
State of Wisconsin,

Plaintiff,

v.

Case No. 04 CV 1709

AMGEN INC., et al.,

Defendants.

PLAINTIFF'S RESPONSE TO
DEFENDANTS' SECOND SET OF INTERROGATORIES

Pursuant to the Wisconsin Rules of Civil Procedure, the State of Wisconsin, by and through its undersigned counsel, respond to "Defendants' Second 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 has had settlement conferences with several of the Defendants who explicitly asked that the Plaintiff not disclose to the other Defendants that such meeting(s) have taken place. Interrogatory 29 specifically asks the State to disclose these meetings and when combined with interrogatories 20 and 21 and others, this discovery requires the State disclose the

substance of what was told to it by one or more of the propounding Defendants. The State OBJECTS to disclosing these settlement discussions choosing instead to honor its promises made to one or more Defendants, all of whom know who they are, some of whom ironically now submit these interrogatories.

2. The Plaintiff OBJECTS to the “definitions” which precede Defendants’ Second Set of Interrogatories to the extent that Defendants’ “definitions” deviate from the ordinary and accepted meaning of the term.

3. 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.

4. The Plaintiff OBJECTS to those interrogatories below that seeks 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.

5. The Plaintiff OBJECTS to the “general instructions” in the following respects:

A. The request that each interrogatory be answered separately by every part of the State’s executive branch and by the Legislative branch is over burdensome and not likely to lead to the discovery of relevant and admissible information. There are literally thousands of offices within the State, including Boards, Commissions, Bureaus and Panels. It is not possible to assume that inquiry can be made of every part of Wisconsin government in the absence of a specific direction as such. Notwithstanding this objection, the Plaintiff will direct the questions

to the Department Health and Family Services, the agency charged with and responsible for the administration of the State's Medical Assistance Program and will cooperate to conduct further relevant and reasonable inquiries upon further direction. To the extent that these interrogatories are responded to by reference to the Plaintiff's response to Defendants' Second Request for Production of Documents, the Plaintiff will produce documents acquired from the Department of Health and Family Services, the Department of Administration, the Department of Justice, the Office of the Governor of the State of Wisconsin, the Wisconsin Legislative Fiscal Bureau, and the Wisconsin Legislative Council.

B. The instructions demand that the Plaintiff answer the interrogatories with information possessed by legal counsel or consultants retained by the Plaintiff. The Plaintiff OBJECTS to the extent that the request demands the production of information protected by the attorney-client or work product privileges. The Plaintiff further OBJECTS on the ground that the Defendants have failed to establish the justification to demand discovery from Plaintiff's litigation consultants or experts as required by Wis. Stat. §804.01(d)2.

6. Plaintiff OBJECTS to the interrogatories that demand answer to questions relating to what the Plaintiff knew, or relied on, questions about what proposals were made, the reasons why an action was taken or why one was not taken, what was considered or not considered, questions about when the Plaintiff became "aware" of an act, event, fact or occurrence or when and/or why the Plaintiff did not become "aware" of something or some event, questions concerning reasons for "your" decision to do or not to do some act or enact or not promulgate some rule or statute, to fund or not fund some program, or reason why laws and budgets were changed, not changed, funded or not, approved by the Legislature, proposed by the then Governor or vetoed in whole or in part, on the ground that all questions asked in that regard

demand irrelevant information, are unduly burdensome and are not likely to lead to the discovery of relevant and admissible evidence. Furthermore, the State of Wisconsin is not a person so as to facilitate the easy determination of what it “knew” or did not “know.” Not only is this purported “knowledge” of the government not relevant, but it is not identifiable.

Subject to the foregoing objections, the Plaintiff answers the Defendants’ Second Set of Interrogatories as follows:

INTERROGATORY NO. 1

Do you contend that any reimbursement by you for a Subject Drug that exceeds the price paid by a Provider to acquire such Subject Drug constitutes an unlawful overpayment?

ANSWER TO INTERROGATORY NO. 1

We contend that as a result of Defendants publishing or causing to be published misleading, false, and inflated pricing information and concealing their true prices, Plaintiff and other persons or entities who used Average Wholesale Prices, (hereafter “AWP” or “AWPs”) in reimbursing Providers, were overcharged by Providers for the Subject Drugs and that these overcharges constituted unlawful overpayments.

INTERROGATORY NO. 2

If your response to Interrogatory Number 1 is anything other than an unqualified “Yes,” state, as a percentage of Provider’s acquisition cost, how large the “spread” or difference between the amount reimbursed by you for a Subject Drug and the price paid by a Provider to acquire such Subject Drug must be to constitute an unlawful overpayment or grounds for liability to you for such alleged “overpayment” by the manufacturer of that Subject Drug?

ANSWER TO INTERROGATORY NO. 2

Anytime the Plaintiff and/or Medicare Part B participants were overcharged directly or indirectly as a result of Defendants’ false statements as outlined in the First Amended Complaint then such overcharge is an overpayment and constitutes grounds for liability for any manufacturer who reported the improper inflated and false pricing information. The evidence the Plaintiff has so far accumulated, principally from wholesalers, shows that the AWP’s of each Defendant were inflated no less than 15% and usually much more. Plaintiff has previously produced this data to the Defendants

INTERROGATORY NO. 3

Identify, by Manufacturer, drug name, NDC, and quarter, the amount that you contend you overpaid for each Subject Drug as a result of each Defendant's alleged misconduct, as described in your First Amended Complaint.

ANSWER TO INTERROGATORY NO. 3

Each Defendant is a manufacturer of drugs and each Defendant manufacturer maintains its own data pertaining to all of its products, by the number assigned to it under the National Drug Code, (hereafter "NDC"). As to which drugs, by NDC, are relevant to this litigation, each Defendant has been given or will be given a list or otherwise apprised of that information in the Plaintiff's Second Amended Complaint. Subject to subsequent repleading of the complaint, the Plaintiff presently contends that every drug produced by each Defendant manufacturer whose AWP it reported, or caused to be reported, that exceeded the accurate Average Wholesale Price since January 1, 1993 constituted the "misconduct" as alleged in Plaintiff's First Amended Complaint.

The exact amount has not yet been calculated. Plaintiff is accumulating information from third parties and from Defendants which should permit these calculations. Plaintiff has already shared most of what it has obtained with the Defendants and will produce more in response to Defendants' Second Document Request. The Defendants themselves have generally refused to produce such information to Plaintiff so far. As Plaintiff receives this information for a Subject Drug, then Plaintiff can identify the amount requested by this interrogatory for each drug. The amount for a particular Subject Drug, manufactured by a particular manufacturer Defendant may be identified only to that Defendant because to do otherwise may require the disclosure of information labeled by a Defendant as "confidential" or "highly confidential" at the time it was provided to Plaintiff and this would violate the Temporary Qualified Protective Order of Judge Krueger, dated May 11, 2005.

As part of Plaintiff's response to "Defendants' Second Request For Production of Documents" the Defendants will be given data indicating the manufacturer and the drug the Medical Assistance Program reimbursed a Provider for the dispensing of prescription drug to a person on Medical Assistance. This data will disclose to each Defendant the utilization, and other salient information, of its products paid for by the Medicaid Program.

INTERROGATORY NO. 4

Identify the statutes, regulations, rules or other authority on which you rely to claim that Defendants had a legal duty to:

- (a) price its prescription drugs in any particular way;
- (b) refrain from discounting the prices of its prescription drugs;
- (c) refrain from confidential price negotiations concerning its prescription drugs; or,

(d) publicly disclose the results of confidential price negotiations.

ANSWER TO INTERROGATORY NO. 4

Plaintiff relies on Wis. Stats. §§ 100.18(1), 100.18(10)(b), 100.264(2), 133.05, 49.49(4m)(a)(2) and all policies, procedures and manuals properly promulgated there under. Plaintiff's investigation is continuing and ongoing and it awaits production of the requested documents and interrogatory answers, requested from Defendants in January 2005, to determine whether it believes Defendants have engaged in additional improper conduct. At this time, Plaintiff's allegations that Defendants failed to meet their legal duties, statutory or otherwise, are contained in the allegations in Plaintiff's Complaint.

INTERROGATORY NO. 5

Explain in detail how you contend Defendants control the prices paid by indirect purchasers.

ANSWER TO INTERROGATORY NO. 5

Notwithstanding the Defendants' definition of the term "indirect purchasers," the Plaintiff OBJECTS to this interrogatory on the ground that "indirect purchaser," in the context of pharmaceutical payment and reimbursements, is vague and ambiguous. To the extent that Defendants intend to refer to sales made between wholesalers and retailers, the Defendant manufacturers control the price as follows: (1) for those indirect purchases made pursuant to contracts between Defendants and Providers, Defendants control the prices through its contract negotiations; (2) for those indirect purchases made by Providers in the absence of contracts with the Defendants, Defendants control the prices through its negotiations with wholesalers. Lastly, the Defendants control the final price incurred by indirect purchasers through a variety of marketing schemes, such as discounts, rebates, free goods and other incentives offered by the Defendant to the indirect purchaser.

INTERROGATORY NO. 6

Explain in detail how you calculate the prescription drug reimbursement rates set forth in the Wisconsin Medicaid physician fee schedule.

ANSWER TO INTERROGATORY NO. 6

There is no "prescription drug reimbursement rate" in the "Wisconsin Medicaid physician fee schedule."

INTERROGATORY NO. 7

Identify all reimbursement methodologies, other than the fee schedule, that you have ever used or considered using to reimburse for physician-administered drugs under the Wisconsin Medicaid Program, and the dates during which each reimbursement methodology was in effect,

and for each reimbursement methodology so identified, identify the person(s) most knowledgeable about each considered and implemented methodology.

ANSWER TO INTERROGATORY NO. 7

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

Notwithstanding these objections, the Plaintiff used a system for the payment of physician administered drugs based in whole or in part on the AWP or the Maximum Allowable Cost, (hereafter “MAC”), (which itself relies in part on Defendants’ AWP) whichever is less. Currently, reimbursement in the Physician Fees Schedule relies in part on the Average Sales Price, (hereafter “ASP”), provided to the Center for Medicaid and Medicare Services by the Defendants. Further and complete information on Plaintiffs method of reimbursing physicians is available online at: <http://www.dhfs.state.wi.us>. Every Wisconsin reimbursement system has been adversely impacted in one way or another by Defendants’ failure to publish truthful and accurate average wholesale prices and by Defendants’ concealment of these true prices.

INTERROGATORY NO. 8

Describe the methods and corresponding reasons and rationale for determining or calculating reimbursements for each Subject Drug that you have ever priced based on MAC or for which you have used pricing that was not based on a formula derived from a pricing benchmark such as AWP, WAC, or Direct Price.

ANSWER TO INTERROGATORY NO. 8

Subject to interrogatory no. 7 above, there is no relevant reimbursement system in Wisconsin, germane to this litigation, that did not use to one extent or another on the AWP that the Defendants published or caused to be published, including the selection of the drug for the imposition and calculation of a State MAC.

INTERROGATORY NO. 9

Identify your method for ensuring that pharmacist reimbursement rates established for the prescription drugs under the Wisconsin Medicaid Assistance Programs estimate the average actual acquisition cost generally and currently paid by Providers as required by 42 C.F.R. § 447.331, including but not limited to:

- (a) The method you currently use, and/or have used historically, for calculating the EAC for each type of pharmaceutical product or aggregate EAC;
- (b) The date of any change to the method for calculating EAC;

- (c) The date of any proposed change, whether or not implemented, for calculating EAC;
- (d) The reasons for implementing or not implementing each proposed change in the method of calculating EAC;
- (e) The identity of each Person who proposed, recommended, or authorized the changes in the method for calculating EAC; and
- (f) The identity of the Persons most knowledgeable about your methods for calculating EAC and the changes to those methods.

ANSWER TO INTERROGATORY NO. 9

Wisconsin does not have a “Wisconsin Medicaid Assistance Program.” Wisconsin has “Medical Assistance Programs” of which “Medicaid” is a part. The Plaintiff assumes this is what is meant by this interrogatory.

Nonetheless, the Plaintiff OBJECTS to part of this interrogatory on the ground that it is overbroad and unduly burdensome to ask for a recitation of any proposed changes to all the Wisconsin Medical Assistance Programs that were proposed by any person at any time. Not only is such information irrelevant, but it is not likely that there is any coherent record of proposals not adopted outside of the legislative records maintained by one or more offices, councils, or bureaus.

Notwithstanding this objection, the method Wisconsin used for ensuring that pharmacist reimbursement rates established for the prescription drugs under its Medical Assistance Programs estimate the average actual acquisition cost generally and currently paid by Providers as required by 42 C.F.R. § 447.331 is set forth in each annual Medical Assistance Program Plan and the documents accompanying the selection of the plan and its adoption by the Department of Health and Family Services.

Each plan shows whether a change has been made from a prior plan. The Defendants have demanded the production of these plans as part of “Defendants’ Second Request For Production of Documents” and may discern from these documents the answer to the questions stated above.

The Plaintiff does not know who is “most” knowledgeable about the State’s method of calculating Estimated Acquisition Cost, (hereafter “EAC”), and the changes to those methods and accordingly OBJECTS because the title “most” knowledgeable is ambiguous. James Vavra, a twenty-five year employee of the Department of Health and Family Services is currently the director of the Bureau of Fee For Health Care Benefits and is knowledgeable about Wisconsin’s Medical Assistance Program Plans.

In sum, the Plaintiff has or will produce various documents from which the Defendants can discern the names of individuals involved and the nature and extent of their involvement in the selection, adoption and implementation of the State Plan for each biennium, including the

alternatives proposed, those rejected and the one selected for any given year. Accordingly, see Plaintiff's response to Defendants' Second Request for Production of Documents.

INTERROGATORY NO. 10

Identify all Persons currently or formerly employed by you who were involved in anyway in the preparation of assurance letters to the federal government representing that your EAC as calculated was the best estimate of the prices that Providers were currently and generally paying for drugs.

ANSWER TO INTERROGATORY NO. 10

The Plaintiff OBJECTS to this interrogatory on the ground that it is overbroad, ambiguous and burdensome to ask for "all persons currently or formerly employed" by the State "who were involved in any way in the preparation of assurance letters to the federal government." (emphasis added).

Notwithstanding this objection, please refer to the name of the persons who signed these letters. See Plaintiff's response to Defendants' Second Request for Production of Documents.

INTERROGATORY NO. 11

Identify all Persons currently or formerly employed by or serving as a contractor to you with any knowledge of, responsibility for, involvement in, or influence on:

- (a) any claim or allegation asserted in the First Amended Complaint filed by you on November 1, 2004;
- (b) the methodology used to determine the amount paid to Providers as reimbursement under Medicaid for pharmacy dispensed and physician-administered drugs, including any proposed changes to this methodology and the criteria used to develop this methodology and any Findings and/or support related thereto;
- (c) the negotiating, drafting, executing or otherwise contributing to any contract, memorandum of understanding, or agreement between you and any Provider concerning AWP's or the reimbursement for the Subject Drugs;
- (d) the reimbursement for any Subject Drug that exceeded Provider acquisition costs;
- (e) the processing of payments for Providers' claims for reimbursement regarding Subject Drugs;
- (f) the adoption, rejection, amendment to, calculation, consideration, or negotiation of any State supplemental rebate program;

- (g) establishing, considering, determining, calculating, or setting of the dispensing fees or fees for other professional services payable in connection with the supply or administration of Subject Drugs by you;
- (h) establishing, considering, determining, calculating, or setting of AWP, AMP, MAC, WAC, EAC, Direct Price, Best Price, or other prices, costs, reimbursement rates, or other benchmarks for any Subject Drug;
- (i) communicating with CMS concerning the reimbursement of Providers for pharmaceutical products under the Wisconsin Medical Assistance Programs; and
- (j) those portions of each of the Medicaid State Plans submitted pursuant to 42 C.F.R. § 447.333 concerning prescription drugs.

And for each such Person, state the subject of information that Person is likely to have.

ANSWER TO INTERROGATORY NO. 11

As a general matter, the Plaintiff OBJECTS to this series of questions on the ground that to ask the Plaintiff to identify who has “any knowledge of, responsibility for, involvement in, or influence on” the topics listed is overbroad, mildly ambiguous and accordingly over burdensome. Notwithstanding this objection, the Plaintiff endeavors to conscientiously respond below.

Additionally, the Plaintiff OBJECTS to this series of questions on the ground that the same questions are essentially asked in Defendants’ “Notice Of Section 804.05(2)(e) Deposition To The State of Wisconsin.” To that extent, please see Plaintiff’s response to the Defendant’s Notice of Deposition.

(a) The claims and allegations asserted in the First Amended Complaint have been reported in various newspapers throughout Wisconsin. Thus, many people who read the newspaper stories would have known about the claims asserted in the present lawsuit. Various persons were consulted or were part of the decision making process resulting in the filing of the lawsuit. To the extent that Defendants desire this kind of information, the Plaintiff OBJECTS on the ground of attorney-client or work product privileges. After submitting these interrogatories, the Plaintiff served upon the Defendants a supplemental response to Defendants’ First Discovery Request. This supplemental response has provided the Defendants with information and data underlying the claim articulated in Plaintiff’s First Amended Complaint restated succinctly in Plaintiff’s Status Report.

(b) First, as to the part of this interrogatory regarding physician administered drugs, the Defendants asked the question in interrogatory number 7 above. Toward that end, please see Plaintiff’s answer to interrogatory 7 above.

As for the methodology used to determine the amount paid to Providers as reimbursement under Medicaid for pharmacy dispensed drugs, please see the published Medicaid Plan for each fiscal year that is requested by and provided in response to Defendants’ Second Request for Production

of Documents. Changes in that Plan are discernable by comparing the Plan in each successive year. A significant amount of information relating to the current Medical Assistance Program is also publicly available on the website prepared by the Wisconsin Department of Health and Family Services and found at: <http://www.dhfs.state.wi.us>

(c) The agreements between the State of Wisconsin and Providers will be made available to the Defendants. Please see Plaintiff's response to Defendants' Second Request for Production of Documents. Finally, additional information about pharmacy Providers and the relationship between them and the State of Wisconsin is available at: <http://www.dhfs.state.wi.us> and by following the links to the page dedicated to pharmacy coverage.

(d) The Department of Health and Family Services does not possess information relating to Provider acquisition costs so there is no person in its current or former employ who could testify to this question. Data that has been collected by the Plaintiff in this lawsuit from third parties has been or will be provided to the Defendants.

(e) Ken Dybevik is knowledgeable about the processing of payments for Providers' claims for reimbursement.

(f) Carrie Gray is knowledgeable about the State's supplemental rebate program.

(g) James Vavra is knowledgeable about dispensing fees payable in connection with the supply or administration of pharmaceutical drugs.

(h) The AWP, AMP, WAC, Direct Price, Best Price, or other prices or costs for the Subject Drug are set by the Defendants and thus the Defendants are most knowledgeable in that regard. Theodore Collins is knowledgeable about the State's MAC.

(i) The Plaintiff OBJECTS to this sub-interrogatory on the ground that it is overbroad and therefore over burdensome. There are many kinds of communications between the State and CMS concerning the reimbursement of Providers for pharmaceutical products under the Wisconsin Medical Assistance Programs that prevent the identification of one person who is knowledgeable in that regard. The Defendants in their Second Request for Production of Documents have asked for most, if not all, of these communications. In this regard, for an answer to this question please see Plaintiff's response to the Defendants' Second Request for Production of Documents.

(j) The Defendants have requested that the Plaintiff provide them with copies of each of the Medicaid State Plans submitted pursuant to 42 C.F.R. § 447.333. Please see Plaintiff's response to Defendants' Second Request for Production of Documents.

INTERROGATORY NO. 12

Identify all Persons currently or formerly employed by or serving as a contractor to you with any knowledge that, at any time, the reimbursement for a pharmaceutical drug product based on AWP might result in reimbursement to a Provider in excess of actual acquisition cost.

ANSWER TO INTERROGATORY NO. 12

The Plaintiff OBJECTS to this interrogatory on the ground that it is overbroad and burdensome to ask it to identify every person who has any knowledge of any aspect of the State's multiple reimbursement programs. The Plaintiff further OBJECTS on the ground that the terms "might result" is ambiguous. Reimbursement based on a published AWP will in fact result for some drugs at some time in the payment of an amount exceeding the Provider's actual acquisition cost. Therefore, assuming this to be true, the universe of persons having an opinion or knowledge in that regard is unlimited.

INTERROGATORY NO. 13

Explain in detail, and identify all documents relating to, how and when you first became aware that Providers could obtain prescription drugs at prices that were lower than that product's published AWP.

ANSWER TO INTERROGATORY NO. 13

Plaintiff OBJECTS to this interrogatory on the ground that it asks for irrelevant information and is not calculated to lead to the discovery of relevant and admissible evidence.

This interrogatory is also objectionable on the ground that the terms "when you first became aware" are ambiguous. This request cannot be applied to the government as it might to an ordinary person. Reimbursement methodology is set by the Legislature as part of the political legislative process and what one person, one legislator, was told by someone, or what one conscientious civil servant knew does not constitute the "knowledge" possessed by the sovereign State of Wisconsin.

Notwithstanding these objections, certain persons employed by the State were in receipt of certain information, i.e. reports of the Inspector General, detailing the fact that the Defendants were alleged to be engaging in the practice of secret discounts, rebates, incentives and the like that had the effect of masquerading the true average wholesale price. In select cases, the Plaintiff, through the Office of the Wisconsin Attorney General, participated in multi-state enforcement proceedings against certain companies concerning various illegal acts having the effect of costing the Medicaid Programs nationwide more than what should have been expended had the Defendants not engaged in such behavior. Finally, certain Defendants in the context of settlement discussions in this case and in other prior cases have directly and indirectly admitted that their published AWP were substantially higher than what the true average wholesale price should have been if calculated to include discounts, rebates and the like.

But during this time, and up to and including the filing of this lawsuit, the Plaintiff, the State of Wisconsin, had no accurate, reliable and reasonably comprehensive information regarding the real average wholesale prices for the products reimbursed by the state's Medicaid Program. In this regard, one purpose of this enforcement action is to establish that the AWP's published by the Defendants were substantially in excess of the Provider's actual acquisition cost and bore no rational relationship to the prices the Defendants published or caused to be published in the various pricing compendiums.

INTERROGATORY NO. 14

Identify any Wisconsin Medical Assistance Program, other than Medicaid, BadgerCare and SeniorCare, which uses AWP in its reimbursement methodology for Providers and for which the State seeks damages relating to Defendants' conduct.

ANSWER TO INTERROGATORY NO. 14

SeniorCare is not part of the Wisconsin Medical Assistance Program. Wisconsin funds various health care benefit programs in addition to BadgerCare and SeniorCare including BadgerCare Plus, Chronic Disease, Health Insurance Risk Sharing Plan, Healthy Start, Wisconsin Well Woman and Correctional Health Services. Whether or not the Defendants' publication of false AWP's has affected programs other than Medicaid, including the degree, if any, has not yet been fully determined.

INTERROGATORY NO. 15

Identify any Wisconsin Medical Assistance Program which does not use AWP in its reimbursement methodology for Providers.

ANSWER TO INTERROGATORY NO. 15

To the extent there have been smaller or limited programs within the Wisconsin Medical Assistance Program that did not use the Defendants' AWP's, then those programs are not part of this lawsuit and no recovery is expected from these Defendants. The program "Research on the Uninsured" does not reimburse for prescription drugs and therefore does not rely on Defendants' false AWP's. A substantial, and growing, percentage of Wisconsin's Medicaid population is enrolled in Managed Care. Managed Care is provided to the Medicaid population by Health Management Organizations which may or may not reimburse Providers by using the Defendants' published AWP's. The Plaintiff seeks damages for the increased capitated rate charged by the organizations to the State as a result of their use of the Defendants' false AWP's.

INTERROGATORY NO. 16

Identify the date on which the State of Wisconsin began seeking rebates for injectable drugs administered under the Medical Assistance Programs.

ANSWER TO INTERROGATORY NO. 16

For single source drugs, the State of Wisconsin began seeking rebates in September 2000. Separate invoices were sent out retroactive for the period 01/01/1994 through 06/30/2000. Beginning with the Quarter beginning March 2000, the State of Wisconsin sends invoices prospectively.

INTERROGATORY NO. 17

Set forth all facts and identify all documents created or prepared relating to your decision:

- (a) not to lower the Medicaid reimbursement rate for pharmacists from AWP-10% to AWP-15%, as proposed in 2001;
- (b) not to lower the Medicaid reimbursement rate for pharmacists from AWP-0% to AWP-18%, as proposed in 1999;
- (c) not to implement the Governor's proposal in Wisconsin's 1996-1997 state budget of a "best price" reimbursement methodology;
- (d) not to lower the Medicaid reimbursement rate for pharmacists from AWP-11.25% to AWP-15%, as proposed in 2003; and
- (e) not to set the Medicaid reimbursement rate for brand name and certain generic drugs under Medicaid to AWP-16% as proposed in the 2005-2007 budget act.

ANSWER TO INTERROGATORY NO. 17

Each and every one of the subparts of interrogatory no. 17 above ask about "your decision" not to do the thing described in (a) through (e) above. The decisions set forth in (a) through (e) above were made by the Legislature and, when applicable, signed by the Governor as part of the State's biennial budget. It is not possible to set forth all facts upon which the legislative body, or members thereof, relied in drafting, amending, arguing and debating, the State's biennial budget. Certain governmental documents exist relating to these acts. Defendants have asked about some of them, i.e. the Legislative Fiscal Bureau. These records are requested as part of the Defendants' Second Document Request and will be produced in response to that request.

INTERROGATORY NO. 18

Identify all departments, agencies, boards, commissions, organizations, consultants, accountants, task forces, or any other entity, including the members of such entities, that have reviewed or analyzed, at any time, your reimbursement of or expenditures for pharmaceutical products or dispensing fees, including but not limited to any State "medical care advisory committee" (42 C.F.R. § 431.12(b)).

ANSWER TO INTERROGATORY NO. 18

The Plaintiff OBJECTS to this interrogatory on the ground that it is overbroad and burdensome to ask to identify all departments, all agencies, all boards, all commissions, any and all organizations presumably of any type, all consultants, (whatever that means), all accountants, (presumably both employees or otherwise), task forces, and as if the preceding list left anything out “any other entity” including all their members who have reviewed or analyzed, at any time, what really amounts to every aspect of the State’s pharmaceutical reimbursement program.

Notwithstanding this objection, the Defendants have asked for documents that are responsive to this interrogatory and will be produced as such. In this respect, please see Plaintiff’s response to Defendants’ Second Request for Production of Documents.

INTERROGATORY NO. 19

If reimbursement, or a proposal for reimbursement, for any Subject Drug was ever based on a percentage adjustment from a benchmark, including but not limited to AWP, WAC, or Direct Price, explain the policy or other reasons for the percentage adjustment, and any Findings regarding the impact of any such adjustments on Medicaid Beneficiaries, including but not limited to, any internal or external assessments, studies, analyses, reviews, plans, reports, or audits conducted by you or on your behalf (whether or not performed at your direction) regarding the possible effect various reimbursement amounts or methodologies could potentially have, or were having, on beneficiary access to medicine or medical treatment, and all Persons who were involved in such internal or external assessments, studies, analyses, reviews, plans, reports, or audits conducted by you or on behalf of you (whether or not performed at your direction).

ANSWER TO INTERROGATORY NO. 19

The Plaintiff OBJECTS to this interrogatory on the ground that, notwithstanding its ambiguity, requests irrelevant information and more importantly is over burdensome. The Plaintiff understands and accepts its obligation to produce and respond to questions relating to its reimbursement system. This interrogatory requests information pertaining to every proposal there ever was to structure the system using any other benchmark other than a true and honest wholesale price to estimate Providers’ acquisition costs. To the extent the question of whether any other system was proposed may be pertinent, the demand to produce each and every internal or external assessments, studies, analyses, reviews, plans, reports, or audits conducted by the State is over burdensome.

Additionally, and more importantly, the reimbursement formula is part of the calculation of the annual Medical Assistance budget and is therefore part of the legislative process. In this regard, please see the Plaintiff’s answer to interrogatory number 17 above.

Notwithstanding the objection stated above, See Plaintiff’s response to “Defendants’ Second Request For Production of Documents.”

INTERROGATORY NO. 20

State whether, at any time, you made any effort to ascertain any Provider's actual acquisition cost or pharmacists' actual dispensing fees for any of the Subject Drugs and, if so, describe those efforts in detail, and identify each Person involved in any such effort.

ANSWER TO INTERROGATORY NO. 20

The Plaintiff OBJECTS to this interrogatory on the ground that it is overbroad and unduly burdensome to ask whether the State at any time ever "made any effort" to ascertain any Provider's actual acquisition costs or any pharmacist's actual dispensing fees for any and all of the subject drugs in this case. Notwithstanding this objection, the State did at various times consider data relating to Provider costs and dispensing fees. On December 15, 2005, University of Wisconsin Professor David Krehling authored a report that contains some data pertaining to acquisition costs and fees. The same 2005 study, accompanied by his testimony, was made to the "Governor's Commission on Pharmacy Reimbursement" and may be viewed as part of the Commission's Final Report at: www.dhfs.wisconsin.gov/medicaid4/pharmacy/prc/meetings

In general, the Plaintiff maintains that efforts to determine accurate and reliable "actual acquisition costs" are and have been thwarted by the Defendants' concerted and calculated practice of secreting reliable and readily accessible information or data.

INTERROGATORY NO. 21

Identify each Provider who actually received alleged "inflated" amounts of reimbursement from you on account of any alleged fraud, scheme, misrepresentation, concealment, negligence, or other culpable conduct by any Defendant. For each Provider identified, state whether you have, by action, administrative proceeding, or otherwise, sought to recover alleged overpayments from the Providers who allegedly received excessive amounts of reimbursement as a direct or indirect result of alleged inflated AWP, WACs, or Direct Prices, and, if so, identify each such action, proceeding or other recovery effort; and if not, state the basis for your failure to do so.

ANSWER TO INTERROGATORY NO. 21

All Providers who received reimbursement from Plaintiff pursuant to the AWP published or caused to be published by any Defendant for any drug it manufactured during the period relevant to this litigation may be identified by the Defendants with the utilization data provided to the Defendants in response to "Defendants' Second Request For Production of Documents." The State seeks to recover these amounts from the Defendants not the Providers who used the false AWP that the Defendants caused to be published.

INTERROGATORY NO. 22

Identify each Third Party Administrator, fiscal agent, Benefits Consultant, other consultant, or PBM contacted, considered, retained, or hired by you to perform any services for you concerning

pharmaceutical product prices, costs, reimbursement, utilization, or benefits, and describe the activity that Person performed or was considered for, and the period of time during which that Person was contracted, considered, retained, or hired by you.

ANSWER TO INTERROGATORY NO. 22

The Plaintiff OBJECTS to this interrogatory on the ground that it is overbroad and unduly burdensome to ask who anyone in the employment of the State may have “contacted” or “considered” to perform any service concerning pharmaceutical prices, costs, reimbursement, utilization or benefits. It is certain that no records are maintained indicating what person or persons any employee considered, much less contacted. Furthermore, the Plaintiff OBJECTS to this interrogatory on the ground that it is overbroad and unduly burdensome to ask who anyone in the employment of the State may have “retained” or “hired” to perform any service concerning pharmaceutical prices, costs, reimbursement, utilization or benefits. Plaintiff also OBJECTS to this interrogatory on the ground that to ask who may have been retained or hired to “perform any service” regarding what appears to be every aspect of the State’s inquiry or work regarding pharmaceuticals, from costs to utilization is unreasonable and overbroad and unduly burdensome.

Notwithstanding these objections, at all times relevant to this action, the State of Wisconsin utilized the services of EDS to process its Medicaid claims and various actuarial firms relating to pharmacy reimbursement. Additionally, Theodore Collins assumed a relationship as a “consultant” with the Department of Health and Family Services, and as discussed and disclosed above, was and is utilized to establish the MAC for selected prescription drugs covered by the State’s Medicaid Program.

INTERROGATORY NO. 23

Identify all relevant employees from the entities identified in response to Interrogatory No. 22 with whom the State communicated regarding pharmaceutical reimbursement under the Wisconsin Medical Assistance Programs; including but not limited to:

- (a) the name(s) of the individuals;
- (b) the title(s) of the individuals;
- (c) their relationship(s) with the State of Wisconsin; and
- (d) the context of the communications.

ANSWER TO INTERROGATORY NO. 23

See answer to Interrogatory no. 22 above. Additionally, see also Plaintiff’s response to “Defendants’ Second Request for Production of Documents.”

INTERROGATORY NO. 24

Identify all Pricing Compendia used by the State to calculate reimbursement rates for prescription drugs, specifying the timeframe during which each was used.

ANSWER TO INTERROGATORY NO. 24

At all times relevant to this litigation, the Plaintiff utilized the services of First Data Bank.

INTERROGATORY NO. 25

Identify all communications between you and any other state or federal government, including but not limited to CMS, NAMFCU, the Department of Health & Human Services, OIG, DOJ, the GAO, Congress, its officials, agents, employees, commissions, boards, divisions, departments agencies, instrumentalities, administrators, and other Persons or entities acting on their behalf, concerning usual and customary, AWP, WAC, Direct Price, AMP, MAC, EAC, Best Price, or other prices, costs, reimbursement rates, or other benchmarks.

ANSWER TO INTERROGATORY NO. 25

The Plaintiff OBJECTS to this interrogatory on the ground that it is ambiguous, (what are “instrumentalities” or “other benchmarks”) and on the ground that it is overbroad and unduly burdensome to ask the Plaintiff to identify every oral or written communication of any type between this State, to every other State, to the federal government, to all the people who work for any State or the federal government, to any member of Congress or any and all of its Departments much less to “other persons or entities acting on their behalf.”

Furthermore, the Plaintiff OBJECTS to the inquiry to the extent that it seeks disclosure of confidential communications between the Wisconsin Department of Justice and the National Association of Medicaid Fraud Control Units and the United States Department of Justice and the Office of the Inspector General on the ground that it is protected by attorney work product and joint law enforcement privilege. Notwithstanding this objection, the Plaintiff will produce in response to Defendants’ Second Request for Production of Documents copies of settlement agreements between the State of Wisconsin and various pharmaceutical companies facilitated in large part by either the USDOJ or the NAMFCU. Finally, the Plaintiff identified numerous publications by various organizations, including the Inspector General in its supplemental response to Defendants’ First Discovery Request.

INTERROGATORY NO. 26

Identify all communications between you and any person, organization, institution, or association, including pharmacy associations and the National Association of Chain Drug Stores, concerning usual and customary, AWP, WAC, Direct Price, AMP, MAC, EAC, Best Price, or other prices, costs, reimbursement rates or other benchmarks.

ANSWER TO INTERROGATORY NO. 26

The Plaintiff OBJECTS to this interrogatory on the ground that it is overbroad and unduly burdensome. This question lists the acronyms of most if not all the terms used in not just Medicare and Medicaid reimbursement, but applicable to other state entitlement and benefit programs. The scope of the request makes an answer nearly impossible. Notwithstanding this objection, every time a Provider completes an electronic transmission for the reimbursement of services or products covered by Medical Assistance and dispensed to a person covered by that program, then he/she/it communicates information, including what the Provider claims is his or her "usual and customary."

Plaintiff has or will provide the Defendants with data pertaining to these electronic transmissions.

INTERROGATORY NO. 27

Identify all periodicals, listservs, publications, associations, or other media or group to which you subscribe or belong and that publish or distribute information concerning health care benefits, prices, costs, and reimbursement or state or federal health care benefit programs.

ANSWER TO INTERROGATORY NO. 27

Agencies and departments of the State of Wisconsin subscribe to numerous general interest newspapers and periodicals that often publish and distribute information regarding the costs of health care and related topics, such as benefits, increasing prices, reimbursement and government business programs. Subscription policies vary and change over time.

INTERROGATORY NO. 28

Identify all federal or state, internal or external, formal or informal, assessments, studies, analyses, reviews, or audits conducted regarding the reimbursement of prescription drugs by Wisconsin Medical Assistance Programs, which the State was aware of prior to filing its Original Complaint and provide the following information for each such assessment, study, analysis, review or audit:

- (a) the date and title;
- (b) the identity of any authors;
- (c) the employees or agents of the State who received or obtained any such assessment, study, analysis, review, or audit;
- (d) the employees or agents of the State who are most knowledgeable about any such assessment, study, analysis, review, or audit;

(e) the results, conclusions, or findings of any such assessment, study, analysis, review, or audit; and

(f) any action taken by the State in response to any such assessment, study, analysis, review, or audit, including but not limited to any change in the reimbursement methodology or amount used by the State for reimbursing the prescription drugs under the Wisconsin Medical Assistance Programs.

ANSWER TO INTERROGATORY NO. 28

See Plaintiff's supplemental response to Plaintiff's First Discovery Request.

Additionally, James Vavra is knowledgeable about the State's Medical Assistance Program. Ken Dybevik, a 21-year employee of the Department of Health and Family Services is currently head of systems and operations of the Medicaid section and Alan White is knowledgeable about program integrity and enforcement issues.

INTERROGATORY NO. 29

Identify any communications with individuals in which you discussed issues surrounding the filing of this lawsuit, including but not limited to:

- (a) the date(s) of such communication;
- (b) the context of the communication;
- (c) the general subject matter of the communication; and
- (d) identify all documents relating to such communications.

ANSWER TO INTERROGATORY NO. 29

The Plaintiff OBJECTS to this interrogatory pursuant to Wis. Stat. §804.01(c) on the ground that it seeks confidential and privileged information and constitutes "trial preparation materials" and is not intended to discover any relevant, much less admissible, information. The Defendants make no differentiation between public and private communications.

The Plaintiff further OBJECTS to this interrogatory on the ground that it is vague and ambiguous. The interrogatory does not define what is meant by "issues surrounding the filing of this lawsuit."

Notwithstanding these objections, the Attorney General issued a press release upon the filing of this lawsuit and made various unrecorded public statements. A copy of that press release is available on the Wisconsin Department of Justice website.

INTERROGATORY NO. 30

Identify all current and former employees or agents that have testified, provided statements to, or been interviewed by agencies of other states; CMS; NAMFCU; HHS; OIG; DOJ; the GAO; Congress; or any other federal or state institution, agency, department, or office regarding AWP, the pricing of prescription drugs, the methodologies for reimbursing prescription drugs since the inception of each Medical Assistance Program, or the establishment of EAC, including but not limited to:

- (a) the date(s) of the testimony, statement, or interview;
- (b) the context of the testimony, statement, or interview (*i.e.*, deposition, affidavit, etc.);
- (c) the general subject matter of the testimony, statement, or interview; and
- (d) identify all documents relating to such testimony.

ANSWER TO INTERROGATORY NO. 30

The Plaintiff OBJECTS to this interrogatory on the ground that it is overbroad and unduly burdensome to ask the Plaintiff to identify every oral or written statement of any type between this State, to every other State, to the federal government, to all the people who work for any State or the federal government, to any member of Congress or any and all of its Departments. The Plaintiff further OBJECTS to the extent the question asks for the disclosure of information protected by attorney-client and work product privileges.

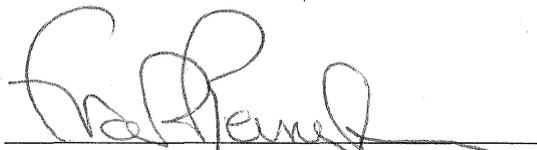
INTERROGATORY NO. 31

Identify the State's trial witnesses and expert witnesses and the area(s) of their testimony.

ANSWER TO INTERROGATORY NO. 31

No decision has been made regarding who will be a witness at trial.

Dated this 19th day of June, 2006.



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