

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS), the State of New Jersey, acting through the New Jersey State Attorney General, Medicaid Fraud Control Unit (State of New Jersey) (collectively, the “Government”), and Excel Pharmacy Inc. (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Excel Pharmacy Inc. (“Excel Pharmacy”) is a retail pharmacy located in Jersey City, New Jersey.

B. The Government contends that Excel Pharmacy caused the submission of claims for payment to the Medicare Part D Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395lll (“Medicare”) and the New Jersey Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 (“Medicaid”), in violation of the Federal False Claims Act, 31 U.S.C. §§ 3729-3733, and the New Jersey False Claims Act, N.J. Stat. § 2A:32C-1 *et seq.*

C. The Government contends that it has certain civil claims against Excel Pharmacy arising from it causing the submission of false claims to the Medicare Part D Program and the New Jersey Medicaid Program for drugs that were not purchased or dispensed to beneficiaries. Specifically, the Government contends that from January 2, 2015, through January 25, 2022, Excel Pharmacy caused the submission of claims for reimbursement to the Medicare Part D Program and the New Jersey Medicaid Program for drugs that were not actually purchased from wholesalers or dispensed to beneficiaries. That conduct is referred to below as the “Covered Conduct.”

D. This Agreement is neither an admission of liability by Excel Pharmacy nor a concession by the Government that their claims are not well founded.

E. Excel Pharmacy denies the United States' contentions in Paragraphs B and C of the Agreement.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Excel Pharmacy shall pay to the Government collectively, the sum of Three Million Dollars (\$3,00,000.00) ("Settlement Amount"), of which One Million Five Hundred Thousand Dollars (\$1,500,000) is restitution, as follows:

a. Excel Pharmacy shall pay to the United States the sum Two Million Nine Hundred Thirty-One Thousand Nine Hundred Ninety-Five Dollars and Seventy Cents (\$2,931,995.70) (the Federal Settlement Amount), of which One Million Four Hundred Sixty-Five Thousand Nine Hundred Ninety-Seven Dollars and Eight-Five Cents (\$1,465,997.85) is federal restitution (the Federal Restitution Amount), no later than thirty (30) days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the District of New Jersey.

i. Within thirty (30) days after the Effective Date of this Agreement, Excel Pharmacy will pay to the United States Eight Hundred Thirty-One Thousand Nine Hundred Ninety-Five Dollars and Seventy Cents (\$831,995.70).

ii. Excel Pharmacy will pay the United States the remaining Federal Settlement Amount in three equal installments of Seven Hundred

Thousand Dollars (\$700,000) on October 1, 2025, February 2, 2026, and June 1, 2026.

b. Excel Pharmacy shall pay to the State of New Jersey Sixty-Eight Thousand Four Dollars and Thirty Cents (\$68,004.30), of which Thirty-Four Thousand Two Dollars and Fifteen Cents (\$34,002.15) is state restitution (the State Restitution Amount), no later than thirty (30) days after the Effective Date of this Agreement by certified funds made payable to the State of New Jersey.

2. Subject to the exceptions in Paragraph 3 (concerning reserved claims) below, and upon the Government's receipt of the Settlement Amount due under Paragraph 1, the Government releases Excel Pharmacy from any civil or administrative monetary claims the Government has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the New Jersey False Claims Act, N.J. Stat. Ann. § 2A:32C-1, *et seq.*, or the common law theories of payment by mistake, unjust enrichment, and fraud.

3. Notwithstanding the releases given in Paragraph 2 of this Agreement, or any other term of this Agreement, the following claims and rights of the Government are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, including mandatory or permissive exclusion from Federal health care programs;
- d. Any liability to the Government (or its agencies) for any conduct other than the Covered Conduct;

- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals;
- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services; and
- h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

4. Excel Pharmacy waives and shall not assert any defenses it may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

5. Excel Pharmacy fully and finally releases the Government, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Excel Pharmacy has asserted, could have asserted, or may assert in the future against the Government, its agencies, officers, agents, employees, and servants, related to the Covered Conduct or the Government's investigation or prosecution thereof.

6. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier) or any state payer, related to the Covered Conduct; and Excel Pharmacy agrees not to resubmit to any Medicare contractor or any state

payer any previously denied claims related to the Covered Conduct, agrees not to appeal any such denials of claims, and agrees to withdraw any such pending appeals.

7. Excel Pharmacy agrees to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395lll and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Excel Pharmacy or its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the Government's audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) Excel Pharmacy's investigation, defense, and corrective actions undertaken in response to the Government's audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payments Excel Pharmacy makes to the Government pursuant to this Agreement

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program ("FEHBP") (hereinafter referred to as "Unallowable Costs").

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Excel Pharmacy, and Excel Pharmacy shall not charge such Unallowable Costs directly or indirectly to any contracts with the Government or

any State Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by Excel Pharmacy or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment:

Excel Pharmacy further agrees that within 90 days of the Effective Date of this Agreement, it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this paragraph) included in payments previously sought from the Government, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Excel Pharmacy or any of its subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the Unallowable Costs. Excel Pharmacy agrees that the Government, at a minimum, shall be entitled to recoup from them any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the Government pursuant to the direction of the Department of Justice and/or the affected agencies. The Government reserves its rights to disagree with any calculations submitted by Excel Pharmacy or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on Excel Pharmacy or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the Government to audit, examine, or re-examine Excel Pharmacy's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

8. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 9 (waiver for beneficiaries paragraph), below.

9. Excel Pharmacy agrees that it waives and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third-party payors based upon the claims defined as Covered Conduct.

10. In the event that Excel Pharmacy fails to pay the Settlement Amount as provided in the payment schedule set forth in Paragraph 1 above, Excel Pharmacy shall be in Default of its payment obligations ("Default").

a. The Government will provide a written Notice of Default, and Excel Pharmacy shall have an opportunity to cure such Default within seven (7) calendar days from the date of receipt of the Notice of Default by making the payment due under the payment schedule and paying any additional interest accruing under the Agreement up to the date of payment. Notice of Default will be delivered to each Defendant, or to such other representative as they shall designate in advance in writing. If Excel Pharmacy fails to cure the Default within seven (7) calendar days of receiving the Notice of Default and in the absence of an agreement with the Government to a modified payment schedule ("Uncured Default"), the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest on the remaining unpaid balance shall thereafter accrue at the rate of 12% per annum,

compounded daily from the date of Default, on the remaining unpaid total (principal and interest balance).

b. In the event of Uncured Default, Excel Pharmacy agrees that the Government, at its sole discretion, may (i) retain any payments previously made, rescind this Agreement and bring any civil and/or administrative claim, action, or proceeding against Excel Pharmacy for the claims that would otherwise be covered by the releases provided in Paragraph 2 above, with any recovery reduced by the amount of any payments previously made by Excel Pharmacy to the Government under this Agreement; (ii) take any action to enforce this Agreement in a new action; (iii) offset the remaining unpaid balance from any amounts due and owing to Excel Pharmacy and/or affiliated companies by any department, agency, or agent of the Government at the time of Default or subsequently; and/or (iv) exercise any other right granted by law, or under the terms of this Agreement, or recognizable at common law or in equity. The Government shall be entitled to any other rights granted by law or in equity by reason of Default, including referral of this matter for private collection. In the event the Government pursues a collection action, Excel Pharmacy agrees immediately to pay the Government the greater of (i) a ten percent (10%) surcharge of the amount collected, as allowed by 28 U.S.C. § 3011(a), or (ii) the Government's reasonable attorneys' fees and expenses incurred in such an action. In the event that the Government opts to rescind this Agreement pursuant to this paragraph, Excel Pharmacy waives and agrees not to plead, argue, or otherwise raise any defenses of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that are (i) filed by the Government against Excel Pharmacy within 120 days of written notification that this Agreement has been rescinded, and (ii) relate to the Covered Conduct, except to the extent these defenses were available on the Effective Date of this Agreement. Excel Pharmacy agrees not to contest any offset, recoupment, and /or collection action undertaken by the Government pursuant

to this paragraph, either administratively or in any state or federal court, except on the grounds of actual payment to the Government.

c. In the event of Uncured Default, OIG-HHS may exclude Excel Pharmacy from participating in all Federal health care programs until it pays the Settlement Amount, with interest, as set forth above (Exclusion for Default). OIG-HHS will provide written notice of any such exclusion to Excel Pharmacy. Excel Pharmacy waives any further notice of the exclusion under 42 U.S.C. § 1320a-7(b)(7) and agrees not to contest such exclusion either administratively or in any state or federal court. Reinstatement to program participation is not automatic. If at the end of the period of exclusion, Excel Pharmacy wishes to apply for reinstatement, it must submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. Excel Pharmacy will not be reinstated unless and until OIG-HHS approves such request for reinstatement. The option for Exclusion for Default is in addition to, and not in lieu of, the options identified in this Agreement or otherwise available.

11. In exchange for valuable consideration provided in this Agreement, Excel Pharmacy acknowledges the following:

a. Excel Pharmacy has reviewed its financial situation and warrants that it is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I) and shall remain solvent following payment to the Government of the Settlement Amount.

b. In evaluating whether to execute this Agreement, the Parties intend that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to Excel Pharmacy, within the meaning of 11 U.S.C. § 547(c)(1), and the Parties conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange.

c. The mutual promises, covenants, and obligations set forth herein are intended by the Parties to, and do in fact, constitute a reasonably equivalent exchange of value.

d. The Parties do not intend to hinder, delay, or defraud any entity to which Excel Pharmacy is or becomes indebted to on or after the date of any transfer contemplated in this Agreement, within the meaning of 11 U.S.C. § 548(a)(1).

e. If any of Excel Pharmacy's payments or obligations under this Agreement are avoided for any reason (including but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code) or if, before the Settlement Amount is paid in full, Excel Pharmacy or a third party commences a case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors seeking any order for relief of Excel Pharmacy's debts, or to adjudicate Excel Pharmacy as bankrupt or insolvent; or seeking appointment of a receiver, trustee, custodian, or other similar official for Excel Pharmacy or for all or any substantial part of Excel Pharmacy's assets:

(i) the Government may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Excel Pharmacy for the claims that would otherwise be covered by the releases provided in Paragraph 2 above; and

(ii) the Government has an undisputed, noncontingent, and liquidated allowed claim against Excel Pharmacy in the amount of \$1,000,000.00, less any payments received pursuant to Paragraph 1 of this Agreement, provided, however, that such payments are not otherwise avoided and recovered from the Government by Excel Pharmacy, a receiver, trustee, custodian, or other similar official for Excel Pharmacy.

f. Excel Pharmacy agrees that any civil and/or administrative claim, action, or proceeding brought by the Government under Paragraph 11.e is not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) because it would be an exercise of the Government's police

and regulatory power. Excel Pharmacy shall not argue or otherwise contend that the Government's claim, action, or proceeding is subject to an automatic stay and, to the extent necessary, consents to relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1). Excel Pharmacy waives and shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claim, action, or proceeding brought by the Government within 120 days of written notification to Excel Pharmacy that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on the Effective Date of this Agreement.

12. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

13. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

14. This Agreement is governed by the laws of the United States. The exclusive venue for any dispute relating to this Agreement is the United States District Court for the District of New Jersey. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

15. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties. Forbearance by the Government from pursuing any remedy or relief available to it under this Agreement shall not constitute a waiver of rights under this Agreement. Other than as set forth in this Agreement, Excel Pharmacy reserves all rights.

16. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

17. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

18. This Agreement is binding on Excel Pharmacy's successors, transferees, heirs, and assigns.


19. All Parties consent to the Government's disclosure of this Agreement, and information about this Agreement, to the public.

20. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

ALINA HABBA
United States Attorney
District of New Jersey

DATED: 6/9/2025

BY: 

KRUTI D. DHARIA
ROBERT L. TOLL
Assistant United States Attorneys
District of New Jersey

DATED: 6/4/25


BY:  Digitally signed by SUSAN
GILLIN
Date: 2025.06.04 11:37:42
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SUSAN E. GILLIN
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

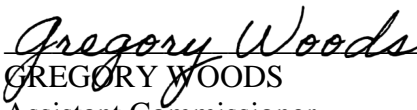
STATE OF NEW JERSEY

MATTHEW J. PLATKIN
ATTORNEY GENERAL FOR THE STATE OF NEW
JERSEY

DATED: 6/4/2025

BY: 
AL GARCIA
Interim Insurance Fraud Prosecutor
Office of the Attorney General
State of New Jersey

DATED: 6/6/2025

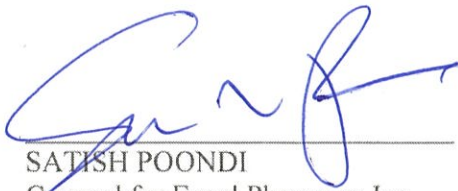
BY: 
GREGORY WOODS
Assistant Commissioner
Division of Medical Assistance and
Health Services
Department of Human Services

EXCEL PHARMACY INC.

DATED: 5/18/2025

BY: JoAnn Bhatia
JOANN BHATIA
Owner of Excel Pharmacy Inc.

DATED: 5/18/25

BY: 
SATISH POONDI
Counsel for Excel Pharmacy Inc.