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STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

May 24, 2017

Mr. Thomas K. Coy  
Underwriting Director  
United HealthCare  
13 Cornell Road  
Latham, NY 12210

Re: United HealthCare Insurance Company  
of New York: Empire Plan Drug Rebates  
Report 2017-F-6

Dear Mr. Coy:

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 have followed up on the actions taken by officials of United HealthCare (United) to implement the recommendations contained in our audit report, *United HealthCare Insurance Company of New York: Empire Plan Drug Rebates* (Report 2014-S-62).

**Background, Scope, and Objective**

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 NYSHIP. In carrying out its responsibilities, 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 was 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. United was required to pass 100 percent of the value of the agreements on to the Department. During the period January 1, 2011 through December 31, 2013, United credited the Department for \$630.9 million in revenue that was derived from agreements with 114 drug manufacturers.

To ensure that the Department would not receive lower drug manufacturer rebates than United's other clients, a key provision of the Department's contract with United specified that manufacturer agreements pertaining to the prescription drug program were required to meet or exceed United's best existing agreements for all individual drugs.

The contract allowed United to subcontract portions of its responsibility to a qualified organization. United, however, retained the ultimate responsibility for all services performed under the contract. Further, all subcontracts had to contain provisions that were functionally identical to, and consistent with, the provisions of United's contract with the Department. 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.

We issued our initial audit report on December 28, 2015. Our objective was to determine whether 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 and included a review of revenue from five drug manufacturers. Our initial audit identified \$710,284 in rebate revenues that were not credited to the Department. We recommended that United review the \$710,284 in rebates and credit the Department for the rebates, as appropriate. We also recommended that United formally instruct Express Scripts to remit 100 percent of all rebate revenues attributable to drug utilization under its subcontract with United.

The objective of this follow-up was to determine the implementation status, as of February 1, 2017, of the two recommendations included in our initial report.

### **Summary Conclusions and Status of Audit Recommendations**

United officials made progress in addressing the issues we identified in the initial audit. This included the remittance of \$338,649 in drug rebate revenue to the Department on April 28, 2016. In addition, United officials stated they intended to remit another \$67,386 to the Department. Officials, however, stated the remaining rebate revenues that were identified in the initial audit, totaling \$304,249, would not be credited to the Department. We still maintain that the \$304,249 in question should be credited to the Department. Of the initial report's two audit recommendations, one was partially implemented and one is no longer applicable.

### **Follow-Up Observations**

#### **Recommendation 1**

*Review the \$710,284 in rebates identified by this audit and credit the Department for the rebates, as appropriate.*

Status – Partially Implemented

Agency Action – As noted previously, United credited the Department for \$338,649 of the \$710,284 in rebate revenues that we identified in our initial audit. Further, United (and Express Scripts) officials agreed to remit an additional \$67,386 in rebate revenues attributable to “Drug B” (as referenced in the initial audit report). However, at the time of our follow-up, United had not yet made this credit to the Department.

During our follow-up, officials stated the remaining \$304,249 in unpaid rebates (\$710,284 - \$338,649 - \$67,386) would not be credited to the Department. As detailed in the initial audit report, these rebates were attributable to a drug (referenced as “Drug A”) for which another Express Scripts client earned higher rebates than did the Department. Express Scripts officials stated a particular client negotiated a comparatively favorable rebate agreement (with the related drug manufacturer) prior to that client’s affiliation with Express Scripts, and the drug manufacturer in question would not extend the higher rebate rate to any of Express Scripts’ other clients. Nonetheless, United’s subcontract with Express Scripts clearly required United to obtain rebates at least equal to any other Express Scripts client with a benefit design comparable to the Empire Plan in certain circumstances, which existed with respect to Drug A, and the contract granted no exception to this provision. Therefore, we maintain that the \$304,249 in rebates for Drug A should have been remitted to United by Express Scripts and then ultimately credited to the Department.

### **Recommendation 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.*

Status – No Longer Applicable

Agency Action – United’s contract to administer the Empire Plan’s prescription drug program expired on December 31, 2013. At the time of our follow-up, the contract had been expired for more than three years, and therefore, United had no further role in administering the contract. Thus, this recommendation is no longer applicable.

Major contributors to this report were Laura Brown, Sally Perry, and Melissa Davie.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We thank the management and staff of United and the Department for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

David J. Fleming  
Audit Manager

cc: Mr. David Boland, Department of Civil Service  
Mr. Ronald Kuiken, Department of Civil Service  
Mr. Jeffrey Stein, Department of Civil Service  
Mr. Daniel Yanulavich, Department of Civil Service