

**STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL**

In the Matter of the

Investigation by Eric T. Schneiderman,
Attorney General of the State of New York, of

Walgreen Co. d/b/a Walgreens

Assurance No. 12 - 037

**ASSURANCE OF DISCONTINUANCE
UNDER EXECUTIVE LAW SECTION 63(15)**

As authorized by Article 22-A of the General Business Law and Section 63(15) of the Executive Law, Eric T. Schneiderman, Attorney General of the State of New York, caused an inquiry to be made into certain business practices of Walgreen Co., d/b/a "Walgreens." The investigation concerned Walgreens' administration of the flu vaccine to individuals with commercial health insurance in New York State.

This Assurance of Discontinuance ("Assurance") contains the findings of the Office of the Attorney General ("OAG") and the relief agreed to by the OAG and Walgreens.

THE ATTORNEY GENERAL'S INVESTIGATION AND FINDINGS

1. Walgreens is a domestic corporation with its principal office at 108 Wilmot Road, Deerfield, IL 60015. Walgreens operates approximately 7,830 retail pharmacies across fifty states, the District of Columbia, and Puerto Rico, with approximately 474 retail pharmacies in the State of New York.

2. Walgreens, as used herein, includes Walgreen Co. and its subsidiary, Duane Reade, Inc.

3. In 2011, the OAG's Health Care Bureau received complaints that some Walgreens stores incorrectly advertised that they provided free flu shots for New York State employees enrolled in the United HealthCare ("UHC") Empire Plan ("Empire Plan"). Under the Empire Plan, flu vaccinations are not covered if administered in a pharmacy.

4. The complaints asserted that the Empire Plan members, believing that the flu shot would be covered at Walgreens, received the vaccination there, but some weeks later were billed by Walgreens for the cost of the vaccine (\$29.50, in most cases).

5. To become a participating, in-network provider of flu vaccinations, Walgreens enters into contracts with insurance providers. Walgreens entered into such a contract with UHC on August 15, 2010 to become a participating, in-network provider of flu vaccinations for UHC plans. While Walgreens' contract with UHC ("Contract") listed most of UHC's insurance products, it did not specifically reference or exclude the Empire Plan. The Empire Plan has over 2.5 million members in New York State.

6. Over the course of the flu seasons in 2010 and 2011, Walgreens administered 8,000 flu vaccinations to Empire Plan members and submitted to UHC the claims for coverage for these flu vaccinations. UHC denied the claims and based on the explanation of benefits ("EOB"), Walgreens billed over 3,000 Empire Plan members directly via mail for the vaccination charge. Of the members who were billed, 1,647 members submitted payment to Walgreens.

7. In August 2011, UHC communicated with Walgreens to confirm that the Empire Plan was excluded from the Contract and provided a copy of the Empire Plan identification card to facilitate the pharmacies' identification of Empire Plan members who were ineligible for

coverage of the pharmacy-administered flu vaccines. Walgreens represents that it was unable to identify all of the Empire Plan members with the information provided by UHC.

8. After the August communication with UHC, Walgreens initiated a process to identify Empire Plan members in its claims processing system and to audit and block the submission of claims for flu vaccines on behalf of those members. As a result, Walgreens represents that any Empire Plan member who received a flu vaccination after September 17, 2011 did not receive a bill for that service from Walgreens.

9. In October 2011, UHC informed Walgreens that it continued to receive complaints from Empire Plan enrollees asserting that Walgreens' retail pharmacies in New York State were incorrectly informing Empire Plan members that flu vaccinations were covered under their plan. By the end of October 2011, Walgreens received confirmation from UHC that its method for identifying Empire plan members for the block would in fact include all Empire Plan members going forward. The block alerts the pharmacies that the Empire Plan will not cover flu vaccinations at Walgreens.

10. Walgreens represents that the block is firmly in place and that it has now issued refunds to at least 34 Empire Plan members for the 2011 season who paid out-of-pocket after being billed by Walgreens and will submit proof of restitution to the OAG. An additional 5,000 claims were written off by Walgreens and not billed to the Empire Plan members.

11. Vaccinations are a key public health strategy in preventing the spread of the flu in New York State and nationally. According to the Centers for Disease Control and Prevention, thousands of U.S. citizens die each year from the flu and its complications, and hundreds of thousands are hospitalized. Access to flu vaccinations without undue financial or other barriers is

an important element of this public health issue. For that reason, complaints from the public alleging coverage or reimbursement problems associated with the flu vaccine are viewed as both a public health as well as a consumer issue.

APPLICABLE LAW

New York State General Business Law/Executive Law

12. New York State General Business Law Section 349 prohibits “deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state. . . .” NY General Business Law Section 349(a).

13. The New York State Executive Law authorizes the Attorney General, where there are “repeated fraudulent or illegal acts” or “persistent fraud or illegality in the carrying on, conducting or transaction of business,” to seek relief including enjoining the continuance of such business activity or of any fraudulent or illegal acts, as well as restitution and damages. NY Executive Law Section 63(12).

14. **NOW, WHEREAS,** The OAG is willing to accept the terms of this Assurance under Executive Law § 63(15) and to discontinue its investigation; and

15. The OAG and Walgreens have agreed to this Assurance upon the following terms and conditions, without any adjudication of any issue of fact or law, and without Walgreens admitting any issue of fact or law other than those related to jurisdiction and venue;

16. The parties each believe that the obligations imposed by this Assurance are prudent and appropriate and in the public interest,

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the parties, as follows:

PROSPECTIVE RELIEF

Provision of Vaccination Services

17. Walgreens agrees that where Walgreens' staff identifies a customer seeking a flu vaccine as an Empire Plan member, Walgreens' staff will inform the Empire Plan member that the vaccine is not a covered benefit under the Empire Plan if administered in a pharmacy.

18. Walgreens' staff shall advise Empire Plan members regarding the provision set forth in paragraph 17 above until such time as: 1) Empire Plan benefits are amended generally to cover flu vaccinations administered in a pharmacy; or 2) Walgreens becomes a contracting participating provider with the Empire Plan for the purpose of providing flu vaccines.

Future Billing for Services Rendered

19. Walgreens shall immediately cease any and all billing of Empire Plan members for flu vaccinations administered to Empire Plan members between its Contract date of August 15, 2010, and up until the "Effective Date" of this Assurance as defined in paragraph 51 below, for which the member's Empire Plan insurance card was "accepted."

20. After the Effective Date of this Assurance, if Walgreens administers a flu vaccine to an Empire Plan member and incorrectly "accepts" the member's Empire Plan insurance card (where it has not contracted with the Empire Plan to provide in-network flu vaccination services and/or out-of-network pharmacy-rendered services are still not a benefit under the Empire Plan), Walgreens shall not bill the member for that service and will otherwise hold the member harmless for the cost of that service.

Public Representations and Internal Communications

21. Walgreens asserts that it has notified all of its pharmacies in New York State to cease any and all representations, in any format, that a flu vaccine administered in Walgreens is a covered benefit under the Empire Plan and that its internal systems have been updated to block charges for the flu vaccine for Empire Plan members.

22. Walgreens shall not make any representations, in any format, that a flu vaccine administered in Walgreens is a covered benefit under the Empire Plan until such time as: 1) Empire Plan benefits are amended generally to cover flu vaccinations administered in a pharmacy; or 2) Walgreens becomes a contracting participating provider with the Empire Plan for the purpose of providing flu vaccines.

RETROSPECTIVE RELIEF

Review of Empire Plan Claims and Services

23. Within sixty (60) days of the Effective Date, Walgreens shall: 1) review the insurance claims it submitted to UHC for reimbursement of flu vaccinations for Empire Plan members who received flu vaccinations from Walgreens since August 15, 2010 (collectively, "Empire Plan Members") and; 2) shall identify Empire Plan Members above who were i) billed by Walgreens in whole or in part for costs relating to the flu vaccines; ii) paid Walgreens; and iii) have not previously received a refund.

24. Within ninety (90) days of the Effective Date, Walgreens shall send a refund letter (in the form attached as Exhibit 1) together with a refund check, to Empire Plan Members who have not received a refund, and shall send a refund letter (in the form attached as Exhibit 2) to Empire Plan Members for whom Walgreens issued a refund in July 2012.

25. Walgreens shall bear all costs of the claims review and restitution process as described above.

COSTS

26. Within thirty (30) days of the Effective Date, Walgreens shall also pay \$15,000 to OAG for costs incurred by the OAG in its investigation.

MISCELLANEOUS

Compliance

27. Walgreens shall submit to the OAG, within thirty (30) days of the completion of the claims review and restitution set forth in paragraphs 23 and 24 above shall provide OAG with a letter signed by an officer of Walgreens authorized to bind Walgreens, certifying and setting forth Walgreens' compliance with this Assurance.

28. The letter shall include details of the claims review and restitution process including: (1) identifiers of the Empire Plan Members who received refunds, refund letters, and the refund amount; and (2) the steps taken to comply with all aspects of the Prospective Relief requirements set forth in paragraphs 17 through 22 above.

Walgreens' Representations

29. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by Walgreens and its counsel and the OAG's own factual investigation as set forth in the above Findings. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

Communications

30. All communications, reports, correspondence, and payments that Walgreens submits to the OAG concerning this Assurance or any related issues is to be sent to the attention of the person identified below or her successor:

Lisa Landau, Esq.
Bureau Chief
Health Care Bureau
Office of the New York Attorney General
120 Broadway
New York, New York 10271
lisa.landau@ag.ny.gov

31. Receipt by the OAG of materials referenced in this Assurance, with or without comment, shall not be deemed or construed as approval by the OAG of any of the materials, and Walgreens shall not make any representations to the contrary.

32. All notices, correspondence, and requests to Walgreens shall be directed as follows:

Kashmira Makwana, Esq.
Walgreen Co.
104 Wilmot Road - MS #1434
Deerfield, IL 60015
Kashmira.makwana@walgreens.com

Valid Grounds and Waiver

33. Walgreens hereby accepts the terms and conditions of this Assurance and waives any rights to challenge it in a proceeding under Article 78 of the Civil Practice Law and Rules or in any other action or proceeding.

No Deprivation of the Public's Rights

34. Nothing herein shall be construed to deprive any member or other person or entity

of any private right under law or equity.

35. To the extent any provisions of this Assurance provide greater benefits to members than that required under the laws or regulations of the State of New York, any other State or Territory of the United States, or the United States as of the Effective Date or later, then the terms of this Assurance shall prevail.

No Blanket Approval by the Attorney General of Walgreens' Practices

36. Acceptance of this Assurance by the OAG shall not be deemed or construed as approval by the OAG of any of Walgreens' acts or practices, or those of their subsidiaries, parents, officers, employees, agents or assigns, and none of them shall make any representation to the contrary.

Monitoring by the OAG

37. To the extent not already provided under this Assurance, Walgreens shall, upon request by the OAG, provide all documentation and information necessary for the OAG to verify compliance with this Assurance. This Assurance does not in any way limit the OAG's right to obtain, by subpoena or by any other means permitted by law, documents, testimony, or other information.

No Limitation on the Attorney General's Authority

38. Nothing in this Assurance in any way limits the OAG's ability to investigate or take other action with respect to any non-compliance at any time by Walgreens with respect to this Assurance, or Walgreens' noncompliance with any applicable law with respect to any matters.

No Undercutting of Assurance

39. Walgreens shall not take any action or make any statement denying, directly or

indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis. Nothing in this paragraph affects Walgreens' (a) testimonial obligations or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which OAG is not a party.

Governing Law; Effect of Violation of Assurance of Discontinuance

40. Under Executive Law § 63(15), evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law in any action or proceeding thereafter commenced by the OAG.

41. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

42. If a court of competent jurisdiction determines that Walgreens has breached this Assurance, Walgreens shall pay to the OAG the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

No Presumption Against Drafter; Effect of any Invalid Provision

43. None of the parties shall be considered to be the drafter of this Assurance or any provision for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof. This Assurance was drafted with substantial input by all parties and their counsel, and no reliance was placed on any representation other than those contained in this Assurance.

44. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG such invalidity, illegality, or unenforceability shall not affect any other

provision of this Assurance.

Entire Agreement; Amendment

45. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Walgreens in agreeing to this Assurance.

46. This Assurance contains an entire, complete, and integrated statement of each and every term and provision agreed to by and among the parties, and the Assurance is not subject to any condition not provided for herein. This Assurance supersedes any prior agreements or understandings, whether written or oral, between and among the OAG and Walgreens regarding the subject matter of this Assurance.

47. This Assurance may not be amended or modified except in an instrument in writing signed on behalf of all the parties to this Assurance.

48. The division of this Assurance into sections and subsections and the use of captions and headings in connection herewith are solely for convenience and shall have no legal effect in construing the provisions of this Assurance.

Binding Effect

49. This Assurance is binding on and inures to the benefit of the parties to this Assurance and their respective successors and assigns, provided that no party, other than the OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without prior written consent of the OAG.

Walgreens' Authorization

50. Walgreens represents and warrants, through the signature below, that the terms

and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized.

Effective Date

51. This Assurance is effective on the date that it is signed by the Attorney General or his authorized representative (the "Effective Date"), and the document may be executed in counterparts, which shall all be deemed an original for all purposes.

AGREED TO BY THE PARTIES:

Dated: Deerfield, Illinois
10/9, 2012

WALGREEN CO.

By: 
(Name) John Foley
(Title) Corporate Operations
Vice President

Dated: New York, New York
10/12, 2012

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

By: 
Lisa Landau
Bureau Chief
Health Care Bureau



Date:

Patient Name
Address
City, State Zip

Dear Walgreens Pharmacy Customer:

Thank you for choosing Walgreens. We appreciate your business and we are dedicated to providing you with the highest level of prescription service and care.

Walgreens recently issued you a refund check. At the time that your flu immunization was processed, the Empire Plan denied the claim because the plan does not cover flu immunizations administered outside a physician's office. As a result, a bill for the flu immunization was sent to you. Given the lack of clarity regarding the issue of coverage, we issued you a refund check for the amount that you paid for the flu immunization."

Thank you again for choosing Walgreens. We are committed to filling all of your prescription and healthcare needs. If you have any questions regarding this matter, please contact Walgreens at 217-554-8680 and give the customer service representative the Prov-RX and invoice date listed on the detail of the enclosed check.

Below is the information from the check detail that the customer service representative will require when you call:

Description section:

ID-DOB: Patient id/patient date of birth

Prov-RX: Provider number/rx number

Invoice date section:

The date in this section is the date of service.

Sincerely,
Walgreens Accounts Receivable Department



Date:

Patient Name
Address
City, State Zip

Dear Walgreens Pharmacy Customer:

Thank you for choosing Walgreens. We appreciate your business and we are dedicated to providing you with the highest level of prescription service and care.

At the time that your flu immunization was processed, the Empire Plan denied the claim because the plan does not cover flu immunizations administered outside a physician's office. As a result, a bill for the flu immunization was sent to you. Given the lack of clarity regarding the issue of coverage, we are issuing you the enclosed refund check for the amount that you paid for the flu immunization. Accordingly, we are issuing you the enclosed refund check for the amount that you paid for the flu immunization.

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