

**CORPORATE INTEGRITY AGREEMENT**  
**BETWEEN THE**  
**OFFICE OF INSPECTOR GENERAL**  
**OF THE**  
**DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
**AND**  
**WAL-MART STORES, INC.**

**I. PREAMBLE**

Wal-Mart Stores, Inc. (Wal-Mart) hereby enters into this Corporate Integrity Agreement (CIA) with the Office of Inspector General (OIG) of the United States Department of Health and Human Services (HHS). The purpose of this CIA is to promote compliance with the terms of this CIA and with all applicable statutes, regulations and written directives of Medicare, Medicaid, CHAMPUS/TriCare, and all other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f))(Federal health care program requirements), by Wal-Mart's corporate officers, directors, pharmacists and other individuals employed or engaged by Wal-Mart to provide retail prescription medication and related services or prepare and/or submit claims for retail prescription medication or related services to any Federal health care program.

Contemporaneously with this CIA, Wal-Mart is entering into a Settlement Agreement with the United States for conduct relating to the partial filling of retail prescription medication and return to stock issues, and this CIA is incorporated by reference into the Settlement Agreement. Contemporaneously with this CIA, Wal-Mart is also entering into settlement agreements with various States relating to these same matters, and Wal-Mart's agreement to this CIA is a condition precedent to those agreements.

**II. TERM OF THE CIA**

The period of the compliance obligations assumed by Wal-Mart under this CIA shall be four years from the effective date of this CIA (unless otherwise specified). The effective date of this CIA shall be the date on which the final signatory of this CIA executes this CIA (Effective Date). Each one-year period, beginning with the one-year period following the Effective Date, shall be referred to as a "Reporting Period."

Sections VII, VIII, IX, X and XI shall expire no later than 120 days after OIG's receipt of: (a) Wal-Mart's final annual report; or (b) any additional materials submitted by Wal-Mart pursuant to OIG's request, whichever is later.

### **III. CORPORATE INTEGRITY OBLIGATIONS**

Wal-Mart's Pharmacy Division (Wal-Mart Pharmacy) has, or will establish within the timelines noted below, a Compliance Program that includes the elements set forth in this section III. Wal-Mart Pharmacy agrees to continue this Compliance Program for the term of this CIA in accordance with the requirements set forth below. Wal-Mart Pharmacy may modify the Compliance Program as appropriate; however Wal-Mart Pharmacy shall ensure that, during the full term of the CIA, it satisfies the integrity obligations enumerated in this CIA.

#### **A. Compliance Officer and Committee.**

1. *Compliance Officer.* Prior to the Effective Date, Wal-Mart Pharmacy appointed a Pharmacy Division Compliance Officer (Compliance Officer) and it shall maintain the position of the Compliance Officer during the term of this CIA. The Compliance Officer is and shall continue to be responsible for overseeing the development of and coordinating the implementation of policies, procedures, and practices necessary to effect compliance with the requirements set forth in this CIA and with applicable Federal health care program requirements. The Compliance Officer shall continue to be a member of senior management of Wal-Mart. The Compliance Officer reports directly to the Senior Vice President of Wal-Mart Pharmacy and to the Director of Compliance for Merchandise/Services of Wal-Mart. The Compliance Officer shall make periodic (at least semi-annual) reports regarding compliance matters directly to the Executive Committee of Wal-Mart Stores, Inc. (the Executive Committee), and shall be authorized to report on such matters to the Executive Committee at any time. The Compliance Officer shall be responsible for monitoring the day-to-day compliance activities engaged in by Wal-Mart and for any reporting obligations created under this CIA.

Wal-Mart shall report to the OIG, in writing, any changes in the identity or position description of the Compliance Officer, or any actions or changes that would affect the Compliance Officer's ability to perform the duties necessary to meet the obligations in this CIA within 15 days after such a change.

2. *Compliance Committee.* Prior to the Effective Date, Wal-Mart Pharmacy appointed a Pharmacy Compliance Committee. The current members of this Committee include Pharmacy Division department heads for Pharmacy Information Systems, Professional Services, Third Party, Personnel, and Operations. Additional pharmacy support is provided by the Vice President of Merchandising, Third Party and Managed Care, Vice President of Operations and the Senior Vice President of the Pharmacy Division. Wal-Mart corporate support is provided by representatives from Internal Audit, Legal, Information Systems, and Training.

The Compliance Officer is, and shall continue to be, the Chair of the Pharmacy Compliance Committee. Wal-Mart Pharmacy shall continue to maintain a Pharmacy Compliance Committee throughout the term of this CIA. The Committee shall include, at a minimum, the Compliance Officer and any other members of management required to meet the requirements of this CIA (e.g., such as senior management of each major department affected, such as pharmacy, personnel, internal audit, legal, training, systems and operations). The Committee shall support the Compliance Officer in fulfilling his/her responsibilities (e.g., shall assist in the analysis of Wal-Mart's risk areas and shall oversee monitoring of internal and external audits and investigations).

Wal-Mart shall report to the OIG, in writing, any changes in the composition of the Pharmacy Compliance Committee, or any actions or changes that would affect the Pharmacy Compliance Committee's ability to perform the duties necessary to meet the obligations in this CIA within 15 days after such a change.

B. Written Standards.

1. *Pharmacy Code of Conduct.* Within 90 days after the Effective Date, to the extent not already accomplished, Wal-Mart Pharmacy shall establish a written Code of Conduct (the Pharmacy Code of Conduct). The Pharmacy Code of Conduct shall be in addition to the Wal-Mart Corporate Code of Ethics. Wal-Mart shall make the promotion of, and adherence to, the Pharmacy Code of Conduct an element in evaluating the performance of all Pharmacy Division employees.

Within 120 days after the Effective Date, the Pharmacy Code of Conduct shall be distributed to Wal-Mart's officers and directors and to all "Relevant Covered

Persons.”<sup>1</sup> Relevant Covered Persons are defined to include those corporate Pharmacy Division staff and all store-level pharmacy personnel who are employed by or who are under contract with Wal-Mart to provide retail prescription medication (and related services) to customers or who prepare or submit claims for retail prescription medication to any applicable Federal health care program.

The Pharmacy Code of Conduct shall, at a minimum, set forth:

- a. Wal-Mart’s commitment to full compliance with all Federal health care program requirements, including its commitment to prepare and submit accurate claims consistent with such requirements;
- b. Wal-Mart’s requirement that all of its Covered Persons shall be expected to comply with all Federal health care program requirements and with Wal-Mart’s own Policies and Procedures as implemented pursuant to section III.B (including the requirements of this CIA);
- c. the requirement that all of Wal-Mart’s Covered Persons shall be expected to report to the Compliance Officer or other individual designated by the Wal-Mart suspected violations of any Federal health care program requirements or of Wal-Mart’s own Policies and Procedures;
- d. the possible consequences to both Wal-Mart and Covered Persons of failure to comply with all Federal health care program requirements and with Wal-Mart’s own Policies and Procedures or of failure to report such non-compliance; and
- e. the right of all individuals to use the Disclosure Program described in section III.E, and Wal-Mart’s commitment to maintain confidentiality, as appropriate, and non-retaliation with respect to disclosures.

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<sup>1</sup>Wal-Mart’s officers, directors and Relevant Covered Persons shall collectively be referred to hereafter as “Covered Persons.”

Within 150 days after the Effective Date, each Covered Person shall certify, in writing or electronically, that he or she has received, read, understood, and will abide by Wal-Mart's Pharmacy Code of Conduct. New Covered Persons shall receive the Pharmacy Code of Conduct and shall complete the required written or electronic certification within 30 days after becoming a Covered Person or within 150 days after the Effective Date, whichever is later.

Wal-Mart shall annually review the Pharmacy Code of Conduct to determine if revisions are appropriate and shall make any necessary revisions based on such a review. To the extent any substantial changes are made to the minimum requirements of the Pharmacy Code of Conduct set forth above, the revised Pharmacy Code of Conduct shall be distributed within 30 days after finalizing such changes. Covered Persons shall certify in writing or electronically that they have received, read, understood and will abide by the revised Pharmacy Code of Conduct within 30 days after the distribution of such revisions.

2. *Policies and Procedures.* To the extent not already accomplished, within 120 days after the Effective Date, Wal-Mart shall implement written Policies and Procedures regarding the operation of Wal-Mart's Compliance Program and its compliance with applicable Federal health care program requirements. At a minimum, the Policies and Procedures shall address:

- a. the subjects relating to the Pharmacy Code of Conduct identified in section III.B.1;
- b. the proper manner (as outlined below) in which Wal-Mart shall submit claims, when it submits such claims, to Federal health care programs for retail prescription medication that is only partially filled (*i.e.*, where only a portion of the prescribed medication is furnished on a given date to a Federal health care program beneficiary) (Partial Fill Policy); and
- c. the proper manner (as outlined below) in which Wal-Mart shall reconcile with or credit Federal health care programs for those instances in which the full amount of a retail prescription medication was billed to a Federal health care program, but the full amount of

the retail prescription medication was not ultimately delivered to the Federal health care program beneficiary (Return to Stock Policy).

With regard to the Partial Fill Policy, the Policies and Procedures shall provide the following:

(1) after a prescription has been presented for filling and once it is determined that the pharmacy has insufficient inventory to immediately and fully fill any prescription, Wal-Mart Pharmacy shall immediately credit return the original cost of the prescription, thereby reversing any claims submitted to the third party (including any Federal health care program) and no charge shall be submitted to the third party at that time;

(2) when the Wal-Mart Pharmacy prepares the remainder amount of the retail prescription medication for dispensing and completes the prescription, it will then submit a claim for the whole amount of the retail prescription medication to the appropriate Federal health care program;

Wal-Mart Pharmacy shall receive only one dispensing fee from any applicable Federal health care program for dispensing any retail prescription medication to a program beneficiary. The Policies and Procedures shall provide that Wal-Mart Pharmacy shall collect only one co-payment from the Federal health care program beneficiary for each retail prescription medication at issue, and that co-payment amount shall not exceed the total co-payment amount applicable to the prescription at issue.

(3) in a partial-fill situation, Wal-Mart Pharmacy shall dispense an initial small supply of the prescribed medication to the Federal health care program beneficiary or recipient; shall affirmatively inform the beneficiary that he or she was furnished with less medication than prescribed; shall instruct the customer of the need to obtain an additional amount of the medication in order to comply with his or her physician's care instructions; and shall instruct the customer when the pharmacist expects the remainder to be available for pickup.

With regard to the Return to Stock Policy, the Policies and Procedures shall provide that if Wal-Mart Pharmacy bills a Federal health care program for a retail prescription medication that is not ultimately delivered to the Federal health care program beneficiary, in whole or in part, Wal-Mart Pharmacy shall reconcile with or credit back the Federal health care program for the portion of the medication that was not delivered.

Within 120 days after the Effective Date, the relevant portions of the Policies and Procedures shall be made available to all individuals whose job functions are related to those Policies and Procedures. Appropriate and knowledgeable staff should be available to explain the Policies and Procedures.

At least annually (and more frequently if appropriate), Wal-Mart Pharmacy shall assess and update, as necessary, the Policies and Procedures. Within 30 days after the effective date of any revisions, the relevant portions of any such revised Policies and Procedures shall be made available to all individuals whose job functions are related to those Policies and Procedures.

### C. Training and Education.

1. *General Training.* Within 120 days after the Effective Date, Wal-Mart shall provide appropriate general training to each Covered Person. This training, at a minimum, shall explain Wal-Mart's:

- a. CIA requirements; and
- b. Compliance Program (including the Pharmacy Code of Conduct and the Policies and Procedures as they pertain to general compliance issues).

New Covered Persons shall receive the general training described above within 30 days after becoming a Covered Person or within 120 days after the Effective Date, whichever is later.

2. *Specific Training.* Within 120 days after the Effective Date, each Relevant Covered Person shall receive appropriate specific training in addition to the general training required above. This specific training shall include a discussion of:

- a. the submission of accurate claims for retail prescription medication rendered to Federal health care program beneficiaries, including, specifically, situations in which retail medication prescriptions have been partially-filled;
- b. Wal-Mart Pharmacy's Partial Fill Policy;
- c. the personal obligation of each individual involved in the billing process to ensure that billings to applicable Federal health care programs are accurate;
- d. reimbursement statutes, regulations, and program requirements and directives applicable to such retail medication prescription claims;
- e. the legal sanctions for improper billings;
- f. examples of proper and improper billing practices involving such claims; and
- g. Wal-Mart Pharmacy's Return to Stock Policy.

Any persons providing the training must be knowledgeable about the subject areas. Training may be provided through computer-based learning modules. If Wal-Mart chooses to provide computer-based training, it shall also make available appropriately qualified and knowledgeable staff or trainers to answer questions or provide additional information to the Relevant Covered Persons who are receiving such training.

Relevant Covered Persons shall receive this training within 30 days after the beginning of their employment or becoming Relevant Covered Persons or within 120 days after the Effective Date, whichever is later. A Wal-Mart employee who has completed the specific training shall review a new Relevant Covered Person's work, to the extent that the work relates to the provision of retail prescription medication (and related services) or the preparation and submission of claims for retail prescription medication to Federal health care programs, until such time as the new Relevant Covered Person completes applicable training.



3. *General Provisions.* After receiving the initial training described above in Sections III.C.1 & 2, every Covered Person shall receive annual appropriate refresher training on the items listed in those Sections.

If Wal-Mart has provided training that satisfies the requirements set forth above in sections III.C.1 & 2 to Covered Persons within 180 days prior to the Effective Date, OIG shall credit that training for purposes of satisfying, in part, Wal-Mart's training obligations for the first year of this CIA.

4. *Certification.* Each individual who is required to attend training shall certify, in writing or electronically, that he or she has received the required training. The certification shall specify the type of training received and the date received. The Compliance Officer (or his or her designee) shall retain the certifications, along with all course materials. These shall be made available to OIG, upon request.

#### D. Review Procedures.

1. *General Description.* For the duration of this CIA, Wal-Mart shall perform audits of its overall billing and claims submission practices with respect to the provision of retail prescription medication, and those internal audits shall be subject to review by an Independent Review Organization (IRO). Prior to the Effective Date, Wal-Mart developed an internal audit workplan (the IA Workplan), as stipulated in Attachment A attached hereto and incorporated herein by reference, which may change from time to time as provided below. Wal-Mart's Internal Audit Services (IAS) will use this IA Workplan to assist Wal-Mart management in assessing the adequacy of Wal-Mart's billing practices pursuant to this CIA. The IAS must have expertise in billing, claims submission, reporting and other requirements of the Federal health care programs from which Wal-Mart seeks reimbursement.

2. *Retention of Independent Review Organization.* To the extent not already accomplished, within 120 days after the Effective Date, Wal-Mart shall retain an IRO entity such as an accounting, auditing, or consulting firm to perform reviews of the work of the IAS as specified in Attachment B (Agreed Upon Procedures Reviews) and to report its findings based on the review. The IRO shall assess annually, along with Wal-Mart, whether it can perform the IRO engagements in a professionally independent and objective fashion taking into account any other business relationships or other engagements that may exist. Each IRO retained by Wal-Mart shall have expertise in the billing, reporting and other requirements of the retail pharmacy industry and in the

general requirements of the Federal health care programs from which Wal-Mart seeks reimbursement.

3. *Billing Audits and Agreed Upon Procedures Reviews.* The IAS will conduct audits that will allow Wal-Mart to present findings on the adequacy of procedures for Wal-Mart's Partial Fill and Return to Stock claims submissions to the Federal health care programs (Billing Audits). The IRO will perform Agreed Upon Procedures Reviews to enable it to present findings about the determinations made by IAS under the IA Workplan and to present findings on Wal-Mart's compliance with its Partial Fill and Return to Stock claims submissions to Federal health care programs.

4. *Frequency of Reviews; Reports.* The Billing Audits and the Agreed Upon Procedures Reviews shall be performed annually and each review shall cover each successive Reporting Period. The results of each Billing Audit and the related Agreed Upon Procedures Review shall be reported with the corresponding Annual Report (as set forth in Section V.B below).

5. *Retention of Records.* The IRO and Wal-Mart, including the IAS, shall retain and make available to the OIG, upon written request, all work papers, supporting documentation, correspondence, and draft reports (those exchanged between the IRO and Wal-Mart) related to the review procedures performed by the IAS and the IRO.

6. *Changes to IA Workplan and IRO Workplans.* The IA Workplan and the corresponding IRO workplan may change from time to time. If changes are made to either workplan, Wal-Mart shall provide a copy of any revised workplan to the OIG prior to the time they are implemented and the OIG shall have the opportunity to comment on the new workplans. Any comments or recommendations made by the OIG after reviewing any revised workplan will not preclude the OIG from making further comments or recommendations after reviewing the reports issued by the IAS or the IRO. Provided, however, that during the term of this CIA, the Billing Audit conducted by the IAS will include an audit related to the Partial Fill and Return to Stock issues. Once the IA Workplan has been developed each year by the IAS, the IAS will deliver the IA Workplan to the IRO. In addition, the IAS will share with the IRO any and all of the IAS's annual audit results under the IA Workplan.

7. *Validation Review.* In the event the OIG has reason to believe that: (a) Wal-Mart's Billing Audit or the IRO's Agreed Upon Procedures Review (collectively the "Reviews") fails to conform to the requirements of this CIA; or (b) the Review findings

or audit results are inaccurate, the OIG may, at its sole discretion, conduct its own review to determine whether the applicable Review complies with the requirements of the CIA and/or the Review findings or audit results are inaccurate (hereafter, “Validation Review”). Wal-Mart agrees to pay for the reasonable cost of any such review performed by the OIG or any of its designated agents so long as it is initiated before one year after Wal-Mart’s final submission (as described in section II) is received by the OIG.

Prior to initiating a Validation Review, the OIG shall notify Wal-Mart of its intent to do so and provide an explanation for believing why such a review is necessary. In order to resolve any concerns raised by the OIG, Wal-Mart may request a meeting with the OIG to discuss the results of any Review submissions or findings; present any additional or relevant information to clarify the results of the Review or to correct the inaccuracy of the Review; and/or propose alternatives to the proposed Validation Review. Wal-Mart agrees to provide any additional information as may be requested by the OIG under this section in an expedited manner. The OIG will attempt in good faith to resolve any Validation Review issues with Wal-Mart prior to conducting a Validation Review. However, the final determination as to whether or not to proceed with a Validation Review shall be made at the sole discretion of the OIG.

8. *Independence Certification.* The IRO shall include in its report(s) to Wal-Mart a certification or sworn affidavit that it has evaluated its professional independence and/or objectivity with regard to its work with Wal-Mart in connection with this CIA, and that it has concluded that it was, in fact, independent and objective.

E. Disclosure Program.

Within 90 days after the Effective Date, to the extent not already accomplished, Wal-Mart Pharmacy shall establish a Disclosure Program, that must include a mechanism (such as a telephone “hotline”) to enable individuals to disclose, to the Compliance Officer or some other person who is not in the disclosing individual’s chain of command, any identified issues or questions associated with Wal-Mart’s policies, conduct, practices, or procedures with respect to a Federal health care program, believed by the individual to be a potential violation of criminal, civil or administrative law. Wal-Mart shall appropriately publicize the existence of the disclosure mechanism (e.g., via posting the information in prominent common areas).

The Disclosure Program shall emphasize a nonretribution, nonretaliation policy, and shall include a reporting mechanism for anonymous, confidential communications.

Upon receipt of a disclosure, the Compliance Officer (or designee) shall gather all relevant information from the disclosing individual. The Compliance Officer (or designee) shall make a preliminary, good faith inquiry into the allegations set forth in every disclosure to ensure that he or she has obtained all of the information necessary to determine whether a further review should be conducted. For any disclosure that is sufficiently specific so that it reasonably: (1) permits a determination of the appropriateness of the alleged improper practice; and (2) provides an opportunity for taking corrective action, Wal-Mart shall conduct an internal review of the allegations set forth in such a disclosure and ensure that proper follow-up is conducted.

The Compliance Officer (or designee) shall maintain a disclosure log, which shall include: 1) a record and summary of each disclosure received (whether anonymous or not); 2) the status of the respective internal reviews; and 3) any corrective action taken in response to the internal reviews. The disclosure log shall be available to OIG, upon request.

#### F. Ineligible Persons.

1. *Definition.* For purposes of this CIA, an “Ineligible Person” shall be any individual or entity who: (a) is currently excluded, debarred, suspended, or otherwise ineligible to participate in the Federal health care programs or in Federal procurement or non-procurement programs; or (b) has been convicted of a criminal offense that falls within the ambit of 42 U.S.C. § 1320a-7(a), but has not yet been excluded, debarred, suspended, or otherwise declared ineligible.

2. *Screening Requirements.* Wal-Mart shall not hire as employees or engage as contractors any Ineligible Persons in situations where those individuals will be engaged as Relevant Covered Persons. To prevent hiring or contracting with any such Ineligible Person, Wal-Mart shall screen all prospective Relevant Covered Persons prior to engaging their services by: (a) requiring applicants to disclose whether they are Ineligible Persons; and (b) appropriately querying the General Services Administration’s List of Parties Excluded from Federal Programs (available through the Internet at <http://epls.arnet.gov>) and the HHS/OIG List of Excluded Individuals/Entities (available through the Internet at <http://oig.hhs.gov>) (these lists will hereinafter be referred to as the “Exclusion Lists”). Nothing in this Section affects the responsibility of (or liability for) Wal-Mart to refrain from billing Federal health care programs for services of the Ineligible Persons.

3. *Review and Removal Requirement.* Within 90 days after the Effective Date, Wal-Mart shall review its list of current Relevant Covered Persons against the Exclusion Lists. Thereafter, Wal-Mart shall review the list annually. In addition, Wal-Mart shall require Relevant Covered Persons to disclose immediately any debarment, exclusion, suspension, or other event that makes the individual an Ineligible Person.

If Wal-Mart has actual notice that a Relevant Covered Person has become an Ineligible Person, Wal-Mart shall remove such person from responsibility for, or involvement with, Wal-Mart's business operations related to the Federal health care programs and shall remove such person from any position for which the person's salary or the items or services rendered, ordered, or prescribed by the person are paid in whole or part, directly or indirectly, by Federal health care programs or otherwise with Federal funds at least until such time as the person is reinstated into participation in the Federal health care programs.

4. *Pending Charges and Proposed Exclusions.* If Wal-Mart has actual notice that any Relevant Covered Person is charged with a criminal offense related to any Federal health care program, or is proposed for exclusion during his or her employment or contract term, Wal-Mart shall take all appropriate actions to ensure that the responsibilities of that employee or contractor have not and shall not adversely affect the quality of care rendered to any beneficiary, or the accuracy of any claims submitted to any Federal health care program.

G. Notification of Government Investigation or Legal Proceedings.

Within 30 days after discovery by senior management at Wal-Mart's corporate headquarters, Wal-Mart shall notify OIG, in writing, of any ongoing investigation or legal proceeding conducted or brought by a governmental entity or its agents involving an allegation that Wal-Mart has committed a crime or has engaged in fraudulent activities. This notification shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation or legal proceeding. Wal-Mart shall also provide written notice to OIG within 30 days after the resolution of the matter, and shall provide OIG with a description of the findings and/or results of the proceedings, if any.

## H. Reporting.

### 1. *Overpayments*.

*a. Definition of Overpayments.* For purposes of this CIA, an “Overpayment” shall mean the amount of money Wal-Mart has received in excess of the amount due and payable under any Federal health care program requirements.

*b. Reporting of Overpayments.* If, at any time, Wal-Mart identifies or learns of any Overpayments, Wal-Mart shall notify the payor (e.g., Medicaid contractor) within 30 days after identification of the Overpayment and take remedial steps within 60 days after identification (or such additional time as may be agreed to by the payor) to correct the problem, including preventing the underlying problem and the Overpayments from recurring. Also, within 30 days after identification of the Overpayment, Wal-Mart shall repay the Overpayment to the appropriate payor to the extent such Overpayment has been quantified. If not yet quantified, within 30 days after identification, Wal-Mart shall notify the payor of its efforts to quantify the Overpayment amount along with a schedule of when such work is expected to be completed. Notification and repayment to the contractor should be done in accordance with the contractor policies. Notwithstanding the above, notification and repayment of any Overpayment amount that routinely is reconciled or adjusted pursuant to policies and procedures established by the payor should be handled in accordance with such policies and procedures.

### 2. *Material Deficiencies*.

*a. Definition of Material Deficiency.* For purposes of this CIA, a “Material Deficiency” means anything that involves:

(i) a substantial Overpayment; or

(ii) a matter that a reasonable person would consider a probable violation of criminal, civil, or administrative laws

applicable to any Federal health care program for which penalties or exclusion may be authorized.

A Material Deficiency may be the result of an isolated event or a series of occurrences.

*b. Reporting of Material Deficiencies.* If Wal-Mart determines through any means that there is a Material Deficiency, Wal-Mart shall notify OIG, in writing, within 30 days after making the determination that the Material Deficiency exists. The report to the OIG shall include the following information:

(i) If the Material Deficiency results in an Overpayment, the report to the OIG shall be made at the same time as the notification to the payor required in section III.H.1, and shall include all of the information provided to the contractor, as well as:

(A) the payor's name, address, and contact person to whom the Overpayment was sent; and

(B) the date of the check and identification number (or electronic transaction number) on which the Overpayment was repaid/refunded;

(ii) a complete description of the Material Deficiency, including the relevant facts, persons involved, and legal and Federal health care program authorities implicated;

(iii) a description of Wal-Mart's actions taken to correct the Material Deficiency; and

(iv) any further steps Wal-Mart plans to take to address the Material Deficiency and prevent it from recurring.

#### **IV. NEW BUSINESS UNITS OR LOCATIONS**

In the event that, after the Effective Date, Wal-Mart opens, purchases or otherwise acquires, new business lines or entities engaged in or related to the provision of pharmacy services to Federal health care program beneficiaries, or expands its business into States in which Wal-Mart had not operated as of the Effective Date, Wal-Mart shall ensure that all such entities and any new Covered Persons at such entities are in compliance with the terms of this CIA. Wal-Mart shall notify the OIG of the change in its next subsequent Annual Report. This notification shall include a description of the new business or acquisition and the location of the new operation. All Covered Persons at such locations shall be subject to the applicable requirements in this CIA (e.g., completing certifications and undergoing training). If Wal-Mart identifies a potential issue with regard to a newly opened or acquired entity or business in which Wal-Mart believes the OIG would have a particular interest, it will notify the OIG within 30 days after the change.

#### **V. IMPLEMENTATION AND ANNUAL REPORTS**

A. Implementation Report. Within 180 days after the Effective Date, Wal-Mart shall submit a written report to OIG summarizing the status of its implementation of the requirements of this CIA. This Implementation Report shall include:

1. the name, address, phone number, and position description of the Compliance Officer required by section III.A, and a summary of other non-compliance job responsibilities of the Compliance Officer;
2. the names and positions of the members of the Pharmacy Compliance Committee required by section III.A;
3. a copy of Wal-Mart's Pharmacy Code of Conduct required by section III.B.1;
4. a copy of all Policies and Procedures required by section III.B.2;
5. a copy of all training materials used for the training required by section III.C, a description of such training, including a description of the targeted audiences, length of sessions, which sessions were mandatory and for whom, percentage of attendance, and a schedule of when the training sessions were held;



6. a certification by the Compliance Officer that:
  - a. the Policies and Procedures required by section III.B have been developed, are being implemented, and have been made available to all appropriate Covered Persons;
  - b. all Covered Persons have completed the Pharmacy Code of Conduct certification required by section III.B.1; and
  - c. all Covered Persons have completed the applicable training and executed the certification(s) required by section III.C.;

The documentation supporting this certification shall be available to OIG, upon request.

7. a description of the Disclosure Program required by section III.E;
8. the identity of the IRO(s) and the proposed start and completion dates of the first Agreed Upon Procedures Review;
9. the identity of the IRO, a summary/description of all engagements between Wal-Mart and the IRO, including, but not limited to, any outside financial audits or reimbursement consulting; and a certification from the IRO regarding its professional independence and/or objectivity from the Wal-Mart;
10. a summary of personnel actions (other than hiring) taken pursuant to section III.F.;
11. a list of all of Wal-Mart's business lines or entities engaged in or related to the provision of pharmacy services to Federal health care program beneficiaries, a brief explanation of the nature and locations of those businesses or entities, and a list of all States in which Wal-Mart does business relating to the Federal health care programs;
12. to the extent not already furnished to OIG, or if modified, a description of Wal-Mart's corporate structure, including identification of any parent and sister companies, subsidiaries and their respective lines of business; and

13. the certification required by section V.C.

B. Annual Reports. Wal-Mart shall submit to OIG Annual Reports with respect to the status of, and findings regarding, Wal-Mart's compliance activities for each of the four Reporting Periods.

Each Annual Report shall include:

1. any change in the identity, position description, or other noncompliance job responsibilities of the Compliance Officer and any change in the membership of the Pharmacy Compliance Committee described in section III.A;
2. a certification by the Compliance Officer that:
  - a. all Covered Persons have completed any Pharmacy Code of Conduct certifications required by section III.B.1;
  - b. all Covered Persons have completed the applicable training and executed the certification(s) required by section III.C;
  - c. Wal-Mart has complied with its obligations under the Settlement Agreement: (i) not to resubmit to any Federal health care program payors any previously denied claims related to the Covered Conduct addressed in the Settlement Agreement, and not to appeal any such denials of claims; and (ii) not to charge to or otherwise seek payment from Federal or State payors for unallowable costs (as defined in the Settlement Agreement);

The documentation supporting this certification shall be available to OIG, upon request.

3. a summary of any significant changes or amendments to the Policies and Procedures required by section III.B and the reasons for such changes (e.g., change in contractor policy) and copies of any compliance-related Policies and Procedures;

4. a copy of all training materials used for the training required by section III.C (to the extent it has not already been provided as part of the Implementation Report), a description of such training conducted during the Reporting Period, including a description of the targeted audiences, length of sessions, which sessions were mandatory and for whom, percentage of attendance, and a schedule of when the training sessions were held;
5. a complete copy of all reports prepared pursuant to the IAS's Billing Audit and the IRO's Agreed Upon Procedures Review, including a copy of the methodologies used, along with a copy of the IRO's engagement letter;
6. Wal-Mart's response and corrective action plan(s) related to any issues raised by the IAS or the IRO;
7. a summary/description of all engagements between Wal-Mart and the IRO, including, but not limited to, any outside financial audits, compliance program engagements, or reimbursement consulting if different from what was submitted as part of the Implementation Report; and a certification from the IRO regarding its professional independence and/or objectivity from Wal-Mart;
8. a summary of Material Deficiencies (as defined in III.H) identified during the Reporting Period and the status of any corrective and preventative action relating to all such Material Deficiencies;
9. a report of the aggregate Overpayments that have been returned to the Federal health care programs. Overpayment amounts should be broken down into the following categories: Medicare, Medicaid (report each applicable state separately) and other Federal health care programs. Overpayment amounts that are routinely reconciled or adjusted pursuant to policies and procedures established by the payor do not need to be included in this aggregate Overpayment report;
10. a summary of the disclosures in the disclosure log required by section III.E that: (a) relate to Federal health care programs; or (b) allege abuse or neglect of patients;

11. a description of any personnel actions (other than hiring) taken by Wal-Mart as a result of the obligations in section III.F, and the name, title, and responsibilities of any person that falls within the ambit of section III.F.4, and the actions taken in response to the obligations set forth in that section;
12. a summary describing any ongoing investigation or legal proceeding required to have been reported pursuant to section III.G. The summary shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation or legal proceeding;
13. a description of all changes to the most recently provided list (as updated) of Wal-Mart's business lines and locations as required by sections IV and V.A.10; and
14. the certification required by section V.C.

The first Annual Report shall be received by the OIG no later than 60 days after the end of the first Reporting Period. Subsequent Annual Reports shall be received by OIG no later than the anniversary date of the due date of the first Annual Report.

C. Certifications. The Implementation Report and Annual Reports shall include a certification by the Compliance Officer that: (1) to the best of his or her knowledge, except as otherwise described in the applicable report, Wal-Mart is in compliance with all of the requirements of this CIA; and (2) the Compliance Officer has reviewed the Report and has made reasonable inquiry regarding its content and believes that the information is accurate and truthful.

D. Designation of Information: Wal-Mart shall clearly identify any portions of its submissions that it believes are trade secrets, or information that is commercial or financial and privileged or confidential, and therefore potentially exempt from disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Wal-Mart shall refrain from identifying any information as exempt from disclosure if that information does not meet the criteria for exemption from disclosure under FOIA.

**VI. NOTIFICATIONS AND SUBMISSION OF REPORTS**

Unless otherwise stated in writing after the Effective Date, all notifications and reports required under this CIA shall be submitted to the following entities:

OIG:

Administrative and Civil Remedies Branch  
Office of Counsel to the Inspector General  
Office of Inspector General  
U.S. Department of Health and Human Services  
Cohen Building, Room 5527  
330 Independence Avenue, SW  
Washington, DC 20201  
Phone: (202) 619-2078  
Fax: (202) 205-0604

Wal-Mart:

Jim Hodges  
Compliance Officer  
Pharmacy Division  
Wal-Mart Stores, Inc.  
702 South-West Eighth Street  
Bentonville, AR 72716-0230  
Phone: (479) 277-9022  
Fax: (479) 273-1986

With a copy to: Associate General Counsel  
Specialty Division  
Wal-Mart Stores, Inc.  
702 S.W. 8th Street  
Bentonville, AR 72716-0840  
Phone: (479) 273-4505  
Fax: (479) 277-5991

Unless otherwise specified, all notifications and reports required by this CIA may be made by certified mail, overnight mail, hand delivery or other means, provided that there

is proof that such notification was received. For purposes of this requirement, internal facsimile confirmation sheets do not constitute proof of receipt.

## **VII. OIG INSPECTION, AUDIT AND REVIEW RIGHTS**

In addition to any other rights OIG may have by statute, regulation, or contract, OIG or its duly authorized representative(s) may examine or request copies of Wal-Mart's books, records, and other documents and supporting materials and/or conduct on-site reviews of any of Wal-Mart's locations for the purpose of verifying and evaluating: (a) Wal-Mart's compliance with the terms of this CIA; and (b) Wal-Mart's compliance with the requirements of the Federal health care programs in which it participates. The documentation described above shall be made available by Wal-Mart to OIG or its duly authorized representative(s) at all reasonable times for inspection, audit or reproduction. Furthermore, for purposes of this provision, OIG or its duly authorized representative(s) may interview any of Wal-Mart's employees, contractors, or agents who consent to be interviewed at the individual's place of business during normal business hours or at such other place and time as may be mutually agreed upon between the individual and OIG. Wal-Mart agrees to assist OIG or its duly authorized representative(s) in contacting and arranging interviews with such individuals upon OIG's request. Wal-Mart's employees may elect to be interviewed with or without a representative of Wal-Mart present.

## **VIII. DOCUMENT AND RECORD RETENTION**

Wal-Mart shall maintain for inspection all documents and records relating to reimbursement from the Federal health care programs, or to compliance with this CIA, for five (5) years (or longer if otherwise required by law).

## **IX. DISCLOSURES**

Consistent with HHS's FOIA procedures, set forth in 45 C.F.R. Part 5, the OIG shall make a reasonable effort to notify Wal-Mart prior to any release by OIG of information submitted by Wal-Mart pursuant to its obligations under this CIA and identified upon submission by Wal-Mart as trade secrets, or information that is commercial or financial and privileged or confidential, under the FOIA rules. With respect to such releases, Wal-Mart shall have the rights set forth at 45 C.F.R. § 5.65(d).

Nothing in this CIA, or any communication or report made pursuant to this CIA, shall constitute or be construed as a waiver by Wal-Mart of its attorney-client, work product, or other applicable privileges. Notwithstanding that fact, the existence of any

such privilege does not affect Wal-Mart's obligation to comply with the requirements of this CIA.

**X. BREACH AND DEFAULT PROVISIONS**

Wal-Mart is expected to fully and timely comply with all of its CIA obligations.

A. Stipulated Penalties for Failure to Comply with Certain Obligations. As a contractual remedy, Wal-Mart and OIG hereby agree that failure to comply with certain obligations set forth in this CIA may lead to the imposition of the following monetary penalties (hereinafter referred to as "Stipulated Penalties") in accordance with the following provisions.

1. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day Wal-Mart fails to have in place any of the obligations described in section III:

- a. a Compliance Officer;
- b. a Pharmacy Compliance Committee;
- c. a written Pharmacy Code of Conduct;
- d. written Policies and Procedures;
- e. a requirement that Covered Persons be trained; and
- f. a Disclosure Program.

2. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day Wal-Mart fails to use the IAS or retain and use an IRO, as required in section III.D.

3. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day Wal-Mart fails to meet any of the deadlines for the submission of the Implementation Report or the Annual Reports to OIG.

4. A Stipulated Penalty of \$2,000 (which shall begin to accrue on the date the failure to comply began) for each day Wal-Mart employs or contracts with an Ineligible Person as a Relevant Covered Person and that person: (i) has responsibility for, or involvement with, Wal-Mart's business operations related to the Federal health care programs; or (ii) is in a position for which the person's salary or the items or services rendered, ordered, or prescribed by the person are paid in whole or part, directly or indirectly, by Federal health care programs or otherwise with Federal funds (the Stipulated Penalty described in this paragraph shall not be demanded for any time period during which Wal-Mart can demonstrate that it did not discover the person's exclusion or other ineligibility after making a reasonable inquiry (as described in section III.F) as to the status of the person).

5. A Stipulated Penalty of \$1,500 for each day Wal-Mart fails to grant access to the information or documentation as required in section VII of this CIA. (This Stipulated Penalty shall begin to accrue on the date Wal-Mart fails to grant access.)

6. A Stipulated Penalty of \$5,000 for each false certification submitted by or on behalf of Wal-Mart as part of its Implementation Report, Annual Report, additional documentation to a report (as requested by the OIG) or otherwise required by this CIA.

7. A Stipulated Penalty of \$1,000 for each day Wal-Mart fails to comply fully and adequately with any obligation of this CIA. In its notice to Wal-Mart, OIG shall state the specific grounds for its determination that Wal-Mart has failed to comply fully and adequately with the CIA obligation(s) at issue and steps the Wal-Mart must take to comply with the CIA. (This Stipulated Penalty shall begin to accrue 10 days after the date that OIG provides notice to Wal-Mart of the failure to comply.) A Stipulated Penalty as described in this paragraph shall not be demanded for any violation for which the OIG has sought a Stipulated Penalty under subparagraphs 1-6 of this section.

B. Timely Written Requests for Extensions. Wal-Mart may, in advance of the due date, submit a timely written request for an extension of time to perform any act or file any notification or report required by this CIA. Notwithstanding any other provision in this section, if OIG grants the timely written request with respect to an act, notification, or report, Stipulated Penalties for failure to perform the act or file the notification or report shall not begin to accrue until one day after Wal-Mart fails to meet the revised deadline set by OIG. Notwithstanding any other provision in this section, if OIG denies such a timely written request, Stipulated Penalties for failure to perform the act or file the notification or report shall not begin to accrue until three business days after Wal-Mart



receives OIG's written denial of such request or the original due date, whichever is later. A "timely written request" is defined as a request in writing received by OIG at least five business days prior to the date by which any act is due to be performed or any notification or report is due to be filed.

C. Payment of Stipulated Penalties.

1. *Demand Letter.* Upon a finding that Wal-Mart has failed to comply with any of the obligations described in section X.A and after determining that Stipulated Penalties are appropriate, OIG shall notify Wal-Mart of: (a) Wal-Mart's failure to comply; and (b) the OIG's exercise of its contractual right to demand payment of the Stipulated Penalties (this notification is hereinafter referred to as the "Demand Letter").

2. *Response to Demand Letter.* Within 10 days after the receipt of the Demand Letter, Wal-Mart shall either: (a) cure the breach to OIG's satisfaction and pay the applicable Stipulated Penalties; or (b) request a hearing before an HHS administrative law judge (ALJ) to dispute OIG's determination of noncompliance, pursuant to the agreed upon provisions set forth below in section X.E. In the event Wal-Mart elects to request an ALJ hearing, the Stipulated Penalties shall continue to accrue until Wal-Mart cures, to OIG's satisfaction, the alleged breach in dispute. Failure to respond to the Demand Letter in one of these two manners within the allowed time period shall be considered a material breach of this CIA and shall be grounds for imposition of a material breach penalty under section X.D.

3. *Form of Payment.* Payment of the Stipulated Penalties or of any Material Breach Penalties shall be made by certified or cashier's check, payable to: "Secretary of the Department of Health and Human Services," and submitted to OIG at the address set forth in section VI.

4. *Independence from Material Breach Determination.* Except as set forth in section X.D.1.c, these provisions for payment of Stipulated Penalties shall not affect or otherwise set a standard for OIG's decision that Wal-Mart has materially breached this CIA, which decision shall be made at OIG's discretion and shall be governed by the provisions in section X.D, below.

D. Monetary Penalty for Material Breach of this CIA

1. *Definition of Material Breach.* A material breach of this CIA means:

- a. a failure by Wal-Mart to report a Material Deficiency, take corrective action and make the appropriate refunds, as required in section III.H;
- b. a repeated or flagrant violation of the obligations under this CIA, including, but not limited to, the obligations addressed in section X.A;
- c. a failure to respond to a Demand Letter concerning the payment of Stipulated Penalties in accordance with section X.C; or
- d. a failure to retain and use the IAS or an IRO in accordance with section III.D.

2. *Notice of Material Breach and Intent to Collect Material Breach Penalty.* The parties agree that a material breach of this CIA by Wal-Mart constitutes grounds for the OIG to impose an enhanced stipulated penalty that is separate and apart from the Stipulated Penalties described above in Section X.A. This monetary penalty (hereinafter referred to as the “Material Breach Penalty”) shall be \$20,000 per day. Upon a determination by OIG that Wal-Mart has materially breached this CIA and that a Material Breach Penalty should be imposed, OIG shall notify Wal-Mart, in accordance with section VI, of: (a) Wal-Mart’s material breach and the specific grounds for the OIG’s determination that Wal-Mart materially breached the CIA; and (b) OIG’s intent to exercise its contractual right to impose a Material Breach Penalty (this notification is hereinafter referred to as the “Notice of Material Breach Letter”).

3. *Opportunity to Cure.* Wal-Mart shall have 30 days after the date of receipt of the Notice of Material Breach Letter to demonstrate to OIG’s satisfaction that:

- a. Wal-Mart is in compliance with the obligations of the CIA cited by the OIG as being the basis for the material breach;
- b. the alleged material breach has been cured; or

c. the alleged material breach cannot be cured within the 30-day period, but that: (i) Wal-Mart has begun to take action to cure the material breach; (ii) Wal-Mart is pursuing such action with due diligence; and (iii) Wal-Mart has provided to OIG a reasonable timetable for curing the material breach.

4. *Material Breach Penalty Letter.* If at the conclusion of the 30-day period, subject to any extension granted pursuant to section X.B, Wal-Mart fails to satisfy the requirements of section X.D.3, OIG may impose the Material Breach Penalty on Wal-Mart and the Material Breach Penalty will begin to accrue on that day. OIG will notify Wal-Mart in writing, in accordance with section VI, of its determination to impose the Material Breach Penalty (this letter shall be referred to hereinafter as the “Material Breach Penalty Letter”). Within 10 days after receipt of the Material Breach Penalty Letter, Wal-Mart shall either: (i) cure the material breach to the OIG’s satisfaction and pay the applicable Material Breach Penalty; or (ii) request a hearing before an ALJ to dispute the OIG’s determination of material breach, pursuant to the agreed upon provisions set forth in Section X.E. In the event Wal-Mart elects to request an ALJ hearing, the Material Breach Penalties shall continue to accrue until Wal-Mart cures, to the OIG’s reasonable satisfaction, the alleged material breach in dispute.

#### E. Dispute Resolution

1. *Review Rights.* Upon OIG’s delivery to Wal-Mart of its Demand Letter or of its Material Breach Penalty Letter, and as an agreed-upon contractual remedy for the resolution of disputes arising under this CIA, Wal-Mart shall be afforded certain review rights comparable to the ones that are provided in 42 U.S.C. § 1320a-7(f) and 42 C.F.R. Part 1005 as if they applied to the Stipulated Penalties or the Material Breach Penalties sought pursuant to this CIA. Specifically, OIG’s determination to demand payment of Stipulated Penalties or to seek Material Breach Penalties shall be subject to review by an HHS ALJ and, in the event of an appeal, the HHS Departmental Appeals Board (DAB), in a manner consistent with the provisions in 42 C.F.R. §§ 1005.2-1005.21. Notwithstanding the language in 42 C.F.R. § 1005.2(c), the request for a hearing involving Stipulated Penalties or Material Breach Penalties shall be made within 10 days after receipt of the Demand Letter or the Material Breach Penalty Letter.

2. *Stipulated Penalties Review.* Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for Stipulated Penalties under this CIA shall be: (a) whether Wal-

Mart was in full and timely compliance with the obligations of this CIA for which the OIG demands payment; and (b) the period of noncompliance. Wal-Mart shall have the burden of proving its full and timely compliance and the steps taken to cure the noncompliance, if any. The OI shall not have the right to appeal to the DAB an adverse ALJ decision related to Stipulated Penalties. If the ALJ agrees with OIG with regard to a finding of a breach of this CIA and orders Wal-Mart to pay Stipulated Penalties, such Stipulated Penalties shall become due and payable 20 days after the ALJ issues such a decision unless Wal-Mart requests review of the ALJ decision by the DAB. If the ALJ decision is properly appealed to the DAB and the DAB upholds the determination of OIG, the Stipulated Penalties shall become due and payable 20 days after the DAB issues its decision.

3. *Material Breach Review.* Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for imposition of a Material Breach Penalty based on a material breach of this CIA shall be:

- a. whether Wal-Mart was in material breach of this CIA;
- b. whether such breach was continuing on the date of the Material Breach Penalty Letter; and
- c. whether the alleged material breach could not have been cured within the 30 day period, but that: (i) Wal-Mart had begun to take action to cure the material breach within that period; (ii) Wal-Mart has pursued and is pursuing such action with due diligence; and (iii) Wal-Mart provided to OIG within that period a reasonable timetable for curing the material breach and Wal-Mart has followed the timetable.

If Wal-Mart invokes the Dispute Resolution Procedures in this section, the Material Breach Penalty shall be imposed only after an ALJ decision that is favorable to the OIG. If the ALJ sustains the determination of the OIG and determines that the imposition of the Material Breach Penalty is authorized, payment of the Material Breach Penalty will be required 20 days after the ALJ issues such a decision, unless Wal-Mart requests review of the ALJ decision by the DAB. If the ALJ decision is properly appealed to the DAB and the DAB upholds the determination of the OIG, the Material Breach Penalty shall become due and payable 20 days after the DAB issues its decision.

**XI. EFFECTIVE AND BINDING AGREEMENT**

Consistent with the provisions in the Settlement Agreement pursuant to which this CIA is entered, and into which this CIA is incorporated, Wal-Mart and OIG agree as follows:

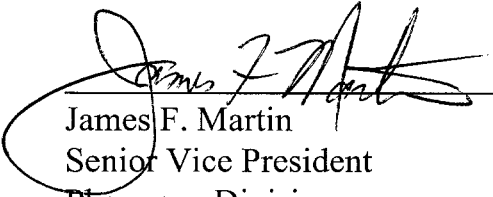
A. This CIA shall be binding on the successors, assigns, and transferees of Wal-Mart;

B. This CIA shall become final and binding on the date the final signature is obtained on the CIA;

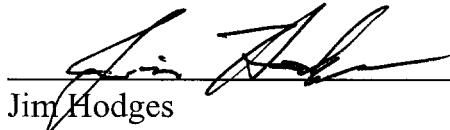
C. Any modifications to this CIA shall be made with the prior written consent of the parties to this CIA;

D. The undersigned Wal-Mart signatories represent and warrant that they are authorized to execute this CIA. The undersigned OIG signatory represents that he is signing this CIA in his official capacity and that he is authorized to execute this CIA.

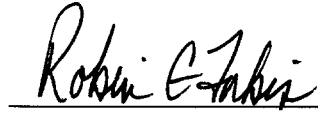
ON BEHALF OF WAL-MART STORES, INC.

  
\_\_\_\_\_  
James F. Martin  
Senior Vice President  
Pharmacy Division  
Wal-Mart Stores, Inc.

3/11/04  
DATE

  
\_\_\_\_\_  
Jim Hodges  
Compliance Officer  
Pharmacy Division  
Wal-Mart Stores, Inc.

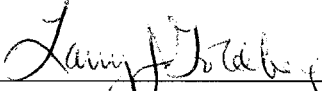
3/11/04  
DATE

  
\_\_\_\_\_  
Robin Forbis  
Senior Vice President of Corporate Compliance  
Wal-Mart Stores, Inc.

3/10/04  
DATE



**ON BEHALF OF THE OFFICE OF INSPECTOR GENERAL  
OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**



\_\_\_\_\_  
Larry J. Goldberg  
Assistant Inspector General for Legal Affairs  
Office of Inspector General  
U. S. Department of Health and Human Services

3/4/04  
DATE

# ATTACHMENT A TO CIA BETWEEN OIG AND WAL-MART STORES, INC.

## Billing Audit – Internal Audit Workplan

### **I. Billing Audit**

Wal-Mart Stores, Inc. (Wal-Mart) has developed this audit work plan to enable Wal-Mart and the Office of Inspector General (OIG) to assess compliance with the company's policies, procedures, and practices with regard to its Partial Fill Policy and its Return to Stock Policy and to determine whether Wal-Mart has taken appropriate steps to comply with Federal health care program requirements. These audit procedures were developed based on Wal-Mart's information systems, data, and current policies and procedures.

#### **A. Partial Fill Procedures**

The following procedures will be performed by Wal-Mart's Pharmacy IAS to assess partial fill prescriptions dispensed by Wal-Mart to beneficiaries of the Federal health care programs. These Partial Fill procedures will be performed quarterly using electronic data that is received at the Home Office through electronic transmission from each store location.

1. Each quarter capture the prescription history for Wal-Mart's partial fill prescriptions billed to the Federal health care programs during the prior three months. The sampling population will be comprised of all prescriptions that were originally coded as "Partials" per Wal-Mart's Partial Fill Policy and subsequently billed to a Federal health care program (Federal Health Care Program Partial Fill Prescription). The sampling unit is defined as a unique individual claim for a given store number, prescription number, fill number, and dispense date.

The Partial Fill population will not include the following transactions:

Any prescriptions originally coded as "Partials" that remain in partial fill status and have not yet been billed to or adjudicated by a third party payor.

Any prescriptions subsequently billed to a non-federal health care government plan.

Any prescriptions where the claim and the credit occurred on the same date.



2. For each quarter, randomly select a sample of 750 Federal Health Care Program Partial Fill Prescriptions from the prescriptions identified in Step 1 above. These sample units shall be selected through the use of RAT-STATS "Random Numbers" function. Using Wal-Mart's computer system, identify the selected prescription number, fill number, and dispense date. Once the sample prescription is identified, test the sample unit as follows:

Review the transaction's billing history;

Verify that Wal-Mart has not billed in a manner inconsistent with Wal-Mart's Partial Fill Policy.

Document observations and deviations in a Billing Audit Observations and Deviations Report. A deviation consists of a Federal Health Care Program Partial Fill Prescription transaction for which Wal-Mart billed the Federal health care program in a manner inconsistent with Wal-Mart's Partial Fill Policy.

3. Each quarter, quantify the dollar value of any deviations. Probable dollar exposure will be computed by multiplying the average dollar error per sample unit by the number of sample units in the total population.
4. The Pharmacy IAS shall document all instances of noncompliance and note all corrective action plans to remedy noncompliance.

## **B. Return to Stock Procedures**

The following procedures will be performed by Wal-Mart's Pharmacy IAS to assess Return to Stock prescriptions and associated reversals of payment within the company. The store performance of Return to Stock procedures will be assessed quarterly using electronic data that is received at the Home Office through electronic transmission from each store location.

1. Each quarter capture the prescription history for all of Wal-Mart's cancelled prescriptions billed to the Federal health care programs during the prior three months, which include Return to Stock prescriptions. The sampling population will be comprised of all cancelled prescriptions that were billed to the Federal health care programs (Federal Health Care Program Cancelled Prescriptions). This population will include all electronic as well as manual cancellations, as well as any cancellations to Federal health care programs that were subsequently billed to a third party. The sampling unit

is defined as a unique individual claim for a given store number, prescription number, fill number, and dispense date.

The cancellation population will not include the following transactions:

- Any cancelled prescriptions relating to a non-federal health care government plan.
  - Any prescriptions where the billing and cancellation occurred on the same date.
2. For each quarter, randomly select a sample of 150 Federal Health Care Program Cancelled Prescriptions from the prescriptions identified in Step 1 above. These sample units shall be selected through the use of the RAT-STATS random sampling technique. Using Wal-Mart's computer system, identify the selected prescription number, fill number, and dispense date. Once the proper prescription is identified, test the sample units as follows:
- Review the transaction's billing history;
- Verify that the Federal Health Care Program Cancelled Prescription was properly credited to the Federal health care program in accordance with Wal-Mart's policies on cancellation prescriptions, including Wal-Mart's Return to Stock Policy (such verification to include on-line and manual transactions); and
  - Document observations and deviations in a Billing Audit Observations and Deviations Report. A deviation consists of a Federal Health Care Program Cancelled Prescription transaction where Wal-Mart billed the Federal health care program in a manner inconsistent with Wal-Mart's policies on cancellation prescriptions, including Wal-Mart's Return to Stock Policy.
3. Quarterly, quantify the dollar value of deviations. Probable dollar exposure will be computed by multiplying the average dollar error per sample unit by the number of sample units in the total population.
4. The Pharmacy IAS shall document all instances of noncompliance and note all corrective action plans to remedy the noncompliance.

### **C. Partial Fill and Return to Stock On-Site Procedures**

Wal-Mart's Pharmacy IAS will perform procedures related to Partial Fill and Return to Stock activity. Using the RAT – STATS "Random Numbers" function, Wal-Mart will select a random sample of 75 pharmacy locations in which to perform these procedures on an annual basis.

These procedures will assess each pharmacy's compliance with Wal-Mart's Partial Fill and Return to Stock Policies as follows:

- Interview Relevant Covered Persons at the pharmacy to verify knowledge of and compliance with Wal-Mart's Partial Fill and Return to Stock Policies; and
- Conduct a general inspection of the pharmacy area to verify that prescriptions are being processed according to Wal-Mart's Partial Fill and Return to Stock Policies.

At the completion of each review, the internal auditor will record his/her findings in an "On-Site Compliance Report". The internal auditor will send the On-Site Compliance Report to the Compliance Officer. Based on the On-Site Compliance Report, Wal-Mart will implement a corrective action plan for those pharmacies not in compliance with Wal-Mart's Partial Fill and Return to Stock Policies. Wal-Mart will make the corrective action plan and any written description of follow-up activities taken in response to the corrective action plan available to the OIG upon written request.

**ATTACHMENT B TO CIA**

**Wal-Mart Stores, Inc.  
IRO Agreed Upon Procedures Review  
Work Plan — Year 1**

	Procedures	CIA Citation	Relevant Contract Provisions, Regulations, And Guidelines	Work Paper Ref.
<b>A.</b>	<b>Billing Audit Engagement</b>			
	The purpose of this agreed-upon procedures engagement is to present findings to assist Wal-Mart Stores, Inc. (Wal-Mart) and the Office of the Inspector General (OIG) of the United States Department of Health and Human Services (DHHS) (the specified users) on whether Wal-Mart has performed the Pharmacy IAS procedures as specified in Attachment A of the Corporate Integrity Agreement (CIA) entered into by and between Wal-Mart and the OIG and dated <insert date.>			
	Pursuant to the terms of the CIA, Wal-Mart must retain an Independent Review Organization (IRO) to present findings on whether Wal-Mart performed the Pharmacy IAS procedures as specified in Attachment A of the CIA.			
	The IRO will obtain and read the Pharmacy IAS' Workpapers and perform re-testing on ten percent of the Partial Fill items and ten percent of the Return to Stock sample items selected by the Pharmacy IAS.			
<b>B.</b>	<b>Partial Fill Procedures</b>			
1.	Obtain and read the Pharmacy IAS's workpapers related to its Partial Fill Procedures as noted in Attachment A and note the procedures for claims submissions to the Federal health care programs.			

**ATTACHMENT B**

**Wal-Mart Corporation  
IRO Billing Audit Engagement Agreed Upon Procedures Review  
Work Plan—Year 1**

	Procedures	CIA Citation	Relevant Contract Provisions, Regulations, And Guidelines	Work Paper Ref.
2.	Obtain and read Pharmacy IAS’s workpaper documentation and note whether the documentation supports that Pharmacy IAS performed the quarterly Billing Audits as specified in Attachment A.			
3.	Obtain and read Pharmacy IAS’s workpaper documentation associated with sample selection and note whether the documentation contains support that the sample was generated randomly using RAT - STATS.			
4.	Obtain and read Pharmacy IAS’s workpapers for calculation of the average dollar error per sample unit and the dollar value of deviations and note whether calculations were performed correctly.			
5.	Obtain and read the billing history and all other documentation relied on by Pharmacy IAS for the Partial Fill Procedures for ten percent of the sample units selected by Pharmacy IAS for the Partial Fill audit. Conduct re-testing on the ten percent of the sample units and note (based on the retesting) whether the items were billed in a manner consistent with Wal-Mart’s Partial Fill Policy.			
6.	Obtain and read Pharmacy IAS workpaper documentation associated with reviewing any exception reports developed by the IAS or Home Office to monitor non-compliance with Wal-Mart’s Partial Fill Policy. Note whether associated action plans were developed and implemented to			

**ATTACHMENT B**

**Wal-Mart Corporation  
IRO Billing Audit Engagement Agreed Upon Procedures Review  
Work Plan—Year 1**

	Procedures	CIA Citation	Relevant Contract Provisions, Regulations, And Guidelines	Work Paper Ref.
	enforce compliance.			
<b>C.</b>	<b>Return to Stock Procedures</b>			
7.	Document observations and exceptions on workpapers.			
1.	Obtain and read the Pharmacy IAS's workpapers related to its Return to Stock Procedures as noted in Attachment A and note the procedures for claims submissions to the Federal health care programs.			
2.	Obtain and read Pharmacy IAS's workpaper documentation and note whether the documentation supports that Pharmacy IAS performed the quarterly audits as specified in Attachment A.			
3.	Obtain and read Pharmacy IAS's workpaper documentation associated with sample selection and note whether the documentation contains support that the sample was generated randomly using RAT – STATS.			
4.	Obtain and read Pharmacy IAS's workpapers for calculation of the average dollar error per sample unit and the dollar value of deviations and note whether calculations were performed correctly.			

**ATTACHMENT B**

**Wal-Mart Corporation  
IRO Billing Audit Engagement Agreed Upon Procedures Review  
Work Plan—Year 1**

	Procedures	CIA Citation	Relevant Contract Provisions, Regulations, And Guidelines	Work Paper Ref.
5.	Obtain and read the billing history and all other documentation relied on by Pharmacy IAS for its Return to Stock Procedures for ten percent of the sample units selected by Pharmacy IAS. Conduct re-testing on the ten percent of the sample units and note (based on the re-testing) whether the items were billed in a manner consistent with Wal-Mart’s policies on cancellation prescriptions including the Return to Stock Policy.			
6.	Obtain and read Pharmacy IAS workpaper documentation associated with reviewing any exception reports developed by the IAS or Home Office to monitor non-compliance with Wal-Mart’s Return to Stock Policy. Note whether associated action plans were developed and implemented to enforce compliance.			
7.	Document observations and exceptions on workpapers.			
D.	On-Site Pharmacy Review Procedures			

**ATTACHMENT B**

**Wal-Mart Corporation  
IRO Billing Audit Engagement Agreed Upon Procedures Review  
Work Plan—Year 1**

	Procedures	CIA Citation	Relevant Contract Provisions, Regulations, And Guidelines	Work Paper Ref.
1.	Obtain and read workpapers related to pharmacies reviewed pursuant to Wal-Mart’s Partial Fill and Return to Stock Procedures identified in Attachment A and note findings.			
2.	Obtain and read workpapers for the selected pharmacies and note whether the internal auditors are following Wal-Mart’s Partial Fill and Return to Stock On-Site Procedures as set forth in Attachment A.			
3.	Obtain and read all applicable documents relating to the On-Site reviews for selected pharmacies and interview the Compliance Officer and note whether Wal-Mart is implementing corrective action plans for those pharmacies identified as not being in compliance with Wal-Mart’s Partial Fill and Return to Stock Policies.			
<b>E.</b>	<b>Report Generation</b>			
1.	The IRO’s report will contain: <ul style="list-style-type: none"> <li>• The findings of the IRO relating to the steps outlined in sections B, C, and D above.</li> <li>• The time frame of the review.</li> <li>• Other applicable documentation supporting the findings.</li> </ul>			