

FSS Tracking Customer Primer

Background:

In the fifteen plus years that I have been involved with Federal Supply Schedule (FSS) contracting, my clients have had more difficulty in understanding and complying with Tracking Customer selection and downstream compliance issues than with any other aspect of the FSS regulations. Of particular concern has been their ability to stay on top of changes in their Tracking Customer contracts and the obligations brought by such changes under the Price Reduction Clause in their FSS contract. This discussion is an effort to explain the basic thrust of these obligations.

General Issues:

Every NDC placed on an FSS contract receives a Tracking Customer contract designee, the TC Price, the then-current WAC price and a ratio between the FSS prices (OGA and Big Four) and the TC price as part of the initial placement. An example might be: Greatnewdrug, NDC# 12345-0044-23 – Kaiser, TCPrice \$47.50, WAC \$100, OGA Ratio 1:1, Big Four Ratio 1:1. That TC is permanently linked to that product. Any other contracts offered after the TC has been agreed to by Your Company and the FSS Contracting Officer are not of interest as long as that TC contract is still in effect for that product (except for a TC of “Wholesaler”).

Changes in Tracking Customer:

In the event that the TC’s commercial contract expires or the product is dropped from the contract, Your Company’s responsible person must contact the FSS Contracting Officer to report that fact **within 10 calendar days**. In the case where the TC’s contract remains in effect but the net price to the contracted customer drops (due to added discounting or to a drop in WAC price), Your Company’s responsible person must contact the FSS Contracting Officer to report that fact **within 15 calendar days**. There is no such obligation to report a TC price increase. However, it should be noted that when a TC’s contract price increases **and** the product’s WAC price also increases (as frequently happens when a contract price floats with WAC price), the manufacturer has the opportunity to request a “comparable” OGA FSS price increase

If the original TC is a Wholesaler, because no other commercial contracts exist at that time, the first time that any commercial contract is entered into (after the product has been placed on an FSS contract), that fact must be reported to the FSS Contracting Officer **within 10 calendar days**.

Negotiating a Replacement Tracking Customer:

When a Tracking Customer contract expires or the product in question is removed from the contract or a Wholesaler TC product finally receives a commercial contract, the FSS Contracting Officer will want to select a replacement TC.

After having been notified, he/she will want the customer, who has the then lowest priced commercial contract for that product to be used. The FSS CO is not necessarily entitled to such a lowest priced TC. If that particular contract has a performance component in order to achieve the price (minimum purchase volumes, minimum or escalating market shares, formulary positioning, sales growth, etc.), that contract is considered to be a “performance contract”, which is not comparable to the manner in which the FSS purchases drugs. They are entitled to see the terms of the contract in summary form or even the contract itself but they are not entitled to use that contract as a Tracking Customer. The process of replacement selection is a negotiation and usually the FSS CO will settle for the lowest priced, non-performance contract existent for that product. Once the new TC contract has been selected, the FSS CO will determine the effective date on which the new TC will replace the old TC. At that time, the new TC identity, TC price, the then-current WAC price and the two ratios will replace the previous set of data.

In the event of a late notification, the FSS CO will want to see those contracts that were in effect on the day that the previous TC contract price was reduced or the TC contract was terminated for a particular product. Those will be the only contracts that are to be considered, **as the TC assignment to a product must be seamless with no time gap.**

Negotiating A FSS Price Reduction

When the selection of a replacement TC or a report of a reduced TC price from the existent TC is received by the FSS CO, the CO will examine the newer TC price to determine whether he/she will want to negotiate a new, lower FSS prices. For a “Dual Pricer” firm, such as Your Company, the OGA (FSS) price is initially set at the same price as the TC price of the initial TC. A replacement TC with a lower price or a reduction in the TC price of the initial TC will, after negotiation, normally cause the OGA (FSS) price to go down so as to reestablish the original OGA ratio between the TC price and the OGA price. Normally that lower OGA (FSS) price will still be higher than the Big Four price **so that the Big Four price will not be reduced** In some cases, however, the reduction in the OGA(FSS) price will be large enough so that OGA(FSS) price becomes lower than the current Big Four price. Since that relationship is not permitted, **this set of events will then cause the Big Four price to also be reduced to the level of the lowered OGA (FSS) price.**

Impact of Failure to Notify Within 10/15 Days

Rapid reporting to the FSS Contract Officer is essential to the proper operation of a FSS contract. A failure to report timely, as a minimum, can result in the payment of rebates to the FSS based on the amount of product purchased by the FSS customer base between the time that the event should have been reported and the time that the FSS price(s) are corrected times the excessive pricing per package actually sold, if any. **In addition, the FSS can impose penalties, if it believes that the failure to report timely was either deliberate or was delayed for so long a time as to constitute gross negligence.**

Responsibility

It is prudent for any firm holding an FSS pharmaceutical contract to establish a clear line of responsibility for TC maintenance and reporting. Normally the CFO or Corporate Controller will determine the responsible party, reporting to him/her. Typically these TC prices should be checked **every 2 weeks** to see that nothing has changed in the TC contracts or that a Wholesaler TC has not been supplanted by a commercial contract. Many firms now use contracting software in which a Tracking Customer contract is identified and related to any NDC for which is it the TC contract. Whenever that contract price changes or the contract is terminated, a flag or warning is generated by the software to so indicate and sent to the responsible party. In the absence of such software, a spreadsheet of products can be used to maintain a continuum of TCs for every product on an FSS contract with TC contract identity and TC prices over time filling columns to the right of the list of products and initial TCs and prices.

Here is a sample of such a spreadsheet:

NDC#	Prod Name	Initial TC Sel. Date	Tracking Customer	TC Price	First Chnge Date	Reason	New Tracking Customer	New TC Price
22554-0123-11	Superba, 75 mg Tab, 30s	3/01/08	Humana	\$5.50	5/15/09	Contr. Terminated	Holy Rosary Hosp.	\$5.75
22554-0123-21	Superba, 75 mg Tab, 100s	3/01/08	Humana	\$16.50	9/30/08	Prod. Drop from Cont.	RxCare	\$16.50

Summary

Appoint a responsible manager to maintain records of all Tracking Customer contracts and NDCs.

Provide a written SOP on TC monitoring.

Require a review of all TCs every two weeks.

Report changes to the VA FSS CO promptly (within 10 or 15 days of the event).

Suggest internal auditors perform an audit on TC compliance, annually.

- Ed Collins, Federal Contracting Consultant

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