

STATE SETTLEMENT AGREEMENT

I. PARTIES

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

II. PREAMBLE

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

A. At all relevant times, PharMerica Corporation was a Delaware corporation with a principal place of business in Louisville, Kentucky, PharMerica, Inc. was a Delaware corporation with its principal place of business in Tampa, Florida, and Kindred Pharmacy Services, Inc. was a Delaware corporation with its principal place of business in Louisville, Kentucky. At all relevant times, PharMerica specialized in providing pharmacy services to long term care facilities.

B. On June 14, 2011, Frank Kurnik ("Relator") filed a *qui tam* action in the United States District Court for the District of South Carolina captioned *United States of America ex rel. Frank Kurnik et al., v. Amgen, Inc., et al.*, Civil Action No. 3:11-cv-01464 (hereinafter the "Civil Action"). PharMerica is a named defendant in the Civil Action.

C. PharMerica 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."

D. The State contends that PharMerica 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 PharMerica for engaging in the following conduct (the "Covered Conduct"):

The State contends that from the period between June 14, 2005 through March 31, 2010, PharMerica solicited and received remuneration from Amgen Inc. in the form of purported discounts, purported market-share rebates, grants, honoraria, speaker fees, consulting services, dinners, travel, or fees for the purchase of data, and that this remuneration was solicited and received in exchange for PharMerica's influencing of health care providers' selection and utilization of Aranesp within long-term care settings, and for implementing "Therapeutic Interchange" programs (also known as "switching" programs) intended to identify patients who were taking a competitor drug and to switch those patients to Aranesp. The State alleges that as a result of the foregoing Covered Conduct, PharMerica knowingly caused false and/or fraudulent claims for Aranesp to be submitted to the State's Medicaid Program.

F. This Agreement is neither an admission of facts or liability by PharMerica, which specifically denies the claims, nor a concession by the State that its allegations are not well founded.

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. PharMerica agrees to pay to the United States and the Medicaid Participating States (as defined in sub-paragraph (c) below), collectively, the sum of \$2,500,000, plus accrued interest on that amount of 2.250% per annum commencing on July 9, 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) PharMerica shall pay to the United States the sum of \$2,078,395, plus accrued interest on that amount at the rate of 2.250% per annum commencing on July 9, 2015 ("Federal Settlement Amount"). The Federal Settlement Amount shall be paid pursuant to the terms of the Federal Settlement Agreement.

(b) PharMerica shall pay to the Medicaid Participating States the sum of \$421,605, plus accrued interest ("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 PharMerica.

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

(d) The total portion of the amount paid by PharMerica in settlement for the Covered Conduct for the State is \$196,680.16, 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 \$112,634.66, 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 PharMerica absent written agreement between counsel for PharMerica 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 PharMerica in State or Federal Courts for the Covered Conduct.

3. Subject to the exceptions in Paragraph 4 below, in consideration of the obligations of PharMerica 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 PharMerica, its predecessors and current and former parents, divisions, subsidiaries, affiliates, successors, transferees, heirs, and assigns, and their current and former directors, officers, and employees, individually and collectively (collectively, the "PharMerica 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;

(c) any civil or administrative liability that any person or entity, including any 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) except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive exclusions from the State's Medicaid program;

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

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

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

5. Nothing in this Agreement precludes the State from taking action against PharMerica in the event that PharMerica is excluded by the federal government, or for conduct and practices other than the Covered Conduct.

6. PharMerica waives and shall not assert any defenses it may have to criminal prosecution or administrative action for the Covered Conduct, which defenses may be based in whole or in part on a contention, under the Double Jeopardy Clause of

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

7. In consideration of the obligations of the State set forth in this Agreement, the PharMerica Released Entities waive and discharge the State, its agencies, employees, and agents from any causes of action which the PharMerica Released Entities have 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 releasing the PharMerica Released Entities from any obligation under 31 U.S.C. § 3730(d) or applicable state laws, for payment of Relators' reasonable attorney's fees and costs.

8. The amount that PharMerica 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 PharMerica 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. PharMerica, in the future, 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. PharMerica 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.

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

12. PharMerica agrees to cooperate fully and truthfully with any State investigation of individuals or entities not released in this Agreement related to the Civil Actions. Upon reasonable notice, PharMerica 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 PharMerica. Upon request, PharMerica 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. PharMerica 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, PharMerica agrees to pay all reasonable expenses and travel costs of the State Team, including reasonable consultant fees and expenses. PharMerica 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 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 PharMerica 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.

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.

State of California

Original Signed By _____ Dated: 10/20/2015
By: ELISEO Z. SISNEROS
Deputy Attorney General
California Office of the Attorney General

Original Signed By _____ Dated: 10/17/15
By: JENNIFER KENT
Director
State of California
Department of Health Care Services

PHARMERICA CORPORATION

By _____
Original Signed By

Dated 11/6/15

[Name] Thomas A. Caneis
[Title] SVP

By _____
Original Signed By
Jeremy M. Steinberg, Holland & Knight
Counsel to
Pharmacia Corporation

Dated 11/12/15

PHARMERICA, INC.

By: Original Signed By Dated: 11/6/15

[Name] Thomas A. Carris
[Title] SVP

By: Original Signed By ? Dated: 4/12/15?

Jeremy M. Sternberg, Holland & Knight
Counsel to
Phar Merica, Inc.

KINDRED PHARMACY SERVICES, INC.

By: Original Signed By Dated: 4/6/15
[Name] Thomas A. Caneris
[Title] SVP

By: Original Signed By Dated: 11/12/15
Jeremy M. Sternberg, Holland & Knight
Counsel to
Kindred Pharmacy Services, Inc.