ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**

Secretary of State
John Thurston
500 Woodlane, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
www.sos.arkansas.gov

For Office Use Only:

Effective Date _____ Code Number _____

Name of Agency Department of Human Services

Department Division of Medical Services

Contact Mac E. Golden E-mail Mac.E.Golden@dhs.arkansas.gov Phone 501.320.6383

Statutory Authority for Promulgating Rules Arkansas Code §§ 20-76-201, 20-77-107, and 25-10-129

Rule Title: Preferred Drug List Pool and Value-Based Purchasing

Intended Effective Date
(Check One)

- ☐ Emergency (ACA 25-15-204)
- ☑ 10 Days After Filing (ACA 25-15-204)
- ☐ Other _____ (Must be more than 10 days after filing date.)

	Date
Legal Notice Published	1/23/2022
Final Date for Public Comment	2/21/2022
Reviewed by Legislative Council	4/22/2022
Adopted by State Agency	6/30/2022

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Contact Person	E-mail Address	Date
Chloe Crater	chloe.crater@dhs.arkansas.gov	6/30/2022

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

S. Elizabeth Pitman
Signature

501-244-3944 elizabeth.pitman@dhs.arkansas.gov
Phone Number E-mail Address

Director, Division of Medical Services
Title

June 30, 2022
Date

Revised 7/2015 to reflect new legislation passed in the 2015 Regular Session (Act 1258). This act changed the effective date from 30 days to 10 days after filing the rule.

12. Prescribed drugs, dentures and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist (Continued)

a. Prescribed Drugs (continued)

(4) The state is in compliance with section 1927 of the Social Security Act. The state will cover drugs of Federal rebate participating manufacturers. The state is in compliance with reporting requirements for utilization and restrictions to coverage. Pharmaceutical manufacturers can audit utilization data.

The state will be negotiating supplemental rebates in the Medicaid program in addition to the Federal rebates provided for in Title XIX. Rebate agreements between the state and pharmaceutical manufacturer(s) will be separate from the Federal rebates.

Effective May 1, 2022, CMS has authorized the state of Arkansas to enter into a multi-state supplemental rebate pool, using a Preferred Drug List (PDL) to maximize state supplemental rebates. The state will continue to select products participating in the federal rebate program that will be in its Preferred Drug List Program and will only receive state supplemental rebates for manufacturer's supplemental covered products included on the PDL.

A rebate agreement between the state and a participating drug manufacturer for drugs provided to the Medicaid program, submitted to CMS on May 24, 2016, and entitled, State of Arkansas Supplemental Rebate Agreement, has been authorized by CMS. Any additional versions of rebate agreements negotiated between the state and manufacturer(s) after May 24, 2016, will be submitted to CMS for authorization.

The state supplemental rebate agreements would apply to the drug benefit, both fee-for-service and those paid by contracted Medicaid managed care organizations (MCOs), under prescribed conditions in Attachment C of the State of Arkansas Supplemental Rebate Agreement. State supplemental rebate agreements would apply to beneficiaries, including those made eligible under the Affordable Care Act receiving fee-for-service benefits and those that are enrolled under a Medicaid managed care organization agreement.

Supplemental rebates received by the State in excess of those required under the National Drug Rebate Agreement will be shared with the Federal government on the same percentage basis as applied under the national rebate agreement.

All drugs covered by the program, irrespective of a supplemental rebate agreement, will comply with the provisions of the national drug rebate agreement.

The supplemental rebate program does not establish a drug formulary within the meaning of 1927(d)(4) of the Social Security Act.

Effective May 1, 2022, CMS has authorized the state of Arkansas to enter into value/outcomes-based contracts with manufacturers on a voluntary basis. The conditions of the value/outcomes-based contract would be agreed upon by both the state and manufacturer.

The unit rebate amount is confidential and cannot be disclosed for purposes other than rebate invoicing and verification, in accordance with Section 1927(b)(3)(D) of the Social Security Act.

(5) Pursuant to 42 U.S.C. Section 1396r-8 the state is establishing a preferred drug list with prior authorization for drugs not included on the preferred drug list. Prior authorization will be provided within a 24-hour turn-around from receipt of request and a 72-hour supply of drugs in emergency situations.

12. Prescribed drugs, dentures and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist (Continued)

a. Prescribed Drugs (continued)

(4) The state is in compliance with section 1927 of the Social Security Act. The state will cover drugs of Federal rebate participating manufacturers. The state is in compliance with reporting requirements for utilization and restrictions to coverage. Pharmaceutical manufacturers can audit utilization data.

The state will be negotiating supplemental rebates in the Medicaid program in addition to the Federal rebates provided for in Title XIX. Rebate agreements between the state and pharmaceutical manufacturer(s) will be separate from the Federal rebates.

Effective May 1, 2022, CMS has authorized the state of Arkansas to enter into a multi-state supplemental rebate pool, using a Preferred Drug List (PDL) to maximize state supplemental rebates. The state will continue to select products participating in the federal rebate program that will be in its Preferred Drug List Program and will only receive state supplemental rebates for manufacturer's supplemental covered products included on the PDL.

A rebate agreement between the state and a participating drug manufacturer for drugs provided to the Medicaid program, submitted to CMS on May 24, 2016, and entitled, State of Arkansas Supplemental Rebate Agreement, has been authorized by CMS. Any additional versions of rebate agreements negotiated between the state and manufacturer(s) after May 24, 2016, will be submitted to CMS for authorization.

The state supplemental rebate agreements would apply to the drug benefit, both fee-for-service and those paid by contracted Medicaid managed care organizations (MCOs), under prescribed conditions in Attachment C of the State of Arkansas Supplemental Rebate Agreement. State supplemental rebate agreements would apply to beneficiaries, including those made eligible under the Affordable Care Act receiving fee-for-service benefits and those that are enrolled under a Medicaid managed care organization agreement.

Supplemental rebates received by the State in excess of those required under the National Drug Rebate Agreement will be shared with the Federal government on the same percentage basis as applied under the national rebate agreement.

All drugs covered by the program, irrespective of a supplemental rebate agreement, will comply with the provisions of the national drug rebate agreement.

The supplemental rebate program does not establish a drug formulary within the meaning of 1927(d)(4) of the Social Security Act.

Effective May 1, 2022, CMS has authorized the state of Arkansas to enter into value/outcomes-based contracts with manufacturers on a voluntary basis. The conditions of the value/outcomes-based contract would be agreed upon by both the state and manufacturer.

The unit rebate amount is confidential and cannot be disclosed for purposes other than rebate invoicing and verification, in accordance with Section 1927(b)(3)(D) of the Social Security Act.

(5) Pursuant to 42 U.S.C. Section 1396r-8 the state is establishing a preferred drug list with prior authorization for drugs not included on the preferred drug list. Prior authorization will be provided within a 24-hour turn-around from receipt of request and a 72-hour supply of drugs in emergency situations.