



New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

CVS Health: Accuracy of Drug Rebate Revenue Remitted to the Department of Civil Service

New York State Health Insurance Program



Report 2016-S-41

January 2019

Executive Summary

Purpose

To determine if CVS Health invoiced and remitted commercial rebate revenue related to Empire Plan drug utilization in accordance with its contract with the Department of Civil Service. Our audit covered the period January 1, 2014 through June 30, 2017.

Background

The New York State Health Insurance Program (NYSHIP), administered by the Department of Civil Service (Civil Service), provides health insurance coverage to active and retired State, participating local government, and school district employees, and their dependents. The Empire Plan is the primary health benefits plan for NYSHIP, covering 1.1 million members. The Empire Plan provides its members with four types of health insurance coverage: prescription drug, medical/surgical, hospital, and mental health and substance abuse coverage. Civil Service contracted with CVS Health to administer the Empire Plan's prescription drug program for the period January 1, 2014 through December 31, 2018. The prescription drug program costs about \$2 billion annually. In accordance with the contract, CVS Health was required to negotiate agreements with drug manufacturers for rebates, discounts, and other consideration and pass 100 percent of the value of the agreements on to Civil Service. During the audit period, Civil Service received more than \$600 million in commercial drug rebates.

Key Findings

We reviewed the rebate revenue generated from agreements with six drug manufacturers and found that CVS Health did not always properly invoice drug manufacturers for rebates (either in a timely manner, accurately, or at all) or remit all rebate revenue to Civil Service that it collected. As a result, Civil Service is due \$2,052,653 in rebates.

Key Recommendations

- Remit \$2,052,653 in rebate revenue to Civil Service.
- Establish a formal process to document, track, and resolve disputes, including issues affecting rebate allocation, so disputes can be resolved in a timely manner.
- Ensure all of the Empire Plan's rebate-eligible drug utilization is invoiced and the resultant revenue is remitted to Civil Service.

Other Related Audits/Reports of Interest

[UnitedHealthcare: Empire Plan Drug Rebate Revenue \(2013-S-41\)](#)

[UnitedHealthcare: Empire Plan Drug Rebates \(2014-S-62\)](#)

**State of New York
Office of the State Comptroller**

Division of State Government Accountability

January 28, 2019

Ms. Sarah J. Smith
Vice President, Division Head, Employer, CVS/Caremark
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Dear Ms. Smith:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the New York State Health Insurance Program entitled *CVS Health: Accuracy of Drug Rebate Revenue Remitted to the Department of Civil Service*. The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller
Division of State Government Accountability*

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This report is also available on our website at: www.osc.state.ny.us

Background

The New York State Health Insurance Program (NYSHIP) was established in 1957 under the Civil Service Law. NYSHIP is one of the nation's largest public sector health insurance programs, covering over 1.2 million active and retired State, participating local government, and school district employees, and their dependents. The Department of Civil Service (Civil Service) administers NYSHIP.

The Empire Plan is the primary health benefits plan for NYSHIP, providing its 1.1 million members with four types of health insurance coverage: prescription drugs, medical/surgical, hospital, and mental health and substance abuse coverage. Civil Service entered into a Pharmacy Benefit Services Contract (Contract) with CVS Health to administer the Empire Plan's prescription drug program for the period January 1, 2014 through December 31, 2018. The prescription drug program costs about \$2 billion annually.

In accordance with the Contract, CVS Health must utilize the Empire Plan's significant enrollment to maximize savings to the prescription drug program by negotiating agreements with drug manufacturers for rebates, discounts, and other consideration and pass 100 percent of the value of the agreements on to Civil Service. CVS Health must disclose all revenue arrangements with manufacturers and credit the prescription drug program for all revenue that is attributable to the Empire Plan's prescription drug utilization. CVS Health is further required to calculate and distribute rebate revenue to Civil Service in a fully transparent and verifiable manner.

During the audit period, January 1, 2014 through June 30, 2017, Civil Service was credited more than \$600 million in commercial rebates derived from agreements with drug manufacturers. (For this report, the term "rebates" is used to refer collectively to all revenue negotiated in the manufacturer agreements, including base rebates, incremental rebates, market share rebates, price protection, and administrative fees paid to CVS Health by drug manufacturers.)

Audit Findings and Recommendations

To determine if CVS Health invoiced and remitted commercial rebate revenue related to Empire Plan drug utilization in accordance with the Contract, we selected six drug manufacturers and reviewed the corresponding rebates during the audit period, January 1, 2014 through June 30, 2017. The six manufacturers accounted for \$270 million of the \$666 million in commercial rebates invoiced by CVS Health during the audit period. Based on our review, we found Civil Service is due \$2,052,653 in rebates.

Untimely Rebate Processing

CVS Health provides Civil Service with a quarterly Rebate Payment Detail Report to support the rebates remitted to Civil Service. We reviewed the Rebate Payment Detail Report as well as other rebate documentation and found CVS Health did not always invoice drug manufacturers, resolve disputes with manufacturers, collect rebates, or allocate rebates to Civil Service related to Empire Plan drug utilization in a timely manner. As a result, Civil Service is due \$1,274,571 in rebate revenue.

Settlements

For the period from April 1, 2014 through December 31, 2014, we identified \$1,032,640 in rebates for one drug that were invoiced by CVS Health but not collected from the manufacturer. CVS Health officials provided a copy of a settlement letter with the manufacturer dated October 3, 2017. The settlement letter states that, on February 24, 2016, the manufacturer received invoices from CVS Health related to these rebates. It further states that, as indicated in a letter dated April 4, 2016, the invoices were not submitted timely (within 45 days of the end of the quarter, as per the terms of the rebate agreement between CVS Health and the manufacturer), and the drugs were ineligible for rebates. CVS Health officials signed the letter in acknowledgment and agreement with the settlement; accordingly, the manufacturer did not pay these invoices. However, CVS Health should remit the value of these rebates to Civil Service in accordance with the Contract, which requires CVS Health to maximize revenues and pass 100 percent of the value to the prescription drug program. Civil Service should not suffer a financial loss because CVS Health did not invoice rebates properly – a basic responsibility under the Contract.

In response to our findings, CVS Health officials stated they invoiced the rebates within the allowed time period, but rather a dispute regarding rebate eligibility occurred. CVS Health officials further said it had numerous phone conversations with the manufacturer regarding the dispute, but could not provide our auditors any documentation of that.

We question why CVS Health did not have documentation to support the invoices, the dispute, or tracking of the progress of the dispute or any records to demonstrate that CVS took all the correct steps to properly invoice the rebates. We further question why CVS Health would enter into a formal settlement agreement with the manufacturer acknowledging that it did not invoice the rebates timely, if it had correctly sent the invoices within the allowed time period. The Contract

requires CVS Health to maximize revenues and pass through 100 percent of the value to the prescription drug program. Civil Service should not be denied the rebates because CVS Health failed to invoice rebates properly and maintain supporting documentation.

Disputes

We identified \$756,694 in outstanding disputed rebates that CVS Health had with another manufacturer during 2016. During our audit fieldwork, CVS Health resolved \$673,747 of the \$756,694 in disputed rebates from the first half of 2016. However, these rebates were not allocated to Civil Service until June and July of 2018 (during our audit fieldwork), more than two years after the rebates were earned. CVS Health and the manufacturer have not yet reached a resolution for the remaining \$82,947 in disputed rebates from the fourth quarter of 2016.

CVS Health officials said they have no formal process to track disputes. Analysts are responsible for different manufacturers and have their own individual methods of documenting disputed rebates. The manufacturer rebate agreements contain specific steps and timelines that address disputed claims. CVS Health should abide by these provisions and establish a formal process to document disputes to resolve them in a timely manner.

We also questioned an additional \$26,293 in rebates from the third quarter of 2015 for this manufacturer that were invoiced but not collected or allocated to Civil Service. In their response to our findings, CVS Health officials stated they created a second invoice that included the rebate-eligible claims, which were not captured in the original invoice. However, the second invoice was not sent to the manufacturer for payment. Therefore, CVS Health agrees that Civil Service is due an additional \$26,293.

Unallocated Rebates

We identified \$132,691 in unallocated rebates for a third manufacturer for the first three quarters of 2016. CVS Health officials responded that the manufacturer provided insufficient payment files for these rebates and, as a result, CVS Health was unable to interpret the files or allocate the funds appropriately. At the time this report was prepared, CVS Health received accurate payment files from the manufacturer to allocate the rebates; however, Civil Service has not yet been allocated these rebates, more than two years after the rebates were earned. CVS Health should ensure Civil Service is allocated all rebates related to Empire Plan drug utilization in a timely manner.

Conclusion

CVS Health is contractually required to maximize revenues and pass through 100 percent of the value of rebates to the prescription drug program. Therefore, CVS Health should ensure rebates are invoiced, collected, and allocated to Civil Service in a timely manner, including the \$1,274,571 in rebates identified in this report.

Recommendations

1. Remit the \$1,191,624 in rebate revenue (\$1,032,640 + \$26,293 + \$132,691) identified in this report to Civil Service.
2. Work with drug manufacturers to promptly resolve outstanding disputes, including the \$82,947 identified in this audit, and remit to Civil Service accordingly.
3. Establish a formal process to document, track, and resolve disputes, including issues affecting rebate allocation, so disputes can be resolved in a timely manner.

Uninvoiced and Incorrectly Invoiced Rebates

We identified \$778,082 in rebate-eligible claims during the audit period that were not invoiced or were invoiced incorrectly.

Uninvoiced Claims

We compared NYSHIP paid drug claims data to CVS Health's Rebated Claims Files and identified 2,160 claims that CVS Health did not invoice that were eligible for rebate (according to the manufacturers' rebate agreements). We found Civil Service is due \$306,343 for rebates on these uninvoiced claims. CVS Health officials initially stated these claims were not rebate-eligible, but could not fully substantiate this. For example, according to CVS Health officials, 722 claims were not rebate-eligible because the drug required a prior authorization (which means a prescriber must obtain approval prior to prescribing a specific medication). Because this disadvantages the drug, manufacturers might not pay rebates on the drug. However, the Empire Plan formulary does not indicate that the drug required a prior authorization. The NYSHIP paid claims data, which CVS Health provided to both the Office of the State Comptroller and Civil Service, also does not indicate that the drug required a prior authorization. CVS Health officials said the data used to invoice rebates indicated that a prior authorization was required, but could not substantiate this. After review of our findings, CVS Health officials agreed these claims were not subject to a prior authorization and were therefore rebate-eligible.

In addition, we identified 1,028 claims that were paid from a temporary holding account, which is used to give Empire Plan members access to prescription drug coverage while their Medicare enrollment is pending. CVS Health officials stated it is their process to exclude claims in this holding account, even though these claims were not excluded from rebates under the manufacturers' rebate agreements. These claims were paid through the Empire Plan, not Medicare Part D; therefore, they should have been eligible for commercial rebates. We calculated that Civil Service is due \$160,834 in rebates for these claims.

Miscalculated or Erroneously Excluded Claims

During our review of the Rebate Payment Detail Reports, we identified a significant decrease in rebates for three drugs from one manufacturer in the second quarter of 2015. Using the Manufacturer Invoice Reports and NYSHIP paid claims data, we found CVS Health did not invoice all of the Empire Plan's utilization for these drugs in April, May, and June of 2015. In response to our findings, CVS Health officials noted these claims were erroneously excluded due to a mapping issue in their rebate system that was identified prior to our audit. CVS Health agreed to remit \$283,418 to Civil Service for these claims.

We also identified rebates that were incorrectly invoiced by CVS Health. We reviewed the manufacturers' rebate agreements and amendments pertaining to our audit period to determine rebate terms and conditions, and compared the rebate percentages to those used to invoice rebates in the Manufacturer Invoice Reports. We found discrepancies in the rebate percentages used by CVS Health to invoice the manufacturers, which totaled \$5,771. CVS Health officials reviewed our findings and determined a mapping issue in the rebate system caused the claims to be invoiced at an incorrect rate or excluded in error. CVS Health officials then found Civil Service was due an additional \$21,716 in rebates related to other manufacturers. Civil Service is due a total of \$27,487 as a result of this issue.

Conclusion

In accordance with the Contract, CVS Health is required to credit Civil Service for all revenue that is attributable to the Empire Plan's utilization. Therefore, CVS Health should remit \$778,082 to Civil Service for all rebate-eligible claims that were not invoiced by CVS Health.

Recommendations

4. Remit the \$778,082 in rebates (\$306,343 + \$160,834 + \$283,418 + \$27,487) identified in this report to Civil Service.
5. Take steps to ensure all of the Empire Plan's rebate-eligible drug utilization is invoiced and the resultant revenue is remitted to Civil Service, including:
 - Not excluding claims in the temporary holding account that are not excluded from rebates under the manufacturers' rebate agreements; and
 - Correcting mapping problems in the rebate system.

Audit Scope, Objective, and Methodology

The objective of our audit was to determine if CVS Health invoiced and remitted commercial rebate revenue related to Empire Plan drug utilization in accordance with its Contract with Civil Service. Our audit covered the period January 1, 2014 through June 30, 2017.

To accomplish our audit objective and assess internal controls related to our audit objective, we interviewed Civil Service and CVS Health officials. We reviewed the Contract between Civil Service and CVS Health. Using the Rebate Payment Detail Reports, we judgmentally selected six drug manufacturers based on the highest rebates paid, high-dollar adjustments, and uncollected balances. These six manufacturers accounted for \$270 million of the \$666 million in rebates invoiced by CVS Health during the audit period. For the six selected manufacturers, we reviewed their rebate agreements with CVS Health to determine rebate terms and conditions. We analyzed the corresponding Manufacturer Invoice Reports to determine if rebates were invoiced and collected in accordance with the agreements. We compared NYSHIP paid claims data to the Rebated Claims Files to determine if all rebate-eligible claims were invoiced by CVS Health.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

Reporting Requirements

We provided preliminary copies of the matters contained in this report to CVS Health officials for their review and comment. Their comments were considered in preparing this report.

Within 90 days of the final release of this report, we request that CVS Health officials report to the State Comptroller, advising what steps were taken to implement the recommendations included in this report.

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