

STATE OF WISCONSIN,

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Plaintiff,

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Case No.: 04 CV 1709

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v.

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ABBOTT LABORATORIES, INC., et. al.,

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Defendants.

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**DEFENDANTS' SECOND SET OF
DOCUMENT REQUESTS DIRECTED TO PLAINTIFF**

Pursuant to Wisconsin Rules of Civil Procedure, Defendants¹ request that the State of Wisconsin ("Plaintiff") respond to the following Requests for Production (the "Requests") no later than 30 days from date of service. In an effort to limit the burden on Plaintiff and advance the efficient resolution of this litigation, Defendants have coordinated in propounding these Requests. By submitting joint Discovery Requests, Defendants do not intend to waive or limit each Defendant's right to propound additional discovery, whether joint or individual.

DEFINITIONS

The following terms used in these Requests, whether or not capitalized, are defined as follows:

1. "Actual Acquisition Cost" means the net price (price after discounts or rebates) an individual healthcare provider or pharmacist pays to purchase a prescription drug intended for resale.

¹ Defendants' Second Set of Document Requests Directed to Plaintiff is being brought on behalf of all Defendants in the above-captioned action except Boehringer Ingelheim Corporation, Boehringer Ingelheim Pharmaceuticals, Inc., Roxane Laboratories, Inc., and Ben Venue Laboratories, Inc.

2. “First Amended Complaint” means the First Amended Complaint filed by the State in this case, No. 04 CV 1709 in the Circuit Court of Dane County.

3. “And” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Requests the greatest possible responsive information, and the terms “each,” “any,” and “all” shall mean “each and every.”

4. “Assurance letters” refers to correspondence from the State to the federal government representing that its calculation of EAC is its best estimate of the price generally and currently paid by providers for the drug pursuant to 42 CFR § 447.301.

5. “AMP” means “Average Manufacturer Price” and shall have the meaning set forth in 42 U.S.C. § 1396r-8(k)(1).

6. “AWP” or “Average Wholesale Price” means any figure so categorized and periodically published by one or more pharmaceutical industry compendia, including the Drug Topics Red Book (the "Red Book"), American Druggist First Databank Annual Directory of Pharmaceuticals ("First DataBank" or "Blue Book") and Medi-Span’s Master Drug Database ("Medi-Span").

7. “BadgerCare” means the Wisconsin medical assistance program for low income families with children.

8. “Best Price” shall have the meaning set forth in 42 U.S.C. § 1396r-8(c)(1)(C).

9. “CMS” means the Centers for Medicare and Medicaid Services and all its agents, employees, commissioners, and anyone else acting on its behalf and its sub-agencies and departments, any of its predecessors, including the Health Care Finance Administration, the Social Rehabilitative Service, and the Department of Health, Education & Welfare.

10. “Communication” means any form of written or oral Communication, including, without limitation, letters, memoranda, electronic mail, voicemail, telegrams, invoices, telephone conversations, face-to-face meetings and other similar forms of Communication or correspondence.

11. “Concern” and “Concerning” mean directly or indirectly referring to, relating to, regarding, constituting, comprising, containing, setting forth, summarizing, reflecting, stating, describing, recording, noting, embodying, mentioning, studying, analyzing, evidencing, discussing, or evaluating.

12. “Defendants” means the Defendants identified in your First Amended Complaint that have not been dismissed from this action.

13. “Describe” means to describe fully by reference to underlying facts rather than by ultimate facts or conclusions of facts or law and to particularize as to time, place and manner.

14. “Direct Price” means any figures so categorized and periodically published by a Publisher.

15. “Document” shall be used in a comprehensive sense as contemplated by the Wisconsin Rules of Civil Procedure and shall mean any kind of tangible material, whether written, recorded, microfilmed, microfiched, photographed, computerized, reduced to an electronic or magnetic impulse, or otherwise preserved or rendered, and including, but not limited to, papers, agreements, contracts, notes, memoranda, electronic or computer-transmitted messages viewed via monitor, correspondence, letters, e-mails, facsimile transmissions, statements, invoices, record books, reports, studies, analyses, minutes, working papers, charts, graphs, drawings, calendars, appointment books, diaries, indices, tapes, summaries and/or notes

regarding telephone conversations, personal conversations, interviews, and meetings, and any and all other written, printed, recorded, taped, typed, duplicated, reproduced or other tangible matter in your possession, custody or control, including, all copies which are not identical to the originals, such as those bearing marginal comments, alterations, notes, or other notations not present on the original Document as originally typed, written, or otherwise prepared.

16. “EAC” or “Estimated Acquisition Cost” shall have the meaning set forth in 42 C.F.R. § 447.301.

17. “Federal Agencies” means CMS, Health Care Financing Administration and all its predecessors, including the Social Rehabilitative Service and the Department of Health, Education & Welfare, the United States Department of Health and Human Services, the Office of the Inspector General, or the United States Department of Justice and all their agents, employees, commissioners, and anyone else acting on their behalf.

18. “Findings” means any conclusions or statements of fact or rationale supporting a determination, proposal, regulation, or statute concerning reimbursement for any pharmaceutical product, including but not limited to findings pursuant to 42 C.F.R. § 447.333.

19. “FUL” means “Federal Upper Limit” and shall have the meaning set forth in 42 C.F.R. § 447.332.

20. “HCFA” refers to the Health Care Financing Administration.

21. “Identify” means, with respect to a Document, to give, to the extent known: (i) the type of document; (ii) its general subject matter; (iii) the date of the document; and (iv) the author(s), addressee(s) and recipient(s). If any such Document was, but is no longer, in your possession, custody or control or in existence, state whether it (i) is missing or lost, (ii) has been destroyed, (iii) has been transferred, voluntarily or involuntarily, to others, or (iv) was

otherwise disposed of, and in each instance, explain the facts and circumstances surrounding such disposition, identify the Person(s) who authorized such disposition, and state the date or approximate date of such disposition.

22. “Identify” means, with respect to persons, to give, to the extent known, the persons full name, present or last known address, and when referring to a natural person, additionally, present or last known place of employment. Once a person has been identified in accordance with this paragraph, only the name of that person need be listed in response to subsequent discovery requests in the identification of that person.

23. “Identify” with respect to oral communications shall mean to give: (i) the communication medium, i.e., in person or telephonic; (ii) the date of each such communication; (iii) the full name and current business and residence address of those who were present at each communication; and (iv) the substance and nature of each such communication.

24. “Inflated” means any copayment paid by a beneficiary or pharmaceutical drug price that Plaintiff alleges was inappropriately increased due to the conduct alleged in the First Amended Complaint.

25. “MAC” or “Maximum Allowable Cost” shall have the meaning set forth in 42 C.F.R. § 50.504 or any analogous state statute or regulation.

26. “Medicaid” means the jointly funded federal-state health insurance program enacted in 1965 under Title XIX of the Social Security Act to pay for the costs of certain healthcare expenses of eligible Beneficiaries.

27. “Medicaid Rebate” means any rebate paid pursuant to 42 U.S.C. § 1396r-8 or an agreement thereunder.

28. “Medicaid State Plans,” “Findings,” and “Assurances” shall have the meanings set forth in 42 C.F.R. § 447.333.

29. “Medical Assistance Programs” means the Wisconsin Medicaid, SeniorCare, BadgerCare, or any other medical assistance program wholly or partially funded by the State of Wisconsin for which the State seeks recovery of damages.

30. “Medicare” means the federal program enacted in 1965 under Title XVIII of the Social Security Act to pay the costs of certain healthcare expenses of eligible beneficiaries.

31. “Medicare Carrier” means any private insurance company contracted by CMS to administer Medicare benefits to beneficiaries, including but not limited to Wisconsin Physicians Service.

32. “Method for calculating” and “methodology” mean any fact, statistic, report, analysis or other source or factor taken into consideration by Plaintiff to provide in its responses.

33. “National Drug Code” and “NDC” mean the unique 11 digit code assigned to each prescription drug product sold in the United States by the U.S. Food and Drug Administration, which identifies the drug manufacturer, product, and package size of each such drug product.

34. “NAMFCU” shall mean the National Association of Medicaid Fraud Control Units.

35. “OIG” shall mean the Office of the Inspector General of the Department of Health and Human Services.

36. “Original Complaint” means the Complaint filed by the State in this case, No. 04 CV 1709 in the Circuit Court of Dane County on June 3, 2004.

37. “Participant” or “Beneficiary” means a Person for whom you provide health insurance coverage, including policyholders and dependents, or any other health care or health benefits via any program.

38. “Person” means any natural person or any business, corporation, partnership, proprietorship, association, organization, governmental entity, group of Persons, or other entity of whatever nature.

39. “Plaintiff,” “you,” “your,” “State,” or “Wisconsin” refer to the State of Wisconsin, including but not limited to its citizens, private payers who pay prescription drugs costs of their members, the Governor’s office, the Wisconsin Legislative Fiscal Bureau, the Wisconsin legislature (including its committees and individual legislators), the Wisconsin Department of Justice, the State of Wisconsin Department of Health and Family Services, the State of Wisconsin Medicare Program, the State of Wisconsin Medicaid Program (including Medical Assistance, BadgerCare, and SeniorCare), any other Wisconsin Medical Assistance Program, any other administrative bodies, legislative agencies, all successors and predecessors, and officials, agents, employees, commissions, boards, divisions, departments, agencies, instrumentalities, administrators and other Persons or entities acting on their behalf and/or involved in administering, overseeing, or monitoring any State program, including Medicaid, that provides reimbursement for pharmaceutical products.

40. “Provider” means any physician, pharmacist or other individual or entity that administers, dispenses or otherwise provides prescription drugs to any beneficiary, or any person to whom Plaintiff provides reimbursement for drugs dispensed to a Participant or Beneficiary.

41. “Pricing data” means any information relating to the prices of pharmaceutical drug products, including but not limited to AWP, AMP, WAC, Best Price and actual acquisition cost.

42. “Publisher” or “pricing compendia” means any pharmaceutical data publishing service, including but not limited to Red Book, First Data Bank, Blue Book, and Medi-Span.

43. “Reimbursement rate” and “reimbursement methodology” mean the formula used to calculate the amount of payment designated by Medicare or the Wisconsin Medical Assistance Programs to reimburse healthcare providers for administering or dispensing pharmaceutical drug products to a beneficiary.

44. “Relating to” means in any way concerning or referring to, consisting of, involving, regarding or connected with the subject matter of the Request.

45. “SeniorCare” means the Wisconsin Pharmaceutical Assistance Contract for the Elderly Program.

46. “Subject Drugs” means all drugs for which you contend AWP or WAC was inflated or manipulated, or for which you otherwise contend you may obtain relief (whether damages or other relief) in this case, unless the parties have reached an agreement to limit discovery to certain drugs, or the Special Discovery Master or the court has ordered discovery be limited to certain drugs, then as to those defendants the “Subject Drugs” shall refer to those drugs only.

47. “Third Party Administrator” means any entity that provides administrative services to you concerning any medical benefit provided to any Participant or Beneficiary.

48. “Utilization Data” means the information that each state agency is required to report to drug manufacturers pursuant to 42 U.S.C. § 1396r-8(b)(2)(A).

49. “WAC” or “Wholesale Acquisition Cost” means any price represented by any Defendant as a price to any entity that purchases pharmaceutical products from a Manufacturer and resells such pharmaceutical products to any other Person and/or Provider, or any price periodically published as WAC by a Publisher, or WAC as used by you in the Complaint or any amendment thereto.

50. “Wisconsin Department of Health and Family Services” means the state agency and its employees responsible for administering the Wisconsin Medical Assistance Programs.

51. The singular is meant to include the plural, and vice versa.

GENERAL INSTRUCTIONS

1. **These Requests are not limited to documents in the possession of the State of Wisconsin Medicaid Program, but include documents in the possession of Wisconsin’s executive, administrative, and legislative offices and agencies as defined in Paragraph 39 above.**

2. Unless otherwise specifically stated, the Requests below refer to the period the alleged scheme began to the present. If it is necessary to produce Documents from a prior time to fully respond to a Request, please do so.

3. Each request for production of documents extends to all documents in your possession, custody, or control or anyone acting on your behalf. A document is to be deemed in your possession, custody, or control if it is in your physical custody, or if it is in the

physical custody of any other person and you (a) own such document in whole or in part; (b) have a right, by contract, statute, or otherwise, to use, inspect, examine, or copy such document on any terms; (c) have an understanding, express or implied, that you may use, inspect, examine or copy such document on any terms; or (d) have, as a practical matter, been able to use, inspect, examine, or copy such document when you sought to do so.

4. If production is requested of a document that is no longer in your possession, custody, or control, your response should state when the document was most recently in your possession, custody, or control, how the document was disposed of, and the identity of the person, if any, presently in possession, custody, or control of such document. If the document has been destroyed, state the reason for its destruction.

5. Provide the following information for each document withheld on the grounds of privilege:

- (i) its date;
- (ii) its title;
- (iii) its author;
- (iv) its addressee;
- (v) the specific privilege under which it is withheld;
- (vi) its general subject matter; and
- (vii) a description of it that you contend is adequate to support your contention that it is privileged.

6. Pursuant to the Wisconsin Rules of Civil Procedure, these requests are continuing in nature so as to require, whenever necessary, continuing production and

supplementation of responses between the initial date for production set forth above and the end of trial.

7. To the extent that you consider any of the following request for production of documents objectionable, please respond to the remainder of the production request, and separately state the part of each request to which you object and each ground for each objection.

REQUESTS FOR DOCUMENTS

1. All Documents referred to or used in responding to Defendants' Second Set of Interrogatories Directed to Plaintiff.

2. All Documents created, maintained, or received by you under 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.

3. All Documents constituting or concerning a "state plan for medical assistance" (42 C.F.R. 430.0 et seq.), any proposed or adopted amendments thereto, and any Findings and/or support related thereto.

4. All Documents concerning the use of or reimbursement for pharmaceutical products based on AWP, WAC, or any other pricing benchmark, as a means of subsidizing other medical services, procedures, costs, or equipment, or as a means of ensuring equal access to care for Medicaid Beneficiaries under 42 U.S.C. § 1396a(a)(30).

5. All Documents constituting or concerning any requests, surveys, or other efforts conducted by you, or on your behalf, to determine that the state is in compliance with 42 U.S.C. § 1136(a)(a)(30), including but not limited to having reimbursement rates that are consistent with providing state residents access to quality care.

6. All Documents concerning the consideration or setting of dispensing fees as required by 42 C.F.R. § 447.331-333, including but not limited to all correspondence, memoranda, analysis, agenda, meeting minutes, e-mails, and testimony.

7. All Documents relating to actions taken by you to ensure that pharmacists and physicians are reimbursed at their usual and customary charge under Medicaid if it is lower than the state-determined EAC or the rates set forth in the Wisconsin Medicaid physician fee schedule as required by 42 C.F.R. § 447.331.

8. All Documents that reflect, discuss, memorialize or otherwise relate to any reimbursement calculation methodologies proposed by you or any other Person for prescription drugs under the Wisconsin Medical Assistance Programs, including but not limited to, discounts off benchmark prices, such as AWP, WAC, or Direct Price, or pricing based on MAC or any other pricing that was not based on a formula derived from a pricing benchmark such as AWP, WAC, or Direct Price.

9. All Documents concerning the proposal, modification or promulgation of any regulations concerning your reimbursement for pharmaceutical products, including but not limited to all comments on proposed or final regulations, all drafts of proposed or final regulations, and all memoranda, correspondence, analyses or other documents concerning proposed or final regulations.

10. All Documents relating to your decision to use AWP as a basis for reimbursement for prescription drugs under the Wisconsin Medical Assistance Program.

11. All Documents relating to any increase or decrease in the reimbursement rates under the Wisconsin Medical Assistance Programs for prescription drugs that was

considered, proposed, or adopted by you, including but not limited to all documents concerning any reasons for such proposed pricing changes.

12. All Documents concerning any executive, judicial, legislative or administrative efforts to alter reimbursement of pharmaceutical products.

13. All Documents concerning communications between you and any Provider, including physicians and pharmacies, or any Provider group, including any organization or association acting on behalf of Providers, such as the National Association of Chain Drug Stores, the American Society of Clinical Oncology, the Pharmacy Society of Wisconsin, the Wisconsin Pharmacists Association, and the Wisconsin Society of Health-System Pharmacists concerning:

- (a) reimbursement rates for pharmaceutical drugs under Medicaid;
- (b) changes, or proposed changes, in the rate of reimbursement for pharmaceutical drugs under Medicaid; and
- (c) actual acquisition costs for pharmaceutical drugs.

14. All Documents concerning communications with physicians, pharmacists, nurses, consulting agencies or any other third party with whom you consulted, or who were involved in any other way in your decision to use AWP as a basis for prescription drug reimbursement under the Wisconsin Medical Assistance Programs, including but not limited to consulting agreements, contracts, surveys, reports, and meeting minutes.

15. All Documents relating to internal communications, including communications within the Wisconsin Medical Assistance programs and with the Governor's office and legislature, concerning:

- (a) the use of AWP as a basis for reimbursement by the Wisconsin Medical Assistance Programs;

- (b) how AWP is determined or calculated for reimbursement by the Wisconsin Medical Assistance Programs; and
- (c) the use of some figure other than AWP as a basis for reimbursement by the Wisconsin Medical Assistance Programs.

16. All Documents relating to your decision to reimburse physicians for physician-administered drugs under the Wisconsin Medicaid Program according to a fee schedule, including, but not limited to, all documents relied upon in making your decision.

17. All Documents explaining or concerning your methodology for reimbursement of physician-administered drugs, including all physician fee schedules.

18. All Documents concerning any changes considered or adopted to your methodology for reimbursement of physician-administered drugs.

19. All Documents in your possession, or in the possession of the Wisconsin Medical Assistance Programs, relating to the definition, meaning or calculation of AWP, WAC, EAC, and/or actual acquisition cost.

20. All Documents relating to your knowledge that the average actual acquisition cost for prescription drugs was lower than the Subject Drugs' published AWP.

21. All Documents constituting or concerning any requests, surveys, or other efforts conducted by you, or on your behalf, to determine the actual acquisition costs or pharmacists' actual dispensing fees of the Subject Drugs to Providers.

22. All Documents relating to actions taken or considered by you to change the rates set forth in the Wisconsin Medicaid physician fee schedule and/or the reimbursement methodologies under the Wisconsin Medical Assistance Programs after becoming aware that AWP did not approximate average actual acquisition cost.

23. All Documents concerning any requests by you for any information concerning the prices, costs, or reimbursement for Subject Drugs, including but not limited to

contracts, memoranda of understanding, agreements, Provider contracts, or communications concerning the calculation, monitoring, tracking, processing, or payment of claims for Subject Drugs.

24. All Documents constituting or concerning any internal or external, governmental or private, formal or informal, reports, assessments, studies, analyses, reviews or audits conducted regarding your reimbursement of pharmaceutical products, including but not limited to:

- (a) Documents concerning any efforts, conclusions, or recommendations, whether preliminary or final, by the Legislative Audit Bureau relating to pharmaceutical reimbursement, including, but not limited to an audit described by then Lieutenant Governor Martin Schreiber in a February 7, 1975 letter to the Department of Health, Education & Welfare. *See Exhibit A.*
- (b) Documents relating to a 2002 HHS-OIG report specifically discussing Wisconsin pharmacy drug acquisition costs for use in the Medicaid program and concluding that pharmacies could purchase well below the State's AWP – 11.25% reimbursement rate and that, on average, Wisconsin pharmacies are able to purchase brand name drugs at 20.52% below the AWP. *See Department of Health & Human Services, Office of the Inspector General, Review of Pharmacy Acquisition Costs of Drugs Reimbursed Under the Medicaid Prescription Drug Program of the Wisconsin Department of Health and Family Services (A-06-01-0003) (Mar. 2002).*

25. All Documents concerning any comments about, participation or involvement in, or responses to any studies, reports, analyses, or papers regarding reimbursement of pharmaceutical products.

26. All Documents concerning your calculation of reimbursement amounts for Subject Drugs, including but not limited to guidelines, instructions, provider manuals and the like.

27. All Documents concerning the purchase of or reimbursement for Subject Drugs by Wisconsin entities, including but not limited to the Wisconsin Department of Corrections, the University of Wisconsin Hospitals, the University of Wisconsin School of Pharmacy.

28. All Documents, including data, concerning Medicaid Rebates, discounts, or reimbursements for the Subject Drugs, including but not limited to all documents and data concerning the following:

- (a) unit rebate amount;
- (b) transactional data;
- (c) communications between you and the federal government concerning utilization and “per-unit” rebate data; and
- (d) data dictionaries that explain the data fields produced in response to this Request.

29. All claims data related to the Subject Drugs, including but not limited to:

- (a) pharmacy claims data;
- (b) medical claims data;
- (c) all service codes data associated with the administration of those Subject Drugs that are physician-administered drugs;
- (d) drug pricing files; and
- (e) data dictionaries that explain the data fields produced in response to this Request.

30. All Documents concerning any communication between you and any Defendant concerning rebates for any Subject Drug.

31. All Documents concerning any communication or negotiation by you, or on your behalf, with any Defendant concerning reimbursement, discounts, or pricing of pharmaceutical products.

32. All Documents concerning or constituting communications between you and any Publisher, including but not limited to memoranda, contracts or agreements, concerning the pricing or reimbursement of pharmaceutical products.

33. All Documents concerning communications between you and any other state government, including but not limited to that government's Medicaid program, officials, agents, employees, divisions, departments, or agencies, concerning usual and customary, AWP, AMP, MAC, WAC, Direct Price, EAC, Best Price, FUL or other prices, costs, reimbursement rates, or other benchmarks for pharmaceutical drug pricing.

34. All Documents relating to communications between you and the federal government, including but not limited to the OIG, the General Accounting Office, CMS and the Department of Health and Human Services, and their predecessor agencies, concerning:

- (a) the pricing of prescription drugs;
- (b) AWP for prescription drugs;
- (c) EAC for prescription drugs;
- (d) WAC for prescription drugs;
- (e) proposed alternative reimbursement methodologies;
- (f) reimbursement methodologies considered or used by other states or state agencies; and
- (g) the processing of prescription drug reimbursement claims submitted by Wisconsin healthcare providers.

35. All Documents from January 1985 to the present, concerning the pricing of Subject Drugs prepared by any Federal Agency, including but not limited to, reports, memoranda, or analyses prepared by the United States Department of Justice or HHS-OIG.

36. All Documents concerning the revised AWP prices provided by the United States Department of Justice and National Association of Medicaid Fraud Control Units in 2000, including but not limited to documents concerning your decision to use or not to use the revised AWP prices in reimbursing pharmaceutical products.

37. All Documents relating to HCFA's 1988 decision to disapprove Medicaid State Plans that base reimbursement for pharmaceutical products on an undiscounted AWP.

38. All Documents relating to any of the following:

- (a) 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);
- (b) 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);
- (c) 1989 HCFA Medicaid Manual indicating that pharmacies buy pharmaceutical products at AWP-10-20%;
- (d) 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);
- (e) 1997 HHS-OIG report indicating that on average, pharmacies 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);

- (f) 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);
- (g) 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);
- (h) 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);
- (i) 2002 HHS-OIG report, *Medicaid Pharmacy – Additional Analyses of the Actual Acquisition Cost of Prescription Drug Products* (A-06-02-00041) (Sept. 2002); and
- (j) 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*.

39. All Documents relating to the Governor's proposal in the 1996-1997 state budget of a "best price" reimbursement methodology, which was not adopted, by which pharmacists would be required to bill Medicaid at the same rate as their lowest third-party insurance contract.

40. All Documents relating to the proposal by your Department of Health and Family Services in 1999 to decrease reimbursement from AWP – 10% to AWP – 18%.

41. All Documents relating to the proposals by the Governor in 2001 and 2003 to decrease reimbursement to AWP – 15%, including but not limited to the budget reports along with any communications regarding the proposals.

42. All Documents between the Governor's office and the Joint Committee on Finance regarding reimbursement of pharmaceuticals in the Wisconsin Medical Assistance

Program, including but not limited to a June 4, 2001 report which indicates that a reimbursement rate of AWP – 15% would provide an average margin of 3% of the AWP price for drugs purchased under Medicare compared with approximately 8% of AWP under current reimbursement rates. *See Exhibit B.*

43. All Documents relating to the 2005-2007 state budget proposal to set reimbursement for brand name and certain generic drugs under Medicaid, BadgerCare, and SeniorCare to AWP – 16%.

44. All Documents relating to the Wisconsin 2005 legislative proposal to increase the reimbursement rate for pharmaceutical drugs dispensed by pharmacies from AWP – 16% to AWP – 13%, including but not limited to the following:

- (a) discussions by individual legislators regarding the proposed increase;
- (b) communications between the legislature and the Governor 's office regarding the proposed increase;
- (c) communications between the legislature and other departments or agencies of the State of Wisconsin regarding the proposed increase; and
- (d) communications with pharmacists or pharmacy groups regarding the proposed increase.

45. All Documents relating to the Governor's decision in 2005 to establish a Pharmacy Reimbursement Commission to find alternatives to decreasing the reimbursement rates for pharmacies and any notes, findings, reports, or recommendations by the Pharmacy Reimbursement Commission.

46. All Documents supporting, refuting, or otherwise concerning your claim, alleged in paragraph No. 37 of your First Amended Complaint, that any individual Defendant illegally misrepresented the true AWP for their drugs.

47. All Documents supporting, refuting, or otherwise concerning Your claim, alleged in paragraph No. 38 of Your First Amended Complaint, that any individual Defendant marketed the spread to one or more Providers.

48. All Documents supporting, refuting, or otherwise concerning your claim, alleged in paragraph No. 40 of your First Amended Complaint, that any individual Defendant illegally inflated the AWP for their drugs.

49. All Documents supporting, refuting, or otherwise concerning your claim, alleged in paragraph No. 44 of your First Amended Complaint, that any individual Defendant illegal and deceptively misrepresented and inflated WAC of their drugs.

50. All Documents supporting, refuting, or otherwise concerning your claim, alleged in paragraph Nos. 44, 51 and 71 of your First Amended Complaint, that any individual Defendant hid the “real” price of their drugs by providing free drugs, secret rebates and phony grants or fees.

51. All Documents reflecting the actual or estimated losses, damages, or alleged overpayments made by you as a result of Defendants’ alleged conduct.

52. All Documents concerning any action, administrative or otherwise, considered or taken by you, or on your behalf, to recover the alleged overpayments from Providers who received alleged overpaid amounts for drug reimbursement.

53. All Documents relating to the total annual dollar figure and corresponding percentage of Wisconsin Medical Assistant Program beneficiary co-payments that have been uncollected by Wisconsin providers since the inception of each program.

54. All Documents relating to the total annual dollar figure and corresponding percentage of Wisconsin Medicare Part B beneficiary co-payments that have been uncollected by Wisconsin providers.

55. All Documents received from third-party sources concerning reimbursement for prescription drugs and/or the pricing of prescription drugs, including but not limited to the Wisconsin Pharmacists Association, the National Association of State Medicaid Directors, the NAMFCU, the National Association of Attorneys General, the American Society of Consultant Pharmacists, and the American Pharmacists Association.

56. All Documents and data given to you through formal or informal requests from third-parties, including but not limited to retail drug chain stores, providers, and provider groups, concerning the prices, costs, or reimbursement for Subject Drugs.

57. All National Coverage Decisions, Local Medical Review Policies and Local Coverage Determinations for prescription drugs in effect for Wisconsin Medicare Carriers and Fiscal Intermediaries.

58. All Documents concerning any proceedings, including but not limited to lawsuits, administrative or legislative proceedings, or criminal or civil investigations, in which your employees or agents have testified, provided statements, or been interviewed concerning the pricing, reimbursement of pharmaceutical products, or access to care.

59. Organizational charts or similar Document(s) that name or describe your employees involved or in any way responsible for the administration or oversight of your Medicaid program, including but not limited to all directors or similar officials.

60. Documents sufficient to describe your Document retention or destruction policies, including any changes to, or departures from, such policies, and Documents

demonstrating that you have complied with such policies, including but not limited to document preservation notices circulated by you.

61. All communications, including bids and requests for proposals, with outside lawyers to potentially handle this case, and the contracts and terms of engagement of such lawyers.

/s/ Jennifer A. Walker
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Attorneys for Amgen Inc.

February 20, 2006

CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2006, a true and correct copy of the foregoing document was served upon all counsel of record via electronic service pursuant to Case Management Order No. 1 by causing a copy to be sent to LexisNexis File & Serve for posting and notification.

/s/ Jennifer A. Walker
Jennifer A. Walker

EXHIBIT A



State of Wisconsin \ OFFICE OF THE LIEUTENANT GOVERNOR

Martin J. Schreiber
Lieutenant Governor

February 7, 1975

Hearing Clerk
Food and Drug Administration
Department of Health, Education & Welfare
Room 4-65
Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20852

Gentlemen:

This letter is in response to the Notice of Proposed Rulemaking, Maximum Allowable Cost for Drugs, published in the Federal Register, Vol. 39, No. 222, Friday, November 15, 1974.

Current federal Medicaid regulations give wide leeway to individual states in designing systems for reimbursement to drug providers such as pharmacies. In Wisconsin, the present Medicaid system pays providers on the basis of a published wholesale price plus a professional fee.

Although Wisconsin's system conforms to present federal guidelines, it appears that the wholesale price plus fee system now in use may allow for excess expenditures of public money.

In Wisconsin, we have only begun to investigate this problem and do not know how large these excess expenditures may be. I have, however, requested that the Legislative Audit Bureau, an arm of the Wisconsin State Legislature, undertake an audit of the Medicaid drug billing system.

An additional complicating factor in Wisconsin is the fact that the billing system, as presently designed, makes auditing for both excess costs and fraudulent billing extremely difficult.

I support the creation of rules by the Department of Education & Welfare which establish a uniform means of controlling Medicaid drug costs, based on the actual cost of drugs to the provider, plus a revised professional fee.

I support this federal rulemaking for three primary reasons:

First, the present system in Wisconsin allows providers to earn uncontrolled profits through bulk purchases, discounts from suppliers and inadequate monitoring of billing practices. Pharmacists, of course, must be allowed reasonable profits in their Medicaid business. But under Wisconsin's present system the extent of those profits cannot be controlled.

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Page Two

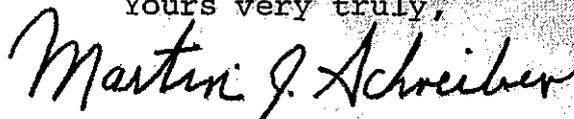
February 7, 1975

Second, large pharmacies which can buy in very large quantities for a low per unit price and which may qualify for additional discounts to further reduce their unit costs, have an unfair competitive advantage over smaller pharmacies which can not obtain goods for such a low unit price. A new system based on actual cost plus professional fee, would protect the smaller pharmacies by ensuring that the profit margin on Medicaid business would be the same, regardless of the size or business volume of a pharmacy.

Third, a federal rulemaking effort could be the best means of implementing a system for controlling Medicaid drug costs in Wisconsin. The Wisconsin Department of Health and Social Services is the designated state Medicaid agency. Its policy and procedures are set by majority vote of the citizen Board on Health and Social Services. While the Board has traditionally shown a great willingness to adopt its policy to changing conditions, a federal effort might be faster, since the Department of Health, Education and Welfare has to date studied the question far more than has Wisconsin. Additionally, because any changes undertaken by Wisconsin will be subject to further revision if new HEW rules on drug costs are promulgated, action by HEW is needed as the first step.

Establishing a uniform Medicaid policy reimbursement for actual acquisition cost, plus an adequate professional fee, would be an important step forward in managing the staggering growth of Medicaid expenditures in Wisconsin and the rest of the nation.

Yours very truly,

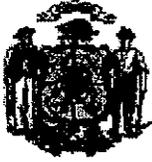


Martin J. Schreiber
Lieutenant Governor

MJS:cl

cc: Dr. Mark Novich
Room 14-82
Parklawn Building

EXHIBIT B



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

June 4, 2001

Joint Committee on Finance

Paper #474

Reimbursement Rates for Prescription Drugs (DHFS -- Medical Assistance)

[LFB 2001-03 Budget Summary: Page 360, #10]

CURRENT LAW

Federal regulations require that states' medical assistance (MA) programs reimburse pharmacies at a rate equal to the lesser of the provider's usual and customary charge or the estimated acquisition cost (EAC) of the drug, plus a reasonable fee for the pharmacists' cost to dispense the drug. In Wisconsin, in addition to the reimbursement for EAC and the dispensing fee, the reimbursement to pharmacies is reduced by \$0.50, based on provisions enacted in 1995 Wisconsin Act 27.

Currently, the EAC for brand name drugs is based on the average wholesale price (AWP), as reported in the First Databank Blue Book, less a 10% discount. Generic drugs are priced according to the maximum allowable cost (MAC) list. This list is initially developed by the U.S. Department of Health and Human Services, Health Care Financing Administration (HCFA), based on a survey of prices at which generics are available from wholesalers. DHFS modifies the list to include additional drugs based on information available to DHFS about the price of generic drugs.

The dispensing fee for most prescriptions is \$4.88. Other dispensing fees are paid under limited circumstances. Because 1995 Act 27 requires that total reimbursements for drugs must be reduced by \$0.50, the dispensing fee is often identified as \$4.38, rather than \$4.88.

Currently, on average, MA reimburses pharmacists 77% of the pharmacists' usual and customary charges, or the retail price of the drug.

GOVERNOR

Reduce MA benefits funding by \$11,521,700 (\$4,781,500 GPR and \$6,740,200 FED) in 2001-02 and \$17,650,300 (\$7,324,900 GPR and \$10,325,400 FED) in 2002-03 to reflect projected savings in MA benefits costs that would result by reducing the MA reimbursement rates DHFS pays to pharmacies and pharmacists for brand name prescription drugs. Under the proposal, DHFS would reimburse pharmacies and pharmacists for these drugs at a rate equal to AWP - 15%, rather than AWP-10%, plus the applicable dispensing fee. DHFS would continue to pay pharmacies and pharmacists for generic prescription drugs a rate equal to the price listed in the MAC list, plus the applicable dispensing fee.

DISCUSSION POINTS

1. It is currently estimated that MA benefit costs would decrease by \$17,370,100 (\$7,165,200 GPR and \$10,204,900 FED) in 2001-02 and \$19,507,200 (\$8,095,000 GPR and \$11,412,200 FED) in 2002-03 if the Governor's proposal is approved. This reestimate reflects revised estimates of MA prescription drug costs in the 2001-03 biennium under the MA base reestimate prepared by this office. Therefore, if the Committee adopts the Governor's recommendation, the funding in the bill should be reduced by an additional \$5,848,400 (\$2,383,700 GPR and \$3,464,700) in 2001-02 and \$1,856,900 (\$770,100 GPR and \$1,086,800 FED) in 2002-03.

2. The Governor's proposal to reduce reimbursement rates for brand name prescription drugs addresses two issues in MA drug reimbursements. First, it would reduce costs for prescription drugs to partially offset rapidly rising prescription drug costs. Second, it would reduce the disparity between the MA reimbursement rate and rates paid by other plans that provide third-party coverage of prescription drugs.

3. The following table identifies total MA drug and rebate revenue for the 1998-99 and 1999-00 fiscal years and estimated reimbursements and rebate revenue for 2000-01 through 2002-03. Additionally, the table identifies total drug expenditures as a percent of total MA expenditures.

MA Drug Expenditures (\$ in Millions)
Fiscal Years 1998-99 through 2002-03

	<u>Actual</u>		<u>Projected</u>		
	<u>1998-99</u>	<u>1999-00</u>	<u>2000-01</u>	<u>2001-02</u>	<u>2002-03</u>
Drug Reimbursements	\$259.3	\$325.9	\$362.6	\$418.0	\$469.4
Manufacturer Rebates	<u>-49.3</u>	<u>-58.2</u>	<u>-72.0</u>	<u>-82.9</u>	<u>-92.8</u>
Total Drug Expenditures	\$210.0	\$267.7	\$290.6	\$335.1	\$376.6
Percent of Total MA Expenditures	8.1%	9.5%	9.7%	10.9%	11.8%

4. It is estimated that approximately 80% of prescription drug expenditures under MA are for the purchase of brand name drugs.

5. Reducing reimbursement rates to pharmacies is one way to reduce MA prescription drug costs. DHFS has used other ways to minimize cost increases, while ensuring MA recipients have access to appropriate medications, by targeting the use of prior authorization and implementing automatic generic substitution. Generic substitution is required unless a prescribing physician indicates in his or her own handwriting that a brand name drug is medically necessary. Both of these cost and utilization control features are discussed in more detail in LFB Paper #482.

6. Because rising prescription drug costs are beyond the control of pharmacies, reducing reimbursement rates paid to pharmacies could be viewed as an inappropriate response to rising costs. The causes for rapidly rising prescription drug costs are complex and are primarily a result of national trends in the increasing availability of newer, higher cost drug therapies. The availability of these new drugs are primarily the result of research and technological advances by pharmaceutical manufacturers.

7. Further, most of the costs of prescription drugs are not paid to cover the pharmacies' service costs, but rather the costs of the product itself. The Kaiser Family Foundation reports that \$0.74 of every retail dollar paid to a pharmacy is for the manufacturer's costs. The remainder is provided for the pharmacy (\$0.23) and the wholesaler (\$0.03).

8. However, the Committee may find it appropriate to reduce reimbursement to pharmacies to address the disparity between what MA currently pays pharmacies for brand name drugs and what other third-party payers reimburse pharmacies.

9. A recent report by Novartis Pharmaceutical Corporation indicates that, in 1999, the health maintenance organization (HMO) industry standard reimbursement rates for prescription drugs averaged AWP-14%, with commercial and MA HMO plans paying on average AWP-14% and Medicare HMO plans paying on average AWP-15%. For all three types of HMO plans, the minimum discount was AWP-9% and the maximum discount was AWP-18%.

10. Drug Topics.com, an on-line newsmagazine for pharmacists, reported a similar reimbursement level. According to Drug Topics.com, based on a survey of 446 employers representing more than 15 million beneficiaries, the average reimbursement to community pharmacies was AWP - 13% in 1999. The average dispensing fee that year was \$2.30. According to the survey, 60% of employers surveyed paid either AWP-12% or AWP-13%, but over 20% paid AWP-15% or less.

11. Two studies, one by the U.S. Department of Health and Human Services, Office of the Inspector General and another study conducted on behalf of the Kentucky Department for Medicaid Services found that pharmacies' average acquisition cost for most brand name drugs is approximately AWP-18%. Both studies found small differences between chain and independent pharmacies, but the Kentucky study found no difference in acquisition costs for urban and rural

pharmacies.

12. Based on these studies, it appears that a reimbursement rate of AWP-15% would provide an average margin of 3% of the AWP price for drugs purchased under MA, compared with approximately 8% of AWP under current reimbursement rates.

13. The margin between the acquisition cost and the reimbursement rate, together with the dispensing fee, represents the pharmacies' total reimbursement for service costs. Therefore, in reviewing reimbursement rates paid for prescription drugs, it may also be worthwhile to review the amount of the dispensing fee paid to pharmacies. The current MA dispensing fee for most drugs is \$4.88. This fee is then reduced by \$0.50, for a total dispensing fee of \$4.38.

14. The Novartis Pharmaceutical Corporation report indicates that the average dispensing fee paid by HMOs to retail and independent pharmacies in 1999 was \$1.93 for brand name drugs and \$2.13 for generic drugs. Dispensing fees ranged between \$0.50 and \$4.09 for brand name drugs and \$1.00 and \$6.13 for generic drugs. The Drug Topics.com report indicates that the average dispensing fee in 1999 was \$2.30. Therefore, the dispensing fee paid by Wisconsin's MA program appears to be above average, but within the range of dispensing fees paid by other third-party payers.

15. Some representatives of pharmacies have expressed concern that studies identifying a pharmacy's acquisition costs as purely the invoice cost, or wholesale cost, do not take into account a pharmacy's true acquisition costs. Distribution costs and some overhead costs are not included in acquisition costs defined in these studies.

16. Compared with other states, Wisconsin's current MA reimbursement rates appears to be equivalent to the rates paid in many other states. The attachment to this paper identifies other states' MA reimbursement rates for drugs in 1999, as identified by the National Pharmaceutical Council. In 2000, 21 states paid AWP-10% for some drugs purchased under MA. However, a number of states, including, Colorado, Connecticut, Indiana, New Jersey, North Carolina, South Carolina, Oregon, Washington and Wyoming, have recently proposed reducing pharmacy reimbursement rates. Most of these proposals are pending approval by either the Governor or the Legislature in those states.

17. Virtually all eligible pharmacies are certified to participate in MA. Of these, approximately 86% submitted claims in the current fiscal year. Some representatives of pharmacies have indicated that a reduction in the MA reimbursement rate for prescription drugs would likely result in some pharmacies choosing to discontinue participation in the MA program. However, since reducing MA rates to AWP-15% would bring the MA rates in line with most other third-party payers, it is not clear why it would be disadvantageous for pharmacies to continue to participate in MA, compared with other health care plans.

18. Further, it appears that, for most pharmacies, a reduction in the MA reimbursement rate would not affect a significant portion of the pharmacy's revenues. According to Novartis

Pharmaceutical Corporation in Wisconsin, MA reimbursements represents 8.5% of total retail revenue for pharmacies in 1999. Because MA represents a small portion of revenue for most pharmacies, it is reasonable to conclude that a reduction in the MA reimbursement rate would not significantly affect total revenue for pharmacies.

19. However, some pharmacies, particularly in larger urban areas with higher concentrations of MA recipients, could be disproportionately affected by reductions in the MA reimbursement rates, since revenue from MA would likely represent a larger portion of total revenue for these pharmacies.

20. If the Committee does not want to reduce reimbursement rates to the level proposed in the Governor's bill, the Committee could reduce the reimbursement rates to AWP-12.5% or AWP-11% identifies the change to base for each of the alternatives.

Estimated Change to MA Base Funding Under Each of the Alternatives

Alternative	2001-02			2002-03		
	GPR	FED	Total	GPR	FED	Total
1. AWP-15% (as reestimated)	-\$7,165,200	-\$10,204,900	-\$17,370,100	-\$8,095,000	-\$11,412,200	-\$19,507,200
2. AWP-14%	-5,732,100	-8,164,000	-13,896,100	-6,476,000	-9,129,800	-15,605,800
3. AWP-12.5%	-3,582,600	-5,102,400	-8,685,000	-4,047,500	-5,706,100	-9,753,600
4. AWP-11%	-1,433,000	-2,041,000	-3,474,000	-1,619,000	-2,282,500	-3,901,500
5. AWP-10% (current law)	0	0	0	0	0	0

ALTERNATIVES TO BASE

1. Adopt the Governor's recommendation, as reestimated, by reducing funds budgeted for MA benefits by an additional \$5,848,400 (\$2,383,700 GPR and \$3,464,700 FED) in 2001-02 and \$1,856,900 (\$770,100 GPR and \$1,086,800 FED) in 2002-03 to reflect a reestimate of the reduction in MA expenditures as a result of the Governor's recommendations.

Alternative 1	GPR	FED	TOTAL
2001-03 FUNDING (Change to Base)	-\$15,260,200	-\$21,617,100	-\$36,877,300
[Change to Bill]	-\$3,153,800	-\$4,551,500	-\$7,705,300

2. Modify funding in the bill by reducing MA benefit appropriation by \$2,374,400 (\$950,600 GPR and \$1,423,800 FED) in 2001-02 and increasing the MA benefits appropriation by \$2,044,500 (\$848,900 GPR and \$1,195,600 FED) in 2002-03 to reflect the estimated reduction in MA expenditures as a result of reducing the MA reimbursement rate for brand name prescription drugs from AWP-10% to AWP-14%.

<u>Alternative 2</u>	<u>GPR</u>	<u>FED</u>	<u>TOTAL</u>
2001-03 FUNDING (Change to Base)	- \$12,208,100	- \$17,293,800	- \$29,501,900
[Change to Bill]	- \$101,700	- \$228,200	- \$329,900]

3. Increase funding in the bill by \$2,836,700 (\$1,198,900 GPR and \$1,637,800 FED) in 2001-02 and \$7,896,700 (\$3,277,400 GPR and \$4,619,300 FED) in 2002-03 to reflect a decrease in the MA reimbursement rate for brand name prescription drugs from AWP-10% to AWP - 12.5%.

<u>Alternative 3</u>	<u>GPR</u>	<u>FED</u>	<u>TOTAL</u>
2001-03 FUNDING (Change to Base)	- \$7,630,100	- \$10,808,500	- \$18,438,600
[Change to Bill]	\$4,476,300	\$6,257,100	\$10,733,400]

4. Increase funding in the bill by \$8,047,700 (\$3,348,500 GPR and \$4,699,200 FED) in 2001-02 and \$13,748,800 (\$5,705,900 GPR and \$8,042,900 FED) in 2002-03 to reflect the estimated reduction in MA expenditures as a result of reducing the MA reimbursement for brand name prescription drugs from AWP-10% to AWP-11%.

<u>Alternative 4</u>	<u>GPR</u>	<u>FED</u>	<u>TOTAL</u>
2001-03 FUNDING (Change to Base)	- \$3,052,000	- \$4,323,500	- \$7,375,500
[Change to Bill]	\$9,054,400	\$12,742,100	\$21,796,500]

5. Maintain current law.

<u>Alternative 5</u>	<u>GPR</u>	<u>FED</u>	<u>TOTAL</u>
2001-03 FUNDING (Change to Base)	\$0	\$0	\$0
[Change to Bill]	\$12,106,400	\$17,065,600	\$29,172,000]

Prepared by: Rachel Carabell

ATTACHMENT

**MA Pharmacy Payment and Patient Cost Sharing By State
2000**

<u>State</u>	<u>Dispensing Fee</u>	<u>Ingredient Reimbursement Basis</u>	<u>Copayment</u>
Alabama	\$5.40	AWP-10%; WAC+9.2%	\$0.50-\$3.00
Alaska	\$3.45	AWP-5%	\$2.00
Arizona*	-	-	-
Arkansas	\$5.51	AWP-10.5%	\$0.50-\$3.00
California	\$4.05	AWP-5%	G: \$1.00; B: \$1.00
Colorado	\$4.08	AWP-10% or WAC+18%; whichever is lowest	G: \$0.50; B: \$2.00
Connecticut	\$4.10	AWP-12%	None
Delaware	\$3.65	AWP-12.9%	None
District of Columbia	\$3.75	AWP-10%	\$1.00
Florida	\$4.23	AWP-13.25%	None
Georgia	\$4.63	AWP-10%	\$0.50
Hawaii	\$4.67	AWP-10.5%	None
Idaho	\$4.94 (\$5.54 for unit dose)	AWP-11%	None
Illinois	G: \$3.75; B: \$3.45	AWP-10%, AWP-12% for multi-source drugs	None
Indiana	\$4.00	AWP-10%	\$0.50-\$3.00
Iowa	\$4.13-\$6.42	AWP-10%	\$1.00
Kansas	\$4.50	AWP-10%	\$2.00
Kentucky	OP: \$4.75; LTC: \$5.75	AWP-10%	None
Louisiana	\$5.77	AWP-10.5%	\$0.50-\$3.00
Maine	\$3.35 (+extra fees for compounding)	AWP-10%	\$0.50-\$3.00
Maryland	\$4.21	Lowest of WAC+10% direct+10%; AWP-10%	\$1.00
Massachusetts	\$3.00	WAC+10%	\$0.50
Michigan	\$3.72	AWP-13.5% (1 to 4 stores), AWP-15.1% (5+ stores)	\$1.00
Minnesota	\$3.65	AWP-9%	None

<u>State</u>	<u>Dispensing Fee</u>	<u>Ingredient Reimbursement Basis</u>	<u>Copayment</u>
Mississippi	\$4.91	AWP-10%	\$1.00
Missouri	\$4.09	AWP-10.43%	\$0.50-\$2.00
Montana	\$2.00-\$4.20	AWP-10%	G: \$1.00; B: \$2.00
Nebraska	\$3.20-\$5.05	AWP-8.71%	\$1.00
Nevada	\$4.76	AWP-10%	None
New Hampshire	\$2.50	AWP-12%	G: \$0.50; B: \$1.00
New Jersey	\$3.73-\$4.07	AWP-10%	None
New Mexico	\$4.00	AWP-12.5%	None
New York	B: \$3.50; G: \$4.50	AWP-10%	G: \$0.50; B: \$2.00
North Carolina	\$5.60	AWP-10%	\$1.00
North Dakota	\$4.60	AWP-10%	None
Ohio	\$3.70	AWP-11%	None
Oklahoma	\$4.15	AWP-10.5%	\$1.00-\$2.00
Oregon	\$3.91-\$4.28 (based on annual # of Rx)	AWP-11%	None
Pennsylvania	\$4.00	AWP-10%	\$1.00-\$2.00
Rhode Island	OP: \$3.40; LTC: \$2.85	WAC+5%	None
South Carolina	\$4.05	AWP-10%	\$2.00
South Dakota	\$4.75 (\$5.55 for unit dose)	AWP-10.5%	\$2.00
Tennessee*	-	-	-
Texas	\$5.27 + 2% of ingredient & dispensing fee	AWP-15% or WAC+12%, whichever is lowest	None
Utah	\$3.90-\$4.40 (based on geographic area)	AWP-12%	\$1.00-\$5.00
Vermont	\$4.25	AWP-11.9%	\$1.00-\$2.00
Virginia	\$4.25	AWP-9%	\$1.00
Washington	\$4.06-\$5.02 (based on annual # of Rx)	AWP-11%	None
West Virginia	\$3.90 (+ extra fees for compounding)	AWP-12%	\$0.50-\$2.00
Wisconsin	\$4.88	AWP-10%	\$0.50-\$1.00
Wyoming	\$4.70	AWP-4%	\$2.00

WAC = Wholesalers Acquisition Cost; AWP = Average Wholesale Price; EAC = Estimated Acquisition Cost.

G = Generic; B = Brand Name; OP = Outpatient; LTC = Long Term Care.

*Within federal and state guidelines, individual managed care and pharmacy benefit management organizations make formulary/drug decisions.

Source: As reported by state drug program administrators in the 2000 National Pharmaceutical Council Survey.