipating the submission of PBPs, HHSC has developed a list of conditions of participation that a manufacturer must meet if it wants to submit a PBP in lieu of a supplemental rebate. PBPs will not be considered if the conditions found in the accompanying document are not met.

If you intend to submit a PBP it is not necessary to do so until you have reached a negotiated agreement with Provider Synergies for a supplemental rebate. At that time you can send your PBP to me. The timeframe governing the negotiation of the PBP can be found in the Conditions of Participation document.

Although Provider Synergies has agreed to distribute the attached Conditions of Participation document, your comments or requests for clarification regarding these conditions should be communicated to me through regular mail, via fax (512) 487-3470, phone (512) 424-6526, or e-mail [thomas.suehs@hhsc.state.tx.us](mailto:thomas.suehs@hhsc.state.tx.us).

Sincerely,

Thomas Suehs  
Deputy Executive Commissioner for Financial Services

cc: Charles Bell, M.D., Deputy Executive Commissioner for Health Services  
Steve Aragon, General Council  
Barbara Dean, R.Ph., Acting Director Vendor Drug  
Lisa Kirsch, Associate Medicaid CHIP Director for Program Innovations Acute Care

Enclosure

**Draft Revised May 5, 2005**  
**Procedures for Defining Operation of Program Benefit Proposal (PBP) Option of Supplemental Rebate Program**

**Conditions of Participation**

After the drug manufacturer has signed a supplemental rebate agreement covering its drugs approved for placement on HHSC's preferred drug list (PDL), the manufacturer may, subject to the following conditions, submit a PBP to HHSC. These conditions are applicable to drug manufacturers seeking to substitute an investment in a PBP, either in part or whole, for supplemental rebate payments.

1. Only the direct investment in the PBP can be used to offset the amount of supplemental rebate owed. Direct investment is defined as the reasonable cost that HHSC would have incurred had it implemented the program defined in the PBP. Reductions in claims submitted to HHSC as a result of the program's implementation or any other outcome of the program is not considered part of the investment and cannot be used to reduce the amount of the supplemental rebate owed.
2. The amount of funding invested in the program benefit must be at least as much as the amount of the supplemental rebate calculated for the duration of the supplemental rebate contract. If the program benefit is to cover only part of the supplemental rebate amount that will be owed, then the amount rebated over the term of the contract plus the amount invested in the program benefit over the same term, must equal the total supplemental rebate amount owed.
3. For drug manufacturers negotiating a program benefit with HHSC, no supplemental rebate payments will be required to be paid to HHSC during the negotiation period. However, the manufacturer remains liable for the payment of these rebates if a program benefit cannot be negotiated. If a program benefit agreement is not reached, the supplemental rebate contract remains in effect and if the manufacturer desires, it may withdraw from the supplemental rebate agreement after giving notice as required by this agreement.
4. If the program benefit agreement is not achieved within 120 days from the Provider Synergies communication, HHSC reserves the right to terminate the negotiations and the drug manufacturer must pay the supplemental rebate on the schedule identified in the supplemental rebate contract it signed.
5. The content of the program benefit must address a program that HHSC believes is clinically valuable and not redundant to other efforts by HHSC to manage costs.
6. The program benefit's methodology will be reviewed by HHSC or an independent contractor selected by HHSC to verify that the investment in and savings associated with the program's implementation can be calculated. Negotiated changes in the methodology may result from this process.
7. There can be a periodic reconciliation of the program benefit investment.