



forth below. Plaintiff is further requested to set forth the matter or matters on which each such designated person will testify.

All terms used in this Notice, whether or not capitalized, shall be defined as stated in Defendants' Second Set of Interrogatories Directed to Plaintiff and Defendants' Second Set of Document Requests Directed to Plaintiff.

Unless otherwise specified, the relevant time period is the period the alleged scheme began to the present.

### **AREAS OF INQUIRY**

1. Plaintiff's knowledge of the meaning of the term AWP.
2. Plaintiff's knowledge of actual acquisition costs for the Subject Drugs (including pharmacy-dispensed and physician-administered drugs) by any purchaser, including but not limited to, pharmacies, physicians, wholesalers, PBMs, drug purchasing pools, or the State itself.
3. Information, including but not limited to the existence, nature, and location of Documents, relating to the following:
  - a. Plaintiff's compliance with 42 U.S.C. § 1396a(a)(30), 42 U.S.C. § 1396a(a)(54), 42 C.F.R. §§ 447.201 et seq., or 42 C.F.R. § 447.333;
  - b. Any evaluations, audits, analyses, or reviews of any aspect of Plaintiff's Medicaid Program from January 1975 to the present;
  - c. Plaintiff's calculation, monitoring, processing, or payment of claims for Subject Drugs from January 1985 to the present;
  - d. Plaintiff's knowledge, consideration, or use of AWP, MAC, WAC, AMP, EAC, Direct Price, Best Price, FUL, or any other possible price, cost, or reimbursement amount or benchmark, metric, or methodology for Subject Drugs from 1985 to the present;

- e. Plaintiff's internal or external assessments, studies, analyses, reviews, or audits conducted by or on behalf of Plaintiff regarding drug pricing or reimbursement amounts or rates of Subject Drugs from January 1985 to the present;
- f. Documents created by or received from any Wisconsin entity, including, but not limited to, the Governor's office, the Department of Health and Family Services, and any legislator to change the methodology for reimbursement of pharmacy-dispensed and physician-administered drugs;
- g. Documents created by, received from, or sent to, or communications with other state governments, including other state Medicaid programs, relating to prices, costs, or reimbursements for pharmaceutical products from January 1985 to the present;
- h. Documents created by, received from, or sent to, or communications with, the federal government or federal agencies, including the DOJ, National Association of Medicaid Fraud Control Units, National Association of Attorneys General, HHS-OIG, CMS, and the Department of Health and Human Services, relating to prices, costs, or reimbursements for pharmaceutical products from January 1985 to the present;
- i. Plaintiff's application for Federal matching funds in connection with the Medicaid Program, as well as Plaintiff's use, allocation, or disbursement of such funds;
- j. Communications between Plaintiff and Participants or Beneficiaries relating to the Medicaid Program;
- k. Communications between Plaintiff and any Defendant concerning pricing of pharmaceutical products;
- l. Communications with third-parties relating to pharmaceutical pricing, costs, or reimbursement, including but not limited to communications concerning data;
- m. Plaintiff's potential or actual contractual relationships with PBMs, Third Party Administrators, Benefit Consultants, Auditors, Wholesalers, Manufacturers, Group Purchasing Organizations, Insurers, Independent Practice Associations, Retailers, Mail Order Pharmacies, Providers, Trade Associations, or Lobbyists, insofar as they cover

reimbursement, purchasing, rebates, or expenditures concerning Subject Drugs;

- n. Documents or data received from or published by a publisher and Plaintiff's reliance on such data or documents;
- o. Documents reflecting losses or damages as a result of Defendants' alleged conduct from January 1985 to the present;
- p. Documents reflecting Defendants' alleged misrepresentations, omissions, or manipulation of spreads from January 1985 to the present;
- q. Defendants' alleged use of free goods, samples, educational grants, secret discounts or rebates, or other incentives to induce providers to purchase Defendants' drugs;
- r. Plaintiff's efforts to reduce or limit expenditures for Subject Drugs;
- s. Plaintiff's responses and objections to the following:
  - i. Defendants' First Set of Interrogatories and Document Requests Directed to Plaintiff;
  - ii. Defendants' Second Set of Interrogatories Directed to Plaintiff;
  - iii. Defendants' Second Set of Document Requests Directed to Plaintiff;
  - iv. Defendants' Third Set of Interrogatories Directed to Plaintiff's *Parens Patriae* Claims;
  - v. Defendants' Third Set of Document Requests Directed to Plaintiff's *Parens Patriae* Claims;
  - vi. Defendants' Third Set of Interrogatories Directed to Plaintiff;
- t. Plaintiff's knowledge or awareness of the existence of statements made by each defendant that Plaintiff contends promoted the sale of each of Defendants' Subject Drugs and caused the State of Wisconsin to purchase each Subject Drug;

- u. Plaintiff's awareness of First DataBank's change in the reported WAC to AWP markups from 20% to 25%, including any communications concerning said change with CMS, First DataBank or any other person or entity; and
- v. Communications, arrangements, contracts or any other documents reflecting a relationship between Plaintiff and First DataBank, Red Book, or any other pricing compendia regarding the purchase of or access to information from the compendia regarding Defendants' drugs.

4. The Plaintiff's administration or oversight of its Medicaid

Program, including but not limited to the existence, nature, and location of data relating to the following:

- a. The utilization of Subject Drugs by patients covered by Plaintiff's Medicaid Program;
- b. Manufacturer rebates received relating to Subject Drugs;
- c. Numbers of Medicare and Medicaid dual eligibles, reimbursement for Medicare co-payments, and Medicaid rebates collected by the State with respect to dual eligibles;
- d. Information provided to the federal government in connection with Plaintiff's Medicaid Program;
- e. Payments made by state or other entities, such as local agencies, to providers in connection with Plaintiff's Medicaid Program;
- f. Payments from the state to other entities, such as local agencies, in connection with Plaintiff's Medicaid Program;
- g. Federal matching funds received relating to Subject Drugs;
- h. The state budgetary source of the money used by Plaintiff to make payments in connection with Plaintiff's Medicaid Program;
- i. To whom payments are directed by Plaintiff in connection with Plaintiff's Medicaid Program;

- j. What entities other than Plaintiff make payments to Providers in connection with Plaintiff's Medicaid Program;
- k. The manner in which the portion paid by Plaintiff and the portion paid by others is calculated in connection with Plaintiff's Medicaid Program;
- l. Plaintiff's net costs, including but not limited to analyses or calculation of its net costs, for Subject Drugs under Plaintiff's Medicaid Program after Manufacturer rebates and Federal matching funds; and
- m. The expense to pharmacies of obtaining Subject Drugs.

5. The manner in which reimbursement for both pharmacy-dispensed and physician-administered drugs is administered in the State of Wisconsin, including, but not limited to:

- a. The manner in which claims for reimbursement of pharmacy-dispensed and physician-administered drugs are submitted and verified;
- b. Plaintiff's present and past method of calculation of reimbursement for pharmacy-dispensed and physician-administered drugs under Wisconsin's Medicaid Program;
- c. Plaintiff's negotiation, authoring, or execution of any contract or memorandum of understanding or agreement, or contribution to any contract or memorandum of understanding or agreement, between Plaintiff and any Provider relating to AWP's or the reimbursement for both pharmacy-dispensed and physician-administered drugs;
- d. Plaintiff's establishment, consideration, determination, calculation, or setting of the dispensing fees or fees for other professional services payable in connection with the supply or administration of pharmacy-dispensed and physician-administered drugs;
- e. Plaintiff's understanding of the meaning of MAC, WAC, AMP, EAC, Direct Price, Best Price, FUL, or other prices, costs, reimbursement rates, or other benchmark or metric for any Subject Drug, including pharmacy-dispensed and physician-administered drugs;

- f. Reimbursements to Providers for Subject Drugs;
- g. All reports, meetings and other information relating to any analysis by Plaintiff of any change to the reimbursement formula (including dispensing fee) for pharmacy-dispensed and physician-administered drugs;
- h. Plaintiff's reliance on pricing benchmarks, including AWP, WAC and Direct Price, published for Defendants' drugs;
- i. Plaintiff's use or consideration of published price information regarding Defendants' drugs, including how or if such information has been used, relied upon, referenced, or considered in evaluating, revising, or setting payments to Providers under Wisconsin's Medicaid Program;
- j. Plaintiff's use or consideration of ASP Information from AstraZeneca, Bayer, TAP, or any other Defendant, including how or if such ASP Information has been used, relied upon, referenced, or considered in evaluating, revising, or setting payments to Providers under Wisconsin's Medicaid Program;
- k. Plaintiff's use or consideration of AMP Information from any Defendant, including how or if such AMP Information has been used, relied upon, referenced, or considered in evaluating, revising, or setting payments to Providers under Wisconsin's Medicaid Program; and
- l. Plaintiff's use or consideration of any pricing information provided to the State directly by any defendant, including how or if such information has been used, relied upon, referenced, or considered in evaluating, revising, or setting payments to Providers under Wisconsin's Medicaid Program.

6. The manner in which Manufacturer rebates and Federal matching funds are applied for, calculated, received, processed, and allocated or distributed by Plaintiff, including, but not limited to:

- a. The manner in which Plaintiff submits claims for Manufacturer rebates and Federal matching funds in connection with Plaintiff's Medicaid Program;

- b. The manner in which the money received from Manufacturer rebates and Federal matching funds is directed, allocated, or distributed upon its receipt by Plaintiff;
- c. Plaintiff's adoption, rejection, amendment to, consideration, or negotiation of any state supplemental rebate program; and
- d. Any attempt by Plaintiff to calculate AMP for any Subject Drugs.

7. Any pending or threatened litigation, claims, allegations, or charges that Plaintiff's Medicaid Program is not in compliance with Federal or state law or otherwise violates Federal or state law, including, but not limited to, the provisions identified in paragraph 3(a) above.

8. Plaintiff's adoption, rejection, or consideration of recommendations and information related to AWP received from other states or the federal government including, but not limited to:

- a. HCFA's 1988 decision to disapprove Medicaid State Plans that base reimbursement for pharmaceutical products on an undiscounted AWP;
- b. 1984 HHS-OIG report indicating that on average, pharmacists buy pharmaceutical products at AWP – 15.9%. *See* Department of Health & Human Services, Office of the Inspector General, *Changes to the Medicaid Prescription Drug Program Could Save Millions* (A-06-40216) (Sept. 1984);
- c. 1989 HHS-OIG report indicating that on average, pharmacists buy pharmaceutical products at AWP – 15.5%. *See* Department of Health & Human Services, Office of the Inspector General, *Use of Average Wholesale Prices in Reimbursing Pharmacies Participating in Medicaid and the Medicare Prescription Drug Program* (A-06-89-00037) (Oct. 1989);
- d. 1989 HCFA Medicaid Manual indicating that pharmacies buy pharmaceutical products at AWP – 10-20%;

- e. 1996 HHS-OIG report indicating potential for significant Medicare savings. *See* Department of Health & Human Services, Office of the Inspector General, *Appropriateness of Medicare Prescription Drug Allowances* (03-95-00420) (May 1996);
- f. 1997 HHS-OIG report indicating that on average, pharmacists buy pharmaceutical products at AWP – 18.3%. *See* Department of Health & Human Services, Office of the Inspector General, *Medicaid Pharmacy – Actual Acquisition Cost of Prescription Drug Products for Brand Name Drugs* (A-06-96-00030) (Apr. 1997);
- g. 1997 HHS-OIG report indicating that on average, pharmacists buy generic drugs at AWP – 42.5%. *See* Department of Health & Human Services, Office of the Inspector General, *Medicaid Pharmacy – Actual Acquisition Cost of Generic Prescription Drug Products* (A-06-97-00011) (Aug. 1997).
- h. The revised AWP prices provided by the United States Department of Justice and National Association of Medicaid Fraud Control Unit in 2000;
- i. 2001 HHS-OIG report indicating that AWP bears little to no resemblance to actual wholesale prices. *See* Department of Health & Human Services, Office of the Inspector General, *Medicare Reimbursement of Prescription Drugs* (03-01-00310) (Jan. 2001);
- j. 2001 HHS-OIG report indicating that continued reliance on average wholesale prices as a reimbursement metric is flawed. *See* Department of Health & Human Services, Office of the Inspector General, *Medicaid's Use of Revised Average Wholesale Prices* (03-01-00010) (Sept. 2001);
- k. 2001 HHS-OIG report indicating that pharmacy actual acquisition cost was an average 21.84% below AWP. *See* Department of Health & Human Services, Office of the Inspector General, *Medicaid Pharmacy – Actual Acquisition Cost of Brand Name Prescription Drug Products* (A-06-00-00023) (Aug. 2001);
- l. 2002 HHS-OIG report, *Medicaid Pharmacy – Additional Analyses of the Actual Acquisition Cost of Prescription Drug Products* (A-06-02-00041) (Sept. 2002); and

- m. 2003 HHS-OIG report indicating that Wisconsin was negotiating with drug manufacturers for supplemental rebates. *See* Department of Health & Human Services, Office of the Inspector General, *State Strategies to Contain Medicaid Drug Costs*.

9. The preparation of survey responses to, participation in, and interviews with the OIG regarding the reports referenced in paragraph 8 above.

10. Information, including but not limited to the existence, nature, and location of documents, concerning any proposed reimbursement methodology for pharmaceutical products and Plaintiff's adoption, rejection or consideration of such proposals, including, but not limited to:

- a. Governor's proposal in Wisconsin's 1996-1997 state budget of a "best price" reimbursement methodology;
- b. Department of Health and Family Service's 1999 proposal to decrease reimbursement from AWP – 10% to AWP – 18%;
- c. Governor's proposal in 2001 and 2003 to decrease reimbursement to AWP – 15%;
- d. Documents between the Governor's office and the Joint Committee on Finance regarding reimbursement of pharmaceuticals in the Wisconsin Medical Assistance Program;
- e. The 2005-2007 state budget proposal to set reimbursement for brand name and certain generic drugs under Medicaid, BadgerCare, and SeniorCare to AWP – 16%;
- f. The 2005 legislation to increase the reimbursement rate for pharmaceutical drugs dispensed by pharmacies from AWP – 16% to AWP – 13%; and
- g. The Governor's decision in 2005 to establish a Pharmacy Reimbursement Commission to find alternatives to decreasing the reimbursement rates for pharmacies.

11. Plaintiff's retention, destruction and public disclosure policies and its compliance with those policies.

12. Plaintiff's computer systems, networks, or databases that might store or contain Documents, data, and communications, including but not limited to e-mail, responsive to Defendants' discovery requests or relevant to the subject matter of the claims or allegations asserted in the Complaint.

13. Plaintiff's restitution claims, including, but not limited to, the following topics:

- a. how you plan to identify individuals on whose behalf Plaintiff is seeking restitution;
- b. how you plan to identify each Subject Drug paid for by these individuals;
- c. how you plan to identify the amount each of these individuals paid for each Subject Drug;
- d. how you plan to identify the damages allegedly caused by each Defendant to each of these individuals; and
- e. how you plan to show reliance by each of these individuals.

14. Any efforts by Plaintiff to define, calculate, determine, investigate, understand or interpret AWP or WAC.

15. The organizational structure of the Wisconsin Medicaid Program, the Department of Health and Family Services, the Wisconsin Legislative Fiscal Bureau and the Wisconsin Legislature, including but not limited to identifying which individuals held what positions, how long the individuals held those positions, and what were the job duties of those position.

16. The nature and purpose of the State's MAC program, including but not limited to the procedure for setting and changing MACs, the criteria and information used to establish and change MACs, and the changes to the MAC program that were considered and/or implemented over time.

17. Communications between Plaintiff and other states or Federal Agencies, including but not limited to, Documents received from or sent by Plaintiff to the National Association of Medicaid Fraud Control Units and the National Association of Attorneys General concerning prices, costs, or reimbursements for pharmaceutical products from January 1, 1985 to the present.

18. All Communications, including bids and request for proposals, with outside lawyers to potentially handle this case, and the contracts and terms of engagement of such lawyers.

19. Communications between Plaintiff and the National Association of Medicaid Fraud Control Units ("NAMFCU") concerning the Bayer 2001 Settlement or the TAP 2001 Settlement (or any investigation or inquiry that preceded either Settlement), including internal analyses, memoranda, reports, and reviews related to communications with NAMFCU.

20. Plaintiff's consideration, evaluation, or analysis of the Bayer 2001 Settlement or Tap 2001 Settlement.

21. The identity of individuals with knowledge on the subjects listed above.

22. The existence, nature, and location of documents and data concerning the subjects listed above.

July 30, 2007

  
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**CERTIFICATE OF SERVICE**

I hereby certify that on July 30, 2007, a true and correct copy of the foregoing document was served upon all counsel of record via LexisNexis File & Serve.

/s/ Jennifer A. Walker  
Jennifer A. Walker