

The New York State Department of
Civil Service
Rebate Final Audit Response
Dated: April 2019

Regarding:

Office of the State Comptroller
Final Audit Report

Dated: January 2019

CVS/caremark

INTRODUCTION

Office of the State Comptroller performed an audit on behalf of The New York State Department of Civil Service (Civil Service), a client of CVS/caremark. Office of the State Comptroller was retained to determine the financial accuracy of rebates paid during the period of January 1, 2014 through June 30, 2017.

CVS/caremark has reviewed and researched the findings reported by Office of the State Comptroller to determine whether, in our view, there are outstanding financial liabilities owed to our client and/or opportunities for process improvement. Below is our response to the findings reported by Office of the State Comptroller.

FINDINGS

There were two (2) general finding within the Office of the State Comptroller report.

Office of the State Comptroller Finding 1: 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

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

CVS/caremark Response

CVS/caremark researched the untimely rebate processing findings and determined the following:

- **Settlements**

Due to contract language ambiguity, CVS/caremark and the manufacturer were in dispute regarding rebate eligibility for one (1) medication. The manufacturer interpreted the contract differently than CVS/caremark which resulted in the manufacturer not paying rebates for the time period of April 1, 2014 through December 31, 2014. It's important to note that CVS/caremark did in fact invoice the claims within the allotted period. CVS/caremark invoiced the claims; however, the manufacturer did not agree the medication was eligible for rebates. The manufacturer and CVS/caremark had numerous phone conversations regarding the dispute but since there was no written documentation the manufacturer claimed that CVS/caremark failed to notify them within the allotted time period, and for that reason, would not pay on the invoiced claims.

According to the agreement between New York State Department of Civil Service and CVS/caremark., Pharma Revenue means any and all revenues generated from agreements between pharmaceutical manufacturers and the Contractor, or any Affiliate or Key Subcontractor of the Contractor, which relate to DCS Program utilization and/or Pharmacy benefit management services provided under the Agreement. CVS/caremark maintains they are not contractually obligated to reimburse Civil Service as rebate revenue was not generated for these claims. Additionally, as stated in the settlement agreement, the agreement shall in no way be construed by either Party as an admission of liability or wrongdoing by the other Party.

CVS/caremark considers this issue closed with no financial impact.

- **Disputes**

CVS/caremark agrees \$673,747 of the \$756,694 disputed amount was resolved during the sample phase of the audit. It is important to note that it can a number of years to fully reconcile rebates invoiced for 2016.

For one (1) medication, the \$82,946.78 disputed amount for the time period of October 1, 2016 through December 31, 2016 was included in the \$128,452.14 reimbursement to

Civil Service in February 2019. Support for the payment is provided under separate cover.

Additionally, for the time period of July 1, 2015 through September 30, 2015, CVS/caremark created a second invoice that included eligible claims for (1) medication that was not captured in the original invoice. Unfortunately, the second invoice was not sent to the manufacturer for payment. As a result, Civil Service is due an additional \$26,292.52.

- **Unallocated Rebates**

For three (3) medications the manufacturer originally provided insufficient payment files for the time period of January 1, 2016 through September 30, 2016. As of the date of this updated report, the manufacturer provided payment in the amount of \$135,472.89 for the January 1, 2016 through June 30, 2016 time period. This amount was reimbursed to Civil Service in March 2019. Support for the payment is provided under separate cover. There is an open dispute for the time period of July 1, 2016 through September 30, 2016 that CVS/caremark and the manufacturer are diligently working to resolve. Funds will be allocated to Civil Service through the standard rebate process once payment is received from the manufacturer.

Civil Service will be reimbursed \$26,292.52 at the conclusion of the audit for eligible claims for one (1) manufacturer. Civil Service was reimbursed \$135,472.89 for one (1) manufacturer for the time period of January 1, 2016 through June 30, 2016. Once an open dispute is resolved, additional funds are due Civil Service for the time period of July 1, 2016 through September 30, 2016.

Office of the State Comptroller Finding 2: Un-invoiced and Incorrectly Invoiced Rebates

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

- **Un-invoiced 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 un-invoiced 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

- Remit the \$778,082 in rebates (\$306,343 + \$160,834 + \$283,418 + \$27,487) identified in this report to Civil Service.
- 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.

CVS/caremark Response

During the sample phase of the audit CVS/caremark was able to demonstrate why some of the claims identified were not invoiced. The top three (3) reasons for non-invoicing include:

- Claims dispensed at a 340B pharmacy, non-US Pharmacy or Government pharmacy.
- Medication adjudicated as Formulary. Per condition to rebates medication must adjudicate at the non-Formulary tier for rebate eligibility.
- Claim submitted after allowable ninety (90) day invoice period.

Additional details as to why claims were not rebate eligible were shared with the auditors, however it's unclear which claims the auditors still consider outstanding. Of the \$778,082 amount calculated by the auditors, CVS/caremark agrees \$717,414.55 is due Civil Service for claims erroneously excluded from earning rebates or invoiced incorrectly.

Un-invoiced claims

- Prior Authorization: After further review CVS/caremark agrees claims for three (3) manufacturers were excluded from rebates in error. The intent of the prior authorization for the eleven (11) medications was to bypass the quantity limit requirement, not to satisfy a clinical requirement for coverage. Civil Service is due \$121,699.43 for the time period of January 1, 2014 through December 31, 2015.
 - Rebate Eligible: Eligible claims for eight (8) medications were not invoiced for three (3) manufacturers. Civil Service is due an additional \$122,053.48 for the time period of February 1, 2014 through June 30, 2015.
 - CVS/caremark agrees claims that adjudicated against a temporary holding account were excluded from earning rebates in error. Civil Service is due \$162,757.11 for the time period of January 1, 2014 through June 30, 2017. Claim detail for CVS/caremark's analysis is provided under separate cover.
- **Miscalculated or Erroneously Excluded Claims**
 - Eligible claims for one (1) medication was not invoiced for the time period of April 1, 2015 through June 30, 2015. These claims were erroneously excluded from the invoicing issue that was identified prior to the audit whereas CVS/caremark discovered a mapping issue that impacted Civil Service rebates. Civil Service will be reimbursed \$197,376.89.
 - Due to a system error, two (2) medications for one (1) manufacturer were incorrectly excluded from earning rebates. Civil Service is due an additional \$86,041.07 for the time period of April 1, 2015 through June 30, 2015.
 - An additional mapping issue impacted the time period of July 1, 2014 through January 31, 2015. Claims for multiple medications were tagged incorrectly which resulted in claims being invoiced at the incorrect rate or excluded in error. Civil Service is due a net refund of \$27,486.57 for the invoicing issues.

Civil Service will be reimbursed \$717,414.55 at the conclusion of the audit. It is our view that we are in now compliance with the contract and there are no additional material financial discrepancies related to this finding.

SUMMARY

Based on CVS/caremark's review of the findings:

- **Disputes**
 - For the time period of July 1, 2015 through September 30, 2015, CVS/caremark created a second invoice that included eligible claims for (1) medication that was not captured in the original invoice. Unfortunately, the second invoice was not sent to the manufacturer for payment. As a result, Civil Service is due an additional \$26,292.52
- **Un-invoiced claims**
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Upon confirmation from Civil Service that the results are accepted and the audit can be closed, a credit will be issued to your invoice in the amount of \$743,707.07. This payment represents a remittance for the previously stated findings pursuant to rebates reviewed by Office of the State

Comptroller covering dates of service from January 1, 2014 through June 30, 2017. By closing the audit, Civil Service agrees that CVS/caremark has no further liability with respect to claims adjudicated by CVS/caremark, and related services, for the period from January 1, 2014 through June 30, 2017 and will not be subject to any further audits for the manufacturers included in the audit scope, for this time period by or on behalf of Civil Service.

State Comptroller's Comment: The Office of the State Comptroller (OSC) conducts independent audits pursuant to its constitutional and statutory authority. CVS/caremark cannot unilaterally restrict OSC's ability to audit.