

STATE SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (the “Agreement”) is entered into between the State of Hawaii (“the State”) and Walgreens Boots Alliance, Inc. and Walgreen Co. (collectively, “Walgreens”), collectively, “the Parties.”

II. PREAMBLE

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

A. At all relevant times, Walgreen Co. is an Illinois corporation with its principal place of business in Deerfield, Illinois, and is a wholly owned subsidiary of Walgreens Boots Alliance, Inc., a Delaware corporation with its principal executive offices in Deerfield, Illinois. Walgreen Co. directly and indirectly owns and operates retail pharmacies throughout the United States that provide pharmacy services to individuals, including beneficiaries of various federal health care programs.

B. On April 26, 2019, Steven Turck filed a sealed *qui tam* action in the United States District Court for the Eastern District of Texas captioned *United States of America et al., ex rel Turck, et al. v. Walgreens Boots Alliance, Inc., et al.*, Civil Action No. 4:19-cv-315 (the “Turck Civil Action”). On April 23, 2020, Lince Jacob filed a sealed *qui tam* action in the United States District Court for the Middle District of Florida captioned *United States, et al. ex rel. Jacob v. Walgreens Boots Alliance, Inc.*, Civil Action No. 8:20-cv-858-T-60TGW (the “Jacob Civil Action”). These *qui tam* actions will be referred to collectively as the “Civil Actions.”

C. On January 29, 2020, Walgreens disclosed to the United States that issues with its billing systems and practices had resulted in Walgreens billing federal health care programs for

prescriptions not provided to customers and for which Walgreens should not have received payment. Specifically, the Walgreens Compliance Department, in accordance with an unrelated Corporate Integrity Agreement between Walgreen Co. and the Office of Inspector General for the United States Department of Health and Human Services (“OIG-HHS”), submitted a “Reportable Event” letter to OIG-HHS regarding a “substantial overpayment” related to prescription orders pending in unaccounted-for status (i.e., “Unaccounted-For Status” or “UA Status”) in Walgreens’s primary, proprietary pharmacy management system, Intercom Plus (“IC+”), that were processed but never dispensed or delivered to beneficiaries after 30 days.

D. Walgreens cooperated with the United States’ investigation, including by preserving, collecting, and disclosing relevant documents, claims data, and information relating to the UA Status prescription billing issue, and retaining an independent consulting firm to assist in determining the amounts improperly billed to federal health care programs.

E. Walgreens took significant steps to remediate the UA Status prescription billing issue, including: (1) implementing a chain-wide system enhancement to IC+ to ensure that the UA Status prescription billing problem did not occur again; and (2) quantifying its overpayment liability resulting from the UA Status billing issue and making refunds to federal health care programs or their payment agents for the UA Status prescriptions totaling \$66,314,790.51

F. Walgreens received credit under the Department of Justice’s guidelines for taking disclosure, cooperation, and remediation into account in False Claims Act cases, Justice Manual §§ 4-4.112.

G. Walgreens has entered into a separate civil settlement agreement (the “Federal Settlement Agreement”) with the United States of America (the “United States”) as that term is defined in the Federal Settlement Agreement.

H. The State contends that Walgreens caused claims for payment to be submitted to the State’s Medicaid Program (42 U.S.C. Chapter 7 Subchapter XIX), including “managed care entities” as defined by 42 U.S.C. § 1396u-2 (collectively, “Medicaid”).

I. The State contends that it has certain civil and administrative causes of action against Walgreens for engaging in the following conduct (the “Covered Conduct”): Walgreens submitted or caused to be submitted false claims to Medicaid for “Unaccounted-For Status” prescriptions that were processed but never picked up by or delivered to customers during the period from June 25, 2013, through May 5, 2020. The State further contends that:

1. Both Medicare and Medicaid regulations require that government-funded health care items and services be provided “only when, and to the extent, medically necessary.” 42 U.S.C. § 1320c-5(a)(1); 42 U.S.C. § 1395y(a)(1) (allowing Medicare reimbursement only for items and services that are “reasonable and necessary”); 42 C.F.R. § 440.230 (authorizing states to limit reimbursement based on “medical necessity”).

2. Under the Affordable Care Act, providers have an “obligation” to return Medicare and Medicaid “overpayments” to those programs within 60 days after the overpayment has been “identified.” 42 U.S.C.A. § 1320a-7k(d)(2). Overpayments that are retained by a person after the deadline for reporting and returning those overpayments are expressly defined as an “obligation” for purposes of the False Claims Act. *Id.*, § 1320a-7k(d)(3).

3. In or around 1994, Walgreens designed and developed IC+ to record and process customer prescriptions. IC+ is a comprehensive claims management and submission system that centrally connects Walgreens stores and facilitates claims processing coordination with various payors, including federal health care programs and

their payment agents. Walgreens rolled out the IC+ system to all pharmacy locations in or around 1997.

4. Walgreens configured IC+ to remove any prescription orders from the local IC+ servers that had not been sold to customers or deleted in IC+ after 29 days due to server storage capacity concerns. These prescription orders were automatically updated to a new Unaccounted-For Status and moved to the central IC+ server. Once this occurred, however, pharmacists could no longer see the prescription orders in the local IC+ work queue. Walgreens also did not have a separate “back-end” process in place to review and resolve the UA Status prescriptions listed on the central server. As a result, claims for such prescriptions were not deleted in IC+ or reversed.

5. Walgreens’s implementation of the UA Status classification and functionality in IC+ caused it to bill government health care payors for UA Status prescriptions that were processed but never picked up by or delivered to the customer. As a result, Walgreens knowingly submitted, or caused to be submitted, claims for UA Status prescriptions that were ineligible for reimbursement.

J. This Agreement is neither an admission of liability by Walgreens nor a concession by the State that its claims are not well founded.

K. 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. Walgreens agrees to pay to the United States and the Medicaid Participating States (as defined in sub-paragraph (c) and subject to the non-participating state deduction provision of sub-paragraph (d) below), collectively, the sum of Ninety-Seven Million, Eight Hundred Fourteen Thousand, Seven Hundred Ninety Dollars and Fifty-One Cents (\$97,814,790.51) plus accrued interest (the “Total Settlement Amount”). Of the Total Settlement Amount, Sixty-Six Million, Three Hundred Fourteen Thousand, Seven Hundred Ninety Dollars and Fifty-One Cents (\$66,314,790.51), which serves as restitution, is the amount that Walgreens previously refunded and shall receive a credit for. Walgreens shall pay to the United States and the Medicaid Participating States, Thirty-One Million, Five Hundred Thousand Dollars (\$31,500,000.00) (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, as defined therein 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) Walgreens shall pay to the United States the sum of Twenty-Six Million, Six Hundred Ninety Thousand, Nine Hundred Thirty-Five Dollars (\$26,690,935.00) (the “Federal Settlement Amount”) plus accrued interest pursuant to the terms of the Federal Settlement Agreement.

(b) The total Medicaid recovery for the Covered Conduct is Twenty-Nine Million, Eight Hundred Sixty-Six Thousand, Five Hundred Nineteen Dollars and Sixty-Eight Cents (\$29,866,519.68) consisting of Fourteen Million, Nine Hundred Thirty-Three Thousand, Two Hundred Fifty-Nine Dollars and Eighty Three Cents (\$14,933,259.83) for the states pursuant to this Agreement and Fourteen Million, Nine Hundred Thirty-Three Thousand, Two Hundred Fifty-

Nine Dollars and Eighty Five Cents (\$14,933,259.85) for the United States pursuant to the Federal Settlement Agreement. Walgreens shall pay to the Medicaid Participating States the sum of Four-Million, Eight Hundred Nine Thousand, Sixty Four Dollars and Ninety Nine Cents (\$4,809,064.99), plus accrued interest on that amount at 4.0% per annum commencing from July 19, 2024, through August 21, 2024, subject to the non-participating state deduction provision of sub-paragraph (d) below (the “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 in a single lump sum payment and immediately deposited 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 (the “State Team”), which written instructions shall be delivered to counsel for Walgreens. This electronic fund transfer shall constitute tender and negotiation of the State Amount as defined in subparagraph (d) below.

(c) Walgreens shall execute a State Settlement Agreement with any State that executes such an Agreement in the form to which Walgreens and the State Team have agreed, or in a form otherwise agreed to by Walgreens and an individual State. The State shall constitute a “Medicaid Participating State” provided this Agreement is fully executed by the State and delivered to Walgreens’ attorneys within 60 days of receiving this Agreement. Walgreens’ offer to resolve this matter with the State shall become null and void absent written agreement between counsel for Walgreens and the State Team to extend the 60-day period.

(d) The total portion of the Settlement Amount paid by Walgreens in settlement for the Covered Conduct for the State is \$14,108.60 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 \$7,944.99 plus applicable interest (the “State Amount”), of which \$0.00 is restitution. If the State does not execute this Agreement within 60 days of receiving this Agreement, the State Amount shall be deducted from the Medicaid State Settlement Amount and shall not be paid by Walgreens absent written agreement between counsel for Walgreens and the State Team to extend the time period for executing this Agreement.

2. Contingent upon receipt of the State Amount, the State agrees to dismiss with prejudice any state law claims which the State has the authority to dismiss currently pending against Walgreens in State or Federal Courts for the Covered Conduct, including any supplemental state law claims asserted in the Civil Actions. Contingent upon receipt of the State Amount, the State, if served with the Civil Action and otherwise liable to pay a relator’s share, agrees to pay the Relators the amount of \$4,440.79 plus applicable interest. This amount is to be paid through the State Team and has been addressed via side letter with the Relators in the Civil Actions.

3. Subject to the exceptions in Paragraph 4 below, in consideration of the obligations of Walgreens set forth in this Agreement, and conditioned upon tender and negotiation of the State Amount, the State agrees to release Walgreens, together with its current and former parent corporations, direct and indirect subsidiaries, divisions, brother or sister corporations, affiliates, current or former corporate owners; and the corporate successors and assigns of any of them (collectively, the “Defendant Released Entities”), from any civil or administrative monetary cause of action that the State has or could have asserted for any claims submitted or caused to be submitted to the State’s Medicaid Program for the Covered Conduct, including any claims under state False Claims Act law, and any common law theories of payment by mistake, unjust enrichment, and fraud.

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

- (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 the Walgreens 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 III.3. above, including, but not limited to, any and all of the following claims: (i) claims involving unlawful or illegal conduct based on State or federal antitrust violations; and (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 based upon obligations created by this Agreement;
- (f) except as explicitly stated in this Agreement, any administrative liability or right, including exclusion from the State's Medicaid Program;
- (g) any liability for expressed or implied warranty claims or other claims for defective or deficient products and services, including quality of goods and services;
- (h) any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;
- (i) any liability for failure to deliver goods or services due; or
- (j) any liability of individuals.

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

6. In consideration of the obligations of the State set forth in this Agreement, the Walgreens Released Entities waive and discharge the State and any of its agencies, departments, and personnel including, but not limited to, officials, employees, and agents, whether current or former in their official and individual capacities from any causes of action (including attorneys' fees, costs, and expenses of every kind and however denominated) which the Walgreens Released Entities have against the State and any of its agencies, departments, and personnel as previously referenced arising from the State's investigation and prosecution of the Covered Conduct.

7. The amount that Walgreens 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 program payor, for the Covered Conduct; and Walgreens agrees not to resubmit to the State's Medicaid Program, or any other state program 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.

8. Walgreens 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.

9. Walgreens expressly warrants that it has reviewed its financial condition and that it is currently solvent, meaning that a fair valuation of its property (exclusive of exempt property) exceeds the sum of its debts.

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

11. 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.

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

13. 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.

14. In addition to all other payments and responsibilities under this Agreement, Walgreens agrees to pay the State Team's reasonable expenses and fees, including travel costs, consultant expenses, and administrative fees. Walgreens will pay this amount by a single 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.

15. 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.

16. The undersigned Walgreens 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.

17. The “Effective Date” of this Agreement shall be the date of signature of the last signatory to this Agreement. The facsimile, email or other electronically delivered signatures of the parties shall be deemed to constitute acceptable binding signatures for purposes of this Agreement, and facsimile or electronic copies shall be deemed to constitute duplicate originals.

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

19. 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.

20. 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.

21. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by the Parties to this Agreement and shall not, therefore, be construed against any of the Parties for that reason. The recitals in Section I (Parties) and Section II (Preamble) are agreed to by the Parties. The headings of this Agreement are not binding, are for reference only, and do not limit, expand, or otherwise affect the contents or meaning of this Agreement.

STATE OF HAWAII

By:  _____ Dated: 11/18/2024

Landon M.M. Murata
Name
Director, Medicaid Fraud Control Unit
Title
Department of the Attorney General
Organization

By:  _____ Dated: Nov 14, 2024

Judy Mohr Peterson, PhD.
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WALGREEN CO.

By: Peter R. Wilson Dated: 2/4/2025

Peter R. Wilson
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VP. Commercial/Government Litigation and Regulatory Law
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Walgreen Co.

By: Howard J. Young Dated: 2-3-2025

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