

New York State Health Insurance Program

CVS Health: Accuracy of Drug Rebate Revenue Remitted to the Department of Civil Service

Report 2019-S-51 | August 2020

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 commercial drug rebate revenue related to Empire Plan drug utilization in accordance with its contract with the Department of Civil Service. Our audit covered the period January 1, 2014 through December 31, 2018.

About the Program

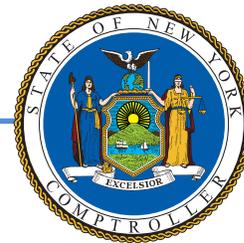
The New York State Health Insurance Program (NYSHIP), administered by the Department of Civil Service (Civil Service), provides health insurance coverage to over 1.2 million active and retired State, participating local government, and school district employees, and their dependents. The Empire Plan 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. The cost of the prescription drug program averaged \$2.4 billion per year during the contract period. In accordance with the contract, CVS Health was required to negotiate agreements with drug manufacturers for rebates, discounts, and other consideration (herein collectively referred to as "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

We reviewed discrepancies between the drug rebates that CVS Health invoiced versus collected from drug manufacturers and found CVS Health did not always collect and remit all rebate revenue to Civil Service. As a result, Civil Service is due \$453,029 in rebates.

Key Recommendations

- Remit \$453,029 in drug rebate revenue to Civil Service.
- Take corrective steps to ensure all of the Empire Plan's rebate-eligible drug utilization is invoiced, collected from drug manufacturers, and remitted in a timely manner to Civil Service.



Office of the New York State Comptroller Division of State Government Accountability

August 21, 2020

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 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 entitled *CVS Health: Accuracy of Drug Rebate Revenue Remitted to the Department of Civil Service*. This 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.

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
340B Drug Pricing Program	A federal government program that requires drug manufacturers to provide outpatient drugs to eligible health care organizations and covered entities at significantly reduced prices	<i>Program</i>
Civil Service	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 for the period January 1, 2014 through December 31, 2018	<i>Key Term</i>
Manufacturer Agreement	An agreement negotiated between CVS Health and a drug manufacturer that sets the terms for the provision of rebates, discounts, and other consideration	<i>Key Term</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>
Rebate Payment Detail Report	Quarterly report submitted by CVS Health to Civil Service to support the invoicing, collection, and remittance of rebates	<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.

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. (For this report, the term "rebates" is used to refer collectively to all revenue negotiated in the manufacturer agreements, including base rebates, incremental rebates, market share rebates, price protection, discounts, and administrative fees paid to CVS Health by drug manufacturers. Additionally, commercial rebates do not include rebates on Medicare Part D claims.)

Audit Findings and Recommendations

We found CVS Health did not collect and remit all rebate revenue that it invoiced to drug manufacturers for rebate-eligible prescription drug claims paid on behalf of the Empire Plan; therefore, Civil Service did not receive all rebate revenue to which it was entitled. Civil Service is due \$453,029 in rebate revenue for the period of January 1, 2014 through December 31, 2018.

Uncollected and Unremitted Rebates

We reviewed the quarterly Rebate Payment Detail Reports that CVS Health submitted to Civil Service for the period of January 1, 2014 through December 31, 2018 and noted any significant discrepancies between the rebates CVS Health invoiced and the rebates CVS Health collected and remitted to Civil Service. In total, we found \$4,878,706 to be questionable. CVS Health was able to provide additional information for \$4,425,677 of that amount that showed why those rebates were either not collected (e.g., duplicate claims, changes in pricing affecting the rebate amount) or why drug manufacturers paid them well after the rebates were earned. The remaining \$453,029 had not yet been collected or remitted to Civil Service or had been written off by CVS Health.

CVS Health informed us that \$231,822 of the \$453,029 in rebates was for two drugs from the first and second quarter of 2018 that were still in “working status” as of the conclusion of our audit fieldwork. Rebates in working status have been invoiced, but have not yet been collected and remitted to Civil Service. Additionally, \$10,783 of the \$453,029 in rebates was for one drug from the first quarter of 2017 through the second quarter of 2018 that was being disputed with the manufacturer; a determination on the rebates will be finalized once the dispute is resolved.

CVS Health invoiced and subsequently wrote off \$159,647 of the \$453,029 in rebates for claims that contained “aberrant quantities.” Aberrant quantities describes prescriptions filled that exceed the Food and Drug Administration-recommended limit. CVS Health was unable to provide any language in the manufacturer agreements that would disqualify claims with aberrant quantities from rebates and informed us that those provisions are generally not included in their manufacturer agreements. Without language in the manufacturer agreements, we believe these claims should be rebate-eligible. CVS Health also wrote off \$6,167 (of the \$453,029) in invoiced rebates, citing terms of the manufacturer agreements that made the claims ineligible because they were filled by a mail order pharmacy or a pharmacy associated with the 340B Drug Pricing Program (a federal government program that requires drug manufacturers to provide outpatient drugs to eligible health care organizations and covered entities at significantly reduced prices). However, the NYSHIP paid claims data indicates these claims were filled at a retail pharmacy and, therefore, were rebate-eligible. CVS Health should remit \$165,814 (\$159,647 + \$6,167) to Civil Service for the rebate revenue generated by these claims.

CVS Health agrees that Civil Service is due \$44,610 of the \$453,029 in rebates for three drugs for the third quarter of 2015. CVS Health prepared corrected invoices that included additional eligible claims; however, the corrected invoices were not

submitted to the manufacturer. CVS Health stated it will remit the \$44,610 at the close of this audit.

Recommendations

1. Remit \$453,029 to Civil Service for the additional rebate revenue identified by our audit.
2. Take corrective steps to ensure all of the Empire Plan's rebate-eligible drug utilization is invoiced, collected from the manufacturers, and remitted in a timely manner to Civil Service.

Audit Scope, Objective, and Methodology

The objective of our audit was to determine if CVS Health remitted commercial drug rebate revenue related to Empire Plan drug utilization in accordance with its Contract with Civil Service. 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 invoiced rebates that were written off, uncollected, or unremitted by CVS Health to Civil Service. We used thresholds of 10 percent (if at least 10 percent of the invoiced rebates were uncollected, per drug) and \$10,000 (if at least \$10,000 of the invoiced rebates were uncollected, per drug) to select our judgmental sample of rebates to review. Because we selected a judgmental sample, our results cannot be projected to the population as a whole.

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. 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 180 days after the 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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