

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (“Settlement Agreement”) is entered into this ____ day of March, 2017 (“Effective Date”) by and between Bergen Pharmacy and Subash Pulimamidi, respectively (hereinafter collectively referred to as “Bergenline”), represented by Angelo J. Cifaldi, Esq. of Wilentz, Goldman and Spitzer, PA and STATE OF NEW JERSEY, OFFICE OF THE STATE COMPTROLLER, MEDICAID FRAUD DIVISION (“MFD”). Bergenline and MFD are hereinafter collectively referred to as the "Parties" and each individually as a “Party.”

WHEREAS, MFD conducted a pharmacy inventory analysis and found that during the period of review between February 1, 2010 and March 1, 2016, Bergenline submitted a total of 3,541 claims for pharmaceutical products provided to Medicaid patients that could not be supported by wholesaler invoices (the “Covered Conduct”); and

WHEREAS, MFD determined that, based on the Covered Conduct, Bergenline had received overpayments from the Medicaid Program; and

WHEREAS, Bergenline, having denied any civil wrongdoing, agreed to a pre-hearing conference in advance of any proceeding before the State of New Jersey, Office of Administrative Law, to attempt to resolve the overpayments asserted by MFD stemming from the Covered Conduct; and

WHEREAS, the Parties held a pre-hearing conference on June 6, 2016; and

WHEREAS, the matter was transmitted to the Office of Administrative Law and the parties thereafter participated in a settlement conference with the Honorable Jude-Anthony Tiscornia, A.L.J. on December 19, 2016; and

WHEREAS, the Parties desire to amicably resolve all disputes between them giving rise to the Covered Conduct and have reached a mutually acceptable resolution of the controversies that exist between them;

NOW THEREFORE, in consideration of the mutual promises contained herein, as well as for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to settle their dispute on the following terms:

(1) Bergenline agrees to pay to MFD the sum of Six Hundred Thirty Thousand Seven Hundred and Ninety Dollars (\$630,790.00) as follows:

One Hundred Thousand Dollars (\$100,000.00) upon the execution of this Settlement Agreement. Thereafter, Bergenline agrees to pay to MFD thirty-six (36) consecutive monthly payments of Fourteen Thousand Seven Hundred Forty Four Dollars and Sixteen Cents (\$14,744.16) on or before the 1st of each month starting February 1, 2017.

(2) Payment shall be by certified check, bank check, or attorney-trust check made payable to "Treasurer, State of New Jersey," and shall be mailed or delivered as follows:

Attention: Processing Bureau
Treasurer, State of New Jersey
Division of Revenue
200 Woolverton Street, Building 20
Lockbox 656
Trenton, New Jersey 08646

Please include "Bergenline Drugs – OSC-MFD" and "MFD-XXXXXXXXXX" in the memo line so that it is properly credited.

(3) If any payment provided for in this Settlement Agreement is more than ten (10) days late, Bergenline will be in default of this Settlement Agreement and the outstanding and unpaid balance will immediately become due and collected through withholding of Medicaid reimbursements and/or through any other means available to MFD as provided by law.

(4) MFD will make good faith efforts to ensure that all current Medicaid fee-for-service payments withheld from Bergenline pursuant to N.J.S.A. 30:4D-17(i) will be returned to

Bergenline. Upon execution of this agreement, MFD shall notify NJ Medicaid that all adjudicated fee-for-service claims that have been withheld to-date are to be returned to Bergenline. In addition, within three (3) business days of the Effective Date, MFD shall send a request to the Managed Care Organizations instructing them to cease withholding Medicaid claims payable to Bergenline and to release adjudicated Medicaid claims held to-date Bergenline.

(5) Bergenline agrees to adhere to the Corrective Action Plan (“CAP”) which is attached hereto and hereby incorporated herein. As set forth in the CAP, the reporting requirement by the CAP Coordinator to the Supervisor of the Regulatory Unit of MFD will be quarterly for the first year, semi-annually for the second year, and once for the third year. Failure to include all necessary information and/or to meet the reporting deadlines under the CAP shall constitute grounds for MFD to declare Bergenline in default of this Settlement Agreement which shall be communicated to the CAP Coordinator or his/her designee. Upon receipt of a Notice of Default, Bergenline shall have 15 days to cure the deficiency identified by the Notice of Default. Failure to cure a Notice of Default shall permit MFD to take action against Bergenline, including, but not limited to a fine of \$1,000 for the first offense, a \$2,500 fine for the second offense and a \$7,500 fine for the third offense.

(6) The Parties agree that this Settlement Agreement is intended to be a final resolution of all issues arising out of the Covered Conduct, and is intended by each Party to release the other Party and its representatives from liability arising out of the Covered Conduct.

(7) Nothing in this Settlement Agreement waives the rights of any other State or Federal agency, including, among others, the New Jersey Division of Criminal Justice, from continuing

with a pending, if any, or beginning a future civil, administrative or criminal investigation or other action for alleged conduct concerning Bergenline or from taking any action for such conduct. Nothing in this Settlement Agreement waives the rights of MFD to conduct an audit or investigation of prior or future conduct (outside of the Covered Conduct) for the improper submission of any claims or conduct not specifically covered by this Settlement Agreement, and to take any action it deems appropriate to address such conduct.

(8) Subject to the express terms of this Settlement Agreement as provided for in paragraphs 1-7 above, by the signatures set forth below, the authorization of which is hereby affirmed, Bergenline and MFD agree to the following Release: in consideration of the provision hereof including this release, each Party agrees to release the other Party and its representatives from liability, obligations and damages arising out of the Covered Conduct.

(9) Nothing herein shall constitute an admission, concession or finding of liability by any Party.

(10) This Settlement Agreement shall be construed, enforced and governed by the laws of the State of New Jersey.

(11) This Settlement Agreement may be executed in Counterparts.

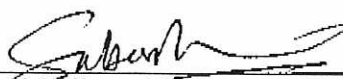
(12) This Settlement Agreement is effective upon the last date it is executed by the Parties hereto.

(13) This Settlement Agreement sets forth the entire agreement between and among the Parties hereto with respect to the claims described herein and supersedes any other written or oral understandings. This Settlement Agreement does not reflect any other terms or conditions or agreements between or among the Parties with respect to any other matter.

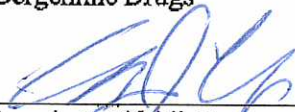
IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto have executed the foregoing Settlement Agreement:

FORM AND CONTENT ACCEPTED AND AGRRED TO BY:


DATE: 2/20/17

By: 
Subash Pulimamidi, Owner
Bergenline Drugs


DATE:

By: 
Angelo J. Cifaldi, Esq.
Attorney for Bergenline Drugs

DATE: 3/22/17

By: 
Josh Lichtblau, Director
Office of the State Comptroller
Medicaid Fraud Division

DATE: 3/21/17

By: 
Siobhan B. Krier, Regulatory Officer
Office of the State Comptroller
Medicaid Fraud Division

Corrective Action Plan Bergenline Drugs



Period of Audit: February 1, 2010 through March 1, 2015

Date Submitted to Bergenline Drugs: February, 2017

Potential Errors: 3,541 claims totaling \$630,789.73

The parties agree that nothing herein shall constitute an admission, concession, or finding of liability by any party.

Corrective Action Discussion: The Office of the State Comptroller, Medicaid Fraud Division (“MFD”) conducted an inventory analysis of Shri Ganeshji Pharmacy, Inc., d/b/a Bergenline Drugs (“Bergenline”), owned by Subash Pulimamidi. During the course of the audit, MFD found multiple areas in which Bergenline billed Medicaid Fee-For-Service or the Managed Care Organizations (collectively referred to as “Medicaid”) improperly. To address the financial issues raised by MFD’s audit, the parties entered into a Settlement Agreement. This Corrective Action Plan (“CAP”) is being entered into in connection with and is operative as of the same date as the effective date of the Settlement Agreement. This CAP identifies all of the areas in which Bergenline allegedly demonstrated noncompliance with Medicaid laws, rules or contract requirements and identifies action items to correct each such area. MFD identifies both short and long term actions to ensure that Bergenline’s alleged billing errors are corrected.

Data Analysis

An inventory analysis by the Medicaid Fraud Division of the New Jersey Office of the State Comptroller (“MFD”) found that between February 1, 2010 and March 1, 2015, Bergenline billed Medicaid for 3,541 claims, totaling \$630,789.73 that could not be supported by the pharmaceutical wholesaler invoices utilized by Bergenline.

Program Analysis

MFD alleged that Bergenline’s failure to provide supporting documentation for the claims in question was in violation of N.J.S.A. 30:4D-12(d) and N.J.A.C. 10:49-9.8.

Corrective Actions

Issue 1: MFD alleges that Bergenline could not provide wholesaler purchase records.

Corrective Action: Within 20 days, Bergenline shall designate a CAP Coordinator responsible for monitoring compliance with the terms of this CAP and all applicable laws and regulations and shall notify the MFD Manager, Regulatory Unit, of the name and contact information for such person within 5 business days of such designation. If the person designated as the CAP Coordinator changes, Bergenline shall provide notice to the MFD Manager, Regulatory Unit, of the name and contact information for such person within 5 business days of such change.

Focus Areas:

- a. The CAP Coordinator shall ensure that all purchase records (i.e., wholesaler's invoices) are properly retained, organized and filed.
- b. On a daily basis, the CAP Coordinator shall verify that all billed prescription labels are filled and ready for dispensing.
- c. On at least a quarterly basis, the CAP Coordinator shall conduct an inventory analysis to reconcile the purchase and billing records for the 10 medications specified by MFD and generate a report documenting the results of the inventory analysis. The report shall be provided to MFD as specified in this CAP.

Issue 2: Bergenline submitted claims to Medicaid for medications that MFD alleges it did not have in its inventory at the time of submission.

Corrective Action: Bergenline shall bill Medicaid for prescriptions only when the medication is in stock.

Focus Areas:

- a. Pharmacy staff shall not submit any Medicaid claims until they ensure that the medication is physically in stock.
- b. If a Medicaid beneficiary presents a prescription for a medication or product that is not in stock, Bergenline shall either (a) obtain the item within 72 hours or (b) locate a pharmacy that is reasonably accessible to the Medicaid beneficiary and has the product in stock and transfer the prescription to such pharmacy.
- c. On a monthly basis, the CAP Coordinator must conduct an analysis to determine whether Bergenline has submitted any Medicaid claims for the 10 medications specified by MFD in paragraph c. listed under Issue 1 that were not in stock at the time of submission. If, however, the CAP Coordinator discovers that the Medicaid claims submitted for the medications were not in stock, then Bergenline must reverse the claim thereby reimbursing Medicaid for those identified claims.

- d. Within 30 days, all pharmacy staff employed by Bergenline must attend training regarding the requirements of this Corrective Action. Thereafter, Bergenline must provide such training to all pharmacy staff on an annual basis. The training shall include, but not be limited to, providing a copy of the CAP to all pharmacy staff along with guidance on the actions necessary to comply with the requirements of the CAP. The CAP Coordinator shall document the attendance of all employees. At a minimum the documentation shall include the employees' signatures at the beginning and the end of the training session, indicating their attendance and that they were provided a copy of the CAP. This documentation requirement applies to all training provided to Bergenline's employees and management.

Issue 3: MFD alleges that prescriptions were filled that were not immediately dispensed.

Corrective Action: Bergenline shall not bill Medicaid for any prescriptions that are not intended for packaging and available for immediate dispensing.

Focus Areas:

- a. On a quarterly basis, the CAP Coordinator must conduct an inventory analysis for the 10 medications specified by MFD paragraph c. listed under Issue 1 to determine whether Bergenline has submitted any Medicaid claims for medication that were not intended for packaging and immediate dispensing.
- b. Within 30 days, all pharmacy staff employed by Bergenline must attend training regarding the requirements of this Corrective Action. Thereafter, Bergenline must provide such training to all pharmacy staff on an annual basis. The training shall include, but not be limited to, providing a copy of the CAP to all pharmacy staff along with guidance on the actions necessary to comply with the requirements of the CAP.

Issue 4:

Bergenline did not adhere to the industry standard of reversing claims for medication that was not picked up within 14 days.

Corrective Action: Bergenline must reverse claims in its system for prescriptions not picked up according to the industry standard of 14 days.

Focus Areas:

- a. If a Medicaid beneficiary does not pick up a prescription within 14 days, the prescription claim must be reversed from the computer system and the medication placed in stock by a pharmacist.
- b. Within 30 days, all pharmacy staff employed by Bergenline must attend training regarding the requirements of this Corrective Action. Thereafter, Bergenline must provide such training to all pharmacy staff on an annual basis. The training shall include, but not be limited to, providing a

copy of the CAP to all pharmacy staff along with guidance on the actions necessary to comply with the requirements of the CAP.

Implementation and Reporting

- a. For a three year period, beginning on the effective date of the Settlement Agreement, pursuant to the schedule that follows, the CAP Coordinator must submit reports to the MFD Supervisor of the Regulatory Unit that demonstrate Bergenline's compliance with all of the Corrective Actions set forth in this CAP.
- b. For the first year, such report must be submitted to the Supervisor of the Regulatory Unit on a quarterly basis no later than the following dates: November 1, 2016, February 1, 2017, May 1, 2017, and August 1, 2017.
- c. In the second year, such report must be submitted to the Supervisor of the Regulatory Unit on a semi-annual basis, no later than the following dates: November 1, 2017 and February 1, 2018.
- d. In the third year, such report must be submitted to the Supervisor of the Regulatory Unit no later than August 1, 2019.
- e. MFD has provided Bergenline with a list of the 10 medications that it will need to conduct the required inventory analysis for the first year. In the second and third years, MFD will provide a list of the 10 medications no later than 60 days from the start of the applicable year.
- f. Failure by Bergenline to include all information necessary to demonstrate compliance with the CAP and/or to meet the reporting deadlines under the CAP shall constitute grounds for MFD to declare Bergenline in default of the Settlement Agreement which shall be communicated to the CAP Coordinator. Upon receipt of a Notice of Default, Bergenline shall have 30 days to cure the deficiency identified by the Notice of Default. Failure to cure a Notice of Default shall permit MFD to take action against Bergenline, including, but not limited to a fine of \$1,000 for the first offense, a \$2,500 fine for the second offense and a \$7,500 fine for the third offense. For purposes of determining compliance with this CAP, an error rate of 4.99% or less for each required inventory analyses shall be considered *de minimis* and shall not constitute a default under the Settlement Agreement. An error rate of 5.00% or higher shall, in the MFD's sole discretion, constitute an adequate basis to constitute a default.

Violations

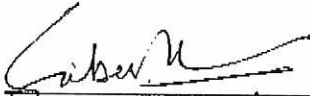
- a. Bergenline is on notice that MFD asserts that the underlying conduct which gave rise to the recovery in this matter was deemed improper or abusive of the New Jersey Medicaid and/or NJ FamilyCare program and that said conduct should cease.
- b. Bergenline is also on notice that any future violation(s) of the underlying conduct addressed in the CAP could lead to exclusion from the New Jersey Medicaid or NJ FamilyCare program, or in

projects or contracts performed with the assistance of and subject to the approval of the Medicaid Agent and/or DMAHS pursuant to N.J.A.C. 10:49-11.1.

- c. Additionally, any future violations of the underlying conduct addressed in this CAP could lead to future recovery attempts by MFD, including but not limited to, the assessment of civil penalties of payment of an amount not to exceed three-fold the amount of such excess benefits or payments; or payment in the sum of not less than and not more than the civil penalty allowed under the federal False Claims Act (31 U.S.C. 53729 et seq.), pursuant to N.J.S.A. 30:4D-17(e).

FORM AND CONTENT AGREED TO AND ACCEPTED BY:

DATE: 2/24/17

By: 
Subash Pullamidi, Owner
Bergenline Drugs

Consent as to form and entry:

By: 
Attorney for Mr. Pulimamidi and Bergenline Drugs