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

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Division of State Government Accountability

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## **Empire Plan Drug Rebates**

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# **United HealthCare Insurance Company of New York**

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# Executive Summary

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## Purpose

To determine if United HealthCare Insurance Company of New York (United) credited the Department of Civil Service (Department) for all rebate revenue due under its contract with the Department for selected drug manufacturers. The audit covered the period January 1, 2011 through December 31, 2013 and included a review of revenue from five drug manufacturers.

## 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 is the primary health benefits plan for NYSHIP, serving about 1.1 million members. The Department contracted with United to administer the Empire Plan's prescription drug program between January 1, 2008 and December 31, 2013. In accordance with the contract, United is required to negotiate agreements with drug manufacturers for rebates, discounts, and other considerations and pass 100 percent of the value of the agreements on to the prescription drug program. United subcontracted key functions of the prescription drug program to Medco Health Solutions, Inc. (Medco), including the negotiation and collection of rebates offered by drug manufacturers. In 2012, Express Scripts Holding Company (Express Scripts) acquired Medco. During our audit period, January 1, 2011 through December 31, 2013, United credited the Department for \$139 million in revenue derived from agreements with the five drug manufacturers included in our audit.

## Key Findings

We identified \$710,284 in rebate revenue that was not credited to the Department. The audit found:

- United did not credit the Department \$371,635 in rebates because manufacturer agreements utilized to obtain rebates for the Empire Plan's prescription drug program did not meet or exceed Express Scripts' best existing rebate agreements for other clients, as required.
- Express Scripts did not invoice, collect, or allocate \$196,845 in rebates to which the Department was entitled due to errors in Express Scripts' rebate process.
- Express Scripts retained rebates of \$141,804 despite its contractual requirement to remit 100 percent of all revenue derived from manufacturer agreements to United, which should then be remitted to the Department.

## Key Recommendations

- Review the \$710,284 in rebates identified by this audit and credit the Department for the rebates, as appropriate.
- Formally instruct Express Scripts to remit 100 percent of all rebate revenues attributable to drug utilization under its subcontract with United, without exception; and credit the Department for all such rebates.

**Other Related Audits/Reports of Interest**

[United HealthCare Insurance Company of New York: Empire Plan Drug Rebate Revenue \(2013-S-41\)](#)

[New York State Health Insurance Program: United HealthCare - Payments for Fraudulent and Improper Claims Submitted by Davis Ethical Pharmacy \(2012-S-10\)](#)

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

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

**Division of State Government Accountability**

December 28, 2015

Mr. Thomas K. Coy  
Underwriting Director  
United HealthCare  
13 Cornell Road  
Latham, NY 12110

Dear Mr. Coy:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively and, by so doing, providing 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 of United HealthCare entitled *Empire Plan Drug Rebates*. 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,

*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](http://www.osc.state.ny.us)

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## Background

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The New York State Health Insurance Program (NYSHIP) provides health insurance coverage to approximately 1.2 million active and retired State, participating local government, and school district employees, and their dependents. The Empire Plan is the primary health benefits plan for NYSHIP, serving about 1.1 million of these members. The Empire Plan covers a comprehensive range of services including, but not limited to, inpatient and outpatient hospital services, home care services, medical equipment and supplies, mental health and substance abuse services, and prescription drugs.

The Department of Civil Service (Department) administers the NYSHIP program. In carrying out its responsibilities, the Department contracted with United HealthCare (United) to administer the Empire Plan's prescription drug program between January 1, 2008 and December 31, 2013. In accordance with the contract, United is required to utilize the Empire Plan's significant enrollment to maximize savings to the prescription drug program by negotiating agreements with drug manufacturers for discounts, rebates, and other considerations and passing 100 percent of the value of the agreements on to the Department. During the audit period, January 1, 2011 through December 31, 2013, the Department was credited \$630.9 million in revenue derived from agreements with 114 drug manufacturers.

The Department's contract with United contains specific provisions to ensure the prescription drug program is properly credited with all revenue from drug discounts and rebates to which it is entitled. Specifically, United must disclose all direct and indirect revenue arrangements with drug manufacturers and United may not enter into any agreement that has the effect of diverting, shortchanging, or trading off any revenue that would otherwise be due the program for other considerations, such as reduced acquisition costs. In addition, all manufacturer agreements pertaining to the prescription drug program must meet or exceed United's best existing agreements for all individual drugs, ensuring that in no instance will the Department receive less drug manufacturer revenue than United's other clients.

The contract allows United to subcontract portions of its responsibility to a qualified organization. United, however, retains the ultimate responsibility for all services performed under the contract; no subcontract will relieve United in any way of any responsibility, duty, and/or obligation of the contract. Further, all subcontracts must contain provisions that are functionally identical to, and consistent with, the provisions of United's contract with the Department. For the period covered by our audit, United subcontracted key functions of the prescription drug program to Medco Health Solutions, Inc. (Medco), including the negotiation, collection, and allocation of rebates offered by drug manufacturers. In 2012, Express Scripts Holding Company (Express Scripts) acquired Medco.

The subcontract between United and Express Scripts is generally consistent with the contract between the Department and United. Express Scripts is required to pay United 100 percent of all rebates and may not negotiate terms with manufacturers that, directly or indirectly, result in a reduction of rebates in connection with or related to purchase discounts or any other

consideration. Express Scripts is further required to use all reasonable efforts to promptly invoice and collect all rebates due under the terms of the manufacturer agreements. The subcontract between United and Express Scripts also contains a provision that requires United to receive rebates at least equal to other Express Scripts clients in certain circumstances. The subcontract further states that in the event United is separately named in a manufacturer agreement regarding the applicable percentage of a rebate, United's rebate will be the greater of the United-specific rebate or Express Scripts' generally applicable rebate under the manufacturer agreement as is consistent with all other contract provisions.

## Audit Findings and Recommendations

To determine whether the Department was properly credited with all drug rebate revenue due under its contract with United, we selected five drug manufacturers and the corresponding rebates for review. We selected five manufacturers that had among the highest rebates credited to the Department during the three-year audit period, January 1, 2011 through December 31, 2013. The five selected manufacturers accounted for \$139 million (22 percent) of the \$630.9 million in drug revenue credited to the Department during the audit period.

We determined United did not credit the Department for all rebate revenue that was due under its contract with the Department. In particular, we found that United did not credit the Department for certain rebates because manufacturer agreements utilized to obtain rebates for the Empire Plan's prescription drug program did not meet or exceed Express Scripts' best existing agreements. Also, Express Scripts did not collect or allocate all rebates to which the Department was entitled, and Express Scripts retained certain rebates despite its contractual requirement to remit all revenue to United and ultimately to the Department. As a result, a total of \$710,284 was not credited to the Department's cash accounts, as shown in Table 1.

**Table 1**

<b>Manufacturer</b>	<b>Best Existing Agreements</b>	<b>Unallocated Rebates</b>	<b>Retained Rebates</b>	<b>Totals</b>
Manufacturer 1	\$371,635		\$6,932	\$378,567
Manufacturer 2			374	374
Manufacturer 3		\$196,845	364	197,209
Manufacturer 4			55,172	55,172
Manufacturer 5			78,962	78,962
<b>Totals</b>	<b>\$371,635</b>	<b>\$196,845</b>	<b>\$141,804</b>	<b>\$710,284</b>

### Manufacturer Rebate Revenue

#### *Best Existing Agreements*

During our review of Express Scripts' agreement with Drug Manufacturer No. 1, we determined other Express Scripts clients earned higher rebates than United for two drugs (Drug A and Drug B). This would appear to contradict contract provisions between United and Express Scripts that require United to receive rebates at least equal to other Express Scripts clients in certain circumstances. We recalculated the rebate amounts due United (and thus the Department) based on Express Scripts' best existing agreements and found the Department was underpaid \$371,635 (\$304,249 for Drug A and \$67,386 for Drug B).

In response to our findings for Drug A (with underpaid rebates totaling \$304,249), United agreed that another client received a higher rebate than United. However, according to United, the other



client had a rebate agreement in place with Manufacturer No. 1 prior to becoming Express Scripts' client and the manufacturer would not agree to offer the higher rebate to any other client. No exception, however, appears to be provided for in United's contract with Express Scripts, which clearly requires United to receive rebates at least equal to other Express Scripts clients in certain circumstances.

In response to our findings for Drug B (with underpaid rebates totaling \$67,386), United agreed that other Express Scripts clients earned a higher rebate than United. United's response stated, however, that the higher rebate was available for Express Scripts clients whose drug coverage plans had a less restrictive prior authorization requirement than United. However, based on our review of Express Scripts' agreement with Manufacturer No. 1, certain plans with the same prior authorization criteria as United received higher rebates than United for the 23-month period, January 1, 2011 through November 30, 2012. Therefore, United (and consequently the Department) was entitled to the same higher rebates for that 23-month period.

### *Unallocated Rebates*

In accordance with the agreement between Drug Manufacturer No. 3 and Express Scripts, effective January 1, 2011, United (and thus the Department) was eligible for rebates on Drug C. However, our review of Express Scripts' Client Audit Rebate Database (CARD) showed that the Department did not receive rebates on Drug C for the first quarter of 2012. As a result, we calculated an additional \$185,121 that is due the Department for Drug C rebates.

We identified rebates for another Manufacturer No. 3 drug (Drug D) that Express Scripts did not allocate to United (and thus the Department). Effective January 1, 2011, United was eligible for rebates on Drug D. We determined the Department did not receive rebate credits on mail order quantities of Drug D because a mail purchase discount agreement was in place between Express Scripts and Manufacturer No. 3. However, both the contract between the Department and United as well as the subcontract between United and Express Scripts state the contractor cannot divert, shortchange, or trade off rebates in return for purchase discounts or other considerations. We calculated an additional \$11,724 that is due the Department for rebates attributable to mail order quantities of Drug D for the period January 1, 2011 through December 31, 2011.

United agreed with the two issues identified for Manufacturer No. 3 and explained that due to a system error in Express Scripts' rebate process, these rebates inadvertently were not allocated for the time periods noted.

### *Retained Rebates*

In accordance with its subcontract with United, Express Scripts makes a series of estimated prepayments of quarterly rebates. Express Scripts performs a final reconciliation 450 days after the end of each quarter to compare actual rebates received with the estimated prepayments made. Express Scripts officials told us their practice is to retain any rebates they collect from manufacturers after the 450-day reconciliation. Express Scripts' practice, however, is contrary to the Department's contract with United, which requires 100 percent of the revenue derived from

agreements with drug manufacturers to be passed through to the prescription drug program.

We analyzed Express Scripts' CARD data for the five selected manufacturers for the period January 1, 2011 through June 30, 2013. (CARD detail for the last two quarters of calendar year 2013 was not available.) From that review, we identified \$141,804 that Express Scripts withheld from rebates remitted to United, and thus were not credited to the Department. These rebates were collected after the 450-day reconciliation and retained by Express Scripts. In accordance with both the contract between the Department and United as well as the subcontract between United and Express Scripts, 100 percent of rebate revenue is to be passed through to the Department. Therefore, \$141,804 in additional rebates should be remitted to the Department.

## Recommendations

1. Review the \$710,284 in rebates identified by this audit and credit the Department for the rebates, as appropriate.
2. Formally instruct Express Scripts to remit 100 percent of all rebate revenues attributable to drug utilization under its subcontract with United, without exception, including all rebates received after the 450-day reconciliation; and credit the Department for all such rebates.

## Audit Scope and Methodology

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The objective of our audit was to determine if United credited the Department for all rebate revenue due under its contract with the Department for selected drug manufacturers. The audit covered the period January 1, 2011 through December 31, 2013.

To accomplish our objective, and assess internal controls related to our objective, we obtained and reviewed the contract between the Department and United as well as the subcontract between United and Express Scripts. We judgmentally selected five manufacturers that had among the highest rebates credited to the Department during the audit period. We reviewed manufacturer agreements, amendments, purchase discount agreements, and invoices for the selected manufacturers. We analyzed CARD data, Empire Plan claims data, and quarterly rebate reports. We also interviewed officials at the Department, United, and Express Scripts.

The Department's contract requires United to respond to all audit requests within 15 days. Despite this, both United and Express Scripts failed to respond timely (within the contractually required 15 days) to our audit requests for the documentation necessary to conduct our audit. Although we eventually received all documentation and were able to complete our audit objective, the lack of timely responses delayed our audit.

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

## Authority

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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.

## Reporting Requirements

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

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

## Contributors to This Report

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### Vision

A team of accountability experts respected for providing information that decision makers value.

### Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.