



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

Division of State Government Accountability

United HealthCare: Empire Plan Drug Rebate Revenue

New York State Health Insurance Program



Report 2016-S-7

November 2016

Executive Summary

Purpose

To determine if United HealthCare (United) remitted all drug rebate revenue to the Department of Civil Service (Department) as required by the contract between United and the Department. The audit covered the period January 1, 2010 through December 31, 2013.

Background

The New York State Health Insurance Program (NYSHIP) 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, serving about 1.1 million members. The Department contracted with United to administer the Empire Plan's prescription drug program from January 1, 2008 through 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. For the audit period, January 1, 2010 through December 31, 2013, United remitted approximately \$863 million in revenue that was derived from agreements with drug manufacturers to the Department.

The Department's contract with United allows United to subcontract portions of its responsibilities. Accordingly, United subcontracted key functions of the administration 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. The subcontract required Express Scripts to remit 100 percent of all rebates collected from the manufacturer agreements to United. United, in turn, was required to remit those rebates to the Department.

Key Finding

- Express Scripts improperly retained \$1,498,719 in NYSHIP rebates despite its contractual obligation to remit 100 percent of all revenue derived from drug manufacturer agreements to United. Consequently, United did not remit the \$1,498,719 in rebate revenues to the Department.

Key Recommendation

- Remit the \$1,498,719 in rebates identified by the audit to the Department.

Other Related Audits/Reports of Interest

[United HealthCare Insurance Company of New York: Empire Plan Drug Rebates \(2014-S-62\)](#)

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

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

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

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

Division of State Government Accountability

November 1, 2016

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 Rebate Revenue*. 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.

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

Background

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, hospital services, outpatient surgery, office visits, home care services, infertility services, medical equipment and supplies, mental health and substance abuse services, and prescription drugs.

The State Department of Civil Service (Department) administers NYSHIP. In carrying out its responsibilities, the Department contracted with United HealthCare (United) to administer the Empire Plan's prescription drug program from January 1, 2008 through December 31, 2013. In accordance with the contract, United is required to use 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 considerations. United is required to pass 100 percent of the value of the agreements back to the prescription drug program. For the audit period January 1, 2010 through December 31, 2013, United remitted \$862.9 million in revenue that was derived from agreements with drug manufacturers to the Department.

The Department's contract (or primary contract) with United allows United to subcontract portions of its responsibility to a qualified organization. United, however, retains the ultimate responsibility for all services performed under the primary contract. No subcontract will relieve United in any way of any responsibility, duty, and/or obligation prescribed by the primary contract. Further, all subcontracts must contain provisions that are functionally identical to, and consistent with, the provisions of the primary contract.

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. Express Scripts Holding Company (Express Scripts) acquired Medco in 2012. Express Scripts negotiated rebate agreements with drug manufacturers on behalf of United, and thereby the Department. The subcontract required Express Scripts to remit 100 percent of all rebates collected from the manufacturer agreements to United. United, in turn, was required to remit those rebates to the Department.

Audit Findings and Recommendations

On a quarterly basis, Express Scripts invoiced drug manufacturers for rebates and, in accordance with its subcontract with United, made quarterly payments to United based on the rebates Express Scripts estimated it would receive from the manufacturers. Express Scripts then performed reconciliations 450 days after the end of each quarter to compare the actual rebates received from drug manufacturers to the estimated payments made to United. The 450-day reconciliation allowed for additional rebates received (those over the estimated amounts) to be paid to United. Express Scripts officials told us that they retained all rebates collected from drug manufacturers after the 450-day reconciliation. Express Scripts' practice, however, is contrary to both the Department's contract with United and the subcontract between United and Express Scripts, which require 100 percent of the revenue derived from rebate agreements with drug manufacturers to be passed through to the prescription drug program.

Express Scripts maintains a database, called the Client Audit Rebate Database (CARD), which contains details about the rebates received from drug manufacturers and the corresponding rebate amounts allocated to its various clients. We analyzed CARD data provided by Express Scripts for the period January 1, 2010 through December 31, 2013 and identified \$1,498,719 in NYSHIP rebates that Express Scripts did not remit to United. Therefore, the \$1,498,719 was not remitted to the Department, as otherwise required. The rebates in question were collected after the 450-day reconciliations and were retained by Express Scripts improperly. As previously noted, the primary contract and the subcontract between United and Express Scripts required 100 percent of rebate revenue to be passed through to the Department. Therefore, for our audit period, \$1,498,719 in additional rebates should be remitted to the Department, consistent with the provisions of the primary contract and related subcontract.

Officials from United agreed with our findings and stated they will remit the rebates identified by our audit to the Department.

Recommendation

1. Remit the \$1,498,719 in rebates identified by the audit to the Department.

Audit Scope and Methodology

The objective of our audit was to determine if United remitted all drug rebate revenue to the Department as required by the contract between United and the Department. The audit covered the period January 1, 2010 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 analyzed CARD data and quarterly rebate and reconciliation reports. We also interviewed officials at the Department, United, and Express Scripts.

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 to certain boards, commissions, and public authorities, some of whom have minority voting rights. 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

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

We provided preliminary copies of the matters contained in this report to United officials for their review and comment. Their comments were considered 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 recommendation included in this 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.