

New York State Health Insurance Program

CVS Health: Temporary Holding Account Rebate Revenue

Report 2019-S-27 | October 2019

OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller

Division of State Government Accountability



Audit Highlights

Objective

To determine if CVS Health remitted to the State Department of Civil Service all commercial drug rebate revenue attributable to eligible prescription drug claims maintained in CVS Health's temporary holding account. Our audit covered the period January 1, 2014 through December 31, 2018.

About the Program

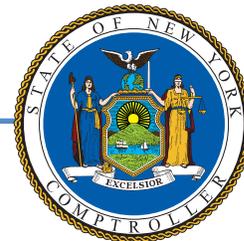
The New York State Health Insurance Program (NYSHIP), administered by the Department of Civil Service (Civil Service), provides health insurance coverage to over 1.2 million active and retired State, local government, and school district employees and their dependents. The Empire Plan is the primary health benefits plan for NYSHIP, covering nearly 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. During the contract period, Civil Service received more than \$1 billion in commercial drug rebates (rebates exclusive of Medicare Part D rebates).

Key Findings

CVS Health improperly designated a temporary holding account, used to process certain prescription drug claims, as "non-rebate-eligible." As a result, CVS Health did not seek rebates from drug manufacturers on claims that were, in fact, rebate-eligible. We identified \$428,958 in rebate revenue that is due to Civil Service for rebate-eligible claims in the account for the period January 1, 2014 through December 31, 2018. CVS Health agreed Civil Service is due the additional rebates. CVS Health also agreed to remove the "non-rebate-eligible" designation from the account. As a result, we project Civil Service will receive additional rebates of \$1.27 million attributable to rebate-eligible claims in the holding account over the next contract period of January 1, 2019 through December 31, 2023.

Key Recommendations

- Remit \$428,958 in rebate revenue to Civil Service.
- Ensure all future rebate revenue attributable to claims in the temporary holding account (estimated at \$1.27 million) is properly remitted to Civil Service.



Office of the State Comptroller Division of State Government Accountability

October 17, 2019

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

Dear Ms. Byron:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *CVS Health: Temporary Holding Account Rebate Revenue*. This audit was performed pursuant to 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,

Division of State Government Accountability

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Glossary of Terms

Term	Description	Identifier
Account	Temporary holding account created by CVS Health for claims attributable to members with pending Medicare Part D enrollment	<i>Key Term</i>
Civil Service	New York State Department of Civil Service	<i>Agency</i>
Contract	Pharmacy Benefit Services Contract between Civil Service and CVS Health to administer the Empire Plan prescription drug program	<i>Key Term</i>
Medicare Part D	Medicare prescription drug program	<i>Program</i>
NYSHIP	New York State Health Insurance Program	<i>Program</i>
Rebates	All revenue negotiated in the manufacturer agreements, including base rates, incremental rebates, market share rebates, price protection, discounts, and administrative fees paid to CVS Health by drug manufacturers	<i>Key Term</i>

Background

The New York State Health Insurance Program (NYSHIP) was established in 1957 under the Civil Service Law. NYSHIP is one of the nation's largest public sector health insurance programs, covering over 1.2 million active and retired State, participating local government, and school district employees and their dependents. The Department of Civil Service (Civil Service) administers NYSHIP.

The Empire Plan is the primary health benefits plan for NYSHIP, providing its nearly 1.1 million members with four types of health insurance coverage: prescription drug, medical/surgical, hospital, and mental health and substance abuse coverage. Civil Service entered into a Pharmacy Benefit Services Contract (Contract) with CVS Health to administer the Empire Plan's prescription drug program for the period January 1, 2014 through December 31, 2018. The cost of the prescription drug program averaged \$2.4 billion per year during the contract period.

In accordance with the Contract, CVS Health must utilize the Empire Plan's significant enrollment to maximize savings to the prescription drug program by negotiating agreements with drug manufacturers for rebates, discounts, and other consideration and pass 100 percent of the value of those agreements on to Civil Service. Accordingly, CVS Health must credit the prescription drug program for all such rebates, discounts, and other consideration (herein collectively referred to as "rebates") that are attributable to the Empire Plan's prescription drug utilization. CVS Health is further required to calculate and distribute rebate revenue to Civil Service in a fully transparent and verifiable manner. Civil Service and CVS Health subsequently entered into a second contract with similar provisions effective January 1, 2019 through December 31, 2023.

During the audit period, January 1, 2014 through December 31, 2018, Civil Service was credited more than \$1 billion in commercial rebates derived from agreements with drug manufacturers. (Commercial rebates do not include rebates on Medicare Part D claims.)

Audit Findings and Recommendations

We found CVS Health did not submit rebate invoices to drug manufacturers for rebate-eligible prescription drug claims maintained in CVS Health's temporary holding account; therefore, Civil Service did not receive all rebate revenue it was entitled to. Civil Service is due \$428,958 in rebate revenue for rebate-eligible claims in the temporary holding account for the period January 1, 2014 through December 31, 2018. Further, due to corrective action taken by CVS Health as a result of our audit work, we project \$1.27 million in additional rebate revenue for the next contract period, January 1, 2019 through December 31, 2023.

Temporary Holding Account Rebate Revenue

In January 2014, CVS Health created a temporary holding account (Account) for certain prescription drug claims to allow Empire Plan members access to uninterrupted prescription benefit coverage while their Medicare Part D enrollment was pending. The Account was designated as non-rebate-eligible and, therefore, Civil Service received no commercial rebates on the claims in the Account. CVS Health officials explained this was done to prevent claims from being counted twice between the commercial and Medicare D plans.

In two prior audits, *Accuracy of Drug Rebate Revenue Remitted to the Department of Civil Service* (audit report numbers [2018-S-50](#) and [2016-S-41](#)), we determined Civil Service was due \$241,929 and \$160,834, respectively, in rebates for certain claims held in the Account. As a result of our audit work, effective January 1, 2019, the Account was reclassified as rebate-eligible, and now claims in the Account earn commercial rebates.

For the period January 1, 2014 through December 31, 2018, we identified \$428,958 in additional rebates owed to Civil Service for claims held in the Account. This additional rebate revenue was not included in our prior audits. CVS Health officials agree Civil Service is due these rebates.

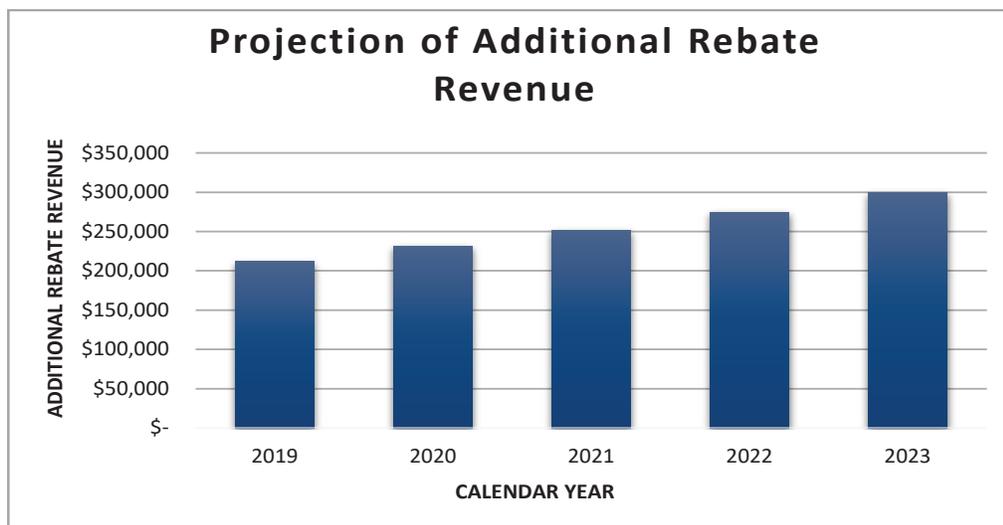
We identified the additional rebate revenue as follows. We analyzed NYSHIP paid claims and Rebate Payment Detail Reports for drug manufacturers that were not reviewed in our prior audits and identified 2,213 rebate-eligible claims in the Account for 66 drug manufacturers that should have been invoiced for rebates. CVS Health officials agreed Civil Service is due \$198,045 in rebates for these claims.

We also calculated the rebates due to Civil Service for the manufacturers included in our two prior audits for claims outside of the original audit time period and for additional rebates due on some claims reported in our prior audits. CVS Health officials agreed Civil Service is due:

- \$147,723 in rebates for the six manufacturers reviewed in audit 2016-S-41; and
- \$83,190 in rebates for the six manufacturers reviewed in audit 2018-S-50.

Projected Additional Rebate Revenue

CVS Health officials indicated the non-rebate-eligible designation was removed from the Account effective January 1, 2019, ensuring rebate-eligible claims in the 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 and verified that rebates were invoiced and remitted to Civil Service for first quarter 2019 claims in the Account. Due to the corrective actions taken by CVS Health as a result of our audits, we project additional rebate revenue of \$1.27 million for the subsequent contract covering the period, January 1, 2019 through December 31, 2023. For an annual projection of additional rebate revenue on the claims in the Account, refer to the following chart:



Recommendations

1. Remit \$428,958 to Civil Service for rebate-eligible claims in the temporary holding account that were not invoiced by CVS Health.
2. Ensure all future rebate revenue attributable to rebate-eligible claims in the temporary holding account is properly remitted to Civil Service in a timely manner.

Audit Scope, Objective, and Methodology

The objective of our audit was to determine if CVS Health remitted to Civil Service all commercial drug rebate revenue attributable to eligible prescription drug claims in its temporary holding account. Our audit covered the period January 1, 2014 through December 31, 2018.

To accomplish our objective and assess internal controls related to our objective, we interviewed Civil Service and CVS Health officials. We reviewed the Contract between Civil Service and CVS Health. Using CVS Health's Rebate Payment Detail Reports and NYSHIP paid claims data, we identified rebate-eligible claims from the Account that had not been invoiced for rebates. We then calculated the estimated rebates due to Civil Service and discussed our findings with CVS Health officials to finalize the actual rebates due. To project additional rebate revenue due to Civil Service during the 2019-2023 contract with CVS Health, we used a 9 percent growth rate, which was determined based on the valuation of the 2014-2018 and 2019-2023 contracts.

Statutory Requirements

Authority

The audit was performed 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 conducted our performance audit in accordance with 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

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 system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Reporting Requirements

We provided preliminary reports of our audit observations to CVS Health officials for their review and comment. Their comments were considered in preparing this report.

Within 90 days after final release of this report, we request that CVS Health officials report to the State Comptroller, advising what steps were taken to implement the recommendations contained in this report, and where recommendations were not implemented, the reasons why.

Contributors to Report

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