

STATE OF WISCONSIN,

)

Plaintiff,

)

Case No.: 04 CV 1709

v.

)

)

ABBOTT LABORATORIES, *et. al.*,

)

)

Defendants.

)

)

**DEFENDANTS' FOURTH JOINT SET OF  
REQUESTS FOR ADMISSION TO PLAINTIFF**

Pursuant to Wis. Stat. § 804.11 and Judge Eich's Order on Defendants' Motion to Compel Supplementary Responses and Verification of Other Responses, Defendants request that Plaintiff, the State of Wisconsin, make the following admissions within twenty (20) days of service.

**DEFINITIONS**

1. The term "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request any information that might otherwise be construed to be outside its scope.

2. "Wisconsin," "you" or "your" means the State of Wisconsin, including but not limited to the office of the Department of Health and Family Services, the Department of Administration, the Governor's Office, the Legislative Fiscal Bureau, the Joint Committee on Finance, the Legislative Audit Bureau, the Legislative Reference Bureau, and any other Wisconsin agencies and programs.

## INSTRUCTIONS

1. Your responses, under oath, to each request for admission shall include such information as is within Your custody, possession, or control, or that of Your attorneys, investigators, employees, agents, consultants, or anyone acting on Your behalf.

2. Any denial of a request for admission shall fairly meet the substance of the request for admission.

3. If You deny any of the requests for admission set forth below, or any part thereof, set forth specifically the matters that are being denied and all grounds and reasons for the denial of each such request for admission, and produce all documents that support Your denial or denials.

4. If You cannot truthfully admit or deny any of the requests for admission, or any part thereof, set forth in detail all grounds and reasons for your inability to truthfully admit or deny each such request for admission. If You claim that You require additional information in order to admit or deny any of the requests, You are requested to explain what You have done to obtain the information You claim You need to admit or deny the request.

5. If written objections to a request for admission, or any part thereof, are made by You, the remainder of the request for admission shall be answered.

6. If good faith requires that You deny only a part, or requires a qualification, of a matter that is the subject of a request for admission, You shall admit so much of the requests for admission as is true and deny only the remainder.

## REQUESTS FOR ADMISSION

**REQUEST NO. 134:** That the statements made by Frank D. Remington contained in the e-mail from Frank D. Remington to Jennifer A. Walker, dated July 11, 2007, attached hereto as Exhibit A, are true, correct and admissible.

**REQUEST NO. 135:** That the statements made by Frank D. Remington contained in the e-mail from Frank D. Remington to Jennifer A. Walker and Steven F. Barley, dated March 16, 2007, attached hereto as Exhibit B, are true, correct and admissible.

**REQUEST NO. 136:** That the statements made by Frank D. Remington contained in the letter from Frank D. Remington to Steven F. Barley and Jennifer Walker, dated May 7, 2007, attached hereto as Exhibit C, are true, correct and admissible.

**REQUEST NO. 137:** That the statements made by Frank D. Remington contained in the letter from Frank D. Remington to Laurice Chen, dated December 5, 2007, attached hereto as Exhibit D, are true, correct and admissible.

Dated: April 9, 2008

/s/ Jennifer A. Walker  
Steven F. Barley  
Joseph H. Young  
Jennifer A. Walker  
Hogan & Hartson LLP  
111 S. Calvert St., Suite 1600  
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*Attorneys for Amgen Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on April 9, 2008, a true and correct copy of the foregoing was served upon all counsel of record via LexisNexis File & Serve.

/s/ Marc A. Marinaccio

Marc A. Marinaccio

# **EXHIBIT A**

**Walker, Jennifer A.**

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**From:** Walker, Jennifer A.  
**Sent:** Wednesday, October 03, 2007 3:48 PM  
**To:** Remington, Frank D.  
**Subject:** FW: answer to your question about the reimbursement rate for physician administered drugs

Frank,

For your convenience, I'm forwarding you the first of several emails you sent me where you appear to be supplementing the State's earlier interrogatory responses. Please memorialize these responses into a formal response and serve it all defendants.

I believe the below email supplements Interrogatory No. 7 of Defendants' 2nd set of interrogatories.

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**From:** Remington, Frank D. [mailto:remingtonfd@DOJ.STATE.WI.US]  
**Sent:** Wednesday, July 11, 2007 5:58 PM  
**To:** Walker, Jennifer A.; Barley, Steven F.  
**Cc:** Conley, William M.; Chuck Barnhill; P. Jeffrey Archibald; Storm, Thomas L.  
**Subject:** RE: answer to your question about the reimbursement rate for physician administered drugs

Jennifer:

I reviewed my notes regarding physician administered drugs. I apologize if I failed to forward this information on to you. I thought I had. Please consider this message a supplemental answer to your earlier interrogatory on this question.

Beginning in 1990 onward, the dates and rates are as follows:

Wisconsin Medicaid priced physician administered drug claims using the AWP formula:

AWP-10% prior to 07/01/01  
AWP-11.25% 07/01/01  
AWP-12% 09/01/03  
AWP-13% 7/1/04  
Beginning October 1, 2005, WI MA changed to ASP+6%.

Please let me know if you have further questions.

Thanks

Frank

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**From:** Walker, Jennifer A. [mailto:JAWalker@HHLAW.com]  
**Sent:** Monday, July 09, 2007 10:13 AM  
**To:** Remington, Frank D.  
**Subject:** your vm

11/30/2007

I'm sorry I keep missing your call. I had to prepare for and jump on a conference call but before I did, I listened to your voice mail message. The FDB data that I'm referring to is the data you produced in August 2006. See #4 of your email below.

We did have a conversation over the phone about PAD reimbursement but it only focused on when the State went to ASP. We never discussed the AWP-X% over the time period. You may have intended to talk to me about that but it isn't in my notes. Perhaps you could just send me an email describing it. Thanks Frank. I appreciate it. Hope you had a good 4th.

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**From:** Remington, Frank D. [mailto:remingtonfd@DOJ.STATE.WI.US]  
**Sent:** Thursday, June 15, 2006 3:12 PM  
**To:** Walker, Jennifer A.; Barley, Steven F.  
**Cc:** Chuck Barnhill  
**Subject:** RE: State's Response to Defendants' First Set of Discovery Requests.

Steve and Jennifer:

I left a message for you yesterday Steve, but I think I have now made a decision that negates the need to call me back. I have made significant progress this week, but I am sorry to report that I will not get a chance to "publish" my answers to the second set of interrogatories until Monday, Tuesday at the very latest. I neglected to consider the fact that I will be out of the office tomorrow. I currently serve on the Wisconsin Supreme Court Lawyer Disciplinary Panel and we meet quarterly to consider disciplinary matters and I simply must attend this meeting.

Here is my update on the issues we discussed.

1. Answers to second set of interrogatories on Monday/Tuesday
2. Date to produce documents: I have decided to go ahead and scan the state's documents at our expense notwithstanding the fact that they are not maintained in that fashion, that we do not have a reciprocal agreement to that effect from the defendants, the cost involved to the already cash-strapped State, and yes I checked, even despite the fact that more than one defendant is refusing to do the same for us. I tried to discern today how long that will take but was not able. I suspect a couple of weeks. In the meantime, the reason for my call yesterday was to invite you or your designee to come and inspect the documents that have been assembled. Of course, if you would like paper copies, I am able to accommodate you immediately. I hope to have the data when the scanned documents are ready to be turned over.
3. Electronic data: I called my contact and was told that we do not yet have from EDS our latest data run that would bring utilization current until today's date. The last run is over a year old and as I mentioned I was told had some issues with some labeler codes. I am told that we can expect the data from EDS in about three weeks.
4. First Data Bank. I am told that we did get electronic data/documents from FDB and that it is more than what was produced in the MDL. We will produce it to you under the protection of the confidentiality order along with the scanned documents.
5. Amended answers to defendants' third set of discovery. I have drafted an amended response and am circulating them internally for review. I optimistically see no reason why I cannot "publish" this document next week as well. I would like nonetheless to talk to you about the state's restitution claim. I learned today that in the draft of the new amended complaint there is new language that addresses this issue. I do not want to preempt that document, but I do want to alert you to the fact that it might be worthwhile for you to delay further discussion until after you get a chance to see the third amended complaint.
6. Documents to be produced as part of the first set of discovery. Of the entries identified am pursuing the deposition transcripts first. I have a call into to determine whether we have electronic copies and if there are any copy write issues.
7. I called the Governor's legal counsel and am told that she will determine the nature and extent of what documents were kept by the Governor's Commission.

Thank you for your cordiality and I apologize for unilaterally taking an additional day for the responses to the second set of interrogatories.

Frank

**From:** Walker, Jennifer A. [mailto:JAWalker@HHLAW.com]  
**Sent:** Tuesday, June 13, 2006 5:35 PM  
**To:** Remington, Frank D.  
**Cc:** Barley, Steven F.  
**Subject:** State's Response to Defendants' First Set of Discovery Requests.

Frank,

As promised, attached is a copy of the State's supplemental responses to the Defendants' First Set of Discovery Requests with my handwritten notes next to the documents we need. I also wanted to confirm that you had no "Exhibit B" documents for Amgen.

Thanks,  
Jennifer

<<img-613173140.pdf>>  
*Jennifer A. Walker, Esq.*  
*Hogan & Hartson LLP*  
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# **EXHIBIT B**

**Walker, Jennifer A.**

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**From:** Walker, Jennifer A.  
**Sent:** Thursday, October 04, 2007 8:43 AM  
**To:** 'Remington, Frank D.'  
**Subject:** FW: answers to five of your latest questions.  
**Attachments:** AWP questions HCPCS.doc; AWP questions MMIS-SC.doc; med\_stat\_code.xls; Upload\_wi\_hcpcs\_may2006.xls

Here is additional information you sent us to supplement Interrogatory No. 7 to defendants' second set of interrogatories

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**From:** Remington, Frank D. [mailto:remingtonfd@DOJ.STATE.WI.US]  
**Sent:** Friday, March 16, 2007 11:06 AM  
**To:** Walker, Jennifer A.; Barley, Steven F.  
**Cc:** Chuck Barnhill; P. Jeffrey Archibald  
**Subject:** RE: answers to five of your latest questions.

Jennifer and Steve:

I did make some progress on the questions you have asked which we discussed earlier. Let me respond here with what I know at this point.

**1. physician administered drugs.**

Our discussion about this topic began with the defendants' interrogatory number 7. The question and answer was as follows:

**INTERROGATORY NO. 7**

Identify all reimbursement methodologies, other than the fee schedule, that you have ever used or considered using to reimburse for physician-administered drugs under the Wisconsin Medicaid Program, and the dates during which each reimbursement methodology was in effect, and for each reimbursement methodology so identified, identify the person(s) most knowledgeable about each considered and implemented methodology.

**ANSWER TO INTERROGATORY NO. 7**

The Plaintiff OBJECTS to this interrogatory on the ground that the term "reimbursement methodologies" is ambiguous. The Physician Fee Schedule is not a "reimbursement methodology." Additionally, the Plaintiff OBJECTS to the breadth of this question inasmuch as it asks for a recitation of everything everyone ever considered regarding reimbursement for physician-administered drugs, regardless of whether it was implemented or not.

Notwithstanding these objections, the Plaintiff used a system for the payment of physician administered drugs based in whole or in part on the AWP or the Maximum Allowable Cost, (hereafter "MAC"), (which itself relies in part on Defendants' AWP) whichever is less. Currently, reimbursement in the Physician Fees Schedule relies in part on the Average Sales Price, (hereafter "ASP"), provided to the Center for Medicaid and Medicare Services by the Defendants. Further and complete information on Plaintiffs method of reimbursing physicians is available online at: <http://www.dhfs.state.wi.us>. Every

Wisconsin reimbursement system has been adversely impacted in one way or another by Defendants' failure to publish truthful and accurate average wholesale prices and by Defendants' concealment of these true prices.

On January 26, 2007 you wrote me a letter indicating dissatisfaction with this answer accusing it of insufficiently describing the "exact payment formula". We have had a number of conversations about the State's claim involving the J-codes. I apologize if I have not been clear or succinct in answering your questions in this regard. I have now had the opportunity to consult with program personnel about the J-codes and our earlier answer to your question.

Reimbursement for J codes are made according to the Physician Fee Schedule. You have been given both the schedule and you have the data indicating precisely who and when such payments were made. As stated in our answer, currently this fee schedule is based on the ASPs provided to CMS by your client. Thus, your client is ultimately in the best position to describe the ASP and the derivative fee schedule and how they are computed. Prior to using the ASP, in Wisconsin, the fee schedule was built off of the reported AWP or the MAC if there was one. You asked me if the fee schedule was built off the usual and customary and the answer is "no".

Thus, in further response to Interrogatory number 7, the physician administered drugs are part of the state's pending law enforcement action and the reimbursement methodology is according to the physician fee schedule.

I am currently checking with DHFS as to the exact date it switched from an AWP/MAC based system to the ASP formula.

The exact and complete fee current schedule is located at:  
<http://dhfs.wisconsin.gov/medicaid4/maxfees/maxfee.htm#Physician>

## **2. Answers to remaining questions about the data**

I have prepared two separate word documents, one for HCPCS and one for MMIS-SC accompanied by two excel spreadsheets. I have not had a chance to completely vet these answers and I reserve the right to supplement or amend them at a later date. Given your request, your patience and the passage of time, I send them to you now for your review. My cursory review leads me to believe that I have answered all of your data questions at this time.

## **3. Applying the search terms**

I am waiting for you for an amended prioritized and refined list. I might add at this point, I have some concern about the burden on the agency to do what I think you are going to ask. We don't need to discuss that in the absence of a final list. I appreciate your willingness to take back the earlier comprehensive list based on my assertion that it would be too burdensome to search all that you have asked for. As to this subject, I understand, further discussions are to take place.

## **4. Scanned documents**

The MMCAP and EDS information, as well as the remaining state plans went to the Milwaukee scanner this week. I called them today and was told that the work will be done on Monday March 19, 2007. I will get these documents to you in electronic for you next week.

## **5. Aggregate Wholesaler data**

Wouldn't you know that the easier and simplest request has been the hardest for me to get a handle on. I have tried to go back and piece together what happened when. I believe you have the aggregate Walgreens data. Otherwise, I have CDs from F. Dohmen, DVDs from Amerisource Bergen Star data, one DVD for AmerisourceBergen RTS data, and one DVD for the Wisconsin specific Cardinal data. I will make copies of these and notify local counsel as to when they may be picked up for hand delivery

But as for the Amerisource Bergen discs we have tentatively scheduled a deposition of their IT staff member who will be asked in his/her deposition to authenticate the data which that company previously gave to us and us to you. This is tentatively scheduled for April 3 or 4, 2007 in Philadelphia. The exact time and location

are still being worked out and a notice will go out next week. I mention it here because it seems to me that what you really want is the aggregate data in an authenticated form, and I am told the defendants and the plaintiffs will get that at this deposition.

I also mentioned to you that we are negotiating with Cardinal for the production of nationwide data with will supersede the earlier state specific data. I will make you a copy of the Wisconsin specific data, but it will become obsolete soon.

Thank you for your patience and ongoing cooperation. If what I have said above is confusing or if you have any further questions, (sigh!), please do not hesitate to contact me.

Frank

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**From:** Walker, Jennifer A. [mailto:JAWalker@HHLAW.com]  
**Sent:** Friday, March 16, 2007 8:17 AM  
**To:** Remington, Frank D.  
**Cc:** Barley, Steven F.  
**Subject:** RE: Summary of call

Frank,

How are you progressing on items 1-2 and 4-5 below? I am aware that you are waiting for search terms from me in order to get started on item 3. I have been mulling over the State's searching capabilities and would like to discuss it in more detail with you (and/or someone who feels more comfortable speaking about it).

I also would like to schedule our next meet-and-confer. We are available the afternoon of March 26 or 27. Please let me know if you are available either of those days. We will probably want to set aside a couple hours because we have a number of things to discuss.

Thanks,  
Jennifer

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**From:** Remington, Frank D. [mailto:remingtonfd@DOJ.STATE.WI.US]  
**Sent:** Thursday, March 08, 2007 9:06 AM  
**To:** Walker, Jennifer A.  
**Cc:** Barley, Steven F.  
**Subject:** RE: Summary of call

Thank you for your letter.

Upon reflection, I decided to send the short stack of records to be scanned and bates stamped in today's mail to the vendor in Milwaukee. I hope to get them to you in about ten days.

I am working on the rest.

Thanks.

Frank

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**From:** Walker, Jennifer A. [mailto:JAWalker@HHLAW.com]  
**Sent:** Wednesday, March 07, 2007 7:16 PM  
**To:** Remington, Frank D.

11/30/2007

**Cc:** Barley, Steven F.  
**Subject:** Summary of call

Frank,

It was a pleasure speaking with you this evening. It is my understanding that you have agreed to focus your initial efforts to supplement the State's discovery responses on the following 5 items:

1. Determine whether physician-administered drugs are part of the case. If they are, then provide us with the reimbursement methodologies used by the State in response to defendants' Interrogatory No. 7.
2. Send the answers to my remaining questions on the data produced by the State.
3. Apply defendants' search terms in order of priority (as provided by me) to all electronic files where responsive documents might be located starting with DHFS' controlled correspondence file.
4. Produce any documents you have already collected, including the MMCAP and EDS contracts.
5. Produce a copy of the aggregate wholesaler data.

If this does not reflect your understanding of our conversation, please let me know.

Thanks,  
Jennifer

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11/30/2007

# **EXHIBIT C**



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

J.B. VAN HOLLEN  
ATTORNEY GENERAL

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May 7, 2007

Steven F. Barley  
Jennifer Walker  
Hogan and Hartson  
555 13th Street, Northwest, Suite 800E  
Washington, D. C. 20004

Re: Amgen, Inc., et al.  
Case No. 2004-CV-1709

Dear Steve and Jennifer:

As you know, the Plaintiff previously responded to the Defendants' Second Set of Interrogatories and we have since that time been discussing that response. In particular, on January 26, 2007, you wrote a letter as part of continuing discussions concerning ongoing discovery issues. I write this letter to you to address those concerns and questions.

Preliminarily, please note that the Plaintiff reiterates all its previous objections contained in its original response and incorporates them here by reference. Subject to these objections, the Plaintiff provides this additional response to the Defendants' Second Set of Interrogatories as follows:

**INTERROGATORIES NO. 1 - 3**

The Defendants assert that the Plaintiff's previous response to these interrogatories was unclear. The Plaintiff provided the Defendants with further clarification that the Defendants now characterize as "confusing." The Defendants now ask additional questions and Plaintiff further responds. The Plaintiff will endeavor to calculate the average wholesale price based on actual wholesale pricing data provided to it from various sources, like wholesalers, large retail chain drug stores, and hopefully from the Defendants themselves if they ever submit to actually producing the data previously requested by the Plaintiff. The method the Plaintiff intends to employ in the calculation of damages has been previously provided to the Defendants.

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Jennifer Walker  
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#### **INTERROGATORY NO. 4**

The Defendants asked in this interrogatory for the Plaintiff to identify the statutes, regulations, rules or other authority upon which the Plaintiff relies. The Plaintiff stated that it relied on Wis. Stats. §§ 100.18(1), 100.18(10)(b), 100.264(2), 133.05, 49.49(4m)(a)(2) and all policies, procedures and manuals properly promulgated there under. The Defendants now inquire as to what is exactly meant by the reference to policies, procedures and manuals. In responding to Defendants' requests, the Plaintiff has noted that information regarding the operation of the Medical Assistance Program is contained in various sources including such things as the Medicaid Provider Handbook and other public information, most of which is readily available online. Additionally, every state Medicaid program, including Wisconsin, is bound by various federal enabling statutes, rules and regulations. What was meant by Plaintiff's previous answer was that various aspects of the Wisconsin Medical Assistance Program are contained in things other than statutes, like the policies and procedures and that these may be found in the Medicaid Provider Handbook, (previously provided to the Defendants). Additionally, please see the Pharmacy Handbook and accompanying tables and exhibits also previously provided to the Defendants by reference to the online material available at [www.dhfs.wisconsin.gov](http://www.dhfs.wisconsin.gov).

#### **INTERROGATORIES NO. 6 and 7**

The Defendants seek further clarification of how the Plaintiff reimbursed for J-coded drugs and to explain how the State calculated the prescription drug reimbursement rates set forth in the Wisconsin Medicaid physician fee schedule. The Plaintiff previously informed the Defendants that it used a system for the payment of physician administered drugs based in whole or in part on the AWP or the Maximum Allowable Cost, (hereafter "MAC"), whichever is less and that currently the Plaintiff reimbursed using a Fee Schedule that relied on the Average Sales Price, (hereafter "ASP"), provided to the Center for Medicaid and Medicare Services by the Defendants. Moreover, the Plaintiff and the Defendants discussed this issue in one or more meet and confers and additional information was provided at that time.

The Defendants seek further clarification on how the MAC was computed. According to Ted Collins the maximum allowable cost (MAC) is determined by reviewing publicly available drug prices to the extent it is available. The Plaintiff will make Mr. Collins available to the Defendants for additional questions and explanation of the state MAC.

#### **INTERROGATORY NO. 9**

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Jennifer Walker  
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The Defendants demand that the Plaintiff disclose all changes to the process of determining the EAC even if they were rejected. The Plaintiff OBJECTS again to this request on the ground that it is over burdensome and not likely to lead to the discovery of relevant and admissible evidence.

#### **INTERROGATORY NO. 11**

The Defendants complain that the Plaintiff did not dutifully identify a person knowledgeable about subjects (a) through (d) and (i) and (j).

(a) The Defendants demand that the Plaintiff identify a person who is knowledgeable about "any claim or allegation asserted in the First Amended Complaint filed by you on November 1, 2004." The Plaintiff already tried to answer this overbroad question. To the extent that the previous answer is unsatisfactory, the Plaintiff OBJECTS to the question on the ground that it is overbroad and unduly burdensome.

(b) The Defendants demand that the Plaintiff identify a person who is knowledgeable about "the methodology used to determine the amount paid to Providers as reimbursement under Medicaid for pharmacy dispensed and physician-administered drugs, including any proposed changes to this methodology and the criteria used to develop this methodology and any Findings and/or support related thereto" The Plaintiff has more than once described the "methodology" underlying the pharmacy based and physician-administered parts of the Medicaid program. The scope of these two systems is so broad such that it is not possible to identify a person who can testify about these systems. Mr. James Vavra possesses generalized knowledge about the Medicaid program but not to the extent demanded in the request. Therefore, Plaintiff OBJECTS on the ground that the request is overbroad and unduly burdensome.

(c) The Defendants demand that the Plaintiff identify a person who is knowledgeable about "the negotiating, drafting, executing or otherwise contributing to any contract, memorandum of understanding, or agreement between you and any Provider concerning AWP's or the reimbursement for the Subject Drugs." The Plaintiff OBJECTS to this interrogatory on the ground that it is ambiguous. For example, the State of Wisconsin does not individually "negotiate" agreements with providers to participate in the Medicaid program. Instead, the agreement is available on-line and providers are free to participate by filling out the details and submitting the document to the DHFS. Similarly, the process of executing these agreements is dissimilar to what is customary in ordinary contract negotiation and execution. Finally, the Plaintiff OBJECTS to the question because it is ambiguous in that the Plaintiff does not negotiate AWP's. These are set by the Defendants.

Steven F. Barley  
Jennifer Walker  
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Page 4

(i) The Defendants demand that the Plaintiff identify a person who is knowledgeable about “communicating with CMS concerning the reimbursement of Providers for pharmaceutical products under the Wisconsin Medical Assistance Programs; and (j) those portions of each of the Medicaid State Plans submitted pursuant to 42 C.F.R. § 447.333 concerning prescription drugs. The Plaintiff reiterates its objection to these two questions. The two subjects described in (i) and (j) are so immense in scope that it is not possible to identify a person who can reasonably answer all questions pertaining to what is essentially the entire Medical Assistance Program.

#### **INTERROGATORY NO. 12**

The Plaintiff objected to this question and the Defendants now seek clarification. The Plaintiff reiterates its objection, but adds the following additional explanation. The question seeks the name of one or more persons who can testify about the knowledge that they have pertaining to whether the reimbursement for a pharmaceutical drug product based on AWP might result in reimbursement to a Provider in excess of actual acquisition cost. First, the Plaintiff has repeatedly stated that it does not possess information sufficient for it to determine on a programmatic level the provider’s actual acquisition costs. The question erroneously assumes that the Plaintiff had this knowledge.

The Defendants are well aware that all the States were charged with estimating the provider’s acquisition costs and a reasonable dispensing fee. The Plaintiff’s earlier response was intended to characterize the possibility that in any process of estimation, it may be that some providers might be reimbursed an amount greater than what was their actual acquisition costs. Beyond a theoretical or statistical probabilities, based on the Defendants own conduct, any person so called to testify would be engaging in speculation and conjecture.

#### **INTERROGATORY NO. 13**

The Plaintiff thoroughly answered this question.

#### **INTERROGATORY NO. 14**

The Plaintiff thoroughly answered this question.

#### **INTERROGATORY NO. 15**

The Defendants would like a more complete response to this interrogatory. The Wisconsin Medical Assistance Program is comprised of Medicaid, Badger Care, Senior Care and Family Planning Waiver. Additionally, as previously mentioned, many Medicaid recipients are enrolled in Managed Care. The Defendants ask which part of these programs **do not** use AWP

Steven F. Barley  
Jennifer Walker  
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in its reimbursement methodology for Providers. There are many parts of these programs that do not involve pharmaceutical products, so by implication, reimbursement is not and cannot be based on Defendants' published average wholesale prices. The Plaintiff OBJECTS to the extent that this question is directed at parts of the Medical Assistance Program unrelated to pharmaceutical products on the ground that it is overbroad and unduly burdensome. (i.e. durable medical equipment).

More particularly, all of these programs have at least part of its reimbursement system that uses some other basis than the Defendants' published average wholesale prices. For example, reimbursement for J-coded drugs is by fee schedule. On the fee for service side of the Medicaid pharmaceutical benefit, some products are reimbursed using a maximum allowable cost. Additionally, occasionally, a product is reimbursed according to the provider's reported usual and customary charge when that amount is the lesser of all others. Finally, birth control products and certain contraceptives in the Family Planning Waiver are made by set fee.

#### **INTERROGATORY NO. 17 and 19**

The Defendants claim that the Plaintiff did not answer these questions. Now, the Defendants ask the Plaintiff to "set forth the facts and identify the documents created or prepared relating to the Legislature's decision not to adopt the reimbursement rates ...." In short, the Defendants demand an explanation for why Wisconsin Legislature did or did not do something.

Preliminarily, Interrogatory 17 and 19 were accompanied by a corresponding document request. The Plaintiff has answered these document requests and the Defendants appear to be in possession of all or nearly all the relevant and available written government records. An answer to this question, to the extent it is possible or even relevant can only be made upon the written documents created during the legislative process, all of which have been produced to the Defendants upon their demand.

Be that as it may, the Plaintiff OBJECTS to the request that it set forth the facts upon which the State Legislature acted, or what any particular State Legislator relied upon on the ground that it is over burdensome and irrelevant and not likely to lead to the discovery of relevant and admissible evidence.

#### **INTERROGATORY NO. 18**

The Defendants have narrowed their request and now ask the Plaintiff to identify any and all "committees, task forces, and/or third parties who analyzed the State's reimbursement of pharmaceutical products and/or dispensing fees." The Plaintiff continues to OBJECT to this interrogatory on the ground that it is overbroad and burdensome to ask to identify all committees,

Steven F. Barley  
Jennifer Walker  
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task forces, and/or third parties who analyzed the State's reimbursement of pharmaceutical products and/or dispensing fees. Notwithstanding this objection, the Plaintiff submits that during every budget cycle the Joint Finance Committee considers the DHFS budget pertaining to the reimbursement of pharmaceutical products and the payment of dispensing fees. Additionally, the Governor recently established his advisory commission that among other things looked at this issue. The Defendants are also aware of a study done by UW Professor Krehling. (*See* Plaintiff's answer to interrogatory 20). Beyond these, the Plaintiff OBJECTS on the ground that Defendants' request to identify anyone who "analyzed" the issue is overbroad, is ambiguous, and over burdensome.

#### **INTERROGATORY NO. 20**

The Plaintiff OBJECTED to this interrogatory on the ground that it is overbroad and unduly burdensome to ask whether the State at any time ever "made any effort" to ascertain any Provider's actual acquisition costs or any pharmacist's actual dispensing fees for any and all of the subject drugs in this case. The Defendants now demand "the details and people involved in all efforts to ascertain Provider's actual acquisition costs or pharmacist's actual dispensing fees." In actuality, the Defendants have made the interrogatory broader than before. The Plaintiff maintains that efforts to determine accurate and reliable "actual acquisition costs" are and have been thwarted by the Defendants' concerted and calculated practice of secreting reliable and readily accessible information or pricing data. In part, calculating the maximum allowable cost is part of the process of estimating acquisition costs and as Defendants are aware, that was done by Mr. Ted Collins. Finally, as the Defendants are also aware, the DHFS employed Professor David Krehling to study pharmacist dispensing fees.

#### **INTERROGATORY NO. 21**

In the exercise of its prosecutorial discretion, the State has not sought to recover from the Providers any overpayments as a result of their reliance on the publication of the Defendants' false prices.

#### **INTERROGATORY NO. 22**

The Defendants now ask who the "various actuarial firms" are that was mentioned before. The reference in Plaintiff's previous response was with regard to managed care rate setting, and the Plaintiff formerly used the accounting firm Miliman and presently uses Price Waterhouse.

#### **INTERROGATORY NO. 23**

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The EDS employee with whom many communications flow between the State of Wisconsin and EDS is Mr. Mark Gajewski whose title is Client Delivery Executive.

**INTERROGATORY NO. 25**

The Plaintiff reiterates its earlier OBJECTION to this interrogatory. The Defendants now seek further information relating to Plaintiff's invocation of privilege relating to confidential communications between the Wisconsin Department of Justice and the National Association of Medicaid Fraud Control Units and the United States Department of Justice and the Office of the Inspector General. The Plaintiff is in the process of gathering documents and determining their status. Furthermore, the Plaintiff is in the process of determining whether NAMFCU, USDOJ, or OIG has already disclosed information such as to waive this joint law enforcement privilege. The Plaintiff will produce information to the Defendants upon a determination relating to this inquiry.

**INTERROGATORY NO. 26**

The Plaintiff has or will provide the Defendants with data pertaining to these electronic transmissions and it has already produced hard copies of documents in response to Defendants' second request for production of documents.

**INTERROGATORY NO. 27**

The plaintiff tried to answer this question the best it could, but apparently to the dissatisfaction of the Defendants. The Plaintiff now OBJECTS to the question on the ground that it is vague and ambiguous and on the ground that it is overbroad and therefore unduly burdensome.

**INTERROGATORY NO. 29**

The Plaintiff thoroughly answered this question.

**INTERROGATORY NO. 30**

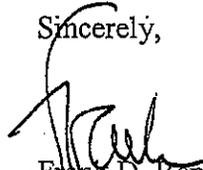
The Defendants asked for the names of DHFS employees who have "testified before the state legislature or the Joint Committee on Finance regarding AWP, pricing or the reimbursement of pharmaceutical drugs ...." In Wisconsin persons generally do not testify

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before the state legislature and no person can recall such occurrence relating to pharmaceutical pricing. As to the Joint Committee on Finance, the Administrator of the Division of Health Care Financing generally presents the DHFS budget relating to pharmaceutical pricing and reimbursement. Currently that office is occupied by Jason Helgerson and prior administrators who would have presented to the Joint Committee would have been Mark Moody, Peggy Handrich, and Kevin Piper. Furthermore, it is likely that these Administrators would have relied on James Vavra for assistance or on some other individual as the need arose. Because there is no readily accessible source of information relating to exactly who spoke and when, the Plaintiff OBJECTS to this question to the extent the foregoing information is not satisfactory to the Defendants.

Thank you for your continuing cooperation in this matter. And I am happy to continue our discussion about a mutually satisfactory resolution to this problem.

Sincerely,



Frank D. Remington  
Assistant Attorney General

FDR:

# **EXHIBIT D**



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

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December 5, 2007

Laurice Chen  
Hogan and Hartson  
555 13th Street, Northwest, Suite 800E  
Washington DC 20004

Re: Amgen, Inc., et al.  
Case No. 2004-CV-1709

Dear Ms. Chen:

I received your electronic message following up on my letter to Steve and Jennifer. Because I want to make progress resolving the outstanding discovery issues, I respond herein.

1. EDS and Managed Care Contracts:

You ask for a date certain by which to expect this production. I have the contracts in my possession now. If you would like a hard copy today, please have local counsel pick them up, copy and return them to me. After you return them to me I will have them scanned in and I will re-deliver the documents with the Bates numbers. I make this suggestion because realistically, if I send the records off today, I expect it will be two weeks before they are scanned and returned.

Responses to Defendants' Fourth Set of Interrogatories:

You claim that I have failed to satisfactorily respond to Interrogatory Nos. 2 and 4. I am sorry, but I thought I had. First, let me state that I do not understand parts of Steve's November 27th letter. You ask for an explanation as to why the Plaintiff answered Defendants' Interrogatory No. 2 by stating "N/A." I think the confusion might lie in the fact that despite your reference to "Interrogatory No. 2," you intended to direct my attention to "Document Request No. 2." Please let me respond herein more clearly. As you know the Plaintiff answered the substantive question as to the use of ASPs as follows:

*"It does not appear that the TAP ASP Information was used in evaluating, revising, or setting payments to Providers under Plaintiff's Medicaid Program."*

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Request No. 2 asks for all documents relating to the use of ASP. Because of the answer given above, it seemed reasonable to respond by saying the request was not applicable. That is, if the information was not used, a demand asking to produce all documents regarding use would thus be inapplicable. Perhaps a better response is that the only documents relating to the use (or non-use as the case may be), of the ASPs are the documents sent to the Plaintiff by the Defendants. I believe this issue was explored in the depositions and a more complete description of what was done with the ASPs was provided to the Defendants.

I have relooked at Interrogatory No. 4, made additional inquiries, both of which cause me to amend my response and ask for a meeting to talk about this further. First, Plaintiff's answer was correct in at least one respect. I checked with my consultant who tells me that the claims data that we produced to you contains the record of the dispensing fee paid.

With regard to the fourth request I now think an objection would have been more appropriate. This request seems to me to not only be somewhat ambiguous, but overbroad as well. If you could provide some elaboration of what it is exactly you are requesting, perhaps I could determine whether any relevant documents are yet to be produced.

As to physician administered administration fees and injection fees, it appears my earlier response is also complete. The Plaintiff has provided all the claims data for the J-coded drugs. This data contains the payments made for the ingredient cost of the product administered. Prior to October 2005, the cost of administering or injecting the drug was incorporated into the one J-code.

I also understand that since 2005, there may be separate J codes for administration or injection. We have not requested from EDS data or information relating to these codes. Consequently, the Plaintiff objects to this request on the ground that it is overbroad and would be unduly burdensome and costly to produce data relating to these codes, the relevance of which escapes me at this point. However, I would like to talk to you, or Steve or Jennifer about this to determine the relevance especially where the original J-code does not correlate to a single sourced drug. Please call me at your convenience.

Memorializing the State's Supplemental Interrogatory Responses:

I am sorry that you take the position that you do on this issue. In particular, I am perplexed by what appears the Defendants' willingness to adopt the solution I proposed some time ago but make it contingent on a response date reduced from thirty days to five. Had Defendants acceded to this proposal and submitted the admissions when first discussed you would have responses by now.

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Please be aware that I do not consider all of the questions that were asked of me and that I answered to be part of or even related to the second set of interrogatories. When asked a question, I provided an answer without regard to whether it related to a prior interrogatory. Therefore, in the abstract, I consider it an open question as to whether the Plaintiff must supplement its earlier response at all.

But, be that as it may, I reiterate Plaintiff's offer to memorialize the answers I have already given in the form of a single set of admissions.

Individual Electronic Searches:

In regards to this issue, you restate the information I provided to you, but then effortlessly ask the question when these employees left the State's employ. This is precisely the point I was making above. I am happy to make an inquiry to gather information to answer this question. But please respond first and indicate what interrogatory previously served demands the employment dates for these persons. My point is not to challenge you, but to say the Defendants cannot have it both ways. You cannot ask me reasonable and pertinent questions informally through letters or email messages and expect not only a response, but to be followed later by a demand that I or someone else swear to the answers under oath.

Please do not misinterpret these comments. I believe both parties have acted appropriately and engaged in both formal and informal discovery designed to best serve their clients.

You note that I did not mention the status of Andrew Forsaith's electronic files. The problem I am having is that all the individuals you previously asked for were employed in the Division of Health Care Financing. Mr. Forsaith is not. I have a call in to him to learn what if any involvement he has with pharmacy reimbursement. The costs and problem to search Mr. Forsaith's computer is greater than the others, because of his employment outside the Division. Please tell me what it is you are looking for from Mr. Forsaith and perhaps I can work with him directly to see if he has any responsive electronic records.

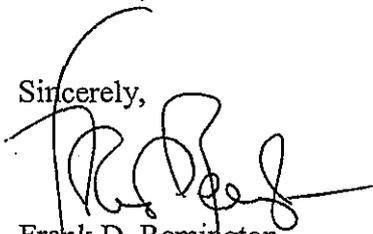
Finally, I might observe that you not infrequently mention the upcoming date for which some Defendants need to respond to Plaintiff's motion. You assert that our continuing work on outstanding discovery issues and what you consider to be "delay" might affect Defendants' response and that you may be thus "forced" to file a motion. Notwithstanding the fact that I seriously doubt the utility of the information that you are now seeking, I see no value in arguing this point. I would note, however, that you have always had other discovery options available to you.

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I would respectfully suggest that as always there are two ways of looking at the same thing. You characterize the Plaintiff's actions as delay. Yet, the Plaintiff interposed legitimate objections to many of the interrogatories Defendants submitted. We have not directly talked about many of these objections. Instead, I think it is accurate to say both parties have focused instead on compromise. That, I think is good. But if push comes to shove, Plaintiff will argue the validity of the objections that it made in the original response. Additionally, although I have steadfastly maintained that a party has an obligation to comply with the discovery statutes notwithstanding actions taken by the opposing party, it may become relevant if and when Plaintiff is called to defend itself to note any inconsistencies between positions taken by the Defendants in compelling discovery as against the position taken by one or more Defendants in responding to Plaintiff's discovery.

I am happy to continue working with the Defendants to address their concerns and to provide relevant documents and information in a timely fashion.

Sincerely,

A handwritten signature in black ink, appearing to read 'Frank D. Remington', written over a large, stylized flourish that extends upwards and to the left.

Frank D. Remington  
Assistant Attorney General

FDR: