
Onmark GPO Merck Vaccine Brand Choice Contract
Duty to Warn Obligations

The Onmark GPO has contracted with Merck to offer its members access to savings opportunities for their purchases of vaccines.

DUTY TO WARN OBLIGATIONS

To be eligible to purchase Merck Vaccine Products, Onmark Eligible Members shall comply with the below “Duty to Warn” term.

- A. Onmark Eligible Members warrant that they will:
1. Take all appropriate steps to assure that all vaccine purchased under this Agreement shall be administered to each patient on the basis of an individualized medical judgment by a healthcare professional, or
 2. Take all appropriate steps to provide to such patient (or to the patient's parent or guardian) meaningful and complete warnings relating to the risks and benefits of vaccination, in form and language understandable to such patient, parent or guardian.
- B. If any suit asserted against Merck by a third party is based in whole or in part on a claim for failure by Onmark Eligible Member to properly discharge the responsibilities assumed by it under paragraph A above, Onmark Eligible Member shall upon prompt written notice of such claim or action, indemnify Merck and hold Merck harmless for any cost, attorneys' fees and damages associated with the defense of such claim or action and to provide its full cooperation and assistance to Merck in defense of such claim.
- C. In the event of Onmark Eligible Member's breach of, or failure to carry out, its responsibilities under paragraph A above, any measure of resulting damages to Merck shall include, but need not be limited to, damages (including money judgments, reasonable attorneys' fees, and other costs) sustained in connection with claims against Merck for personal injuries caused by such breach or failure. This provision shall not limit any other right of Merck to obtain damages or other relief for any breach of this contract or for the settlement of any dispute arising under this contract.
- D. It is the policy of Merck to ship any Merck Vaccine only to those persons or entities that are licensed by law to accept such shipments. Onmark Eligible Member represents either that it is authorized by state law to accept shipment of any Merck Vaccine or that it has designated such a person or entity to accept the shipment of any Merck Vaccine called for by this contract.