

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"), the State of North Carolina, by and through the North Carolina Attorney General, and the North Carolina Division of Medical Assistance (collectively "the Government" includes both federal and state entities above), and Physicians Pharmacy Alliance, Inc. (hereafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. Physicians Pharmacy Alliance, Inc. (hereinafter "PPA") is a corporation that provides pharmacy services, primarily to Medicaid and Medicare patients in North Carolina.

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

C. The Government contends that:

1. Between January 1, 2008, and January 4, 2011, PPA provided gift cards to patients, physician office employees, and community health center employees in order to induce them to enroll or refer patients to PPA in violation of the Anti-kickback statute, 42 U.S.C. § 1320a-7b; and

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2. Between January 1, 2008, and April 30, 2013, PPA waived copayments for Medicare and Medicaid beneficiaries who had their prescriptions filled at PPA.

The Government contends that through the above conduct, PPA submitted or caused to be submitted false and fraudulent claims to Medicare and Medicaid in violation of the False Claims Act. This conduct is referred to below as the Covered Conduct.

D. The State of North Carolina alleges that it has certain claims against PPA for the Covered Conduct under the North Carolina False Claims Act, N.C.G.S. § 1-605, et. seq.

E. The United States alleges that it has certain civil claims against PPA for the Covered Conduct.

F. This Settlement Agreement is neither an admission of liability by PPA nor a concession by the Government that its claims are not well founded.

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 Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. PPA shall pay to the Government five million dollars (\$5,000,000) ("Settlement Amount"), and interest on the Settlement Amount at a rate of 2.5% compounded annually from September 4, 2014, by electronic funds transfer to an account (the "Identified Account") pursuant to written instructions to be provided to PPA no later than the 50th day after the Effective Date of this Agreement by the Office of the United States Attorney.

PPA shall pay the Government the sum of one million dollars (\$1,000,000), within 60 days of the Effective Date of this Agreement. PPA shall make a second payment of two million dollars (\$2,000,000), plus accrued interest to the date of the second payment, within one year of the Effective Date of this Agreement. PPA shall make a third payment of the remaining balance of two million dollars (\$2,000,000), plus the remaining accrued interest, within two years of the Effective Date of this Agreement. Unless written notice is given to PPA no later than the 10th Business Day prior to the date on which any such payment is due that such payment shall be paid to an account other than the Identified Account, PPA will make the payment to the Identified Account.

In order to secure this Agreement, the Defendant shall enter a consent order for judgment in the amount of \$5,000,000, contemporaneously with this Settlement Agreement, holding that the Defendant is liable in the full Settlement Amount, plus interest at a rate of 2.5% compounded annually, and the judgment to be entered by the Court, based upon the consent order of the parties, shall be recorded against the property of PPA by the Government.

PPA makes the following representation and warranties and covenants that (a) as of the Effective Date of this Agreement, (i) PPA's only secured long-term debt is payable to Fifth Street Finance (in an amount equal to, on the Effective Date of this Agreement, approximately \$10.5 million) (the "Senior Loan") and (ii) as of the Effective Date of this Agreement, PPA has no other long-term indebtedness with a principal amount in excess of \$500,00 other than the note payable to James Taggart (in an amount equal to, as of the Effective Date of this Agreement, approximately \$3 million) (the "Subordinated Loan"), and (iii) PPA shall not obtain other secured long-term debt until the judgment referenced in the

immediately preceding paragraph is properly recorded, except that PPA is expressly permitted to secure a long-term debt to replace the Senior Loan (b) until such time as the Settlement Amount, plus all interest thereon then due, has been paid in full, PPA will not make any cash payments or prepayments of principal on the Senior Loan or the Subordinated Loan except that PPA may make monthly interest payments (equal to, as of the Effective Date of this Agreement, 10.233%, LIBOR + 10%, on the principal outstanding) quarterly principal payments (equal to \$400,000) and other mandatory prepayments in respect of the Senior Loan in accordance with the Credit Agreement with Fifth Street Finance as required in its current written loan agreements or as required in any new loan agreement with long-term debt that replaces the Senior Loan so long as the new loan agreement does not contain interest payments or principal payments that are collectively higher (total payments for respective time periods) than those referenced herein, (c) that if any payment default occurs on the Fifth Street Finance loan that remains uncured or unwaived for a period in excess of 10 business days, or if PPA makes any additional payment other than that allowed in subparagraph (b) above, then default automatically occurs on this Government liability and the full unpaid obligation to the Government becomes immediately due (acceleration), and (d) PPA shall provide prompt notice to the Government (in accordance with the notice provisions of this Agreement) of any type of default with respect to the Senior Loan which remains uncured or unwaived for a period in excess of 10 business days, the acceleration of the Senior Loan, or the exercise of any material rights and remedies under the Senior Loan or the Subordinated Loan.

In the event that PPA fails to pay any amounts as provided in paragraph 1 within five (5) business days of the date on which such payment is due or otherwise fails to comply with

the covenants contained in the immediately preceding paragraph, PPA shall be in default of its payment obligations ("Default"). The Government will provide written notice of the Default to Defendant and Defendant shall have the opportunity to cure such Default within five (5) business days from the date of receipt of the notice. Notice of Default will be delivered to Defendant's counsel executing this agreement or to such other representative as Defendant shall designate in advance in writing. If Defendant fails to cure such Default within five (5) business days of receiving the Notice of Default, the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest shall accrue at the rate of 9% per annum compounded daily from the date of Default on the remaining unpaid total (principal and interest balance). Upon default, the Government, at its sole option, may: (a) offset or recoup the remaining unpaid balance from any amounts due and owing to Defendant by any department, agency, or agent of the Government at the time of Default; (b) collect the entire unpaid balance of the Settlement Amount, plus interest, including 9% interest from the date of Default, and all other amounts due upon the event of Default as specified in this paragraph; (c) file a civil action for the Covered Conduct; or (d) exercise any other rights granted by law or in equity, including referral of this matter for private collection. In the event a complaint is filed pursuant to subsection (c) of this paragraph, Defendant agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories to the allegations in the complaint, except to the extent such defenses were available to Defendant on the Effective Date. Defendant agrees not to contest any consent judgment, offset, or any collection action undertaken by the Government pursuant to this paragraph, either administratively or in any state or federal court. Defendant shall pay the Government all reasonable costs of collection

and enforcement under this paragraph, including attorneys' fees and expenses.

2. Subject to the exceptions in Paragraph 5 (concerning excluded claims) below and subject to Paragraph 14, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement), and conditioned upon PPA's full payment of the Settlement Amount, the United States releases PPA, together with its current employees, officers and directors, including current employees who were employees of PPA when PPA was acquired in January 2011, and all employees hired after January 2011 (but not former employee and owner James Taggart), 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.

3. OIG-HHS expressly reserves all rights to institute, direct, or to maintain any administrative action seeking exclusion against PPA and/or PPA's officers, directors, and employees from Medicare, Medicaid, and all other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) under 42 U.S.C. § 1320a-7(a) (mandatory exclusion), or 42 U.S.C. § 1320a-7(b) or 42 U.S.C. § 1320a-7a (permissive exclusion).

Notwithstanding the foregoing, in the event of Default as defined in Paragraph 1, above, OIG-HHS may exclude PPA from participating in all Federal health care programs until PPA pays the Settlement Amount and reasonable costs as set forth in Paragraph 1, above. OIG-HHS will provide written notice of any such exclusion to PPA. PPA waives any further notice of the exclusion under 42 U.S.C. § 1320a-7(b)(7), and agrees not to contest such exclusion either administratively or in any state or federal court. Reinstatement to

program participation is not automatic. If at the end of the period of exclusion PPA wishes to apply for reinstatement, PPA must submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. PPA will not be reinstated unless and until OIG-HHS approves such request for reinstatement.

4. In consideration of the obligations of PPA set forth in this Agreement, and Subject to the exceptions in Paragraph 5, below, in consideration of the obligations of PPA set forth in this Agreement, and conditioned upon PPA's full payment of the Settlement Amount, the State of North Carolina (on behalf of itself, its officers, agents, agencies, and departments) releases PPA, together with its current employees, officers and directors, including current employees who were employees of PPA when PPA was acquired in January 2011, and all employees hired after January 2011 (but not former employee and owner James Taggart), from any civil or administrative monetary claim the State of North Carolina has for the Covered Conduct under the North Carolina False Claims Act, N.C.G.S. § 1-605 et. seq., the North Carolina Medical Assistance Provider False Claims Act, N.C.G.S. § 108A-70.10 et. seq., or the common law theories of payment by mistake, unjust enrichment, and fraud for the Covered Conduct.

5. Notwithstanding the releases given in paragraphs 2 and 4 of this Agreement, or any other term of this Agreement, the following claims of the Government 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 or permissive exclusion from Federal health care programs;
- d. Any liability to the Government (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g. Any liability for failure to deliver goods or services due;
- h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;
- i. Any liability of individuals except as expressly stated herein.

6. PPA has provided sworn financial disclosure statements (Financial Statements) to the Government and the Government has relied on the accuracy and completeness of those Financial Statements in reaching this Agreement. PPA warrants that the Financial Statements are complete, accurate, and current. If the Government learns of asset(s) in which PPA had an interest at the time of this Agreement that were not disclosed in the Financial Statements, or if the Government learns of any misrepresentation by PPA on, or in connection with, the Financial Statements, and if such nondisclosure or misrepresentation changes the estimated net worth set forth in the Financial Statements by \$500,000 or more, the Government may at its option: (a) rescind this Agreement and file suit based on the Covered Conduct, or (b) let the Agreement stand and collect the full Settlement Amount plus

one hundred percent (100%) of the value of the net worth of PPA previously undisclosed. PPA agrees not to contest any collection action undertaken by the Government pursuant to this provision, and immediately to pay the Government all reasonable costs incurred in such an action, including attorney's fees and expenses, except that PPA may argue that misrepresentations were not made with knowledge.

7. PPA waives and shall not assert any defenses PPA 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 Government concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

8. PPA fully and finally releases the Government, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that PPA has asserted, could have asserted, or may assert in the future against the Government, and its agencies, employees, servants, and agents, related to the Covered Conduct and the Government's investigation and prosecution thereof.

9. 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 PPA agrees not to resubmit to any Medicare contractor, Medicaid fiscal agent, or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

10. PPA 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 PPA, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement and any related plea agreement;
- (2) the Government's audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;
- (3) PPA's investigation, defense, and corrective actions undertaken in response to the Government's 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 and any Plea Agreement; and
- (5) the payment PPA makes to the Government pursuant to this Agreement.

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").

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

c. Treatment of Unallowable Costs Previously Submitted for Payment: PPA 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 PPA 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. PPA agrees that the Government, at a minimum, shall be entitled to recoup from PPA 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 Government pursuant to the direction of the Department of Justice and/or the affected agencies. The Government reserves its rights to disagree with any calculations submitted by PPA or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as

defined in this Paragraph) on PPA 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 Government to audit, examine, or re-examine PPA's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

11. PPA agrees to cooperate in good faith and truthfully with the Government's investigation of individuals and entities not released in this Agreement.

12. 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 13 (waiver for beneficiaries paragraph), below.

13. PPA 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.

14. PPA warrants that it has reviewed its financial situation and that it currently is 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 to the Government of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to PPA, within the meaning of 11 U.S.C. § 547(c)(1), and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact,

represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which PPA was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

15. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, PPA commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of PPA's debts, or seeking to adjudicate PPA as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for PPA or for all or any substantial part of PPA's assets, PPA agrees as follows:

a. PPA's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and PPA shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) PPA's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) PPA was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the Government; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to PPA.

b. If PPA's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the Government, at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against PPA for the claims that would otherwise be covered by the releases provided in Paragraphs 2, 3 and 4, above. PPA agrees that (i) any such claims, actions, or proceedings brought by the

Government are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and PPA shall not argue or otherwise contend that the Government's claims, actions, or proceedings are subject to an automatic stay; (ii) PPA shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding that are brought by the Government within 90 calendar days of written notification to PPA that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on March 25, 2013; and (iii) the Government has a valid bankruptcy claim against PPA in the amount of \$10,000,000, and the Government may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. PPA acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

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

17. 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.

18. 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 Eastern District of North Carolina. 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.

19. This Agreement constitutes the complete civil agreement between the Parties.
This Agreement may not be amended except by written consent of the Parties.
20. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.
21. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.
22. This Agreement is binding on PPA's successors, transferees, heirs, and assigns.
23. All parties consent to the Government's disclosure of this Agreement, and information about this Agreement, to the public.
24. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 5.6-15 BY: Thomas G. Walker
THOMAS G. WALKER
United States Attorney
NEAL I. FOWLER
Assistant United States Attorney
310 New Bern Avenue, Suite 800
Raleigh, NC 27601-1461

DATED: 4/14/15 BY: Allie Pang
ALLIE PANG
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: _____ BY: _____
ROBERT K. DECONTI
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

THE UNITED STATES OF AMERICA

THOMAS G. WALKER
United States Attorney

DATED: _____

BY: _____

NEAL I. FOWLER
Assistant United States Attorney
310 New Bern Avenue, Suite 800
Raleigh, NC 27601-1461

DATED: _____

BY: _____

ALLIE PANG
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: 5/6/15

BY: _____

Robert K. DeConti
ROBERT K. DECONTI
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

THE STATE OF NORTH CAROLINA

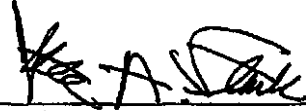
DATED: 4/14/2015

BY: Charles H. Hobbard
CHARLES H. HOBGOOD
Special Deputy Attorney General
Director, North Carolina Medicaid Investigations
Division

PHYSICIANS PHARMACY ALLIANCE - DEFENDANT

DATED: 4.8.2015

BY:



PETE A. STARK
Chief Executive Officer
Physicians Pharmacy Alliance

DATED: _____

BY:

STEPHEN T. SMITH
McMillan & Smith
Counsel for Physicians Pharmacy Alliance

DATED: _____

BY:

KIRSTEN BACKSTROM
Member
Epstein Becker & Green, P.C.
Counsel for Physicians Pharmacy Alliance

PHYSICIANS PHARMACY ALLIANCE - DEFENDANT

DATED: _____

BY: _____

PETE A. STARK
Chief Executive Officer
Physicians Pharmacy Alliance

DATED: 4-13-15

BY: _____

Stephen T. Smith
STEPHEN T. SMITH
McMillan & Smith
Counsel for Physicians Pharmacy Alliance

DATED: 4/9/15

BY: _____

Kirsten Backstrom
KIRSTEN BACKSTROM
Member
Epstein Becker & Green, P.C.
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