

The New York State Department of Civil  
Service  
Rebate Audit Response  
January 2021

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Regarding:

Office of the State Comptroller  
Summary Conclusions and Status of Recommendations  
Rebate Audit Report

December 2020

**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**

We issued our initial audit report response on January 28, 2019. The audit objective 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.

We reviewed the rebate revenues generated from agreements CVS Health had 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 was due \$2,052,653 in rebates.

The objective of our follow-up was to assess the extent of implementation, as of December 9, 2020, of the five recommendations included in our initial audit report.

### **Summary Conclusions and Status of Audit Recommendations**

CVS Health officials addressed most of the problems we identified in the initial audit. Of the report's five recommendations, two were implemented and three were partially implemented.

#### **Recommendation 1**

Remit the \$1,191,624 in rebate revenue (\$1,032,640 + \$26,293 + \$132,691) identified in this report to Civil Service.

Status – Partially Implemented

Agency Action – Each of the various rebate amounts identified as part of this recommendation (i.e., \$1,032,640 + \$26,293 + \$132,691) are in different phases of collection. Credits to Civil Service on May 28, 2019 and August 29, 2019 included \$132,578 out of the identified rebates of \$132,691. The credited amount was less than the original invoiced amount because the credited amount is based on the drug manufacturer's actual recalculated amount. CVS Health has acknowledged owing Civil Service the \$26,293, but is waiting for Civil Service to officially request the payment before the payment is made. Civil Service is reviewing the \$1,032,640 identified by our audit to determine whether CVS Health is responsible for remitting this to Civil Service.

### **CVS/caremark Response**

CVS/caremark maintains they are not contractually obligated to reimburse Civil Service \$1,032,640 as rebate revenue was not generated for these claims. CVS/caremark will continue to work with Civil Service to resolve the alleged findings.

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.

Of the \$132,691 finding, Civil Service was credited \$132,578 (the amount reimbursed by the manufacturer) on May 28, 2019 and August 29, 2019.

Civil Service will be reimbursed \$26,292.52 at the conclusion of the audit. It is our view that we are now in compliance with the contract and there are no additional financial discrepancies related to the recommendation.

### **Recommendation 2**

Work with drug manufacturers to promptly resolve outstanding disputes, including the \$82,947 identified in this audit, and remit to Civil Service accordingly.

Status – Implemented

Agency Action – On May 28, 2019, Civil Service was credited \$98,231 for the disputed drug identified by this recommendation. The credited amount exceeded the original invoiced amount because the credited amount is based on the drug manufacturer's actual recalculated amount.

### **CVS/caremark Response**

The disputed amount of \$82,946.78 for one (1) medication for the time period of October 1, 2016 through December 31, 2016 was reimbursed to Civil Service in February 2019.

It is our view that we are now in compliance with the contract and there are no additional material financial discrepancies related to this recommendation.

### **Recommendation 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.

Status – Partially Implemented

Agency Action – CVS Health has a dispute process in place to track, manage, and follow up with manufacturers to resolve disputes timely. CVS Health follows all requirements related to payment disputes as outlined in each manufacturer agreement. CVS Health also holds internal bi-weekly calls with analysts and rebate leadership to discuss manufacturer disputes and their status, progress, and resolution. However, the process is not formally documented.

### **CVS/caremark Response**

All disputes are identified and tracked in CVS/caremark's GDX Cash application during the payment reconciliation process. Additionally, internal bi-weekly meetings are held to discuss open disputes with rebate leadership.

It is our view that we are in compliance with the contract and there are no material financial discrepancies related to this recommendation.

### **Recommendation 4**

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

Status – Partially Implemented

Agency Action – CVS Health has agreed that Civil Service is due \$717,415 of the \$778,082 in un-invoiced claims identified by our audit, and is waiting for Civil Service to officially request payment before the payment is made. Civil Service is working with CVS Health to determine if the remaining claims are eligible for rebates.

### **CVS/caremark Response**

CVS/caremark determined Civil Service is due \$717,414.55 for eligible claims not invoiced in error.

### **Un-invoiced claims**

- **Prior Authorization:** 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.
- **Temporary Holding Account:** 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.

### **Miscalculated or Erroneously Excluded Claims**

- Eligible claims for one (1) medication were 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.

CVS/caremark will continue to work with Civil Service to resolve the remaining findings.

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

### **Recommendation 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.

Status – Implemented

Agency Action – CVS Health officials stated that the “non-rebate-eligible” designation was removed from the temporary holding account effective January 1, 2019, ensuring rebate-eligible claims in the temporary holding account would be properly invoiced and the rebates remitted to Civil Service. We reviewed Rebate Payment Detail Reports, Rebated Claims Files, and Civil Service's bank statements for the second quarter of 2019 and verified that rebates for a sample of claims in the temporary holding account were invoiced and remitted to Civil Service. In addition, the mapping issues were corrected by CVS Health.

### **CVS/caremark Response**

Rebated claims for the time period of April 1, 2019 through June 30, 2019, were provided to the auditors to demonstrate the non rebate eligible designation was removed for the current contract January 1, 2019 through December 31, 2023 and claims for the temporary holding account are currently earning rebates as intended.

It is our view that we are now in compliance with the contract and there are no material financial discrepancies related to this recommendation.

### **SUMMARY**

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

#### **Disputes**

Civil Service is due an additional \$26,292.52 for eligible claims for (1) medication that were not invoiced in error. The impact period is July 1, 2015 through September 30, 2015.

### **Un-invoiced claims**

- **Prior Authorization:** Claims for three (3) manufacturers were excluded from rebates in error due to a prior authorization being present on the claim. 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.
- **Temporary Holding Account:** 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.

### **Miscalculated or Erroneously Excluded Claims**

- Eligible claims for one (1) medication were not invoiced for the time period of April 1, 2015 through June 30, 2015 due to a mapping issue. 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.
- 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 time period of July 1, 2014 through January 31, 2015.

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.**