

STATE SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into between the State of North Carolina ("the State") and Omnicare, Inc., NCS Healthcare, LLC. and Neighborcare, Inc. (collectively "Omnicare") (hereafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. Omnicare is an institutional pharmacy that provides pharmacy goods and services to residents of nursing homes and other long-term care facilities. Throughout the period referenced in this Agreement, certain of Omnicare's pharmacy goods and services were reimbursed by government healthcare programs, including Medicare and Medicaid.

B. On January 19, 2010, Relator Donald Gale filed a *qui tam* action in the United States District Court for the Northern District of Ohio (the "Gale Court"), captioned *United States ex rel. Gale v. Omnicare, Inc.*, Civil Action No. 1:10-cv-0127, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the "Gale Civil Action").

C. On March 4, 2011, Relator Marc Silver filed a *qui tam* action in the United States District Court for the District of New Jersey (the "Silver Court"), captioned *United States, et al. ex rel. Silver v. Omnicare, Inc. et al.*, Civil Action No. 1:11-cv-01326, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b), and various state False Claims Acts and other laws (the "Silver Civil Action").

D. The Gale Civil Action and the Silver Civil Action are referred to collectively as the Civil Actions. Omnicare has entered into a separate civil settlement agreement (the

"Federal Settlement Agreement") with Relators Gale and Silver and with the United States (as the United States is defined in the Federal Settlement Agreement).

E. The State contends that Omnicare engaged in the following conduct:

During the period from January 19, 2004 through June 30, 2012, Omnicare offered and paid remuneration to skilled nursing facilities through (a) discounted per diem pricing for drugs provided to Medicare Part A patients; (b) prompt pay discounts; (c) free drugs; and (d) discounted fee-for-service pricing for drugs provided to Medicare Part A patients, to induce the referral of the remaining pharmacy business to Omnicare, including for drugs provided to patients covered by Medicare Part D and the state Medicaid programs, in violation of the Federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b); and provided per diem or fee-for-service pricing in violation of "most favored nation"/"most favored customer" pricing. The State further contends that Omnicare, during the time period of January 19, 2004 through December 31, 2013 and as a result of the foregoing conduct, submitted or caused to be submitted false claims that were reimbursed by federal healthcare programs, including through Medicare Part D reimbursements and the state Medicaid programs, in violation of the federal False Claims Act, State False Claims Acts and other laws.

This conduct is hereinafter referred to as the "State Covered Conduct"

F. The State Covered Conduct specifically does not include claims alleged under the federal and state False Claims Acts in the Third Amended Complaint filed in *United States, et al. ex rel. Ruscher v. Omnicare, Inc., et al.*, Civil Action No. 08-3396, pending in the Southern District of Texas.

G. The State contends that it has certain civil and administrative causes of action against Omnicare for engaging in the State Covered Conduct.

H. This Settlement Agreement is made in compromise of disputed claims. This Agreement is neither an admission of facts or liability by Omnicare, nor a confession by the State that its allegations are not well founded. Omnicare expressly denies the allegations set

forth herein and in the Silver Civil Action. Neither this Agreement or its execution, nor the performance of any obligations arising under it, including any payment, nor the fact of settlement is intended to be, or shall be understood as, an admission of liability or wrongdoing, or other expression reflecting on the merits of the dispute by any party to this Agreement.

I. 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.

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 Medicaid Participating States (as defined in Paragraph 1(b) below), collectively, the sum of EIGHT MILLION TWO HUNDRED AND FORTY THOUSAND DOLLARS (\$8,240,000.00) (the "Medicaid State Settlement Amount"). The debt shall forever be discharged by payment to the Medicaid Participating States, under the following terms and conditions:

(a) The Medicaid 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. Unless otherwise agreed to in writing by Omnicare and the State Team, Omnicare shall pay the Medicaid State Settlement Amount (as may be reduced consistent with Paragraph 1(c) below) within seven

(7) days of receipt of the executed State Settlement Agreement (in a form agreed to by Omnicare) by every Medicaid Participating State, provided that the State Team has provided written notice to Omnicare of receipt of the Stipulation of Dismissal with Prejudice of All State Law Claims in the Silver Action which has been executed by Relator Silver and Silver's counsel, and which shall be tendered to Omnicare within three (3) days of payment of the Medicaid State Settlement Amount.

(b) Omnicare shall execute a 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 the Agreement is fully executed by the State and delivered to Omnicare's attorneys within 45 days of receiving this Agreement. If this condition is not satisfied within 45 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 45-day period.

(c) The total portion of the amount paid by Omnicare in settlement for the State Covered Conduct for the State is \$85,412.66 (the "State Amount"). If the State does not execute this Agreement within 45 days of receiving this Settlement Agreement, the State Amount shall be deducted from the Medicaid State Settlement Amount and shall be retained 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 claims currently pending against Omnicare in State or Federal Courts for the State Covered Conduct and, if named in the Silver Civil Action, consents to the dismissal with prejudice of the Silver Civil Action

and executes Exhibit A attached. Contingent upon the receipt of its State Amount, the State, if properly served with the Silver Civil Action and liable to pay a Relator's share, agrees to pay, as soon as feasible after such receipt, such amount as has been or will be negotiated with the Relator in the Silver Civil Action, which shall be set forth in a side letter issued to and executed by the Relator in the Silver Civil Action.

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 the State Amount, the State agrees to release Omnicare, its predecessors and current and former parents, divisions, subsidiaries, successors, transferees, heirs, and assigns, and their current and former directors, officers, and employees, individually and collectively (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's Medicaid Program as a result of the State 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 State Covered Conduct;

(e) any liability which may be asserted on behalf of any other payors or insurers, including those claims by other payors or insurers 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 exclusions from the State's Medicaid Program;

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

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

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

5. Omnicare waives and shall not assert any defenses it may have to criminal prosecution or administrative action for the State 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. Nothing in this Agreement constitutes an agreement by the State concerning the characterization the amount paid hereunder for purposes of any revenue code.

6. In consideration of the obligations of the State set forth in this Agreement, Omnicare waives and discharges the State, its agencies, political subdivisions, employees, servants, and agents from any causes of action (including attorneys' fees, costs, and expenses of every kind and however denominated) which Omnicare has asserted, could have asserted, or may assert in the future against the State, its agencies, political subdivisions, employees, servants, and agents, arising from the State's investigation and prosecution of the State Covered Conduct.

7. The amount that Omnicare must pay to the State pursuant to Paragraph 1(c) above will not be decreased as a result of the denial of claims for payment now being withheld from payment by the State's Medicaid Program, or any other state payor, for the State 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 State Covered Conduct, and agrees not to appeal or cause the appeal of any such denials of claims.

8. 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.

9. Omnicare expressly warrants that it has reviewed its financial condition and that it is currently solvent, and that payment of the Medicaid State Settlement Amount described in Paragraph 1 shall not render Omnicare insolvent.

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

11. Except for the State Team expenses and costs identified in Paragraph 15 below, 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 by this instrument the Parties do not release any liability against any other person or entity.

13. 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.

14. 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.

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

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

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

18. 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.

19. 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 NORTH CAROLINA

By: Charles H. Hobbard

CHARLES H. HOBGOOD
Director, Medicaid Investigations Division
Office of the Attorney General

Dated: 7/28/2014

By: [Signature]

ROBIN G. CUMMINGS, M.D., Director
Division of Medical Assistance

Dated: 7/24/14

OMNICARE, INC.

By: Alexander M. Kayne Dated: 8/26/14

Alexander Kayne
General Counsel

By: _____ Dated: _____

J. Andrew Jackson
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001.2113
(202) 879-3939

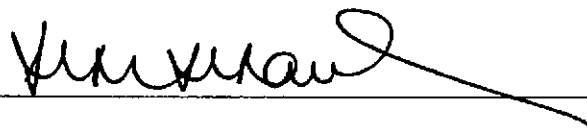
Tina M. Tabacchi
JONES DAY
77 W. Wacker Dr.
Suite 3500
Chicago, IL 60601
(312) 782-3939

Counsel to Omnicare, Inc.

OMNICARE, INC.

By: _____ Dated: _____

Alexander Kayne
General Counsel

By:  _____ Dated: 8.27.14

Tina M. Tabacchi
JONES DAY
77 W. Wacker Dr.
Suite 3500
Chicago, IL 60601
(312) 782-3939

J. Andrew Jackson
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001.2113
(202) 879-3939

Counsel to Omnicare, Inc.