

SETTLEMENT AGREEMENT

I. Parties

This Settlement Agreement (“Agreement”) is entered into between the State of Michigan and CVS/Caremark Corporation (“CVS”), acting through their authorized representatives (hereafter referred to as “the Parties”)

II. Preamble

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

A CVS is a Delaware corporation that, *inter alia*, owns and operates various entities that are or were participating providers of pharmacy services in the Medicaid Program (“Medicaid”) of the State of Michigan, pursuant to Medicaid Provider Agreements entered into with the State of Michigan.

B Relator Bernard Lisitza (“Relator”) is an individual resident of the State of Illinois. On January 31, 2003, Relator filed a *qui tam* action in the United States District Court for Northern District of Illinois captioned *United States et al ex rel Bernard Lisitza v. CVS Corporation*, No 03-C-0742 (hereinafter “the Civil Action”).

C The State of Michigan contends that CVS submitted or caused to be submitted claims for payment to the State of Michigan’s Medicaid Program (“Medicaid”), 42 U.S.C §§ 1396-1396v.

D The State of Michigan contends that it has certain civil claims against CVS for engaging in the following conduct (hereinafter referred to as the “Covered Conduct”): From April 1, 1999 through December 31, 2006, CVS improperly caused its pharmacies to switch Medicaid patients who were prescribed ranitidine (generic Zantac) 150 mg or 300 mg tablets to the capsule form of the drug. This switch occurred because the Centers for Medicare and Medicaid Services (“CMS”) had imposed a Federal Upper Limit (“FUL”) price on the tablet form of ranitidine. As a

result of this improper substitution, CVS received reimbursement amounts from Medicaid that were higher than it was entitled to receive.

E. This Agreement is made in compromise of disputed claims. CVS expressly denies each and every one of the contentions and claims of the State of Michigan that are set forth in Paragraph D above and the allegations of the Relator in the Civil Action, and expressly denies that it has engaged in any wrongful conduct in connection with the Covered Conduct or that it is liable under the False Claims Act, 31 U.S.C. §§ 3729-3733, or any other civil, administrative or criminal cause of action with regard to such contentions or allegations. Nothing in this Agreement, or any obligation herein, or the fact of the settlement shall constitute, be construed to be, or be understood as an admission by CVS that it has violated or breached any act, law, regulation, obligation or contract or has engaged in any wrongdoing.

F. CVS has entered into or will be entering into a separate settlement agreement (hereinafter referred to as the "Federal Settlement Agreement and Release") with the United States Department of Justice (hereinafter referred to as the "United States"), which will be receiving settlement funds from CVS pursuant to Paragraph 1(a) below for the Covered Conduct described in Paragraph D above.

G. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

III. Terms and Conditions

1. CVS agrees to pay to the United States and to the states that will be receiving settlement funds pursuant to this paragraph (“the Participating States”), collectively a total of \$36,700,000 (thirty-six million seven hundred thousand dollars) (the “Settlement Amount”). The Settlement Amount is to be paid to the United States and the Participating States as follows:

a. CVS and the United States agree that the sum of \$21,060,535.54 (twenty-one million sixty thousand five hundred thirty-five dollars and fifty-four cents) represents the Federal Share (the “Federal Settlement Amount”). CVS agrees to pay the Federal Settlement Amount to the United States by electronic funds transfer pursuant to written instructions to be provided by the U.S. Attorney’s Office for the Northern District of Illinois. CVS agrees to make this electronic funds transfer no later than 10 business days from the Effective Date of the Federal Settlement Agreement and Release.

b. CVS and the Participating States agree that the sum of \$15,639,464.46 (fifteen million six hundred thirty-nine thousand four hundred sixty-four dollars and forty-six cents) represents the Participating States’ share (the “State Settlement Amount”) under the terms and conditions agreed upon by CVS and the Participating States (the “State Settlement Agreements”). Upon execution of the State Settlement Agreements by the Participating States, or at any earlier date as otherwise agreed in writing between CVS and the Negotiating Team of the National Association of Medicaid Fraud Control Units, (“NAMFCU”), CVS shall transfer the State Settlement Amount to an account designated by NAMFCU for distribution to the Participating States by NAMFCU.

c. The total portion of the Settlement Amount paid by CVS in settlement for the Covered Conduct to the State of Michigan is \$819,312.25, consisting of a portion paid to the

State of Michigan under this Agreement and another portion paid to the federal government as part of the Federal Settlement Agreement and Release. The individual portion of the State Settlement Amount allocable to the State of Michigan under this Agreement is the sum of \$348,555.52

d. Contingent upon the Participating States receiving the State Settlement Amount from CVS and as soon as feasible after receipt, the Participating States agree to pay \$729,039.73 (seven hundred twenty-nine thousand thirty-nine dollars and seventy-three cents) to Relator Lisitza pursuant to instructions provided by Counsel for the Relator, Michael I. Behn of Behn & Wyetzner, Chartered, ("Counsel for Relator Lisitza").

e. CVS agrees to pay Counsel for Relator for expenses and attorneys' fees and costs pursuant to instructions provided by Counsel for Relator, in accordance with the terms of a separate agreement between CVS and the relator. CVS agrees to make this electronic funds transfer no later than 10 days from the Effective Date of the Federal Settlement Agreement and Release.

2 Subject to the exceptions in Paragraph 4 below, in consideration of the obligations of CVS in this Agreement, conditioned upon CVS's full payment of the Federal and State Settlement Amounts, the State of Michigan on behalf of itself, its officers, agents, employees, servants, agencies, and departments, fully and finally releases CVS, its parents, divisions, subsidiaries, predecessors, successors, assignees, transferees, employees, agents and affiliates as set forth in Attachment A ("the CVS Released Parties") from any civil or administrative monetary claim the State of Michigan has for the Covered Conduct.

3 The CVS Released Parties fully and finally release the State of Michigan, its officers, agencies, employees, servants, departments and agents from any claims that CVS has against the State of Michigan, its agencies, employees, servants and agents, for the Covered Conduct.

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

- a any civil, criminal, or administrative liability arising under State of Michigan revenue codes;
- b any criminal liability;
- c any civil or administrative liability that CVS has or may have under any state statute, regulation or rule not covered by this Agreement;
- d any liability to the State of Michigan (or its agencies) for any conduct other than the Covered Conduct;
- e any liability based upon such obligations as are created by this Agreement;
- f except as explicitly stated in this Agreement, including but not limited to the first three clauses of Paragraph 5 below, any administrative liability, including mandatory exclusion from the State of Michigan's Medicaid Program;
- g any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h any claims 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.

5 In consideration of the obligations of CVS in this Agreement and the Corporate Integrity Agreement ("CIA") entered into between the Office of the Inspector General of the United States Department of Health and Human Services ("OIG-HHS") and CVS, conditioned upon CVS's

full payment of the Federal and State Settlement Amounts, the State of Michigan agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from the State of Michigan's Medicaid Program, except as reserved in Paragraph 4, for the Covered Conduct. Nothing in this Agreement precludes the State of Michigan from taking action against CVS in the event that CVS is excluded by the federal government, or for conduct and practices other than the Covered Conduct. The State of Michigan does not release CVS from any claims or actions that may be asserted by private payers or insurers on their own behalf.

6. CVS waives and shall not assert any defenses CVS 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. CVS is specifically not waiving any other defenses it may have. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by the State of Michigan concerning the characterization of the Settlement Amount for purposes of state revenue laws.

7. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by the State of Michigan's Medicaid Program or other state payer for the Covered Conduct; and CVS shall not resubmit to the State of Michigan's Medicaid Program or any state payer any previously denied claims for the Covered Conduct, and shall not appeal any such denials of claims.

8. CVS agrees to cooperate fully and truthfully with the State of Michigan's investigation of individuals and entities not released in this Agreement. Upon reasonable notice,

CVS shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. CVS agrees to furnish to the State of Michigan complete and unredacted copies of all documents, reports, memoranda of interviews and records in its possession, custody or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by its counsel or other agent, unless such material is covered by a valid claim of privilege.

9. 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 10 below

10 CVS waives and shall not seek payment for any of the health care billings covered by this Agreement from any Medicaid beneficiary or said beneficiary's parents, sponsors, legally responsible individuals or third party payers based upon the claims defined as Covered Conduct.

11 CVS 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 United States and the Participating States 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 CVS, 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 that CVS was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

12. In addition to all other payments and responsibilities under this Agreement, CVS agrees to pay \$6,000.00 (six thousand dollars) as reimbursement for all reasonable travel costs and expenses incurred by the NAMFCU Negotiating Team. CVS will pay this amount by separate check or wire transfer made payable to the National Association of Medicaid Fraud Control Units after the Participating States execute this Agreement or as otherwise agreed by the Parties.

13. CVS represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

14. This Agreement is governed by the laws of the State of Michigan. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

15. The individuals signing this Agreement on behalf of CVS represent and warrant that they are authorized by CVS to execute this Agreement on behalf of the CVS Released Parties, including all entities that are or were participating providers of pharmacy services in the Medicaid Program of the State of Michigan, pursuant to Medicaid Provider Agreements entered into with the State of Michigan. The individuals signing this Agreement on behalf of the State of Michigan

represent and warrant that they are signing this Agreement in their official capacities and are authorized by the State of Michigan to execute this Agreement.

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

17. This Agreement is binding on CVS's successors, transferees, heirs and assigns.

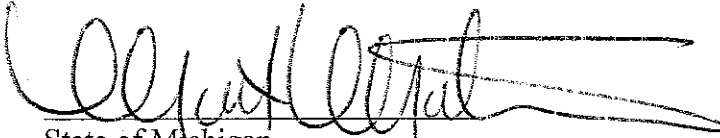
18. All Parties consent to the disclosure of this Agreement, and information about this Agreement, to the public.

19. This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date"). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.


20. Upon payment by CVS of the amounts referenced in Paragraphs III 1. and III 1. e. above, the Civil Action shall be dismissed with prejudice.

STATE OF MICHIGAN

DATED: 12/27/2007


BY: 
State of Michigan
Office of the Attorney General
Medicaid Fraud Control Unit

DATED: 12-20-2007

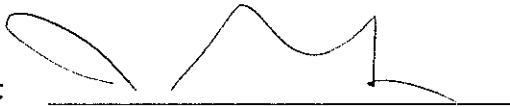
BY: 
State of Michigan
Medicaid Program

CVS/CAREMARK CORPORATION

DATED: 3/14/08

BY: 
CVS Representative

DATED: 3/14/08

BY: 
MICHAEL GARDENER
Counsel for CVS/Caremark Corporation
Mintz Levin Cohn Ferris Glovsky & Popeo, PC
One Financial Center
Boston, MA 02111
617-542-6000

Attachment A

CVS/Caremark Corporation and CVS Pharmacy, Inc , a Rhode Island corporation, on its own behalf and on behalf of each of its subsidiaries and affiliates that operated stores in the jurisdictions listed below during the period from April 1, 1999 to December 31, 2006, including those CVS Pharmacy, Inc. subsidiaries operating under the ProCare or PharmaCare Pharmacy names. Specifically excluded from the CVS Released Parties are those store locations in the states of Indiana and Illinois acquired from Albertson's, Inc. on June 2, 2006.

Alabama
Connecticut
Washington, DC
Florida
Georgia
Illinois
Indiana
Kentucky
Maine
Maryland
Massachusetts
Michigan
New Hampshire
New Jersey
New York
North Carolina
Ohio
Pennsylvania
Rhode Island
South Carolina
Tennessee
Vermont
Virginia
West Virginia

DISTRIBUTION OF PROCEEDS

CVS/Caremark Corporation

State of Michigan

DEPT OF
ATTORNEY GENERAL

MAR 19 2008

HEALTH CARE FRAUD DIVISION

TOTAL MEDICAID SETTLEMENT (STATE/FEDERAL)	\$819,312.25
1. State Share of Medicaid Restitution	\$174,277.76
2. State Share of Additional Recoveries	\$174,277.76
3. Total State Settlement Amount	\$348,555.52 *

***THESE ARE STATE MONIES ONLY; DO NOT SEND OR CREDIT
ANY AMOUNT TO THE FEDERAL GOVERNMENT.**

IF ANY MFCU STATES HAVE QUESTIONS ON HOW TO REPORT THESE
MONIES, PLEASE DIRECT QUESTIONS TO:

Sharon Colby, Director
Medicaid Fraud Unit Oversight Staff
Office of the Inspector General
202-260-3711