

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”), (collectively, the “United States”), Omnicare, Inc. (“Omnicare”), and Elizabeth Corsi and Christopher Ezzie (“Relators”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Omnicare, directly and through its affiliates and subsidiaries, provides pharmacy goods and services to patients and providers in the United States, including skilled nursing, assisted living, and other institutional care facilities. Throughout the period referenced in this Agreement, certain of Omnicare’s pharmacy goods were reimbursed by federal healthcare programs, including Medicare and Medicaid.

B. On February 21, 2014, Relators filed a *qui tam* action in the United States District Court for the District of New Jersey captioned *United States of America et al. ex rel. Elizabeth Corsi and Christopher Ezzie v. Omnicare, Inc.*, No. 1:14-cv-01136-JEI-JS, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). In their complaint, Relators allege that Omnicare knowingly implemented a prescription verification system that resulted in false claims to Medicare Part D and Medicaid in connection with prescription drug services performed at its hub pharmacy in King of Prussia, Pennsylvania, and at Omnicare’s other hub pharmacy locations throughout the United States. Relators alleged that Omnicare’s automated label verification (“ALV”) system was designed and implemented in such a fashion that allowed certain generic prescriptions (1) to be filled and dispensed with drugs with a different National Drug Code (“NDC”) than that identified by the pharmacist and billed to the

government; and (2) to be dispensed with patient-specific labels containing incorrect NDCs and manufacturer information. The United States intervened in the Civil Action for purposes of settlement in March 2017.

C. The United States contends that Omnicare submitted or caused to be submitted claims for payment to: the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 (“Medicare”) and the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 (“Medicaid”).

D. In order to resolve claims asserted pursuant to state law in the Civil Action, Omnicare will be entering into separate settlement agreements (the “Medicaid State Settlement Agreements”) with certain states, which will receive settlement funds from Omnicare pursuant to paragraph 2 below.

E. The United States contends that it has certain civil claims against Omnicare arising from its submission of false claims for payment for drugs under the Medicare Part D Program and Medicaid during the period from January 2008 through December 2014. Specifically, the United States alleges that Omnicare, in an effort to increase business efficiency and profit, designed and implemented its ALV system to utilize a less specific drug code known as “MEDID” during its automated stage II pharmacist verification process, instead of the more specific NDC corresponding to the drug intended to be dispensed and billed. This in turn caused (1) Omnicare’s automated system to approve the dispensing of certain generic drugs in more than two million transactions where the drug actually dispensed was made by a different manufacturer and had a different NDC than the drug initially identified by the pharmacist to be dispensed; (2) Omnicare to knowingly submit claims for payment to Medicare and Medicaid for drugs with different NDCs than those actually dispensed; and (3) the dispensing of drugs to patients with patient-specific labels displaying the incorrect manufacturer and/or NDC. The

United States further alleges that the false manufacturer and NDC information on the labels impacted Omnicare's ability to properly track and, if necessary, conduct a patient-level recall of such mismatched drugs. The conduct described in this Paragraph E is referred to below as the "Covered Conduct."

F. This Agreement is neither an admission of liability by Omnicare nor a concession by the United States that its claims are not well founded. Omnicare denies the allegations and contentions of the United States and the Relators as set forth in this Agreement and in the Civil Action.

G. Relators claim entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Agreement and to Relators' reasonable expenses, attorneys' fees and costs.

H. 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. Omnicare shall pay to the United States seven million four-hundred fifteen thousand three-hundred and fifty-seven dollars (\$7,415,357) plus interest at a rate of 1.65% per annum from October 24, 2016 until the day prior to payment ("Settlement Amount") no later than 15 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.

2. Omnicare shall pay a total of five-hundred eighty-four thousand six-hundred forty-three dollars (\$584,643) plus interest at a rate of 1.65% from October 24, 2016 until the day prior to payment pursuant (the "Medicaid State Settlement Amount") to the Medicaid State Settlement Agreements. This Medicaid State Settlement Amount shall be paid by electronic

funds transfer pursuant to written instructions from the National Association of Medicaid Fraud Control Units negotiation team for the Medicaid Participating States.

3. Conditioned upon the United States receiving the Settlement Amount from Omnicare and as soon as feasible after receipt, the United States shall pay one million three-hundred seventy-one thousand and eight-hundred forty-one dollars (\$1,371,841) plus accrued interest in the amount of 1.65% per annum from October 24, 2016 until the day prior to payment by Omnicare to Relators by electronic funds transfer in accordance with instructions provided by Relators' counsel.

4. Omnicare shall pay Relators' reasonable expenses, attorneys' fees and costs under 31 U.S.C. § 3730(d)(1) and resolve Relators' claims under 31 U.S.C. § 3730(h) pursuant to a separate settlement agreement among these parties.

5. Subject to the exceptions in Paragraph 8 (concerning excluded claims) below, and conditioned upon Omnicare's full payment of the Settlement Amount, the United States releases Omnicare from any civil or administrative monetary claim the United States 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; or the common law theories of payment by mistake, unjust enrichment, and fraud.

6. Subject to the exceptions in Paragraph 8 below, and conditioned upon Omnicare's full payment of the Settlement Amount, Relators, for themselves and for their heirs, successors, attorneys, agents, and assigns, release Omnicare from any civil monetary claim the relators have on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

7. In consideration of the obligations of Omnicare in this Agreement and the Corporate Integrity Agreement (CIA), entered into between OIG-HHS and CVS Health, which

acquired Omnicare, and conditioned upon Omnicare's full payment of the Settlement Amount, the OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Omnicare under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Covered Conduct, except as reserved in this Paragraph and in Paragraph 8 (concerning excluded claims), below. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Omnicare from Medicare, Medicaid, and other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 8, below.

8. Notwithstanding the releases given in paragraphs 5-7 of this Agreement, or any other term of this Agreement, the following claims of the United States 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, including mandatory exclusion from Federal health care programs;
- d. Any liability to the United States (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.

9. Relators and their heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relators' receipt of the payment described in Paragraph 3, Relators and their heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

10. Omnicare waives and shall not assert any defenses Omnicare 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. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

11. Omnicare fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Omnicare has asserted, could have asserted, or

may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

12. Omnicare fully and finally releases the Relators from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Omnicare has asserted, could have asserted, or may assert in the future against the Relators, related to the Covered Conduct and the Relators' investigation and prosecution thereof.

13. 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 Omnicare 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.

14. Omnicare 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. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Omnicare, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;
- (3) Omnicare's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and any criminal

investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);

- (4) the negotiation and performance of this Agreement.
- (5) the payment Omnicare makes to the United States pursuant to this Agreement and any payments that Omnicare may make to Relators, including costs and attorneys fees; and
- (6) the negotiation of, and obligations undertaken pursuant to the CIA to:
 - (i) retain an independent review organization to perform annual reviews as described in Section III of the CIA; and (ii) prepare and submit reports to the OIG-HHS

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). However, nothing in paragraph 14.a.(6) that may apply to the obligations undertaken pursuant to the CIA affects the status of costs that are not allowable based on any other authority applicable to Omnicare.

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Omnicare, and Omnicare shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States 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 Omnicare or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Omnicare 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 United States, 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 Omnicare 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. Omnicare agrees that the United States, at a minimum, shall be entitled to recoup from Omnicare 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 United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Omnicare or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Omnicare 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 United States to audit, examine, or re-examine Omnicare's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

15. 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 16 (waiver for beneficiaries paragraph), below.

16. Omnicare 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.

17. Upon receipt of the payment described in Paragraphs 1 and 4, above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the claims asserted on behalf of the United States in the Civil Action pursuant to Rule 41(a)(1). The Joint Stipulation of Dismissal shall provide that the claims are being dismissed subject to the terms of the Agreement, with prejudice as to the United States as to the Covered Conduct released in this Agreement, and without prejudice as to any other claims, and with prejudice as to all claims as to the Relators.

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

19. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

20. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and 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.

21. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.


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

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

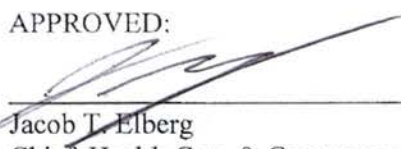
24. This Agreement is binding on Omnicare's successors, transferees, heirs, and assigns.
25. This Agreement is binding on Relators' successors, transferees, heirs, and assigns.
26. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.
27. 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.

ON BEHALF OF THE UNITED STATES OF AMERICA

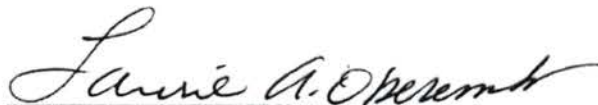
DATED: 5/16/17

BY: 
David E. Dauenheimer
Bernard J. Cooney
Assistant United States Attorneys
United States Attorney's Office
District of New Jersey

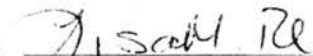
APPROVED:


Jacob T. Elberg
Chief, Health Care & Government Fraud Unit
United States Attorney's Office
District of New Jersey

DATED: 5/11/17

BY: 
Laurie A. Oberembt
Senior Trial Attorney
Commercial Litigation Branch
Civil Division

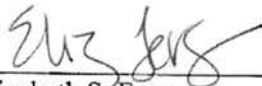
DATED: 5/8/17

BY: 
Lisa M. Re
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

ON BEHALF OF OMNICARE, INC. - DEFENDANT

DATED:

BY:



Elizabeth S. Ferguson
Deputy General Counsel
CVS Health Corporation

DATED: _____

BY:

Michael Martinez
Mayer Brown LLP
Counsel for Omnicare, Inc.

ON BEHALF OF OMNICARE, INC. - DEFENDANT

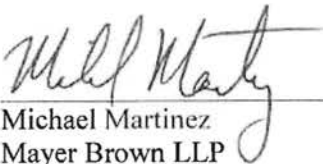
DATED:

BY:

Elizabeth S. Ferguson
Deputy General Counsel
CVS Health Corporation

DATED: 5/10/17

BY:


Michael Martinez
Mayer Brown LLP
Counsel for Omnicare, Inc.

ON BEHALF OF RELATORS ELIZABETH CORSI and CHRISTOPHER EZZIE

DATED: May 2, 2017 BY: 
Elizabeth Corsi

DATED: _____ BY: _____
Christopher Ezzie

DATED: _____ BY: _____
Charles C. Goetsch
Charles Goetsch Law Offices LLC
Counsel for Relators

DATED: _____ BY: _____
Anthony S. Pinnie
Pinnie Law Offices
Counsel for Relators

ON BEHALF OF RELATORS ELIZABETH CORSI and CHRISTOPHER EZZIE

DATED: _____

BY: _____
Elizabeth Corsi

DATED: 5/2/17

BY: 
Christopher Ezzie

DATED: _____

BY: _____
Charles C. Goetsch
Charles Goetsch Law Offices LLC
Counsel for Relators

DATED: _____

BY: _____
Anthony S. Pinnie
Pinnie Law Offices
Counsel for Relators

ON BEHALF OF RELATORS ELIZABETH CORSI and CHRISTOPHER EZZIE


DATED: _____

BY: _____
Elizabeth Corsi

DATED: _____

BY: _____
Christopher Ezzie

DATED: May 2, 2017

BY: 
Charles C. Goetsch
Charles Goetsch Law Offices LLC
Counsel for Relators

DATED: _____

BY: _____
Anthony S. Pinnie
Pinnie Law Offices
Counsel for Relators

ON BEHALF OF RELATORS ELIZABETH CORSI and CHRISTOPHER EZZIE

DATED: _____

BY: _____
Elizabeth Corsi

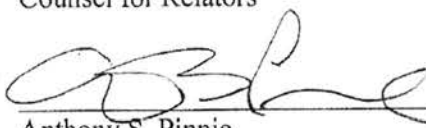
DATED: _____

BY: _____
Christopher Ezzie

DATED: _____

BY: _____
Charles C. Goetsch
Charles Goetsch Law Offices LLC
Counsel for Relators

DATED: 5-3-17

BY: 
Anthony S. Pinnie
Pinnie Law Offices
Counsel for Relators