



New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

United HealthCare: Payments for Fraudulent and Improper Claims Submitted by Davis Ethical Pharmacy

New York State Health Insurance Program



Report 2012-S-10

August 2013

Executive Summary

Purpose

To determine if Davis Ethical Pharmacy inappropriately billed the State's employee health insurance program for prescription medications. The audit covered the period from January 1, 2008 through December 13, 2011.

Background

The New York State Health Insurance Program (NYSHIP) provides health insurance coverage to active and retired State, participating local government and school district employees and their dependents. The Empire Plan (Plan) is the primary health benefits plan for NYSHIP and includes prescription drug coverage. The Department of Civil Service (Department) contracts with United HealthCare (United) to administer the prescription drug benefit portion of the Plan. Based on the primary contract, the Department reimburses United for all properly adjudicated claims.

Davis Ethical Pharmacy (Davis Ethical) is an independently owned pharmacy located in Rockville Centre, New York. For the period from January 1, 2008 through December 13, 2011, the Department paid United more than \$6.2 million for 52,485 claims submitted by Davis Ethical. During this period, Davis Ethical was owned and operated by William Davis, a licensed pharmacist. Pursuant to allegations of improper billing practices, there have been several investigations of Davis Ethical by oversight authorities, including the Nassau County District Attorney (NCDA) and the New York State Department of Financial Services (DFS). In December 2011, Davis Ethical was sold. We limited our audit to claim payments made to Davis Ethical during the time it was owned by William Davis.

Key Findings

- From January 1, 2008 through December 13, 2011, NYSHIP overpaid \$137,459 for 147 (26 percent) of the 572 selected prescriptions that we tested. Nearly all of the improper payments resulted from efforts by Davis Ethical that appear to have been designed to defraud NYSHIP.
- The improper payments included \$54,055 for 57 prescriptions for medications purportedly dispensed to NYSHIP members who, at the time the medications were prescribed, were not patients of the purported prescribing physicians.
- The improper payments also included \$71,462 for 67 other prescriptions that were not authorized by the purported prescribing physicians, although the members in question were patients of the physicians. This includes four prescriptions for William Davis or a family member for which the physician of record indicated the drugs were never prescribed.

Key Recommendations

- Coordinate with the NCDA, DFS and other authorities as requested to assist in any further investigation and to recover the \$137,459 in improper payments, as identified by this audit.
- Formally assess the payments we did not test and determine the extent to which Davis Ethical submitted other fraudulent and/or improper claims. Recover overpayments, as warranted.

- Formally assess the conduct of William Davis and determine whether he should be allowed to continue to participate in NYSHIP or face other sanctions. Consider referring William Davis to the State Education Department for assessment of his professional conduct as a licensed pharmacist.

Other Related Audits/Reports of Interest

[New York State Health Insurance Program: Payments for Repackaged Drugs Dispensed Under the Empire Plan \(2010-S-38\)](#)

[New York State Health Insurance Program: Payments for Prescription Drugs Dispensed by Kings Pharmacy Under the Empire Plan \(2010-S-43\)](#)

**State of New York
Office of the State Comptroller**

Division of State Government Accountability

August 13, 2013

Ms. Paula A. Gazeley-Daily, R.Ph.
Strategic Client Executive, Empire Plan Rx Program
United HealthCare
22 Corporate Woods Boulevard
Albany, New York 12211

Dear Ms. Gazeley-Daily:

The Office of the State Comptroller is committed to providing accountability for tax dollars spent to support government operations. This fiscal oversight is accomplished, in part, through our audits, which determine whether entities contracting with the State are fulfilling contract responsibilities. Audits can also identify strategies for reducing costs, improving operations and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the New York State Health Insurance Program entitled *United HealthCare: Payments for Fraudulent and Improper Claims Submitted by Davis Ethical Pharmacy*. This audit was done according to the provisions of the contract between the Department of Civil Service and United HealthCare and the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller
Division of State Government Accountability*

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This report is also available on our website at: www.osc.state.ny.us

Background

The New York State Health Insurance Program (NYSHIP) provides health insurance coverage to active and retired State, participating local government and school district employees and their dependents. The Empire Plan (Plan) is the primary health benefits plan for NYSHIP. The Department of Civil Service (Department) contracts with United HealthCare (United) to administer the prescription drug benefit portion of the Plan. United subcontracted its claims processing and payment functions for drug coverage to Express-Scripts. Based on the primary contract, the Department reimburses United for all properly adjudicated claims paid by Express-Scripts.

Davis Ethical Pharmacy (Davis Ethical) is an independently owned pharmacy located in Rockville Centre, New York. From January 1, 2008 through December 13, 2011, the Department paid United more than \$6.2 million for 52,485 claims submitted by Davis Ethical. During this period, William Davis owned Davis Ethical and worked there as a practicing pharmacist. On December 14, 2011 (subsequent to our audit period) William Davis sold Davis Ethical to a new owner. Our findings pertained to the Department's payments to United for claims submitted by Davis Ethical during the time it was owned by William Davis.

In October of 2011, the Office of the State Comptroller received allegations of improper billing practices by Davis Ethical. In particular, it was alleged that Davis Ethical had submitted claims for medications that were neither prescribed nor dispensed. At that time, we learned that the Nassau County District Attorney (NCDA) and the New York State Department of Financial Services (DFS) had received similar allegations and had initiated an investigation of Davis Ethical. We coordinated our audit and investigative work with the NCDA and DFS.

In addition to this audit of the Department's payments for claims submitted by Davis Ethical, the State Comptroller concurrently audited claims submitted by Davis Ethical under the New York State Medicaid program (Medicaid). A separate report (2012-S-11), addressed to the New York State Department of Health, includes details of improper claims submitted by Davis Ethical under Medicaid.

Audit Findings and Recommendations

Fabricated and Other Improper Pharmacy Claims

NYSHIP made improper payments totaling \$137,459 for 147 (26 percent) of the 572 prescriptions we selected for testing. Based on information obtained from the prescribers (the physicians indicated on the claims), we determined that Davis Ethical likely fabricated nearly all of the improper claims. Davis Ethical processed many of the improper claims well outside of normal business hours and often lacked records verifying that patients actually picked-up the drugs billed to United. Moreover, as a result of our audit, we concluded that Davis Ethical routinely submitted fraudulent claims to NYSHIP and received payments for those claims. The following table summarizes our audit findings.

Nature of Problem with Prescription	Number of Improper Prescriptions	Improper NYSHIP Payments
Member Was Not a Patient of the Prescriber	57	\$54,055
Prescriber Denied Writing / Authorizing Prescription for Patient	67	71,462
Quantity Claimed Exceeded Amount on Prescription	23	11,942
Totals	147	\$137,459

Davis Ethical referenced 57 (39 percent) of the 147 improper prescriptions to 13 physicians who did not treat the recipients in question at the time the prescription forms were allegedly prepared. We contacted the 13 purported prescribers of record, and they told us they had not prescribed the drugs. Moreover, the physicians advised us that the recipients in question were not their patients at the time the prescriptions were allegedly written. In certain instances, the recipients were never patients of the prescribing physicians.

The following example details one of these 57 prescriptions. NYSHIP paid \$2,688 for a prescription of Aciphex, a medication for acid reflux disease. According to Davis Ethical's records, William Davis prepared the related phoned-in prescription form for Aciphex in February 2010. Nevertheless, the office of the physician who allegedly prescribed this drug informed us that the member was not a patient of that physician at the time the prescription was made. Moreover, based on the information provided by this physician's office and the other physicians we contacted, we concluded that Davis Ethical fabricated each of the 57 prescriptions, costing NYSHIP \$54,055.

In addition, we determined that physicians did not authorize 67 other prescriptions costing NYSHIP \$71,462, although the members in question were patients of the physicians of record.

We believe Davis Ethical fabricated these prescriptions as well. For example, in September 2010, William Davis prepared a form for a phoned-in prescription of Lidoderm, a medication to relieve pain associated with neuralgia. This prescription, including five refills, cost NYSHIP \$3,532. The physician of record informed us that the recipient listed on prescription was his patient but that he did not phone-in this prescription.

Also, Davis Ethical billed excessive quantities for 23 other prescriptions, overcharging NYSHIP \$11,942 for them. For example, NYSHIP paid \$2,373 for four claims for Advair, a medication for bronchial disease. The four claims were referenced to a single prescription and included three refills. We concluded that the corresponding prescription, which was written in June 2010 was authentic, but that it provided for only one refill, not three. Thus, the claims and related payments totaling \$1,205 for the final two refills were improper.

There were other problems with many of the questionable prescriptions. Davis Ethical's standard business hours were Monday through Friday 9:00 am to 6:00 pm and Saturday from 9:00 am to 4:00 pm. From the available records, we determined that merely 47 (32 percent) of the 147 improper prescriptions were processed during the pharmacy's normal business hours. Thus, the pharmacy processed all or portions of the remaining 100 prescriptions (68 percent) outside normal hours. Davis Ethical processed these 100 prescriptions, which included multiple refills, 458 times. We determined that 162 (35 percent) of these orders were processed outside normal hours. Two of the suspect prescriptions were allegedly filled near midnight - more than six hours after Davis Ethical's usual closing time. One of these prescriptions was processed on a Sunday when Davis Ethical was not open. Although it is reasonable for a limited number of prescriptions to be processed outside of normal business hours, we question why so many of the improper prescriptions we identified were processed after normal hours.

Further, during our review period, Davis Ethical implemented an electronic system to record customers' signatures when they picked-up their medications and employees' signatures when they delivered medications to customers. The electronic system was in place when the pharmacy processed 106 of the 147 questionable prescriptions. Yet, the system had no signatures for customer pick-up or employee delivery for 101 (95 percent) of the 106 prescriptions. (Note: For the remaining five prescriptions, electronic signature images were available but we were unable to verify the authenticity of those signatures). We question why there were no signatures for the pick-ups/deliveries of 95 percent of the prescriptions tested.

We derived our overall audit results from an initial sample of 530 prescriptions and a supplemental sample of 42 prescriptions from the 13 physicians who were not treating the patients for whom prescriptions were allegedly written. Of the 147 improper prescriptions, 105 were from our initial sample. Among these was the aforementioned prescription for Aciphex, for which William Davis prepared a phoned-in order form. New York State law requires pharmacies to maintain prescriptions for at least five years. According to the available records, 103 of the 105 improper prescriptions in question were allegedly phoned-in by physicians' offices. Consequently, Davis Ethical employees prepared forms for these 103 prescriptions. Further, William Davis was the pharmacist who generated the forms for 100 of the 103 phoned-in prescriptions.

This is significant because a pharmacy can easily fabricate documentation for prescriptions that are allegedly phoned-in. In comparison, prescriptions generated externally on official New York State prescription forms are more difficult to falsify. Also, Davis Ethical could not provide the prescription forms for the remaining two prescriptions that were not phoned-in. Thus, all of the 105 improper prescriptions from our initial sample were allegedly phoned-in or lacked the required supporting documentation. These included four prescriptions (totaling \$1,072) for William Davis and a family member, wherein the physician of record informed us that he did not prescribe the medications in question.

Our overall audit findings and observations pertained to prescriptions and their related NYSHIP payments processed throughout our audit period (of nearly four years). Moreover, we identified aberrant billing patterns that suggest a conscious and continuous effort to fabricate required records - and were likely intended to defraud NYSHIP. As noted previously, 105 (20 percent) of the prescriptions from our initial sample were improper. These prescriptions corresponded to 30 percent (\$102,186 / \$343,705) of the related claim payments we reviewed.

Also, as noted previously, NYSHIP paid more than \$6.2 million for 52,485 claims submitted by Davis Ethical during our audit period and our audit included prescriptions related to payments totaling \$378,978. Thus, our test samples did not include prescriptions and their related payments totaling more than \$5.8 million. Given the rates of questionable prescriptions (20 percent) and improper claim payments (30 percent) we identified, there is significant risk that many of the untested prescriptions were also improper and/or fraudulent - and the additional amounts of improper payments were high. Thus, Department officials and other appropriate authorities should investigate the remaining prescriptions and related payments and recover any other improper payments made to Davis Ethical.

Based on our audit work, we believe that William Davis acted to defraud NYSHIP and we will continue to assist the NCDCA in any further investigation. Given the nature of our findings, United should also formally assess the conduct of William Davis and determine if he should be allowed to continue as a NYSHIP provider. In addition, United should consider referring William Davis to the State Education Department's Office of Professional Licensing for an assessment of his professional conduct as a licensed pharmacist.

Recommendations

1. Coordinate with the NCDCA, DFS and other authorities as requested in any further investigation and to recover the \$137,459 in improper payments, as identified by this audit. Credit the recoveries to the State.
2. Formally assess the \$5.8 million in prescription payments we did not test and determine the extent to which Davis Ethical submitted other fraudulent or improper claims. Recover improper payments, as warranted, and credit the recoveries to the State.
3. Formally assess the conduct of William Davis and determine if he should be allowed to continue

to participate in NYSHIP or face other sanctions. Consider referring William Davis to the State Education Department for assessment of his professional conduct.

Audit Scope and Methodology

The objective of our audit was to determine if Davis Ethical Pharmacy inappropriately billed NYSHIP for pharmacy claims. Our audit covered the period from January 1, 2008 through December 13, 2011.

To perform our audit, we met with United officials and reviewed the applicable laws, rules and regulations. Using forensic audit and data analysis tools, we identified high risk claims. Specifically, we identified claims that were submitted (or originated) outside of store hours or had no record of the date the drug was received by the patient. We linked those claims with their corresponding prescription numbers and selected claims corresponding to questionable prescriptions. From this claims group, we selected an initial sample of 530 prescriptions totaling \$343,705. This included 432 prescriptions from the top 15 prescribers and 98 other prescriptions selected at random.

We conducted site visits of Davis Ethical and obtained copies of documentation for the prescriptions we sampled. We interviewed one physician and requested confirmations from other prescribers to verify: the date the prescription was written; the patient's name; the drug's name, strength, quantity, and dosage; and the number of refills authorized. For prescribers who responded that recipients were not their patients on the date of the prescription, we selected 42 additional prescriptions totaling \$35,273 for review. In total, we examined 572 prescriptions corresponding to payments of \$378,978. Also, we coordinated our work as necessary with the NCD and DFS.

In preparing this report, we excluded certain details relating to the claims we reviewed due to the proprietary nature of United's and Express-Scripts' policies and procedures. However, we provided specific details of all the transactions in question to United officials for their review and resolution, as appropriate.

We conducted our performance audit according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting systems; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members (some of whom have minority voting rights) to certain boards, commissions, and public authorities.

These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these

management functions do not affect our ability to conduct independent audits of program performance.

Authority

The audit was done according 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. The audit was also done pursuant to provisions in the contract between the State and United.

Reporting Requirements

We provided preliminary copies of the matters contained in this report to United officials for their review and comments. Their comments have been taken into consideration in preparing this report.

Within 90 days of the final release of this report, we request United officials to report to the State Comptroller advising what steps were taken to implement the recommendations included in this report.

Contributors to the Report

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Vision

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