

UnitedHealthcare Insurance Company of New York  
13 Cornell Road, Latham, NY 12211 - NY058-1000

March 29, 2016

Mr. David Fleming  
Office of State Comptroller  
110 State Street, 11<sup>th</sup> Floor  
Albany, NY 12236

Dear Mr. Fleming:

Enclosed is UnitedHealthcare's response to the recommendations in the Office of State Comptroller's Final Report 2014-S-62, Empire Plan Drug Rebates.

**Recommendation One**

*Review the \$710,284 in rebates identified by this audit and credit the Department for the rebates, as appropriate.*

*United did not credit the Department \$371,635 in rebates because manufacturer agreements utilized to obtain rebates for the Empire Plan's prescription drug program did not meet or exceed Express Scripts' best existing rebate agreements for other clients, as required.*

As noted in our preliminary response to the Office of the State Comptroller dated June 22, 2015, it is United's understanding that United and the Department were not entitled to any additional rebates. The subcontract between United and Express Scripts does contain a provision that states in no instance will United receive less rebates in any therapeutic class than other clients of Express Scripts with a comparable benefit design and consistent preferred drug designations in the class. For Drug A, Express Scripts has noted there was one client that received a higher rate than the Department. Express Scripts indicated that when this client started with Express Scripts, they already had a higher contracted rate from the manufacturer. The rates earned by United's and Express Script's book of business were part of a negotiation with the manufacturer, and the manufacturer would not provide the higher rate to United or to any other client. For Drug B, Express Scripts has noted that the Department received the lower negotiated rate due to United's prior authorization criteria. A higher rate was available for plans with less restrictive criteria.

Discussions on this topic continued through the fall of 2015 primarily via teleconference. It is United's position that the Department is not entitled to any additional rebates because the manufacturers were unwilling to allow the additional rebates to United or any other clients. Section 13 – Force Majeure, of the Agreement states "neither party is responsible for any causes not reasonably foreseen or beyond the control of a party. Each party is required to use best efforts to eliminate or minimize the effect." It was beyond United's control to make a manufacturer extend rebates to United that it had extended to another client. United and Express Scripts used their best

efforts to obtain the same rebate or minimize the effect. No rebates were received by United or Express Scripts, and neither should be forced to pay the Department that which it did not receive.

*Express Scripts did not invoice, collect, or allocate \$196,845 in rebates to which the Department was entitled due to errors in Express Scripts' rebate process.*

On January 29, 2016 United credited \$196,845 to the Empire Plan Pharmacy CMA.

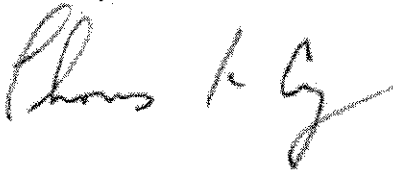
### **Recommendation Two**

*Formally instruct Express Scripts to remit 100 percent of all rebate revenues attributable to drug utilization under its subcontract with United, without exception; and credit the Department for all such rebates.*

*Express Scripts retained rebates of \$141,804 despite its contractual requirement to remit 100 percent of all revenue derived from manufacturer agreements to United, which should then be remitted to the Department.*

On January 29, 2016 United credited \$141,804 to the Empire Plan Pharmacy CMA. Express Scripts complied with the subcontract under United.

Sincerely,



Thomas K. Coy  
Underwriting Director

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- J. Stein – DCS
- S. Burdick – UHC
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