



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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June 27, 2008

Steve Barley
Hogan and Hartson, L.L.P.
111 South Colvert Street
Baltimore, MD 21202

Re: State v Amgen, et al.
Dane County, WI, Case 04-CV-1709

Dear Steve:

Enclosed you will find Plaintiff's Response to Defendants' Eighth Discovery Request. Also enclosed you will find one digital video disc containing data produced in response to the Defendants' Eighth Request for Production of Documents. Per your instructions, I am sending this to you in your capacity as coordinating discovery on behalf of the other defendants. Please note that I have marked this disc "Confidential." I am waiting for EDS to deliver the additional data that I reference in Plaintiff's response. I understand that it will be sent to me next week (although undoubtedly, the national holiday may complicate things). I will forward this information to you as soon as I receive it.

Thank you for your continuing courtesies and cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Frank D. Remington'.

Frank D. Remington
Assistant Attorney General

FDR:gdt

Enclosures

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 04-CV-1709

AMGEN INC., et. al.,

Defendants.

PLAINTIFF'S RESPONSE TO DEFENDANTS' EIGHTH SET OF
INTERROGATORIES AND REQUESTS FOR PRODUCTION

Pursuant to the Wisconsin Rules of Civil Procedure, the State of Wisconsin, by and through its undersigned counsel, respond to "Defendants' Eighth Set of Interrogatories" as follows.

Preliminarily, please be advised that the State of Wisconsin is continuing its investigation of Defendants' unlawful conduct and has not completed its discovery or its preparation for trial. This response is given without prejudice to the State's right to produce evidence of any subsequently discovered facts, documents or information and thus modify, change or amend its response given below and/or obligation to supplement this response under Wis. Stat. § 804.01(5).

GENERAL OBJECTIONS:

1. The Plaintiff OBJECTS to the "definitions" which precede Defendants' Eighth Set of Interrogatories to the extent that Defendants' "definitions" deviate from the ordinary and accepted meaning of the term. In particular, the Plaintiff OBJECTS to

definitions 1, 2, 4, 5 and 7 on the ground that Defendants' suggested definition is either inaccurate or incomplete.

2. The Plaintiff OBJECTS to those interrogatories below that can be answered with the production of the document to which the interrogatory indirectly applies. As such, pursuant to Wis. Stat. § 804.08(3), the Plaintiff elects to use the procedure set forth in sec. 804.09 where the interrogatory is nothing more than a demand for the production of documents.

3. The Plaintiff OBJECTS to those interrogatories below that seek information prior to January 1, 1993. Because records prior to 1993 are outside the scope of this lawsuit, and because of logistical difficulties retrieving information or knowledge back beyond that period of time, those interrogatories are overbroad and producing responsive information is unduly burdensome.

Subject to the foregoing objections, the Plaintiff answers the Defendants' Eighth Set of Interrogatories as follows:

INTERROGATORIES

INTERROGATORY NO. 1:

Identify what HCPCS codes you contend are at issue in this case.

ANSWER:

The Plaintiff OBJECTS to this interrogatory on the ground that it has already been answered. Please see the data already produced to the Defendants on September 6, 2006. The Plaintiff furthermore OBJECTS on the ground that the list of relevant NDCs has been disclosed pursuant to stipulation and court order. Any HCPC that contains an NDC contained within a defendant's targeted drug list is "at issue" in this case.

INTERROGATORY NO. 2:

Identify what criteria was used to select the HCPCS codes in the data produced to Defendants on September 6, 2006.

ANSWER:

Plaintiff OBJECTS to this interrogatory on the ground that selection of targeted drugs by NDC or HCPC is protected by attorney work product.

INTERROGATORY NO. 3:

For each HCPCS drug code claim, identify how You determined what price to use for reimbursement purposes, including but not limited to:

- a) Whether you used AWP to set the price used for each HCPCS drug code claim and, if not, what pricing information you used.
- b) What other pricing information (i.e. other than ingredient cost) you used to set the price used for each HCPCS drug code claim.
- c) The identity of the person and/or entity responsible for determining what price to use for a given HCPCS drug code.
- d) How You determined what price to use when there were multiple NDCs associated with a given HCPCS drug code.
- e) The identity of the person and/or entity responsible for determining what price to use when there were multiple NDCs associated with a given HCPCS drug code.

ANSWER:

- a) The State used AWP to set the price for most single source agents. For most multi-source agents, the State used the MAC to set the price. In other instances where a drug required manual pricing, physician or pharmacy consultants used Red Book, the reference file with Medicaid pricing data and other tools to determine a price.
- b) Any administration fee was paid with each HCPCS drug code claim.

- c) Pharmacy and physician consultants at EDS and the State as well as the physician policy analyst.
- d) For most multi-source agents, the State used the MAC to set the price. In other instances where a drug required manual pricing, physician or pharmacy consultants used Red Book, the reference file with Medicaid pricing data and other tools to determine a price.
- e) Pharmacy and physician consultants at EDS and the State as well as the physician policy analyst.

INTERROGATORY NO. 4:

Identify how the Manual Pricing amount was determined for PADs reimbursed under the Medicaid program during the Relevant Time Period, including but not limited to:

- a) Specific steps taken to designate that Manual Pricing should be used for a given PAD.
- b) Specific steps taken to determine the Manual Pricing amount for a given PAD.
- c) Circumstances under which a PAD would be reimbursed based on Manual Pricing.
- d) The identity of the person(s) and/or entities responsible for determining whether to apply Manual Pricing for a given PAD and/or the Manual Pricing amount for PADs.

ANSWER:

- a) A pricing action code (PAC) of 21J was assigned to a code unless a price was designated. Pharmacy and physician consultants at EDS and the State as well as the physician policy analyst would assist in making that decision.
- b) Pharmacy and physician consultants at EDS and the State would use their best professional judgment as well as any available tools such as Red Book, invoices, reference file and any other credible source available to determine the price for the PAD.

- c) Pharmacy and physician consultants at EDS and the State would use their best professional judgment to determine the circumstances for manual pricing. In certain instances, assigning a price would be delayed until there was some utilization on that drug to see what the EAC price would be for the PAD.
- d) Pharmacy and physician consultants at EDS and the State as well as the physician policy analyst.

INTERROGATORY NO. 5:

Identify how the MAC rate was determined for PADs during the Relevant Time Period, including but not limited to:

- a) Specific steps taken to determine the MAC rate for a PAD, including how it was determined which NDC to use in calculating the reimbursement amount for a multi-source drug.
- b) The identity of the person and/or entity responsible for determining the MAC rate for PADs.

ANSWER:

Theodore Collins set the MAC. He is a consultant and he would be able to explain if and how it was done.

INTERROGATORY NO. 6:

Identify whether the Medicare claims data produced to Defendants on August 25, 2006 contain Wisconsin Medicare Part B beneficiaries' claims and/or Dual-Eligible Claims.

ANSWER:

The Plaintiff OBJECTS to this interrogatory on the ground that it is ambiguous. Furthermore, Plaintiff OBJECTS to the question inasmuch as the Defendants' answer can

be derived from either the information itself or by using the already produced Medicaid claims data which included all the dual eligible crossovers.

INTERROGATORY NO. 7:

Explain what the Level I, Level II, and Level III fields in the MMIS database represent, including but not limited to:

- a) whether the definitions set forth in Exhibits B and C, attached, for the Level I, Level II, and Level III fields are accurate;
- b) why the definitions for the Level I, Level II, and Level III fields set forth in Exhibit B differ from those set forth in Exhibit C; and
- c) what the specific terms in the definitions set forth in Exhibits B and C, attached, for the Level I, Level II, and Level III fields mean, including but not limited to the terms “locality” and “specialty specific rates.”

ANSWER:

- a) The definitions in Exhibits B and C are accurate for Level I, Level II, and Level III fields.
- b) The definitions for Level I, Level II, and Level III fields in Exhibit C were provided in the data dictionary with the HCPCPS claims data. It was intended to explain the dollar amount present in the fields when a claim is a Medicare crossover claim. The definitions for Level I, Level II, and Level III fields in Exhibit B were provided when clarification was requested by Defendants’ legal counsel. It was intended to provide a global definition of the fields, not just Medicare crossover claims.
- c) “Provider-specific rates” – A provider specific rate is a unique rate defined for a specific provider, (e.g. Dr. Jones). “Provider locality” – A provider locality is a unique rate defined by specific counties, (e.g., out-of-state). “Pricing specialty specific rates” – A pricing specialty specific rate is a unique rate defined for a category of like providers, (e.g. physical therapists).

SPECIFIC REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1:

Pharmacy address, provider address, and place of service fields in the MMIS database for both pharmacy and HCPCS claims for the Relevant Time Period. *See Gray Tr. at 25:6-12; 25:13-19; 51:22-52:7* for references to these fields (Ex. A).

ANSWER:

The Plaintiff will produce at a mutually convenient date and time the pharmacy and provider addresses. The “place of service field” may be found in the “quick reference file”.

REQUEST NO. 2:

Complete HCPCS data containing all of the line numbers for each claim for the Relevant Time Period. *See Gray Tr. at 32:10-34:7* for references to the missing line numbers (Ex. A).

ANSWER:

The Plaintiff OBJECTS to this request on the ground that it demands information and data not relevant to this matter. The cost of acquiring additional data from the EDS would be substantial and would not likely lead to the discovery of relevant and admissible evidence.

REQUEST NO.3:

HCPCS Historical Pricing Files for the Relevant Time Period.

ANSWER:

The Plaintiff will produce at a mutually convenient date and time a current snapshot containing these pricing files.

REQUEST NO. 4:

Pharmacy Claims Pricing Files for October 2004 through the present.

ANSWER:

The Plaintiff already produced two snapshots of the Pricing Files. The Plaintiff will produce another snapshot of the current Pricing File.

REQUEST NO. 5:

Claim Reference Files for the Relevant Time Period.

ANSWER:

The Plaintiff OBJECTS to this request on the ground that “claim reference file” is not a term known to the program.

REQUEST NO. 6:

Quick Reference document which covers the Relevant Time Period.

ANSWER:

The Plaintiff will produce the quick reference file.

REQUEST NO. 7:

Any documents constituting, reflecting or referring to Cross-Walks used to determine rebates or reimbursement rates for HCPCS claims for the Relevant Time Period.

ANSWER:

Plaintiff OBJECTS to this request on the ground that information or data relating to the determination of rebates is irrelevant, over burdensome, and not likely to lead to the discovery of relevant and admissible evidence. Plaintiff also OBJECTS on the ground that the request is ambiguous. Notwithstanding these objections, the Plaintiff uses and hereby references the CMS website which includes pricing information as well as crosswalk information.

<http://www.cms.hhs.gov/McrPartBDrugAvgSalesPrice>

REQUEST NO. 8:

Any documents used to answer the above Interrogatories.

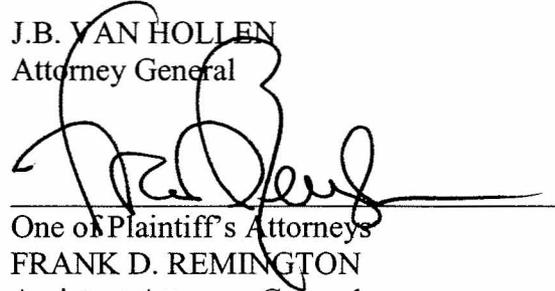
ANSWER:

No document was used to answer the above interrogatories that has not otherwise been provided or is within the public domain and equally accessible to the defendants.

AS TO OBJECTIONS:

Dated this 27th day of July, 2008.

J.B. VAN HOLLEN
Attorney General

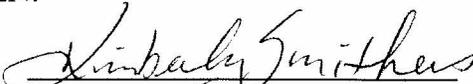
A handwritten signature in black ink, appearing to read 'Frank D. Remington', is written over a horizontal line. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

One of Plaintiff's Attorneys
FRANK D. REMINGTON
Assistant Attorney General
State Bar #1001131

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(608) 266-3542

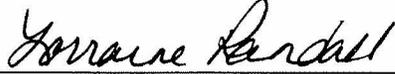
AUTHENTICATION

AS TO INTERROGATORY NUMBER SEVEN:


Kimberly Smithers

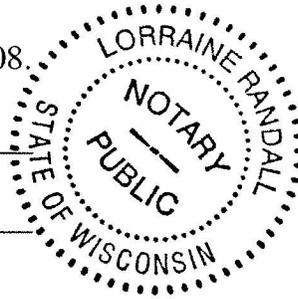
Subscribed and sworn before me

This 24th day of June, 2008.



Notary Public, State of Wisconsin

My commission: 2/6/11



AUTHENTICATION

AS TO INTERROGATORIES THREE, FOUR AND FIVE:

Carrie Gray
Carrie Gray

Subscribed and sworn before me

This 24 day of June, 2008.

[Signature]

Notary Public, State of Wisconsin

My commission: is permanent