

## STATE SETTLEMENT AGREEMENT

### I. PARTIES

This Settlement Agreement ("Agreement") is entered into between the State of California ("the State") and Omnicare, Inc. ("Omnicare"), hereinafter collectively referred to as "the Parties."

### II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. Omnicare is an institutional pharmacy that provides pharmaceuticals and related pharmacy services to long-term care facilities as well as chronic care facilities and other settings. CVS Health Corporation acquired Omnicare effective August 18, 2015.

B. On October 31, 2007, Relator Meredith McCoyd filed a *qui tam* action in the United States District Court for the Western District of Virginia captioned United States of America and the states of California, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Louisiana, Massachusetts, Michigan, Nevada, New Hampshire, New Mexico, New York, Tennessee, Texas, Virginia, and the District of Columbia, ex rel. Meredith McCoyd v. Abbott Laboratories, Civil Action No. 1:07cv00081 (W.D. Va.). On June 15, 2010, Relator Meredith McCoyd filed an Amended Complaint adding additional counts under the false claims statutes for the states of Connecticut, Montana,

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New Jersey, North Carolina, Oklahoma, Rhode Island, Wisconsin, and the City of Chicago.

On January 21, 2010, Relator Thomas J. Spetter, Jr. filed a *qui tam* action in the United States District Court for the Western District of Virginia captioned United States of America and the states of Arkansas, California, Delaware, District of Columbia, Florida, Georgia, Hawaii, Illinois, Indiana, Louisiana, Massachusetts, Michigan, Missouri, Montana, New Hampshire, New Jersey, New Mexico, New York, Nevada, North Carolina, Oklahoma, Rhode Island, Tennessee, Texas, Virginia and Wisconsin, ex rel. Thomas J. Spetter, Jr. v. Abbott Laboratories, Inc., Civil Action No. 1:10cv00006 (W.D. Va.). On February 16, 2010, Relator Thomas J. Spetter filed a First Amended Complaint adding an additional count under the false claims statute for the state of Connecticut, and removing counts under the false claims statutes for Arkansas and Missouri. On December 3, 2010, Relator Thomas J. Spetter, Jr. filed a Second Amended Complaint adding additional counts under the false claims statutes for the states of Colorado, Maryland, and Minnesota.

The *qui tam* actions were consolidated in the United States District Court for the Western District of Virginia on June 29, 2011 under Civil Action 1:07cv00081 and will be referred to collectively as the "Civil Actions."

C. Omnicare has entered into a separate civil settlement agreement (the "Federal Settlement Agreement") with the United States of America (as that term is defined in the Federal Settlement Agreement) hereinafter referred to as the "United States."

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D. The State contends that Omnicare caused claims for payment to be submitted to the State's Medicaid Program (see 42 U.S.C. §§ 1396-1396(v)).

E. The State contends that it has certain civil and administrative causes of action against Omnicare for engaging in the following conduct:

Knowingly soliciting and receiving illegal remuneration from drug manufacturer Abbott Laboratories ("Abbott") in the form of agreements that required Omnicare to engage in certain promotional programs, grants, and other financial support. The remuneration was intended to induce Omnicare to promote and/or purchase Abbott's prescription drug Depakote in violation of the state anti-kickback statutes and the Federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b), between January 1, 2001 and December 31, 2008. As a result, the State alleges that Omnicare knowingly submitted or caused to be submitted false and/or fraudulent claims for Depakote to Medicaid. Also, the submission of false and/or fraudulent claims for Depakote to the state's Medicaid program violates the state False Claims Act, Medicaid fraud provisions, and/or common law causes of action, where applicable (the "Covered Conduct").

F. This Agreement is made in compromise of disputed claims. This Agreement is neither an admission of facts or liability by Omnicare, nor a concession by the State that its allegations are not well founded. Omnicare expressly denies the allegations of the State as set forth herein and in the Civil Actions and denies that it engaged in any wrongful conduct in connection with the Covered Conduct.

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G. To avoid the delay, expense, inconvenience, and uncertainty of protracted litigation of these causes of action, the Parties mutually desire to reach a full and final settlement as set forth below.

### III. TERMS AND CONDITIONS

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants and obligations set forth in this Agreement, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. Omnicare agrees to pay to the United States and the Medicaid Participating States (as defined in sub-paragraph (c) below), collectively, the sum of Twenty Eight Million, One Hundred Twenty-five Thousand Dollars (\$28,125,000.00) plus accrued interest in the amount of 2.250% per annum commencing on December 8, 2015 and continuing and including the day payment is made under this Agreement (collectively, the "Settlement Amount"). The Settlement Amount shall constitute a debt immediately due and owing to the United States and the Medicaid Participating States on the Effective Date of the Federal Settlement Agreement, and subject to the terms of this Agreement. The debt shall forever be discharged by payments to the United States and the Medicaid Participating States, under the following terms and conditions:

(a) Omnicare shall pay to the United States the sum of \$20,279,688.15, plus accrued interest in the amount of 2.250% per annum commencing on December 8, 2015,

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("Federal Settlement Amount"). The Federal Settlement Amount shall be paid pursuant to the terms of the Federal Settlement Agreement.

(b) Omnicare shall pay to the Medicaid Participating States the sum of \$7,845,311.85, plus accrued interest in the amount of 2.250% per annum commencing on December 8, 2015 ("Medicaid State Settlement Amount"), subject to the non-participating state deduction provision of Sub-paragraph (d) below ("Medicaid Participating State Settlement Amount"), no later than seven (7) business days after the expiration of the 60 day opt-in period for Medicaid Participating States described in Sub-paragraph (c) below. The Medicaid Participating State Settlement Amount shall be paid by electronic funds transfer to the New York State Attorney General's National Global Settlement Account pursuant to written instructions from the State Negotiating Team ("State Team"), which written instructions shall be delivered to counsel for Omnicare.

(c) Omnicare shall execute a State Settlement Agreement with any State that executes such an Agreement in the form to which Omnicare and the State Team have agreed, or in a form otherwise agreed to by Omnicare and an individual State. The State shall constitute a Medicaid Participating State provided this Agreement is fully executed by the State and delivered to Omnicare's attorneys within 60 days of receiving this Agreement. If this condition is not satisfied within 60 days, Omnicare's offer to resolve this matter with the individual State shall become null and void absent written agreement between counsel for Omnicare and the State Team to extend the 60 day period.

(d) The total portion of the amount paid by Omnicare in settlement for the Covered Conduct for the State is \$915,340.13, consisting of a portion paid to the State under this Agreement and another portion paid to the United States as part of the Federal Settlement Agreement. The amount allocated to the State under this Agreement is the sum of \$538,690.27, plus applicable interest (the "State Amount"). If the State does not execute this Agreement within 60 days of receiving this Settlement Agreement, the State Amount shall be deducted from the Medicaid State Settlement Amount and shall not be paid by Omnicare absent written agreement between counsel for Omnicare and the State Team to extend the time period for executing this Agreement.

2. The State agrees to dismiss with prejudice any state law claims which the State has the authority to dismiss currently pending against Omnicare in State or Federal Courts for the Covered Conduct, including any supplemental state law claims asserted in the Civil Action. Contingent upon the receipt of their respective State Amounts, the State, if served with the Civil Action and liable to pay a Relator's share, agrees to pay the Relator(s) the amount of \$80,803.54, plus applicable interest. This amount is to be paid through the State Team and has been addressed via side letter(s) with the Relator(s) in the Civil Action(s).

3. Subject to the exceptions in Paragraph 4 below, in consideration of the obligations of Omnicare set forth in this Agreement, and conditioned upon receipt by the State of its share of the Medicaid State Settlement Amount, the State agrees to release Omnicare, its predecessors and current and former parents, divisions, direct and indirect subsidiaries, affiliates, successors, transferees, heirs, and assigns; and the corporate

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successors and assigns of any of them (collectively, the "Omnicare Released Entities"), from any civil or administrative monetary cause of action that the State has for any claims submitted or caused to be submitted to the State Medicaid Program as a result of the Covered Conduct.

4. Notwithstanding any term of this Agreement, the State specifically does not release any person or entity from any of the following liabilities:

- (a) any criminal, civil, or administrative liability arising under state revenue codes;
- (b) any criminal liability not specifically released by this Agreement;
- (c) any civil or administrative liability that any person or entity, including any Omnicare Released Entities, has or may have to the State or to individual consumers or state program payors under any statute, regulation or rule not expressly covered by the release in Paragraph 3 above, including but not limited to, any and all of the following claims: (i) State or federal antitrust violations; (ii) Claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;
- (d) any liability to the State for any conduct other than the Covered Conduct;
- (e) any liability which may be asserted on behalf of any other payors or insurers, including those that are paid by the State's Medicaid program on a capitated basis;
- (f) any liability based upon obligations created by this Agreement;
- (g) any liability of individuals;
- (h) except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusions from the State's Medicaid program;

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(i) any liability for expressed or implied warranty claims or other claims for defective or deficient products and services provided by Omnicare;

(j) any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; or

(k) any liability based on a failure to deliver goods or services due.

5. In consideration of the obligations of Omnicare set forth in this Agreement, and the Corporate Integrity Agreement ("CIA") that Omnicare has entered into with the Office of the Inspector General of the United States Department of Health and Human Services ("HHS-OIG") in connection with this matter, and conditioned on receipt by the State of its share of the State Medicaid Settlement Amount, the State agrees to release and refrain from instituting, recommending, directing, or maintaining any administrative action seeking exclusion from the State's Medicaid program against Omnicare for the Covered Conduct, except as reserved in Paragraph 4 above. Nothing in this Agreement precludes the State from taking action against Omnicare in the event that Omnicare is excluded by the federal government, or for conduct and practices other than the Covered Conduct.

6. Omnicare 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 of the Fifth Amendment of the Constitution or the Excessive Fines Clause of the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

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7. In consideration of the obligations of the State set forth in this Agreement, Omnicare waives and discharges the State, its agencies, employees, and agents from any causes of action (including attorneys' fees, costs, and expenses of every kind and however denominated) which Omnicare has against the State, its agencies, employees, and agents arising from the State's investigation and prosecution of the Covered Conduct. However, nothing in this Agreement shall be construed as addressing any obligation under 31 U.S.C. § 3730(d) or applicable state laws, for payment of Relators' reasonable attorney's fees and costs, if applicable.

8. The amount that Omnicare must pay to the State pursuant to Paragraph III.1. above will not be decreased as a result of the denial of any claims for payment now being withheld from payment by the State's Medicaid program, or any other state payor, for the Covered Conduct; and Omnicare agrees not to resubmit to the State's Medicaid program or any other state payor, any previously denied claims, which denials were based on the Covered Conduct, and agrees to withdraw the appeal of or not to appeal or cause the appeal of any such denials of claims.

9. Omnicare shall not seek payment for any claims for reimbursement to the State's Medicaid Program covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors.

10. Omnicare expressly warrants that it has reviewed its financial condition and that it is currently 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 of the Settlement Amount and compliance with this Agreement.

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11. The Parties each represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

12. Omnicare agrees to cooperate fully and truthfully with any State investigation of individuals or entities not released in this Agreement. Upon reasonable notice, Omnicare shall facilitate, and agrees not to impair, the cooperation of its directors, officers, employees or agents, for interviews and testimony, consistent with the rights and privileges of such individuals and of Omnicare. Upon request, Omnicare agrees to furnish to the State complete and unredacted copies of all non-privileged documents including, but not limited to, reports, memoranda of interviews, and records in their possession, custody or control, concerning the Covered Conduct. Omnicare shall be responsible for all costs it may incur in complying with this paragraph.

13. Except as expressly provided to the contrary in this Agreement, each Party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

14. Except as otherwise stated in this Agreement, this Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any liability against any other person or entity.

15. Nothing in this Agreement constitutes an agreement by the State concerning the characterization of the amounts paid hereunder for purposes of the State's revenue code.

16. In addition to all other payments and responsibilities under this Agreement, Omnicare agrees to pay all reasonable expenses and travel costs of the State

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Team, including reasonable consultant fees and expenses. Omnicare will pay this amount by separate check made payable to the National Association of Medicaid Fraud Control Units, after the Medicaid Participating States execute their respective Agreements, or as otherwise agreed by the Parties.

17. This Agreement is governed by the laws of the State, except disputes arising under the CIA shall be resolved exclusively under the dispute resolution provisions of the CIA, and venue for addressing and resolving any and all disputes relating to this Agreement shall be the state courts of appropriate jurisdiction of the State.

18. The undersigned Omnicare signatories represent and warrant that they are authorized as a result of appropriate corporate action to execute this Agreement. The undersigned State signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement on behalf of the State through their respective agencies and departments.

19. The Effective Date of this Agreement shall be the date of signature of the last signatory to this Agreement. Facsimiles of signatures shall constitute acceptable binding signatures for purposes of this Agreement.

20. This Agreement shall be binding on all successors, transferees, heirs, and assigns of the Parties.

21. This Agreement constitutes the complete agreement between the Parties with respect to this matter and shall not be amended except by written consent of the Parties.

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

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STATE OF CALIFORNIA

**Medicaid Fraud Control Unit:**

By: \_\_\_\_\_ Original Signed By

Dated: \_\_\_\_\_

*July 6, 2016*

Carlotta Hivoral  
Deputy Attorney General  
Bureau of Medi-Cal Fraud and Elder Abuse  
Office of the Attorney General  
California Department of Justice  
1455 Frazee Road, Suite 315  
San Diego, CA 92108-4304

**Medicaid Program:**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Jennifer Kent  
Director  
Department of Health Care Services  
MS 0000  
P.O. Box 997413  
Sacramento, CA 95899-7413

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STATE OF CALIFORNIA

**Medicaid Fraud Control Unit:**

By: \_\_\_\_\_ Dated: \_\_\_\_\_

Carlotta Hivoral  
Deputy Attorney General  
Bureau of Medi-Cal Fraud and Elder Abuse  
Office of the Attorney General  
California Department of Justice  
1455 Frazee Road, Suite 315  
San Diego, CA 92108-4304

**Medicaid Program:**

Original Signed By  
By: \_\_\_\_\_ Dated: 7/7/16

Jennifer Kent  
Director  
Department of Health Care Services  
MS 0000  
P.O. Box 997413  
Sacramento, CA 95899-7413

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OMNICARE, INC.

Original Signed By  
By: \_\_\_\_\_ Dated: 10/14/2016

Elizabeth S. Ferguson, Esq.  
Deputy General Counsel  
CVS Health Corporation

Original Signed By  
By: \_\_\_\_\_ Dated: 10/14/2016

Eric A. Dubelier, Esq.  
Katherine J. Seikaly, Esq.  
Reed Smith LLP  
Counsel for Omnicare, Inc.