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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

December 3, 2015

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

Re: United Healthcare Insurance Company
of New York: Empire Plan Drug Rebate
Revenue
Report 2015-F-23

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 Rebate Revenue* (Report 2013-S-41).

Background, Scope, and Objective

The New York State Health Insurance Program (NYSHIP) provides health insurance coverage to 1.2 million active and retired State, participating local government, and school district employees and their dependents. The Empire Plan (Plan) is the primary health benefits plan for NYSHIP, serving about 1.1 million of these members. The Plan covers inpatient and outpatient hospital coverage, medical/surgical coverage, Centers of Excellence (for transplants, infertility, and cancer treatments), home care services, 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 to administer the Plan's prescription drug program between January 1, 2008 and December 31, 2013. In accordance with the contract, United is required to utilize the Plan's significant enrollment to maximize savings to the prescription drug program by negotiating agreements with drug manufacturers for rebates, discounts, and other considerations and passing 100 percent of the value of the agreements on to the program. During our audit period (January 1, 2010 through December 31, 2012), the Department was credited with \$635.8 million in revenue derived from agreements with about 67

drug manufacturers.

The Department's contract with United contains specific provisions to ensure the program is properly credited with all revenue from drug rebates and discounts to which it is entitled. A key provision of this contract specified that manufacturer agreements were required to meet or exceed United's best existing agreements for individual drugs, ensuring that the Department would not receive lower drug manufacturer rebates than United's other clients.

The contract also 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 were required 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 September 26, 2014. Our objective was to determine if United credited the Department for all rebate revenue due under its contract with the Department. The audit covered the period January 1, 2010 through December 31, 2012 and included a review of revenue from six drug manufacturers. Our initial audit identified \$694,227 in revenue that was not credited to the Department. Further, throughout the course of our initial audit, United and Express Scripts delayed access to information we requested and refused to provide certain amendments to manufacturer agreements. This limited our ability to ensure the Department was credited with all drug rebate and discount revenue due the State. We recommended that United remit to the Department the \$694,227 in rebate and discount revenue identified by our audit, and fully comply with contract provisions that require timely audit access to all documents and information deemed necessary.

The objective of this follow-up was to determine the implementation status, as of September 1, 2015, of the three recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

United officials have made progress in addressing the problems we identified in the initial audit. This included the remittance of \$670,470 in additional drug rebate and discount revenue to the Department. However, additional actions are still needed. Of the initial report's three audit recommendations, one was partially implemented, one was not implemented, and one was no longer applicable.

Follow-Up Observations

Recommendation 1

Remit to the Department \$694,227 in additional rebate and discount revenue as identified by our audit.

Status - Partially Implemented

Agency Action - United credited the Department for \$670,470 of the \$694,227 in additional rebate and discount revenues identified in our initial audit. United officials indicated that no additional credits will be made, as follows.

The outstanding amount of \$23,757 (\$694,227 - \$670,470) was attributable to rebates for a drug for which the Department received a lower rebate than the rebate that another United client received for the same drug. Yet, according to the contract between the Department and United, drug rebates were required to meet or exceed United's best existing agreements for individual drugs. In response to our follow-up, United officials stated their other client's rebate agreement was negotiated by that client prior to its affiliation with United, and further, the drug manufacturer no longer offered those types of rebates.

However, that does not void or otherwise contravene the applicable provisions of the Department's contract with United, which specifically states: "in no instance, will the Program [the Plan] receive less Pharma Revenue [manufacturer rebates] in any therapeutic class than other clients of the Insurer [United] with a comparable benefit design and consistent preferred drug designations in the class provided the Program's utilization of the drugs generating Pharma Revenue in the class is equal to or greater than those of other clients." Therefore, United should have calculated the comparable rebate amount based on its best existing agreement for that drug and credited such amount to the Department. Thus, we maintain that the \$23,757 in question should be credited to the Department.

Recommendation 2

Establish and implement oversight procedures to ensure drug rebate and discount revenues from manufacturers are correct and properly credited to the Department, consistent with the provisions of the contract.

Status - No Longer Applicable

Agency Action - United's contract to administer the Plan's prescription drug program expired on December 31, 2013. At the time of our follow-up, the contract had been expired for nearly two years. Thus, we concluded that the recommendation was no longer applicable.

Recommendation 3

Fully comply with all provisions pertaining to audits as prescribed by contracts with the Department. This includes (but is not limited to) providing timely access to all documents and other information, in unredacted form, deemed necessary by the State.

Status - Not Implemented

Agency Action - Although United's contract as administrator of the prescription drug program expired, the State retained rights to audit United's performance beyond the contract's expiration. The contract also required United to respond to all audit requests within 15 business days. Subsequent to the initial audit, we engaged a second audit of United to examine drug rebate revenues from other manufacturers (not examined during the initial audit) that United should have credited to the Department as well. During our second audit, which was ongoing at the time of this follow-up, we encountered the same types of restrictions and delays in access to information that we did during our initial audit.

For example, in March 2015, we requested information pertaining to a discrepancy between the rebates United received for a particular drug and the drug's corresponding utilization. However, United did not provide the requested information for the drug in question until June 2015 (three months after it was requested), far exceeding the 15 business day limit. Further, the information United provided was speculative in nature and did not specifically address or explain the discrepancy related to the drug. Rather, United listed several possible circumstances that could prohibit rebates for drugs dispensed to Plan members. Moreover, United's unwillingness and/or inability to provide timely access to pertinent information continued to impede our audit efforts.

The major contributor to this report was Ed Durocher.

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 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