

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

FILED  
AHCA  
AGENCY CLERK

2014 JUL -2 P 12:42

STATE OF FLORIDA, AGENCY FOR  
HEALTH CARE ADMINISTRATION,

Petitioner,

v.

HOLIDAY CVS, LLC, d/b/a  
CVS/PHARMACY NO. 0219 &  
CVS/PHARMACY NO. 5195

DOAH CASE NOS: 12-1611MPI  
12-1605MPI  
PROVIDE NOS: 105515100  
022315800  
C.I. NOS: 12-2030-000  
12-2026-000

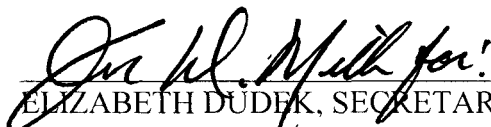
RENDITION NO.: AHCA- 14 - 0612 -S-MDO

Respondent.

**FINAL ORDER**

THE PARTIES resolved all disputed issues and executed a Settlement Agreement. The parties are directed to comply with the terms of the attached settlement agreement, **attached as Exhibit "1."** Based on the foregoing, this file is **CLOSED**.

DONE and ORDERED on this the 29<sup>th</sup> day of June, <sup>2014</sup>~~2013~~ in Tallahassee, Florida.

  
ELIZABETH DUDEK, SECRETARY  
Agency for Health Care Administration

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO A JUDICIAL REVIEW WHICH SHALL BE INSTITUTED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A SECOND COPY ALONG WITH FILING FEE AS PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

Copies furnished to:

Horace Dozier  
Field Office Manager  
Medicaid Program Integrity  
2727 Mahan Drive, MS#6  
Tallahassee, Florida 32308  
(Via Interoffice Mail)

Agency for Health Care Administration  
Bureau of Finance and Accounting  
2727 Mahan Drive  
Building 2, Mail Station 14  
Tallahassee, Florida 32308  
(Interoffice Mail)

Nathaniel M. Lacktman, Esquire  
Foley and Lardner, LLP  
100 North Tampa Street, Suite 2700  
Tampa, Florida 33602  
(Via U.S. Mail)

Rick Zenuch, Bureau Chief  
Medicaid Program Integrity  
2727 Mahan Drive  
Building 2, Mail Station 6  
Tallahassee, Florida 32308  
(Interoffice Mail)

Shena Grantham, Esquire  
Agency for Health Care  
Administration  
2727 Mahan Drive, MS#3  
Tallahassee, Florida 32308  
(Via Interoffice Mail)

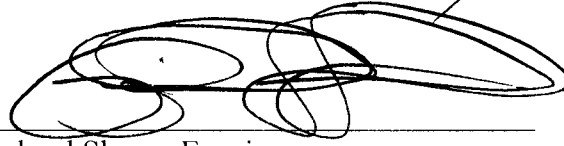
Bureau of Health Quality Assurance  
2727 Mahan Drive, Mail Stop 9  
Tallahassee, Florida 32308  
(Interoffice Mail)

Eric Miller, Inspector General  
Medicaid Program Integrity  
2727 Mahan Drive  
Building 2, Mail Station 6  
Tallahassee, Florida 32308  
(Interoffice Mail)

Division of Administrative Hearings  
The Desoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(Via U.S. Mail)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the above named addressees by U.S. Mail on this the 2<sup>nd</sup> day of July, 2014.



Richard Shoop, Esquire  
Agency Clerk  
State of Florida  
Agency for Health Care Administration  
2727 Mahan Drive, Building #3  
Tallahassee, Florida 32308-5403

**STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION**

**STATE OF FLORIDA, AGENCY FOR  
HEALTH CARE ADMINISTRATION,**

**Petitioners,**

**PROVIDER NOS.:** 105515100,  
022315800

**C.I. NO.:** 12-2030-000,  
12-2026-000

vs.

**DOAH CASE NO.:** 12-1611MPI  
12-1605MPI

**HOLIDAY CVS, LLC, d/b/a  
CVS/PHARMACY NO. 0219 &  
HOLIDAY CVS, LLC d/b/a  
CVS/PHARMACY NO. 5195,**

**Respondent.**

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**SETTLEMENT AGREEMENT**

Petitioner, **STATE OF FLORIDA, AGENCY FOR HEALTH CARE ADMINISTRATION**, (“AHCA” or “Agency”), and Respondents, **HOLIDAY CVS, L.L.C. D/B/A CVS/PHARMACY #0219** and **HOLIDAY CVS, L.L.C. D/B/A CVS/PHARMACY #5195** (“Petitioners” or “Providers”), by and through the undersigned, hereby stipulate and agree as follows:

1. The parties enter into this agreement for the purpose of memorializing the resolution to this matter.
2. Providers are licensed community pharmacies (license numbers PH20573 and PH20391) and enrolled Florida Medicaid providers in the State of Florida (provider numbers 105515100 and 022315800).
3. On April 4, 2012, the Agency issued two letters to Providers, noticing that the Agency intended to suspend Providers’ participation in the Florida Medicaid program on the grounds that the Agency’s “records indicate that a license which is required for [Providers’]

participation in the Florida Medicaid program has not been renewed, or has been revoked, suspended, or terminated, for cause, by the licensing agency of any state. Specifically, [the Agency has] information that on March 13, 2012, the U.S. Court of Appeals in Washington upheld a suspension which was issued by the Drug Enforcement Administration (DEA).” The Agency’s letters seek suspension of Providers’ Florida Medicaid participation under Sections 409.915(15)(a), Florida Statutes, and Rule 59G-9.070(7)(a), Florida Administrative Code.

4. In response to the Agency’s April 4, 2012 letters, on April 23, 2012, Providers filed a consolidated *Petition for Formal Hearing Involving Disputed Issues of Material Fact* with the Agency, challenging the Agency’s action.

5. In order to resolve this matter without further administrative proceedings, Providers and the Agency expressly agree as follows:

- (1) Providers will voluntarily dismiss their pending Petitions filed April 23, 2012.
- (2) The Agency agrees to modify its suspension of Providers in that Providers will be allowed to continue participating in the Florida Medicaid program, with the exclusion of dispensation of controlled substances in accordance with the suspension of Providers’ federal DEA controlled substances registrations.
- (3) Unless and until Providers’ federal DEA controlled substances registrations return to full and active status, Providers will not dispense controlled substances to any patients, including Florida Medicaid recipients. Until such time as the Agency approves (discussed in greater

detail below), Providers agree not to submit claims to the Florida Medicaid program for controlled substances.

- (4) Providers are not permitted to submit any claims to and receive payment from the Florida Medicaid program for controlled substances before Providers' federal DEA controlled substances registrations return to full and active status. In the event that Providers do so, Providers will return said payments to the Florida Medicaid program within thirty (30) days.
- (5) In order to verify Providers' compliance with this Agreement, including Sections 5(3) and 5(4) above, Providers, at their own expense, will conduct a monthly report of all claims submitted to the Florida Medicaid program in order to confirm that Providers have not submitted any claims for controlled substances. Providers will provide the Agency with a copy of said report each month.
- (6) The terms of this Agreement shall continue until Providers' federal DEA controlled substances registrations return to full and active status, at which time Providers will notify the Agency and seek authorization to submit claims to and receive payment from the Florida Medicaid program for controlled substances. The Agency shall not unreasonably withhold said authorization.
- (7) Upon such time as the Agency provides the authorization described in Section 5(6) above, Providers' obligations to conduct and share monthly claims reports under this Section 5 shall terminate and Providers shall be

able to submit claims to and receive payment from the Florida Medicaid program for controlled substances.

- (8) Providers and the Agency agree that such payments as set forth above will resolve and settle this case completely and release both parties from all liabilities arising from the findings in the letters referenced as C.I. Numbers 12-2026-000 and 12-2030-000.

6. Providers agree that failure to pay any monies due and owing under the terms of this Agreement shall constitute Providers' authorization for the Agency, with notice, to withhold the total remaining amount due under the terms of this agreement from any monies due and owing to Providers for any Florida Medicaid claims.

7. The Agency reserves the right to enforce this Agreement under the laws of the State of Florida, the Rules of the Florida Medicaid Program, and all other applicable rules and regulations.

8. This settlement does not constitute an admission of wrongdoing or error by either party with respect to this case or any other matter.

9. The signatories to this Agreement, acting in a representative capacity, represent that they are duly authorized to enter into this Agreement on behalf of the respective parties.

10. This Agreement shall be construed in accordance with the provisions of the laws of Florida. Venue for any action arising from this Agreement shall be in Leon County, Florida.

11. This Agreement constitutes the entire agreement between Providers and the Agency, including anyone acting for, associated with or employed by them, concerning all matters and supersedes any prior discussions, agreements or understandings; there are no promises, representations or agreements between Providers and the Agency other than as set

forth herein. No modification or waiver of any provision shall be valid unless a written amendment to the Agreement is completed and properly executed by the parties.

12. This is an agreement of settlement and compromise, made in recognition that the parties may have different or incorrect understandings, information and contentions, as to facts and law, and with each party compromising and settling any potential correctness or incorrectness of its understandings, information and contentions as to facts and law, so that no misunderstanding or misinformation shall be a ground for rescission hereof.

13. Providers expressly waive in this matter their right to any hearing pursuant to sections 120.569 or 120.57, Florida Statutes, the making of findings of fact and conclusions of law by the Agency, and all further and other proceedings to which they may be entitled by law or rules of the Agency regarding this proceeding. Providers further agree that they shall not challenge or contest any Final Order entered in this matter which is consistent with the terms of this settlement agreement in any forum now or in the future available to it, including the right to any administrative proceeding, circuit or federal court action or any appeal.

14. Providers do hereby discharge the State of Florida, Agency for Health Care Administration, and its agents, representatives, and attorneys of and from all claims, demands, actions, causes of action, suits, damages, losses and expenses, of any and every nature whatsoever, arising out of or in any way related to this matter, the Agency's actions herein, including, but not limited to, any claims that were or may be asserted in any federal or state court or administrative forum, including any claims arising out of this agreement.

15. The parties agree to bear their own attorney's fees and costs, if any.

16. This Agreement is and shall be deemed jointly drafted and written by all parties to it and shall not be construed or interpreted against the party originating or preparing it.



17. To the extent that any provision of this Agreement is prohibited by law for any reason, such provision shall be effective to the extent not so prohibited, and such prohibition, shall not affect any other provision of this Agreement.

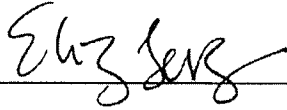
18. This Agreement shall inure to the benefit of and be binding on each party's successors, assigns, heirs, administrators, representatives and trustees.

19. All times stated herein are of the essence of this Agreement.

20. This Agreement shall be in full force and effect upon execution by the respective parties in counterpart.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK**

HOLIDAY CVS, L.L.C., D/B/A CVS/PHARMACY #0219  
HOLIDAY CVS, L.L.C. D/B/A CVS/PHARMACY #5195

  
\_\_\_\_\_

Dated: 8 May 2014, 2014

BY: Elizabeth Ferguson  
(Print name)

AGENCY FOR HEALTH CARE  
ADMINISTRATION  
2727 Mahan Drive, Bldg. 3, Mail Stop #3  
Tallahassee, FL 32308-5403

  
\_\_\_\_\_

Eric W. Miller  
Inspector General

Dated: June 29, 2014

  
\_\_\_\_\_

Stuart F. Williams  
General Counsel

Dated: 6/23, 2014

  
\_\_\_\_\_

Kim Kellum  
Chief Medicaid Counsel

Dated: \_\_\_\_\_, 2014

  
\_\_\_\_\_

Shena L. Grantham  
Acting Chief FFS Medicaid Counsel

Dated: 5/14, 2014



RICK SCOTT  
GOVERNOR

ELIZABETH DUDEK  
SECRETARY

**CERTIFIED MAIL NO. 7009 2820 0001 5675 0583**

April 4, 2012

Holiday CVS, LLC  
CVS Pharmacy 00219  
CVS Corporation-056  
P.O. Box 405043  
Atlanta, Georgia 30384-5043

**Provider No: 1055151 00**  
**C.I. No: 12-2030-000**

**Provider License No: PH20573**  
**NPI No: 1043314024**

**In Reply Refer to: Suspension from participation (License)**

Dear Provider:

Our records indicate that a license which is required for your participation in the Florida Medicaid program has not been renewed, or has been revoked, suspended, or terminated, for cause, by the licensing agency of any state. Specifically, we have information that on March 13, 2012, the U. S. Court of Appeals in Washington upheld a suspension which was issued by the Drug Enforcement Administration (DEA).

In accordance with Sections 409.913(15)(a), Florida Statute (F.S.), and Rule 59G-9.070(7)(a), Florida Administrative Code (F.A.C.), the Agency for Health Care Administration (Agency) is hereby suspending your participation in the Medicaid program. This is a preclusion from participation which includes any action that results in a claim for payment to the Medicaid program as a result of furnishing, supervising a person who is furnishing, or causing a person to furnish goods or services. The suspension will remain in effect for the duration of the licensure suspension; however, if the licensure suspension continues for more than one year the Medicaid suspension will convert to a termination. Also, you may not resume participation until authorized by the Agency and must seek the authorization as specified in Rule 59G-9.070, F.A.C.

You have the right to request a formal or informal hearing pursuant to Section 120.569, F.S. If a request for a formal hearing is made, the petition must be made in compliance with Section 28-106.201, F.A.C., and mediation may be available. If a request for an informal hearing is made, the petition must be made in compliance with rule Section 28-106.301, F.A.C. Additionally, you are hereby informed that if a request for a hearing is made, the petition must be **received by the Agency within twenty-one (21) days of receipt of this letter. For more information regarding your hearing and mediation rights, please see the attached Notice of Administrative Hearing and Mediation Rights.**

2727 Mahan Drive, MS# 6  
Tallahassee, Florida 32308



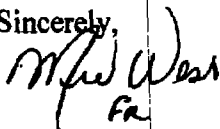
Visit AHCA online at  
<http://ahca.myflorida.com>

Holiday CVS, LLC  
Provider No: 1055151 00  
April 4, 2012  
Page 2 of 4

(EX.1)

Any questions you may have about this matter should be directed to: Horace Dozier, Field Office Manager, Agency for Health Care Administration, Medicaid Program Integrity, 2727 Mahan Drive, Mail Stop #6, Tallahassee, Florida 32308-5403, telephone (850) 412-4600, facsimile (850) 410-1972.

Sincerely,



Horace Dozier  
Field Office Manager  
Office of Inspector General  
Medicaid Program Integrity

HD/vmb

cc: Kim Kellum, Chief Medicaid Counsel  
Health Quality Assurance (HQA)  
Department of Health (via email)

(Ex.1)

**NOTICE OF ADMINISTRATIVE HEARING AND MEDIATION RIGHTS**

You have the right to request an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes. If you disagree with the facts stated in the foregoing Final Audit Report (hereinafter FAR), you may request a formal administrative hearing pursuant to Section 120.57(1), Florida Statutes. If you do not dispute the facts stated in the FAR, but believe there are additional reasons to grant the relief you seek, you may request an informal administrative hearing pursuant to Section 120.57(2), Florida Statutes. Additionally, pursuant to Section 120.573, Florida Statutes, mediation may be available if you have chosen a formal administrative hearing, as discussed more fully below.

The written request for an administrative hearing must conform to the requirements of either Rule 28-106.201(2) or Rule 28-106.301(2), Florida Administrative Code, and must be received by the Agency for Health Care Administration by 5:00 P.M., no later than 21 days after you received the FAR. The address for filing the written request for an administrative hearing is:

**Richard J. Shoop, Esquire  
Agency Clerk  
Agency for Health Care Administration  
2727 Mahan Drive, MS # 3  
Tallahassee, Florida 32308  
Fax: (850) 921-0158**

The request must be legible, on 8 ½ by 11-inch white paper, and contain:

1. Your name, address, telephone number, any Agency identifying number on the FAR, if known, and name, address, and telephone number of your representative, if any;
2. An explanation of how your substantial interests will be affected by the action described in the FAR;
3. A statement of when and how you received the FAR;
4. For a request for formal hearing, a statement of all disputed issues of material fact;
5. For a request for formal hearing, a concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle you to relief;
6. For a request for formal hearing, whether you request mediation, if it is available;
7. For a request for informal hearing, what bases support an adjustment to the amount owed to the Agency; and,
8. A demand for relief.

A formal hearing will be held if there are disputed issues of material fact. Additionally, mediation may be available in conjunction with a formal hearing. Mediation is a way to use a neutral third party to assist the parties in a legal or administrative proceeding to reach a settlement of their case. If you and the Agency agree to mediation, it does not mean that you give up the right to a hearing. Rather, you and the Agency will try to settle your case first with mediation.

If you request mediation, and the Agency agrees to it, you will be contacted by the Agency to set up a time for the mediation and to enter into a mediation agreement. If a mediation agreement is not reached within 10 days following the request for mediation, the matter will proceed without mediation. The mediation must be concluded within 60 days of having entered into the agreement, unless you and the Agency agree to a different time period. The mediation agreement between you and the Agency will include provisions for selecting the mediator, the allocation of costs and fees associated with the mediation, and the confidentiality of discussions and documents involved in the mediation. Mediators charge hourly fees that must be shared equally by you and the Agency.

Holiday CVS, LLC  
Provider No: 1055151 00  
April 4, 2012  
Page 4 of 4

If a written request for an administrative hearing is not timely received you will have waived your right to have the intended action reviewed pursuant to Chapter 120, Florida Statutes, and the action set forth in the FAR shall be conclusive and final.

RICK SCOTT  
GOVERNOR



ELIZABETH DUDEK  
SECRETARY

**CERTIFIED MAIL NO. 7009 2820 0001 5672 2399**

April 4, 2012

Holiday CVS, LLC  
CVS Corporation-056  
P.O. Box 405043  
Atlanta, Georgia 30384-5043

**Provider No: 0223158 00**  
**C.I. No: 12-2026-000**

**Provider License No: PH20391**  
**NPI No: 1891899761**

**In Reply Refer to: Suspension from participation (License)**

Dear Provider:

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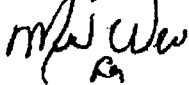


Visit AHCA online at  
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Holiday CVS, LLC  
Provider No: 0223158 00  
April 4, 2012  
Page 2 of 4

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Sincerely,



Horace Dozier  
Field Office Manager  
Office of Inspector General  
Medicaid Program Integrity

HD/vmb

cc: Kim Kellum, Chief Medicaid Counsel  
Health Quality Assurance (HQA)  
Department of Health (via email)

(Ex.1)



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Holiday CVS, LLC  
Provider No: 0223158 00  
April 4, 2012  
Page 4 of 4

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