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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

February 8, 2021

Ms. Cheryl A. Byron
Division Head, CVS/caremark
CVS Health
420 E. Waterside Drive, Unit 2710
Chicago, IL 60601

Re: CVS Health – Accuracy of Drug
Rebate Revenue Remitted to the
Department of Civil Service
Report 2020-F-24

Dear Ms. Byron:

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 have followed up on the actions taken by officials of CVS Health to implement the recommendations contained in our audit report, *CVS Health – Accuracy of Drug Rebate Revenue Remitted to the Department of Civil Service* (Report [2018-S-50](#)).

Background, Scope, and Objective

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, local government, and school district employees, and their dependents. The Empire Plan is the primary health benefits plan for NYSHIP, covering 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. In accordance with the contract, CVS Health was required to negotiate agreements with drug manufacturers for rebates and remit the rebate revenue to Civil Service.

We issued our initial audit report on June 6, 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. The audit covered the period January 1, 2014 through June 30, 2018. Based on a review of the rebate revenue generated from agreements CVS Health had with six drug manufacturers, we found that CVS Health did not always invoice drug manufacturers for all rebates, collect all rebates from the manufacturers, or remit all rebate revenue to Civil Service. As a result, Civil Service was due \$2,240,798 in rebates.

The objective of our follow-up was to assess the extent of implementation, as of December 21, 2020, of the six 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 six recommendations, three were implemented and three were partially implemented.

Follow-Up Observations

Recommendation 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.

Status – Partially Implemented

Agency Action – CVS Health agreed Civil Service is due \$1,192,169 (\$936,817 + \$255,352) of the unpaid rebates that CVS Health did not dispute with the manufacturers, 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.

Recommendation 2

Take steps to ensure all incorrectly paid rebates are disputed and all rebate revenue due Civil Service is collected from the manufacturers.

Status – Implemented

Agency Action – CVS Health has taken steps to improve the dispute process in place to track, manage, and follow up with manufacturers to resolve disputes. CVS Health officials state they follow all requirements related to payment disputes as outlined in each manufacturer agreement. CVS Health rebate leadership also holds internal bi-weekly calls with analysts to discuss manufacturer disputes and their status, progress, and resolution. CVS Health officials stated they remain committed to ensuring rebates are invoiced, collected, and remitted to Civil Service in a timely manner.

Recommendation 3

Remit the \$403,652 (\$161,723 + \$241,929) in uninvoiced rebates identified in this report to Civil Service.

Status – Partially Implemented

Agency Action – CVS Health agreed Civil Service is due \$342,398 of the \$403,652 in uninvoiced rebates, and is waiting for Civil Service to officially request payment before the payment is made. However, CVS Health maintains that the remaining claims were not rebate eligible. We encourage Civil Service to work with CVS Health to determine if the remaining claims are eligible for rebates.

Recommendation 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.*

Status – Implemented

Agency Action – The 340B Drug Pricing Program is a federal program that requires drug manufacturers to provide outpatient drugs to certain entities at significantly reduced prices. Because drugs dispensed through the 340B program are purchased at a discount, manufacturers do not pay rebates on them. While CVS Health does not utilize the Health Resources and Services Administration website to verify whether pharmacies are enrolled in the 340B Drug Pricing Program, it continues to research more accurate ways to identify whether pharmacies are actively enrolled in this program before excluding claims from manufacturer rebates. In addition, 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.

Recommendation 5

Remit the remaining \$361,653 in outstanding rebate revenue identified in this report to Civil Service.

Status – Partially Implemented

Agency Action – According to Rebate Payment Detail Reports, CVS Health collected and remitted \$54,977 of the outstanding rebate revenue identified by our audit. According to CVS Health officials, the manufacturers did not pay the remaining rebates for a variety of reasons such as the claims did not meet conditions for rebates, the National Drug Code was inactive, the prescription was filled at a 340B pharmacy, the quantity was aberrant, or the claim was a duplicate. We encourage Civil Service to work with CVS Health to determine if the remaining claims are eligible for rebates.

Recommendation 6

Take steps to ensure more timely processing, collection, and remittance of rebate revenue to Civil Service.

Status – Implemented

Agency Action – CVS Health has taken steps to ensure more timely processing, collection, and remittance of rebate revenue to Civil Service. The non-rebate-eligible designation was removed from the temporary holding account effective January 1, 2019, ensuring rebates for eligible claims in the temporary holding account would be remitted to Civil Service timely. In addition, CVS Health continues to research more accurate ways to identify 340B pharmacies.

Major contributors to this report were Paul Alois, Cynthia Herubin, Gary Czosnykowski, and Tracy Glover.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We thank the management and staff of CVS Health for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Andrea Inman
Audit Director

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