



# Department of Health

**KATHY HOCHUL**  
Governor

**JAMES V. McDONALD, MD, MPH**  
Commissioner

**JOHANNE E. MORNE, MS**  
Executive Deputy Commissioner

June 4, 2025

Andrea Inman  
Audit Director  
Division of State Government Accountability  
NYS Office of the State Comptroller  
110 State Street, 11<sup>th</sup> Floor  
Albany, New York 12236

Dear Andrea Inman:

Pursuant to the provisions of Section 170 of New York State Executive Law, I hereby transmit to you a copy of the New York State Department of Health's comments related to the Office of the State Comptroller's final audit report 2023-S-2 entitled, "Medicaid Program: Impact of Rejected Encounters on the Collection of Drug Rebates."

Please feel free to contact the Office of Governmental and External Affairs at (518) 473-1124 with any questions.

Sincerely,

A handwritten signature in blue ink that reads "Johanne E. Morne".

Johanne E. Morne, M.S.  
Executive Deputy Commissioner

Enclosures

cc: Alyssa DeRosa  
Melissa Fiore  
DOH Audit

**Department of Health Comments on the  
Office of the State Comptroller's  
Final Audit Report 2023-S-2 entitled,  
"Medicaid Program: Impact of Rejected Encounters on the  
Collection of Drug Rebates"**

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The following are the Department of Health's (Department) comments in response to the Office of the State Comptroller's (OSC) Final Audit Report Audit 2023-S-2 entitled, "Medicaid Program: Impact of Rejected Encounters on the Collection of Drug Rebates."

**General Comments:**

OSC Use of A Judgmental Sample

OSC used a judgmental sample to select which payments they would review, which means the auditors selected the payments based on their professional judgement, opinion, and knowledge. As a result, the selected sample and any OSC findings or conclusions are not representative of the entire population.

**State Comptroller's Comment** – Judgmental samples—in this case, selected to focus on the highest risk—are routinely used and widely acceptable to reach audit conclusions. Furthermore, the audit sampled the top five highest-paid MCOs, which represented about 65% of the total MCO claim payments analyzed by the audit. As mentioned in the audit report, the judgmental sample review was supplemented with reviews of policies and procedures, interviews with various DOH and MCO officials, assessments of internal controls, and data analysis to reach audit conclusions and make the recommendation.

**Audit Recommendation Responses:**

**Recommendation #1**

Review the 453,706 encounter claims totaling an estimated \$31.2 million in missed drug rebates and recover the corresponding missed rebates, as appropriate.

**Response #1**

The Department still does not agree with OSC's findings and believes the estimated \$31.2 million in missed drug rebates is grossly overstated. The Department does not keep rejected records; therefore, cannot validate that there were 453,706 claims missing from the Medicaid Data Warehouse on which rebates should have been collected. Moreover, it is likely that not all these claims would result in rebates as rebates are not collected on all claims. As mentioned in the Department's draft response, the rebate amount is variable depending on the drug. Additionally, manufacturers, through a highly confidential process with the Centers for Medicare & Medicaid Services, enter into rebate agreements for their drugs. Regardless of this inconsistency, the Department will, to the extent that resources are available, giving priority to other reviews with a higher likelihood of substantial impact, reach out to the Managed Care Organizations to review the 453,706 encounter claims and work with them, if appropriate, to resubmit those missing claims. The Department will also continue its work with Managed Care Organizations via the Encounter Data Quality compliance program to ensure encounter data is submitted, and/or resubmitted timely, accurately, and completely.

**State Comptroller's Comment** – DOH's statement that the audit findings of \$31.2 million in missed rebates is "grossly overstated" is unfounded and an incorrect assumption by DOH officials. DOH states, "it is likely that not all these claims would result in rebates as rebates are not collected on all claims." However, contrary to DOH's statement and as mentioned on page 10 of our report, all of the drug claims in our audit findings were eligible for rebates (e.g., the drugs are part of the Medicaid Drug Rebate Program, the claims did not indicate a 340B discount, etc.). We encourage DOH to review the claim findings to fully understand the audit results.

DOH also said it does not keep rejected records, but that statement is misleading because DOH has access to all encounter submission files that contain the 453,706 claims identified in the audit. Further, we provided DOH with the finding's claim details with all the information necessary for DOH to review, analyze, and rectify the issue identified in the audit. DOH should use the claims details—focusing on the highest risk—and work with MCOs to ensure that the Medicaid drug rebates owed to the State are collected.

Lastly, DOH stated it will review the 453,706 pharmacy claims "to the extent that resources are available, giving priority to other reviews with a higher likelihood of substantial impact." As stated in our report, the top 10% of the claims (45,371 claims) represented 96% (\$30.1 million) of the estimated missed rebates. A follow-up review will be conducted by the Comptroller's office in the future, and if the recommendation is not implemented, the follow-up will ask for documentation regarding DOH's prioritization of reviews and what other reviews were given higher priority.