

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

Regarding:

Office of the State Comptroller
Draft Audit Report

Dated June 2019



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, 2018.

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 three (3) general findings within the Office of the State Comptroller report.

Office of the State Comptroller Finding 1: Undisputed and Uncollected Rebates

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 dispute incorrect payments made by the manufacturers or collect all rebates due from manufacturers. As a result, Civil Service is due \$1,475,493 in rebate revenue.

- We identified significant adjustments made to rebates invoiced in the third and fourth quarters of 2015 for one manufacturer. According to CVS Health officials, rebates on the drugs were invoiced, but the manufacturer deemed the drugs ineligible for rebates. However, the drugs were listed on the Empire Plan formulary (a list of prescription drugs approved to be prescribed by the Empire Plan) and were, therefore, eligible for rebates. CVS Health failed to dispute this with the manufacturer at the time and instead adjusted the original amount invoiced. As a result, these rebates were not collected and remitted to Civil Service. CVS Health officials agree that these drugs were eligible for rebates and Civil Service is due an additional \$936,817 in rebates.
- We also compared the amount CVS Health originally invoiced the manufacturers on the Rebate Payment Detail Reports to the amount remitted to Civil Service and discussed the differences we identified with CVS Health officials. In most instances, either the manufacturer paid incorrectly and CVS Health did not dispute it or CVS Health disputed the amount paid and, while the manufacturer agreed, it did not remit the additional payment to CVS Health. As a result, CVS Health officials agree that Civil Service is due \$255,352 in additional rebate revenue.
- We also questioned \$283,324 in rebates from the first quarter of 2014 through the first quarter of 2017 that were invoiced but not collected and remitted to Civil Service. CVS officials stated that rebates were not paid by the manufacturer on these claims because they were either duplicate claims or claims for aberrant (abnormal) drug quantities. However, CVS Health officials were unable to provide sufficient evidence to substantiate this. Further, the NYSHIP paid claims data did not support what CVS Health officials told us

about duplicate claims, and aberrant quantities was not listed in these manufacturers' agreements as a reason for excluding claims from rebates. Civil Service is due \$283,324 in rebates for these claims.

Conclusion

CVS Health is contractually required to maximize revenues and pass 100 percent of the value of rebates on to the prescription drug program. Therefore, CVS Health should ensure rebates are calculated correctly, disputed when necessary, collected from the manufacturers, and remitted to Civil Service. CVS Health should remit \$1,475,493 to Civil Service for the undisputed and uncollected rebates identified in this report.

Recommendations

1. Remit the \$1,475,493 (\$936,817 + \$255,352 + \$283,324) in undisputed and uncollected rebate revenue identified in this report to Civil Service.
2. Take steps to ensure all incorrectly paid rebates are disputed and all rebate revenue due Civil Service is collected from the manufacturers

CVS/caremark Response:

CVS/caremark reviewed the Undisputed and Uncollected Rebates claims provided. The following was determined:

- Significant adjustments were made to rebates invoiced in the third and fourth quarters of 2015 for one (1) manufacturer. Three (3) medications from this manufacturer were originally identified as ineligible for rebates. CVS/caremark confirmed these were eligible for rebates and the invoicing was adjusted. Civil Service is due an additional \$936,816.98 for the time period of July 1, 2015 through December 31, 2015.
- Differences were identified in the amounts originally invoiced to some manufacturers and the amount remitted to Civil Service. Either the manufacturer paid incorrectly or the manufacturer did not remit the additional payment. Civil Service is due \$255,351.74 in additional rebate revenue:
 - One (1) medication was incorrectly invoiced at a lower rate. This issue was identified by CVS/caremark and the manufacturer was re-invoiced at the correct rate. However, the manufacturer neglected to submit new payment files resulting in an incorrect payment amount. Civil Service is due an additional \$115,639.93 for the time period of July 1, 2015 through September 30, 2015 and January 1, 2016 through March 31, 2016.
 - Two (2) medications were incorrectly paid at a lower base rate by two (2) manufacturers. Civil Service is due an additional \$61,019.91 for the time period of July 1, 2014 through September 30, 2014 and July 1, 2015 through December 31, 2015.

- One (1) NDC was not paid by the manufacturer. Civil Service is due an additional \$21,548.12 for the time period of July 1, 2015 through December 31, 2015.
 - Payments for six (6) medication from two (2) manufactures resulted in a rounding variance between CVS/caremark's invoice and the manufacturer payment file. Civil Service is due an additional \$57,143.78 for the time period of July 1, 2014 through September 30, 2014, January 1, 2015 through September 30, 2015 and April 1, 2016 through June 30, 2016.
- CVS/caremark reviewed the claims excluded due to aberrant quantity and no issues were identified. CVS/caremark reviewed the duplicate claims and determined that these include both internal and external duplicate claims.
 - External Duplicate claims occur when a claim is submitted in an invoice that the manufacturer has already received (and paid) from a different PBM/Organization. The manufacturer pays claims on a first come first serve basis and will not pay the same claim twice. Since CVS/caremark has no visibility into claims submitted by other PBMs, we are unable to dispute these external duplicates. It is important to note that CVS/caremark only invoices primary claims and does not invoice secondary/tertiary claims.
 - Internal Duplicate claims occur when the manufacturer identifies a submitted claim that was previously submitted/invoiced. Unlike external duplicate claims, these can be reviewed and validated. CVS/caremark validates internal duplicate claims by looking at the RX number, New Refill Indicator, Dispense date, and NPI to determine if the same claim was invoiced at an earlier time. The examples provided were reviewed and it was confirmed that the claims in question are indeed internal duplicate claims and are ineligible to earn rebates. Many Internal Duplicate claims are EGWP (Primary) and WRAP (Secondary) claims.
 - Aberrant Quantity is a claim the manufacturer does not pay because it exceeds the maximum quantity. These claims are reviewed at the NDC level and researched using the DailyMed government website to determine the dosage and administration. The usage amount is compared to the maximum allowed units per day and multiplied by the days of supply of the claim that was rejected.

CVS/caremark agrees to reimburse Civil Service a total of \$1,192,168.72 (\$936,816.98 + \$255,351.74). It is our view that we are in compliance with the contract and plan design, and there are no additional material financial discrepancies related to the findings.

Office of the State Comptroller Finding 2: Uninvoiced Claims

We compared NYSHIP paid drug claims data to CVS Health's Rebated Claims Files and identified 3,108 claims that CVS Health did not invoice that were eligible for rebates (according to the terms of the manufacturers' agreements). We calculated that Civil Service is due \$161,723 for the 3,108 uninvoiced claims.

For 178 of these claims, CVS Health officials stated they did not invoice rebates because the drugs were dispensed through the 340B Drug Pricing Program, a federal program administered by the Health Resources and Services Administration (HRSA) that requires drug manufacturers to provide outpatient drugs to eligible health care organizations and covered entities at significantly reduced prices. Because drugs dispensed through the 340B program are purchased at a discount, manufacturers do not pay rebates on them. Using the database of 340B pharmacies available through HRSA, we verified that none of the pharmacies used in the 178 claims were actively enrolled in the 340B program at the time the drugs were dispensed. While CVS Health officials indicated they maintain a list of 340B pharmacies, they do not verify this information through HRSA. CVS Health should take appropriate steps to verify that a pharmacy is enrolled in the 340B Drug Pricing Program before excluding claims from manufacturer rebates. We calculated that Civil Service is due \$15,726 in rebates for these 178 claims and an additional \$145,997 for the remaining 2,930 uninvoiced claims (note: there were a variety of reasons CVS Health did not invoice the 2,930 claims; by the conclusion of our fieldwork, CVS Health agreed 2,426 of those claims should have been invoiced).

In addition, we identified 969 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 initially stated that it is their process to exclude these claims, even though they are not excluded by the terms of the manufacturer agreements. These claims were paid through the Empire Plan, not Medicare Part D; therefore, they should have been eligible for rebates. CVS Health officials subsequently agreed that these claims are rebate-eligible and Civil Service is due \$241,929 in rebates for these claims.

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 \$403,652 to Civil Service for the rebate-eligible claims that were not invoiced by CVS Health.

Recommendations

3. Remit the \$403,652 (\$161,723 + \$241,929) in uninvoiced rebates identified in this report to Civil Service.
4. Take steps to ensure that all of the Empire Plan's rebate-eligible drug utilization is invoiced and the resultant revenue is remitted to Civil Service, including: Verifying 340B Drug Pricing Program enrollment; and
5. Not excluding claims in the temporary holding account that are not excluded from rebates under the manufacturers' rebate agreements.

CVS/caremark Response:

CVS/caremark reviewed the three thousand one hundred and eight (3,108) un-invoiced claims provided. During the sample phase of the audit CVS/caremark was able to demonstrate why some of the claims identified were not invoiced. The following was determined:

- One hundred seventy eight (178) claims were identified as dispensed through the 340B Drug Pricing Program. CVS/caremark continues to research more accurate ways to identify these pharmacies, but does not utilize the Federal Government website.

Traditionally, CVS/caremark has relied on the manufacturer to provide a list of 340B pharmacies or the pharmacies to self-identify 340B claims.

- Of the remaining two thousand nine hundred and thirty (2,930) un-invoiced claims, CVS/caremark agrees that \$100,468.62 is due Civil Service for claims that were erroneously excluded from earning rebates or they were invoiced incorrectly.
 - Rebate eligible claims for thirteen (13) medications were not invoiced for five (5) manufacturers. Civil Service is due an additional \$84,308.23 for various time periods between January 1, 2014 and June 30, 2018.
 - Due to an incorrect logic calculation, claims for six (6) medications for four (4) manufacturers were incorrectly calculated. Civil Service is due an additional \$9,143.67 for the time period of April 1, 2015 through June 30, 2015.
 - After further review, CVS/caremark agrees that claims for one (1) manufacturer were excluded from rebates in error. The intent of a prior authorization for two (2) medications was not to satisfy a clinical requirement for coverage. Civil Service is due \$7,016.72 for the time period of January 1, 2014 through March 31, 2014 and October 1, 2014 through December 31, 2014.
- CVS/caremark agrees claims that adjudicated against a temporary holding account were excluded from earning rebates in error. Civil Service is due \$241,928.90 for the time period of January 1, 2014 through June 30, 2018. Claim detail for CVS/caremark's analysis is provided under separate cover. The additional amount due for price protection is included in the 2019-S-027 Preliminary Audit Report.

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 \$161,723 amount calculated by the auditors, CVS/caremark agrees \$100,468.62 is due Civil Service for claims erroneously excluded from earning rebates or invoiced incorrectly.

Office of the State Comptroller Finding 3: Untimely Rebate Processing

During our review of the quarterly Rebate Payment Detail Reports, we found that CVS Health did not always collect and remit rebates related to Empire Plan drug utilization in a timely manner.

We identified \$361,653 and \$69,616 in outstanding rebates from 2017 and 9 2016, respectively, that had been invoiced but not remitted to Civil Service. CVS Health officials stated that the 2017 periods were still open, and they were in the process of collecting these rebates. At the end of the audit fieldwork, the \$361,653 in 2017 rebates remained outstanding; the 2016 rebates were credited to Civil Service in February 2019.

During the audit, we also questioned CVS Health about \$2.3 million in outstanding rebates from the first quarter of 2016 (\$120,305) and the first quarter of 2017 (\$2,162,773) that had not been remitted to Civil Service. During our audit fieldwork, CVS Health credited Civil Service for these outstanding rebates – almost two and three years after the rebates were earned.

Conclusion

CVS Health is contractually required to maximize revenues and pass 100 percent of the value of rebates on to the prescription drug program. Therefore, CVS Health should ensure rebates are invoiced, collected, and remitted to Civil Service in a timely manner, including the \$361,653 in outstanding rebates identified in this report.

Recommendation

6. Remit the remaining \$361,653 in outstanding rebate revenue identified in this report to Civil Service.
7. Take steps to ensure more timely processing, collection, and remittance of rebate revenue to Civil Service.

CVS/caremark Response:

Drug manufacturers generally remit 85%-90% of the originally invoiced dollars. These payments are reconciled and remitted to the client within two weeks of collection. The remaining 10%-15% represents disputed claims requiring additional review and support. Once these issues are resolved, the reconciliation and distribution of the remaining dollars is completed.

SUMMARY

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

Undisputed and Uncollected Rebates

- Three (3) medications from this manufacturer were originally identified as ineligible for rebates. CVS/caremark confirmed these were eligible for rebates and the invoicing was adjusted. Civil Service is due an additional \$936,816.98 for the time period of July 1, 2015 through December 31, 2015.
- One (1) medication was incorrectly invoiced at a lower rate. This issue was identified by CVS/caremark and the manufacturer was re-invoiced at the correct rate. However, the manufacturer neglected to submit new payment files resulting in an incorrect payment amount. Civil Service is due an additional \$115,639.93 for the time period of July 1, 2015 through September 30, 2015 and January 1, 2016 through March 31, 2016.
- Two (2) medications were incorrectly paid at a lower base rate by two (2) manufacturers. Civil Service is due an additional \$61,019.91 for the time period of July 1, 2014 through September 30, 2014 and July 1, 2015 through December 31, 2015.
- One (1) NDC was not paid by the manufacturer. Civil Service is due an additional \$21,548.12 for the time period of July 1, 2015 through December 31, 2015.
- Payments for six (6) medication from two (2) manufactures resulted in a rounding variance between CVS/caremark's invoice and the manufacturer payment file. Civil Service is due an additional \$57,143.78 for the time period of July 1, 2014 through

September 30, 2014, January 1, 2015 through September 30, 2015 and April 1, 2016 through June 30, 2016.

Un-invoiced Claims

- Rebate eligible claims for thirteen (13) medications were not invoiced for five (5) manufacturers. Civil Service is due an additional \$84,308.23 for various time periods between January 1, 2014 and June 30, 2018.
- Due to an incorrect logic calculation, claims for six (6) medications for four (4) manufacturers were incorrectly calculated. Civil Service is due an additional \$9,143.67 for the time period of April 1, 2015 through June 30, 2015.
- After further review, CVS/caremark agrees that claims for one (1) manufacturer were excluded from rebates in error. The intent of a prior authorization for two (2) medications was not to satisfy a clinical requirement for coverage. Civil Service is due \$7,016.72 for the time period of January 1, 2014 through March 31, 2014 and October 1, 2014 through December 31, 2014.
- CVS/caremark agrees claims that adjudicated against a temporary holding account were excluded from earning rebates in error. Civil Service is due \$ 241,928.90 for the time period of January 1, 2014 through June 30, 2018. Claim detail for CVS/caremark's analysis is provided under separate cover. The additional amount due for price protection is included in the 2019-S-027 Preliminary Audit Report.

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 \$1,522,945.16. 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, 2018. 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, 2018 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.