

**ASSURANCE OF DISCONTINUANCE**

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IN THE MATTER OF PFIZER INC. COPAYMENT COUPON

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This Assurance of Discontinuance (“Assurance”) is entered into between the State of Colorado, *ex rel.* Philip J. Weiser, Attorney General for the State of Colorado (the “State” or “Attorney General”), and Pfizer Inc. (“Pfizer”) pursuant to the Attorney General’s powers under Colo. Rev. Stat. section 6-1-110(2) and constitutes a complete settlement between the State and Pfizer (the “Parties”) regarding the State’s allegations herein.

**I. PARTIES**

1. Philip J. Weiser is the duly elected Attorney General for the State of Colorado and has express jurisdiction to investigate and prosecute violations of the Colorado Consumer Protection Act (“CCPA”), C.R.S. sections 6-1-101 through 6-1-1121.

2. Pfizer is a Delaware corporation with its principal place of business located in New York, and includes its United States-based affiliates, subsidiaries, predecessors, successors, and assigns. For avoidance of doubt, Pfizer does not admit any violations of the CCPA and does not admit any wrongdoing.

## II. DEFINITIONS

The following definitions shall be used in construing this Assurance:

3. “Clearly and Conspicuously” or “clear and conspicuous” shall mean that the statement, representation or term being disclosed is of such size, color, contrast and/or audibility and is presented so as to be readily noticed and understood by the consumer to whom it is disclosed. In addition to the foregoing, with regard to interactive media, the disclosure shall also be unavoidable (i.e., no click-through required to access it), and shall be presented prior to the consumer incurring any financial obligation.

4. “Consumer” shall mean a consumer located within the State of Colorado who utilized a Copayment Coupon during the Covered Conduct period, as defined herein.

5. “Copayment Coupons” or “Coupons” shall mean the drug coupons offered by Pfizer to assist eligible Consumers with some of their out-of-pocket costs associated with purchasing Estring®, Quillivant®, or Flector Patch® from at least 2014 through 2018. Many of these Coupons set forth that eligible consumers who are commercially-insured or uninsured would “PAY NO MORE THAN” certain amounts out-of-pocket, subject to certain terms and conditions.<sup>1</sup>

6. “Covered Conduct” shall mean Pfizer’s offer of Copayment Coupons to eligible Consumers who were prescribed Estring®, Quillivant®, and Flector Patch®

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<sup>1</sup> Pfizer’s Copayment Coupons are not valid for prescriptions that are eligible to be reimbursed, in whole or in part by Medicaid, Medicare, Tricare, or other federal or state healthcare programs.

from at least 2014 through 2018, which was the subject of an investigation by the State pursuant to the CCPA.

7. “Effective Date” shall mean the date on which each Party has executed and delivered this Assurance to the other.

8. “Health Care Provider” or “HCP” shall mean any physician or other health care practitioner, who is licensed to provide health care services or to prescribe pharmaceutical products.

9. “Internet Coupons” shall mean Pfizer’s Copayment Coupons that were downloaded and/or printed from consumer websites that Pfizer maintained during the Covered Conduct period.

10. “Parties” shall mean Pfizer as defined herein and the Signatory Attorney General.

11. “Pfizer” shall mean Pfizer Inc., and its United States-based affiliates, subsidiaries, predecessors, successors, and assigns.

12. “Plastic Coupons” shall mean wallet-size plastic coupons cards provided to Consumers or a Health Care Provider.

13. “Signatory Attorney General” shall mean the Attorney General of Colorado or his authorized designee, who has agreed to this Assurance.

### **III. ALLEGATIONS**

14. During the Covered Conduct period, Pfizer sold Estring®, (which treats moderate to severe symptoms of vulvar and vaginal atrophy due to menopause by releasing local estrogen therapy via a vaginal ring); Quillivant® XR and Quillichew

ER® (which treat attention deficit hyperactivity disorder via a liquid formulation and chewable tablet, respectively) (Quillivant® XR and Quillichew ER® are referred to collectively herein as “Quillivant®”)<sup>2</sup>; and Flector Patch® (a prescription NSAID patch that treats acute pain due to minor strains, sprains, and bruises).

15. Pfizer occasionally offers copayment coupons to assist patients with some of their out-of-pocket costs associated with accessing certain important medicines. From at least 2014 - 2018, Pfizer made Copayment Coupons for Estrin®<sup>2</sup>, Quillivant®, and Flector Patch® available to Consumers. Many of those Copayment Coupons set forth that eligible Consumers would “PAY NO MORE THAN” a certain amount out-of-pocket, subject to certain “terms and conditions.” Although the Copayment Coupons included terms and conditions describing the maximum potential savings and the possibility that out-of-pocket expenses could exceed the “PAY NO MORE THAN” amount listed on the face of the Copayment Coupon, these terms and conditions were not disclosed Clearly and Conspicuously.

16. In general, Consumers accessed Pfizer’s Copayment Coupons in two ways. First, these Consumers could have received wallet-size Plastic Coupon cards from their Health Care Providers. Second, these Consumers could have downloaded and printed paper Internet Coupons from consumer websites that Pfizer maintained. The Plastic Coupons and Internet Coupons both advertised the same offer; however, the Internet Coupons presented the terms and conditions differently than the Plastic Coupons.

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<sup>2</sup> Pfizer stopped selling Quillivant® in 2017.

17. While many Consumers paid less than or equal to the “PAY NO MORE THAN” amount that appeared on the relevant Pfizer Copayment Coupons, hundreds of Consumers paid more than the “PAY NO MORE THAN” amount indicated on the Copayment Coupons.

18. The above conduct violates the CCPA, including C.R.S. sections 6-1-105(1)(e) and (l).

19. In early 2018, Pfizer began changing the text of the “PAY NO MORE THAN” Copayment Coupons to say that patients could “PAY AS LITTLE AS” the listed amount.

20. While Pfizer does not admit any violations of the CCPA and does not admit any wrongdoing, Pfizer is willing to enter into this Assurance regarding the Covered Conduct in order to resolve the concerns of the Colorado Attorney General, under the CCPA as to the matters addressed in this Assurance and thereby avoid significant expense, inconvenience, and uncertainty.

21. Pfizer is entering into this Assurance solely for the purpose of settlement, and nothing contained herein may be taken as or construed to be an admission or concession of any violation of law, rule, or regulation, or of any other matter of fact or law, or of any liability or wrongdoing, all of which Pfizer expressly denies. Pfizer does not admit any violation of the CCPA and does not admit any wrongdoing that was or could have been alleged by any Attorney General before the date of the Assurance under those laws. No part of this Assurance, including its statements and commitments, shall constitute evidence of any liability, fault, or

wrongdoing by Pfizer. This document and its contents are not intended for use by any third party for any purpose.

22. This Assurance shall not be construed or used as a waiver or limitation of any defense otherwise available to Pfizer in any other action, or of Pfizer's right to defend itself from, or make any arguments in, any other private individual, regulatory, governmental, or class claims or suits relating to the subject matter or terms of this Assurance. This Assurance is made without trial or adjudication of any issue of fact or law or finding of liability of any kind. Notwithstanding the foregoing, the State may file an action to enforce the terms of this Assurance.

23. No part of this Assurance shall create a private cause of action or confer any right to any third party for violation of any federal or state statute except that the State may file an action to enforce the terms of this Assurance. It is the intent of the Parties that this Assurance shall not be binding or admissible in any other matter, including, but not limited to, any investigation or litigation, other than in connection with the enforcement of this Assurance.

#### **IV. LEGAL AUTHORITY**

24. C.R.S. section 6-1-110(2) authorizes the Attorney General to accept an assurance of discontinuance of any deceptive trade practice listed in Part 7 of the CCPA. Section 6-1-110(2) also allows the Attorney General to accept a voluntary payment from Pfizer of the costs of the State's investigation and any action or proceeding by the Attorney General.

## V. CONSIDERATION

25. The terms of this Assurance shall be governed by the laws of the State of Colorado.

26. The Parties enter into this Assurance for the purpose of compromising and resolving all disputed claims and to avoid further expense of protracted litigation.

## VI. MONETARY TERMS

27. Pfizer shall pay a total of **\$137,174.82** to the State of Colorado.

28. Within thirty days of the Effective Date, Pfizer shall send initial payment to the State of Colorado of **\$30,000.00**. Such payment shall be held, along with any interest thereon, in trust by the Attorney General to be used in the Attorney General's sole discretion for reimbursement of the State's actual costs and attorneys' fees, the payment of restitution, if any, and for future consumer fraud, consumer credit or antitrust enforcement, consumer education, or public welfare purposes.

29. In lieu of paying the remaining **\$107,174.82** directly to the State of Colorado, Pfizer shall pay restitution to Colorado Consumers based on the first time each of those Consumers utilized a Copayment Coupon for Estring®, Quillivant®, and Flector Patch® during the Covered Conduct period and paid more out-of-pocket than the "PAY NO MORE THAN" amount listed on their Coupon. Pfizer shall pay those Colorado Consumers as follows:

- a. A Consumer who utilized a Plastic Coupon and paid his or her pharmacy an amount exceeding the "PAY NO MORE THAN" amount

listed on his or her Copayment Coupon shall receive a restitution payment equal to 100% of his or her first-time payment in excess of the “PAY NO MORE THAN” amount.<sup>3</sup>

- b. A Consumer who utilized an Internet Coupon and paid his or her pharmacy an amount exceeding the “PAY NO MORE THAN” amount listed on his or her Copayment Coupon shall receive a restitution payment equal to 25% of his or her first-time payment in excess of the “PAY NO MORE THAN” amount.<sup>4</sup>
- c. If a Consumer utilized both Plastic and Internet Coupons during the Covered Conduct period, or used the same type of Coupon more than once during the Covered Conduct period, he or she will receive a restitution payment tied to the first time that Consumer paid his or her pharmacy an amount in excess of the “PAY NO MORE THAN” amount listed on his or her Copayment Coupon. No Consumer is entitled to more than one restitution payment per medicine under this Assurance.

30. Within thirty days of the Effective Date, Pfizer shall provide to the State a list containing (a) the available names and addresses of Colorado Consumers who are entitled to a restitution payment under this Assurance; (b) the amounts to which

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<sup>3</sup> For example, if a Consumer paid \$20 at the pharmacy counter when utilizing an Estring Plastic Coupon that stated “Pay No More Than \$15” (subject to terms and conditions), that Consumer would receive \$5 in restitution under this Assurance.

<sup>4</sup> For example, if a Consumer paid \$20 at the pharmacy counter when utilizing an Estring Internet Coupon that stated “Pay No More than \$15” (subject to terms and conditions), that Consumer would receive \$1.25 in restitution under this Assurance.



those Consumers are entitled; and (c) whether those Consumers used a Plastic Coupon or Internet Coupon for the transaction at issue (the “Restitution List”).

31. Within fourteen (14) days of the date on which Pfizer provides the Restitution List, the State shall notify Pfizer that (i) it approves the Restitution List; or (ii) that the State has found an error or discrepancy in the Restitution List. Both parties shall work in good faith to resolve and or correct any discrepancies in the Restitution List.

32. Within ninety (90) days of finalizing the Restitution List, Pfizer, or its vendor, will issue restitution payments by check according to the Restitution List. These Restitution payments will be accompanied by a letter to the Consumer that is substantially similar to the form attached as **Exhibit A**. Once sent, these payments will constitute a full refund to all Consumers identified on the Restitution List as specified and associated with the Covered Conduct.

33. Within one hundred eighty days of issuing the restitution payments described in Paragraph 29, Pfizer, or its vendor, will cancel all undeposited checks issued to Consumers on the Restitution List.

34. Within two hundred ten days of issuing the restitution payments described in Paragraph 29, Pfizer will submit a report to the Attorney General providing a full accounting of all restitution paid to Consumers pursuant to this Assurance. Pfizer will then send the balance of the **\$107,174.82**, if any, to the State of Colorado. Such payment shall be held, along with any interest thereon, in trust by the Attorney General to be used in the Attorney General’s sole discretion for

reimbursement of the State's actual costs and attorneys' fees, the payment of restitution, if any, and for future consumer fraud, consumer credit or antitrust enforcement, consumer education, or public welfare purposes.

35. Payments to the State of Colorado under the preceding paragraph shall be in the form of a certified check, cashier's check, or money order made payable to the State of Colorado shall reference "Pfizer Co-Payment Coupons" and shall be delivered to:

Mark Bailey, Senior AAG II  
Colorado Department of Law  
1300 Broadway, Ste. 700  
Denver, Colorado 80203

## **VII. FURTHER ASSURANCES OF PFIZER**

### **A. Compliance**

36. Pfizer's advertising, marketing and business practices concerning Copayment Coupons shall comply fully with the CCPA and all other applicable laws.

### **B. Advertising and Marketing Practices**

37. Pfizer shall, as of the Effective Date, cease disseminating any printed materials including Copayment Coupons themselves, which include the "PAY NO MORE THAN" language where the terms and conditions reveal that some consumers may pay more than the stated amount.

38. Pfizer shall disclose in its marketing materials, online and in print, Clearly and Conspicuously:

- a. The maximum savings associated with its Copayment Coupons. Such disclosures shall be made contemporaneously with the claim that they are intended to qualify; and
- b. A toll-free number for customer service regarding the offer, eligibility requirements, and terms and conditions associated with Pfizer's Copayment Coupons.

### **VIII. ENFORCEMENT**

39. All obligations undertaken by Pfizer in this Assurance shall apply prospectively.

40. For the purposes of resolving disputes with respect to compliance with this Assurance, should the State have a reasonable basis to believe that Pfizer has engaged in a practice that violates a provision of this Assurance subsequent to the Effective Date, then the State shall notify Pfizer in writing of the specific objection, identify with particularity the provision of this Assurance that the practice appears to violate and give Pfizer thirty days to respond to the notification; provided, however, that the State may take any action if the State believes that, because of the specific practices, a threat to the health or safety of the public requires immediate action.

41. Upon receipt of written notice, Pfizer shall provide a good faith written response to the State's notification, containing either a statement explaining why Pfizer believes it is in compliance with the Assurance, or a detailed explanation of how the alleged violation occurred and a statement explaining how Pfizer intends to remedy the alleged breach. Nothing in this section shall be interpreted to limit the

State's Civil Investigative Demand ("CID") to the extent such authority exists under applicable law, and Pfizer reserves all of its rights in responding to a CID, to the extent such authority exists under applicable law.

42. The State may agree, in writing, to provide Pfizer with additional time to extend any of the deadlines listed in this Assurance.

### **IX. RELEASE**

43. Released Claims. By its execution of this Assurance, the State of Colorado releases and forever discharges Pfizer and its past and present officers, directors, employees, representatives, agents, affiliates, parents, subsidiaries, operating companies, predecessors, assigns and successors (collectively, the "Releasees") from the following: all civil causes of action, claims, damages, restitution, disgorgement, fines, costs, attorney's fees, or penalties that the Colorado Attorney General has asserted or could have asserted against Releasees under the CCPA, or any amendments thereto, or by common law claims concerning deceptive or fraudulent trade practices, that the Colorado Attorney General has the authority to release resulting from the Covered Conduct up to and including the Effective Date.

44. Claims Not Covered. Notwithstanding any term in this Assurance, specifically reserved and excluded from the release in Paragraph 43 as to any entity or person, including Releasees, are any and all of the following:

- a. Any criminal liability that any person or entity, including Releasees, has or may have to the State of Colorado;

- b. Any civil or administrative liability that any person and/or entity, including Releasees, has or may have to the State of Colorado not expressly covered by the release in Paragraph 43, including, but not limited to, any and all of the following claims:
- i. State or federal antitrust violations;
  - ii. Claims involving “best price,” “average wholesale price,” “wholesale acquisition cost,” or any reporting practices;
  - iii. Medicaid claims, including but not limited to federal Medicaid drug rebate statute violations, Medicaid fraud or abuse (whether common law, statutory or otherwise), and/or kickback violations related to the State’s Medicaid program;
  - iv. State false claims violations; and
  - v. Claims to enforce the terms and conditions of this Assurance.
- c. Actions of, or on behalf of, state program payors of the State of Colorado arising from the purchase of Estring®, Quillivant®, and Flector Patch®.
- d. Any claims individual consumers have or may have under the CCPA or other laws against any person or entity, including the Releasees.

45. Nothing contained in this Assurance shall relieve Pfizer of the obligations it maintains under any other judgment or agreement relating to any Pfizer product.

#### **X. ADDITIONAL PROVISIONS**

46. Nothing this this Assurance shall be construed to authorize or require any action by Pfizer in violation of applicable federal, state or other laws.

47. Modification. The Assurance may be modified by a written stipulation of the Parties.

48. Pfizer shall not cause or encourage third parties, nor knowingly permit third parties acting on its behalf to engage in the practices from which Pfizer is prohibited by this Assurance.

49. No Approval by the State. The acceptance of this Assurance by the State of Colorado shall not be deemed approval by the State of any Pfizer's marketing or business practices. Further, neither Pfizer nor anyone acting on its behalf shall state or imply, or cause to be stated or implied that the State of Colorado or any other governmental unit of Colorado has approved, sanctioned or authorized any practices, act, advertisement, coupon or conduct of Pfizer.

50. Pfizer acknowledges that it is the State's customary position that an agreement restraining certain conduct by a party does not prevent the State from addressing later conduct that could have been prohibited, but was not, in the earlier agreement, unless the earlier agreement expressly limited the State's enforcement options in that manner. Therefore, nothing herein shall be interpreted to prevent the

State from taking enforcement action to address conduct occurring after the Effective Date that the State believes to be in violation of the law. The fact that such conduct was not expressly prohibited by the terms of this Assurance shall not be a defense to any such enforcement action.

51. The terms and provisions of this Assurance may be enforced by the current Colorado Attorney General, and by any of his duly authorized agents or representatives, as well as by any of his successors in interest, and by any of his successors in interest's agents or representatives.

52. Pursuant to C.R.S. section 6-1-110(2), this Assurance shall be a matter of public record.

53. Pfizer acknowledges that it had a full opportunity to review this Assurance and consult with legal counsel regarding it. The undersigned representatives of Pfizer agree and represent that they have read and understood this Assurance, accept the legal consequences involved in signing it, and that there are no other representations, agreements, or understandings between the State and Pfizer that are not stated in writing herein.

54. This Assurance may be signed in one or more counterparts, each of which shall be deemed an original, but which together shall constitute the Assurance. Electronic copies of this Assurance and the signatures hereto may be used with the same force and effect as an original.

55. Strict Performance. Any failure by any party to this Assurance to insist upon strict performance by any other party of any of the provisions of this Assurance

shall not be deemed a waiver of any of the provisions of this Assurance, and such party, notwithstanding such failure, shall have the right thereafter to insist upon a specific performance of any and all of the provisions of this Assurance.

56. Entire Agreement. This Assurance represents the full and complete terms of the settlement entered into by the parties hereto. In any action undertaken by the parties, no prior versions of this Assurance and no prior versions of any of its terms that were not entered by the Court in this Assurance, may be introduced for any purpose whatsoever.

57. Counterparts. This Assurance may be executed in counterparts and a pdf signature shall be deemed to be, and shall have the same force and effect as, and original signature.

58. Notices. All Notices under this Assurance shall be provided to the following via email and United States Postal Service First-Class Mail:

Pfizer:

Markus Green  
Vice President  
Assistant General Counsel  
Pfizer Inc.  
235 East 42nd Street  
New York, NY 10017  
E-mail: markus.green@pfizer.com  
Telephone: 212-733-3966

Copy to Pfizer's Counsel:

Andrew Hoffman II  
DLA Piper  
2000 Avenue of the Stars  
Suite 400 North Tower  
Los Angeles, CA 90067-4704  
E-mail: andrew.hoffman@dlapiper.com



Telephone: 310-595-3010

State of Colorado

Mark Bailey

Senior Assistant Attorney General II

Colorado Department of Law

1300 Broadway, 7<sup>th</sup> Floor

Denver, Colorado 80203

E-mail: mark.bailey@coag.gov

Telephone: 720-508-6202

59. To the extent that any provision of this Assurance obligates Pfizer to change any policy(ies) or procedure(s) and to the extent not already accomplished, Pfizer shall implement the policy(ies) or procedures(s) as soon as reasonably practicable, but no later than 120 days after the Effective Date of this Assurance.

[Signatures appear on the following page(s).]

For Defendant Pfizer Inc.



Date: May 18, 2022

Markus Green  
Vice President  
Assistant General Counsel  
Pfizer Inc.  
235 East 42nd Street  
New York, NY 10017

Counsel for Pfizer Inc.



Date: May 18, 2022

Andrew Hoffman II  
DLA Piper  
2000 Avenue of the Stars  
Suite 400 North Tower  
Los Angeles, CA 90067-4704

For Plaintiff State of Colorado

Philip J. Weiser  
Attorney General



Date: 5/19/22

Mark Bailey  
Senior Assistant Attorney General II  
Colorado Department of Law  
1300 Broadway, 7th Floor  
Denver, Colorado 80203

## Exhibit A

[Insert Colorado Attorney General Letterhead]

[Date]

Greetings,

Earlier this year my office settled with Pfizer Inc. (“Pfizer”) concerning its use of certain copayment coupon cards for Estrin, Quillivant XR, Quillichew ER, and Flector Patch. The enclosed check reflects what you are entitled to receive pursuant to that settlement in connection with your use of such coupons. Please cash or deposit this check promptly. **If you do not deposit the check within 180 days from the date of issue printed on the check, it will be canceled.**

If you have any questions about this check, you may call the Attorney’s General’s Consumer Protection Division at [insert number] between the hours of [insert time], Monday through Friday.

Sincerely,

[insert signature block]