

The State of New York Health Insurance
Program (NYSHIP) - EGWP 2022-S-001
Rebate Audit Response
Dated December 2023

Regarding:

New York Office of State Comptroller
Audit Report

Dated June 2023



INTRODUCTION

New York Office of State Comptroller (OSC) performed an audit on behalf of The State of New York Health Insurance Program (NYSHIP), a client of CVS Caremark®. OSC was retained to determine the financial accuracy of rebates paid during the period of January 1, 2014 through December 31, 2019.

CVS Caremark has reviewed and researched the findings reported by OSC 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 OSC.

FINDINGS

There were six (6) general findings within the OSC report.

OSC Finding 1: Manufacturer Disputes

CVS Health did not collect \$4,222,741 in rebates due to manufacturer disputes (i.e., when a drug manufacturer disagrees with the original rebate amount invoiced by CVS Health).

For one drug with \$3,469,753 in rebates owed, CVS Health officials originally stated the incorrect rate was used to calculate rebates. Rates are determined by the formulary status of a drug, which dictates prescription preference by placing those drugs into tiers. They later stated that the rebates were correctly invoiced, but the manufacturer had disputed the rebates and subsequently CVS Health was unable to collect them. We reviewed the formulary for the applicable periods, along with the manufacturer agreement, and confirmed that the rebates were calculated correctly. Therefore, CVS Health should have paid Civil Service for the disputed rebates, even though it failed to collect them.

CVS Health also failed to provide detailed documentation to support that the remaining \$752,988 in rebates were not collected due to valid manufacturer disputes. According to CVS Health officials, they consider dispute settlements proprietary and thus would not make such documentation available to auditors.

CVS Caremark Response: Manufacturer Disputes

CVS Caremark invoiced the claims correctly to Allergan and the manufacturer adjusted the payment. CVS Caremark was unsuccessful in disputing the manufacturer payment for these claims. Due to the proprietary nature of the information, CVS Caremark does not share with the client or auditors the details surrounding settlements with the drug manufacturers. Because the drug manufacturer adjusted the payment, an adjustment to the original invoiced rebate dollars was performed to align with the manufacturer's payment. No additional rebates are owed to the client as these are uncollectable rebates.

CVS Caremark invoiced claims to Merck which were adjusted by the manufacturer. CVS Caremark successfully disputed the manufacturer payment of these claims, therefore the

manufacturer paid additional rebates that were then shared with the client. Any rebate shortfall remaining following CVS Caremark's dispute efforts was adjusted and considered uncollectable. No additional rebates are owed to the client.

CVS Caremark invoiced 2014 claims to Depomed at an incorrect higher rate which the manufacturer paid at the correct lower rate. CVS Caremark confirmed the rate the manufacturer paid was the correct rate, therefore CVS Caremark did not dispute the manufacturer's payment. No additional rebates are owed to the client as these are uncollectable rebates.

CVS Caremark invoiced the 2015 claims to Depomed correctly however, the manufacturer failed to carry-forward the price protection base. CVS Caremark disputed this with the manufacturer but has been unsuccessful in collecting additional rebates. Should the dispute settle, and CVS Caremark collect additional rebates, those dollars would be remitted to the client in accordance with the rebate payment schedule outlined in the client's contract. No additional rebates are owed to the client at this time as these are currently uncollectable rebates.

OSC Finding 2: Aberrant Quantity

CVS Health officials stated drug quantities that exceed limits posted by the U.S. Food & Drug Administration (FDA) – known as aberrant quantities – are not eligible for rebate. We determined CVS Health invoiced but subsequently did not collect \$1,680,856 in rebates for claims that officials incorrectly indicated contained aberrant quantities.

For these rebates, our comparison of the Empire Plan Medicare Rx paid claims data to FDA limits did not support that they were for aberrant quantities. We requested evidence from CVS Health to support that the uncollected rebates were for aberrant quantities; however, the evidence was either incomplete or insufficient. For example, one drug accounted for \$907,835 in rebates not collected due to aberrant quantity. Because the supporting claims amount would typically be greater than the rebate amount, in this case we expected to see claims that exceeded \$907,835. However, CVS Health officials provided only \$22,944 in claims that they believed were for aberrant quantities and were otherwise unable to support their assertion that these claims were for aberrant quantities.

CVS Caremark Response: Aberrant Quantity

CVS Caremark invoiced the claims correctly and the manufacturer scrubbed the claims for aberrant quantities. CVS Caremark did not dispute these claims as aberrant claims are considered ineligible by the drug manufacturers. The auditors were provided contract language to support these claims as uncollectable. Uncollectable rebates are rebates for claims that were invoiced to the manufacturer where the manufacturer never made payment, in this instance there are then no rebates to then remit for payment. No additional rebates are owed to the client as these are uncollectable rebates.

CVS Caremark invoiced the claims to Boehringer Ingelheim correctly and the manufacturer scrubbed the claims for aberrant quantities. CVS Caremark did not dispute these claims as aberrant claims are considered ineligible by the drug manufacturers. Because the drug

manufacturer adjusted the payment, an adjustment to the original invoiced was performed to align with the manufacturer's payment. No additional rebates are owed to the client as these are uncollectable rebates.

CVS Caremark invoiced the Shire Richwood drug claims which were scrubbed by the manufacturer for aberrant quantity and adjusted the payment of other claims. CVS Caremark did not dispute these claims as aberrant claims are considered ineligible by the drug manufacturers. Because the manufacturer scrubbed some claims and adjusted the payment of others, an adjustment to the original invoiced was performed to align with the manufacturer's payment. No additional rebates are owed to the client as these are uncollectable rebates.

CVS Caremark invoiced claims to Assertio which were scrubbed by the manufacturer for aberrant quantity. CVS Caremark did not dispute these claims as aberrant claims are considered ineligible by the drug manufacturers. Because the manufacturer scrubbed some claims and adjusted the payment of others, an adjustment to the original invoiced was performed to align with the manufacturer's payment. No additional rebates are owed to the client as these are uncollectable rebates.

OSC Finding 3: Invoice Error

CVS Health did not collect \$2,238,242 in rebates after, according to officials, it was determined the rebates were invoiced in error due to a miscalculation (e.g., based on the wrong formulary status or because they represented duplicate claims). However, evidence provided by CVS Health to support that the rebates were invoiced in error was either incomplete or insufficient.

CVS Caremark Response: Invoice Error

CVS Caremark invoiced the claims which the manufacturer scrubbed as ineligible for rebates. CVS Caremark has provided OSC with documents to support that these claims were not eligible for rebates. No additional rebates are owed to the client as these are uncollectable rebates.

CVS Caremark invoice claims to Amgen which were scrubbed by the manufacturer or paid at a different rate for various reasons. CVS Caremark determined the manufacturer scrubbed and/or paid the correct rate, therefore CVS Caremark did not dispute the manufacturer's payment. Because the manufacturer scrubbed and/or paid the claims an adjustment to the original invoiced was performed to align with the manufacturer's payment. No additional rebates are owed to the client as these are uncollectable rebates.

CVS Caremark invoiced the Pfizer drug. The 2014 claims were not paid at the full invoiced amount due to the manufacturer's system limitations. The 2016 claims were incorrectly invoiced by CVS Caremark and the manufacturer correctly scrubbed as ineligible rebate claims. CVS Caremark agreed with the manufacturer and did not dispute. CVS Caremark adjusted \$10,405.16 in relation to this drug. No additional rebates are owed to the client as these are uncollectable rebates.

CVS Caremark invoiced the Dey Labs drug at an incorrect higher Price Protection rate. CVS Caremark determined the manufacturer paid the correct rate and did not dispute. CVS Caremark adjusted \$15,792.77 in relation to this drug. No additional rebates are owed to the client as these are uncollectable rebates.

CVS Caremark invoiced the Aralez drug. CVS Caremark paid the client 100% of the rebates that were collected prior to the manufacturer claiming bankruptcy. CVS Caremark adjusted \$19,460.15 in relation to this drug. No additional rebates are owed to the client as these are uncollectable rebates.

CVS Caremark invoiced the Allergan drug. The manufacturer scrubbed the 2017 claims for aberrant quantity for units exceeding the thresholds and paid slightly different rates for 2018-2019 claims. CVS Caremark did not dispute the 2017 claims as aberrant claims are considered ineligible by the drug manufacturers. CVS Caremark deemed the 2018-2019 rebates paid by the manufacturer were accurate and did not dispute. CVS Caremark adjusted \$34,681.77 in relation to this drug. No additional rebates are owed to the client as these are uncollectable rebates.

CVS Caremark invoiced the Alcon drugs. Two drugs were disputed with the manufacturer paying CVS Caremark additional rebates. CVS Caremark then remitted the additional rebates to the client and adjusted any remaining shortfall. CVS Caremark adjusted \$66,545.10 in relation to these two drugs. No additional rebates are owed to the client as these are uncollectable rebates. The third drug was invoiced incorrectly with the manufacturer paying the correct rebates; therefore, CVS Caremark did not dispute. CVS Caremark adjusted \$22,823.30 in relation to this drug. No additional rebates are owed to the client as these are uncollectable rebates.

CVS Caremark invoiced the Johnson and Johnson drug claims with the manufacturer scrubbing the claims for ineligible pharmacy. CVS Caremark provided OSC support for the ineligible pharmacy exclusions established by the manufacturers as outlined in their contracts. No additional rebates are owed to the client as these are uncollectable rebates.

CVS Caremark invoiced the Takeda drug claims with the manufacturer scrubbing the claims as ineligible for 'drug not on formulary'. CVS Caremark provided the auditors documentation to support that all claims for this drug were adjusted as not rebate eligible. No additional rebates are owed to the client as these are uncollectable rebates.

CVS Caremark invoiced the Amgen drug which the manufacturer adjusted as the NDC for this drug was inactive. The auditors were provided documentation to support that the active date of this NDC was not in scope of this audit. No additional rebates are owed to the client as these are uncollectable rebates.

CVS Caremark invoiced three drugs to Abbvie, Aventis and Johnson & Johnson with the manufacturers subsequently not paying some of the claims or not paying the full amount invoiced. CVS Caremark determined the manufacturers payments were correct and did not dispute. CVS Caremark provided the auditors with documentation to support the adjustments for these three drugs. No additional rebates are owed to the client as these are uncollectable rebates.

CVS invoiced the Amgen claims which were scrubbed by the manufacturer for aberrant quantity. CVS Caremark did not dispute these claims as aberrant claims are considered ineligible by the drug manufacturers. Because the manufacturer scrubbed the claims, an adjustment to the original invoiced was performed to align with the manufacturer's payment. No additional rebates are owed to the client as these are uncollectable rebates.

CVS Caremark invoiced United Therapeutics Corporation correctly with adjustments issued correctly. No additional rebates are owed to the client as these are uncollectable rebates.

OSC Finding 4: Ineligible Pharmacy Type

For \$876,753 in rebates, CVS Health officials stated that they either did not invoice claims or did not collect the rebates due to pharmacy-related ineligibility, such as pharmacies that qualify for reduced drug pricing from drug manufacturers (e.g., 340B Drug Pricing Program pharmacies, long-term care pharmacies, Indian Health Service pharmacies, government pharmacies).

For example, the 340B Drug Pricing Program, administered by the U.S. Health Resources & Services Administration (HRSA), 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 Drug Pricing 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 relating to these claims were actively enrolled in the 340B Drug Pricing 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.

We evaluated the claims for all disallowed pharmacy types and noted that none of the claims relating to the \$876,753 were dispensed by a disallowed pharmacy.

CVS Caremark Response: Ineligible Pharmacy Type

CVS Caremark maintains claims invoiced at 340B, long term care pharmacies, Indian Health Service pharmacies and government pharmacies deem the claims ineligible for rebates per conditions set by the manufacturers. The auditors were provided documentation to support the pharmacies the manufacturers exclude from receiving rebates. No additional rebates are owed to the client as these are uncollectable rebates.

The claims listed were submitted with an invalid NABP Pharmacy ID. CVS Caremark provided the auditors with documentation to support the determination of invalid NABP Pharmacy ID. No additional rebates are owed to the client as these are uncollectable rebates.

CVS Caremark invoiced all eligible claims for rebates. The drug manufacturers did not pay rebates due to ineligible pharmacy, ineligible formulary status, non-US pharmacy, 340B pharmacy or old claims (claims that were reversed and reprocessed and once reprocessed were too old to invoice based on the manufacturers' submission timelines. CVS Caremark has

provided OSC with documentation to support these uncollectable claims. No additional rebates are owed to the client as these are uncollectable rebates.

OSC Finding 5: Ineligible for Rebate

CVS Health did not collect \$700,107 in invoiced rebates that, according to CVS Health officials, were deemed ineligible for various reasons, such as: the drug did not meet pre-authorization requirements per the manufacturer agreements; the drug had expired (the drug's National Drug Code was not actively certified by the FDA); or the drug was removed from the Empire Plan Medicare Rx Formulary. We reviewed information contained in manufacturer agreements, the Empire Plan Medicare Rx formulary, as well as information available from the FDA, and concluded that the \$700,107 was, in fact, eligible for rebates and should have been collected and remitted to Civil Service.

CVS Caremark Response: Ineligible for Rebate

CVS Caremark invoiced the Allergan and Aventis drugs which were not paid by the drug manufacturer because the drugs were not covered by the formulary. CVS Caremark provided the auditors with documentation to support not invoicing these claims. No additional rebates are owed to the client as these are uncollectable rebates.

CVS Caremark invoiced the Sunovion drug which was scrubbed by the manufacturer for ineligible rebates. CVS Caremark agreed with the manufacturer and did not dispute. CVS Caremark adjusted \$28,120.98 in relation to this drug. No additional rebates are owed to the client as these are uncollectable rebates.

OSC Finding 6: Other

For \$972,117 in rebates that we determined were due Civil Service, CVS Health did not provide evidence to support why the rebates were not invoiced or collected. Additionally, for \$33,100 in rebates, CVS Health agreed and acknowledged Civil Service was due additional rebates.

CVS Caremark Response: Other

CVS Caremark reviewed the drugs that were included in the "other" bucket and determined that responses were provided for these drugs to the auditors during the audit. The responses outlined that the claims for these drugs were either invoiced, were scrubbed, or deemed ineligible for rebates based upon the pharmacy type for where the claims were filled.

CVS Caremark did agree to making a service warranty payment in the amount of \$38,480.54. This amount will be paid to the client at the close of the audit.

SUMMARY

It is our view that we are in compliance with the contract and plan design, and there are no material financial discrepancies related to the findings other than those listed above.

Upon confirmation from NYSHIP that the results are accepted, and the audit can be closed, a credit will be issued to your invoice in the amount of \$38,480.54. This payment represents a remittance for the previously stated findings pursuant to rebates reviewed by OSC covering dates of service from January 1, 2014 through December 31, 2019. By closing the audit, NYSHIP agrees that CVS Caremark has no further liability with respect to rebates invoiced by CVS Caremark, and related services, for the period from January 1, 2014 through December 31, 2019 and will not be subject to any further audits for this time period by or on behalf of NYSHIP.

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. On December 27, 2023, CVS Caremark granted OSC permission to post the response on OSC's website.