

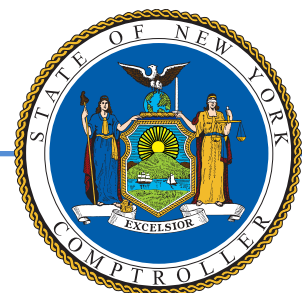
New York State Health Insurance Program

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

Report 2018-S-50 | June 2019

OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller

Division of State Government Accountability



Audit Highlights

Objective

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, 2018.

About the Program

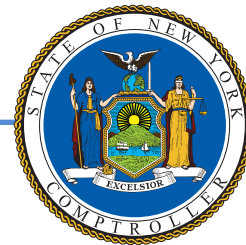
The New York State Health Insurance Program (NYSHIP), administered by the Department of Civil Service (Civil Service), provides health insurance coverage to over 1.2 million active and retired State, participating local government, and school district employees, and their dependents. The Empire Plan is the primary health benefits plan for NYSHIP, covering nearly 1.1 million members. 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 more than \$2 billion annually. In accordance with the contract, CVS Health was required to negotiate agreements with drug manufacturers for rebates, discounts, and other consideration (herein collectively referred to as "rebates") and remit the rebate revenue to Civil Service. During the audit period, Civil Service received more than \$850 million in commercial drug rebates (rebates exclusive of Medicare Part D rebates).

Key Findings

We reviewed the rebate revenue generated from agreements with six drug manufacturers and found that CVS Health did not always invoice drug manufacturers for rebates, collect rebates from the manufacturers, or remit all rebate revenue to Civil Service. As a result, Civil Service is due \$2,240,798 in rebates.

Key Recommendations

- Remit \$2,240,798 in rebate revenue to Civil Service.
- Ensure all of the Empire Plan's rebate-eligible drug utilization is invoiced, collected from the manufacturers, and remitted in a timely manner to Civil Service.



Office of the New York State Comptroller Division of State Government Accountability

June 6, 2019

Ms. Sarah J. Smith
Vice President, Division Head, Employer, CVS/Caremark
CVS Health
9501 E. Shea Boulevard, MC 502
Scottsdale, AZ 85260

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. By so doing, it provides accountability for the 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 entitled *CVS Health: Accuracy of Drug Rebate Revenue Remitted to the Department of Civil Service*. This 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,

Division of State Government Accountability

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Glossary of Terms

Abbreviation	Description	Identifier
Civil Service	Department of Civil Service	<i>Agency</i>
Contract	Pharmacy Benefit Services Contract between Civil Service and CVS Health to provide prescription drug program services for the period January 1, 2014 through December 31, 2018	<i>Key Term</i>
HRSA	Health Resources and Services Administration	<i>Agency</i>
Manufacturer Agreement	An agreement negotiated between CVS Health and a drug manufacturer that sets the terms for the provision of rebates, discounts, and other consideration	<i>Key Term</i>
NYSHIP	New York State Health Insurance Program	<i>Program</i>
Rebates	All revenue negotiated in the manufacturer agreements, including base rates, incremental rebates, market share rebates, price protection, and administrative fees paid to CVS Health by drug manufacturers	<i>Key Term</i>
340B Drug Pricing Program	A federal government program that requires drug manufacturers to provide outpatient drugs to eligible health care organizations and covered entities at significantly reduced prices	<i>Program</i>

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 nearly 1.1 million members with four types of health insurance coverage: prescription drug, 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 more than \$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 those agreements on to Civil Service. Accordingly, CVS Health must credit the prescription drug program for all such rebates, discounts, and other consideration that are 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, 2018, Civil Service was credited more than \$850 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. Additionally, commercial rebates do not include rebates on Medicare Part D claims.)

Audit Findings and Recommendations

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 the Contract. We selected six drug manufacturers and reviewed the corresponding rebates during the audit period, January 1, 2014 through June 30, 2018. The six manufacturers accounted for \$251 million of the \$935 million in commercial rebates invoiced by CVS Health during the audit period. Based on our review, we found Civil Service is due \$2,240,798 in rebates.

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.

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
 - Not excluding claims in the temporary holding account that are not excluded from rebates under the manufacturers' rebate agreements.

Rebates Not Collected and Remitted in a Timely Manner

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

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.

Recommendations

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

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, 2018.

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 not previously reviewed by our office for the audit period, based on the highest rebates paid, high-dollar adjustments, and uncollected balances. These six manufacturers accounted for \$251 million of the \$935 million in commercial rebates invoiced by CVS Health during the audit period. For the six selected manufacturers, we reviewed their agreements with CVS Health to determine rebate terms and conditions. We analyzed the corresponding Manufacturer Invoice Reports to determine if rebates were invoiced in accordance with the manufacturer agreements. We compared NYSHIP paid claims data to the Rebated Claims Files to determine if all rebate-eligible claims were invoiced by CVS Health.

Statutory Requirements

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.

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.

Reporting Requirements

We provided preliminary reports of our audit observations to CVS Health officials for their review and comment. Their comments were considered in preparing this report.

Within 90 days after 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 contained in this report, and where recommendations were not implemented, the reasons why.

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