

The New York State Department of  
Civil Service #4  
Rebate Audit Response  
Dated December 2021

---

Regarding:

Office of the State Comptroller  
Final Audit Report

Dated November 2021



## **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 December 31, 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 two (2) recommendations within the Office of the State Comptroller report.

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, serving 1.1 million members. Civil Service contracted with CVS Health to administer the Empire Plan's prescription drug program for the period from 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.

Our initial audit report, issued on August 21, 2020, sought to determine if CVS Health remitted commercial drug rebate revenue related to Empire Plan drug utilization in accordance with its contract with Civil Service. Our audit covered the period from January 1, 2014 through December 31, 2018. We found CVS Health did not collect and remit all rebate revenue that it invoiced to drug manufacturers for rebate-eligible prescription drug claims paid on behalf of the Empire Plan; therefore, Civil Service did not receive all rebate revenue to which it was entitled. As a result, Civil Service was due \$453,029 in rebate revenue for the period of January 1, 2014 through December 31, 2018.

The objective of our follow-up was to assess the extent of implementation, as of October 7, 2021, of the two 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, having partially implemented the reports two recommendations.

### **Follow-Up Observations**

#### **OSC Recommendation #1: Unremitted Rebates**

*Remit \$453,029 for Civil Service for additional rebate revenue identified by our audit.*

## Status – Partially Implemented

Agency Action – Of the \$453,029 identified in the original audit, \$230,693 has been credited back to Civil Service (on February 29, 2020 and November 30, 2020); \$162,922 was determined by CVS Health not to be eligible for rebate; \$10,783 is in a working status in the rebate process (i.e., still in dispute); and \$48,631 has not been remitted to Civil Service, as CVS health officials stated these rebates will be paid after all issues found during the original audit are resolved.

### **CVS/caremark Response:**

CVS/caremark researched the unremitted rebates identified:

- CVS/caremark agrees that rebates in the amount of \$230,693 were previously remitted to the state. In addition, \$1,129 was withheld as it was not rebated by the manufacturer.
- Manufacturers did not pay on claims that they identified as aberrant quantity in the amount of \$159,647. CVS/caremark confirmed that per FDA Guidelines, the quantities dispensed fall outside of defined thresholds in comparison to days supply. The majority of manufacturer contracts do not provide aberrant quantity language, however, CVS/caremark utilizes a website (<https://dailymed.nlm.nih.gov/dailymed/>) to determine whether the excluded claims exceeded the recommended dosage.
- CVS/caremark incorrectly invoiced one drug which is packaged as a carton of twelve (12) bottles of one hundred twenty (120) tablets each. The manufacturer determined that this package size was exclusive to VA pharmacies, however, claims were dispensed via mail order. According to the manufacturer contract, Mail Order/Government pharmacies are ineligible for rebates. Therefore, these claims were ineligible for rebates and the manufacturer correctly excluded payment in the amount of \$4,021 for these claims. In addition, \$2,146 were determined to be for an NDC that was intended for institutional use only and not eligible for rebates.
- CVS/caremark and the manufacturer of one (1) drug are in an active dispute concerning interpretation of the contract language and invoicing of 1Q17 price protection. Currently, the Trade and Legal departments are working to resolve the issue. The dispute concerns whether price protection earned from 2013-2016 should be carried over into 2017 and beyond. CVS/caremark determined that price protection should be invoiced as full carryover, while the manufacturer believes that price protection should be reset in 2017. This resulted in the manufacturer not paying the price protection invoiced for 2017 and 2018 resulting in the variance of \$10,783.27. A final response will be provided once resolution is reached, and the period is closed.
- CVS/caremark determined that re-invoicing for eligible claims was prepared for two drugs for July 2015. However, the new/updated invoices were never sent to the manufacturer. Therefore, the manufacturer only paid on claims included in the initial

invoice. The claim detail has been previously provided and \$44,610.43 will be reimbursed at the close of the audit.

## **OSC Recommendation #2: Unrebated Claims**

*Take corrective steps to 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.*

Status – Partially Implemented

Agency Action – CVS Health stated it has made several organizational and systems updates, including enhancements to its invoicing process and payment reconciliations to Civil Service. To improve accuracy and timeliness, CVS Health said that it has increased staffing to handle workload and implemented a new system to automate rebate-eligible products. However, CVS Health was unable to provide supporting documentation on the system and process changes. Additionally, both CVS Health and Civil Service are working collaboratively to resolve and establish clear guidelines for the issues that resulted in uncollected and unremitted rebates.

### **CVS/caremark Response:**

There have been several organizational and system updates made over the years. To begin, invoice resubmissions and payment reconciliations have broken off into their own separate teams. Increased headcount was also budgeted to keep up with the demanding workload. A new system was also deployed in 2019 that automates formulary eligibility for most products and greatly reduces the risk of manual error. These changes have increased the accuracy of our invoices and allowed payments to be distributed to clients more accurately and timely. There is also a system enhancement currently in process for resubmissions that will deploy in 1Q22 to allow more real time corrections to be made, as opposed to the current process of waiting two quarters to resubmit.

## **SUMMARY**

---

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

- CVS/caremark re-invoiced 2 drugs for July 2015. However, the new/updated invoice was never sent to the manufacturer. Therefore, the manufacturer only paid on claims included in the initial invoice. The claim detail has been previously provided and \$44,610.43 will be reimbursed at the close of the audit.

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 \$44,610.43. 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 December 31, 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 December 31, 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.**