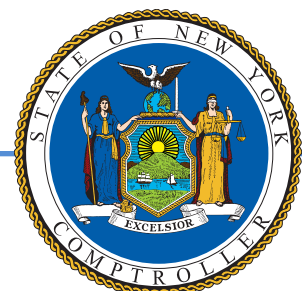


New York State Health Insurance Program

CVS Caremark: Accuracy of Empire Plan Commercial Rebate Revenue Remitted to the Department of Civil Service

Report 2023-S-42 | March 2025

OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller
Division of State Government Accountability



Audit Highlights

Objective

To determine if CVS Caremark appropriately invoiced drug manufacturers and remitted corresponding rebate revenue to the Department of Civil Service for prescription drugs provided under the Empire Plan. The audit covered the period January 2019 through December 2022.

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 about 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 over 1 million members.

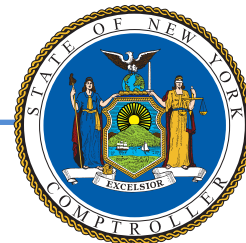
Since 2014, Civil Service has contracted with CVS Caremark to administer the prescription drug program. From 2019 through 2022, the cost of the prescription drug program averaged almost \$3.3 billion per year. In accordance with the contracts, CVS Caremark was required to negotiate agreements with drug manufacturers for rebates, discounts, and other consideration (herein collectively referred to as “rebates”) and remit the rebate revenue to Civil Service. From January 2019 through December 2022, Civil Service received over \$2 billion in Empire Plan commercial drug rebates (rebates exclusive of Medicare Part D rebates).

Key Findings

We reviewed rebate revenue generated by Empire Plan commercial claims and found that CVS Caremark did not always invoice drug manufacturers for rebates or collect and remit all rebate revenue to Civil Service. Based on judgmental samples of 10 manufacturers and 25 drugs, we identified \$1,160,286 in rebates that is due to Civil Service from CVS Caremark.

Key Recommendations

- Review the \$1,160,286 in drug rebate revenue identified as due to Civil Service, and remit as warranted.
- Take corrective steps to ensure all of the Empire Plan’s rebate-eligible drug utilization is invoiced, collected from the drug manufacturers, and remitted in a timely manner to Civil Service.



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

March 18, 2025

Joni Lozano
Division Head, Employer Accounts
CVS Caremark
420 E. Waterside Drive, Unit 2710
Chicago, IL 60601

Dear Ms. Lozano:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively. By so doing, it provides accountability for the 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 Caremark: Accuracy of Empire Plan Commercial 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	Federal program that requires drug manufacturers to provide outpatient drugs to eligible health care organizations and covered entities at reduced prices	<i>Program</i>
Civil Service	Department of Civil Service	<i>Agency</i>
Contract	Pharmacy Benefit Services Contract between Civil Service and CVS Caremark to administer the Empire Plan's prescription drug program	<i>Key Term</i>
Manufacturer agreement	Agreement negotiated between CVS Caremark 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 rebates, incremental rebates, market share rebates, price protection, discounts, and administrative fees paid to CVS Caremark 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 about 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 over 1 million members with four types of health insurance coverage: prescription drug, medical/surgical, hospital, and mental health and substance use coverage.

Civil Service entered into a Pharmacy Benefit Services Contract (Contract) with CVS Caremark to administer the Empire Plan's prescription drug program for the period January 2019 through December 2023. During the audit period, January 2019 through December 2022, CVS Caremark processed and paid over 126 million claims totaling over \$13.1 billion.

In accordance with the Contract, CVS Caremark must utilize the Empire Plan's significant enrollment to maximize savings to the prescription drug program by negotiating agreements with drug manufacturers (manufacturer agreements) for rebates, discounts, and other consideration, and pass 100% of the value of those agreements on to Civil Service. Accordingly, CVS Caremark must credit the prescription drug program for all such rebates, discounts, and other considerations that are attributable to the Empire Plan's prescription drug utilization. CVS Caremark is further required to calculate and distribute rebate revenue to Civil Service in a fully transparent and verifiable manner. (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 Caremark by drug manufacturers. Additionally, commercial rebates do not include rebates on Medicare Part D claims.)

During the audit period, January 2019 through December 2022, Civil Service was credited over \$2 billion in commercial rebates derived from agreements with drug manufacturers.

Audit Findings and Recommendations

In accordance with the Contract, CVS Caremark is required to maximize revenue and pass 100% of drug rebates to Civil Service. We reviewed claims and relevant rebate information to identify rebates that were uncollected or never invoiced to manufacturers. We identified a total of \$1,160,286 in rebates that CVS Caremark should have, but did not, invoice or collect—and did not remit to Civil Service. CVS Caremark officials were unable to adequately support why these rebates were not collected and remitted to Civil Service. Accordingly, we recommend that CVS Caremark remit the \$1,160,286 to Civil Service.

Rebates Not Invoiced, Collected, or Remitted

We consider a rebate to be owed to Civil Service when:

- Empire Plan drug utilization (based on claim information) was not included in CVS Caremark's invoice requests to manufacturers and CVS Caremark did not provide sufficient information to substantiate the absence of that drug utilization.
- CVS Caremark requested rebates from the manufacturer but they had not been received or the amounts received were less than the amount originally requested, and CVS Caremark did not provide sufficient information to substantiate why the full amount was not collected.

Over the course of the audit, we made numerous requests for CVS Caremark officials to provide reasons and support for why certain rebates were either never invoiced to drug manufacturers or were not collected and remitted to Civil Service after being invoiced. CVS Caremark officials generally provided broad reasons for why the rebates were not paid to Civil Service. We evaluated the corresponding evidence provided by CVS Caremark officials and found \$1,160,286 in unpaid rebates was not sufficiently supported by evidence to justify the unpaid rebates. As a result, we conclude that these unpaid rebates are owed to Civil Service.

For example, CVS Caremark officials indicated \$75,101 in rebates were ineligible because the dispensing pharmacies qualified for reduced drug pricing from drug manufacturers and, as such, were not subject to rebates. We evaluated the associated claims and found none of the pharmacies qualified for the reduced drug pricing at the time the pharmacies dispensed the drugs. Accordingly, CVS Caremark should have invoiced the drug manufacturers for these rebates and remitted the rebate revenue to Civil Service.

Recommendations

1. Review the \$1,160,286 in drug rebate revenue identified as due to Civil Service, and remit as warranted.
2. Take corrective steps to ensure all of the Empire Plan's rebate-eligible drug utilization is invoiced, collected from the drug 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 Caremark appropriately invoiced drug manufacturers and remitted corresponding rebate revenue to Civil Service for prescription drugs provided under the Empire Plan. The audit covered the period January 2019 through December 2022.

To accomplish our objective and assess related internal controls, we interviewed CVS Caremark officials. We also reviewed the Contract between Civil Service and CVS Caremark.

We used a non-statistical sampling approach to provide conclusions on our audit objective. We selected judgmental samples for this work. Because we used a non-statistical sampling approach for our tests, we cannot project the results to the respective populations. Our samples included:

- A judgmental sample of the top 10 manufacturers from CVS Caremark's Rebate Payment Detail Reports to test for non-invoiced claims and to review manufacturer agreements.
- A judgmental sample of the top 25 drugs based on the highest dollar value of negative adjustments to rebates.

In addition to testing for the assertions provided by CVS Caremark, we tested all claims to ensure they were not ineligible for rebates for general reasons such as aberrant quantities (when the days' supply of a claim exceeds allowed thresholds), ineligible pharmacies (such as government-run pharmacies or pharmacies that participate in the 340B Drug Pricing Program), or duplicated claims.

We relied on data from CVS Caremark and, based on work performed by OSC, we determined that the data is sufficiently reliable for the purposes of this audit.

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 professional judgment, these duties do not affect our ability to conduct this independent performance audit of prescription drug rebate revenues remitted by CVS Caremark to Civil Service.

Reporting Requirements

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

Within 180 days after the final release of this report, we request that CVS Caremark 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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