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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

February 18, 2016

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

Re: United HealthCare: Payments for
Fraudulent and Improper Claims
Submitted by Davis Ethical Pharmacy
Report 2015-F-26

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 to implement the recommendations contained in our audit report, *United HealthCare: Payments for Fraudulent and Improper Claims Submitted by Davis Ethical Pharmacy* (Report 2012-S-10).

Background, Scope, and Objective

The Department of Civil Service (Department) administers the New York State Health Insurance Program (NYSHIP), which provides health insurance coverage to 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. The Department contracted with United HealthCare (United) to administer the prescription drug benefit portion of the Plan from January 1, 2008 through December 31, 2013. United subcontracted its claims processing and payment functions for drug coverage to Express Scripts. Based on the primary contract, the Department reimbursed United for all properly adjudicated claims paid by Express Scripts.

In October 2011, the Office of the State Comptroller received allegations of improper billing practices by Davis Ethical Pharmacy (Davis Ethical), an independently owned pharmacy located in Rockville Centre, New York. In particular, it was alleged that Davis Ethical had submitted claims for medications that were neither prescribed nor dispensed. At that time, we learned that the Nassau County District Attorney (NCDA) and the New York State Department of Financial Services (DFS) had received similar allegations and had initiated an investigation of Davis Ethical. We coordinated our audit and investigative work with the NCDA and DFS.

For the period from January 1, 2008 through December 13, 2011, the Department paid United more than \$6.2 million for 52,485 claims submitted by Davis Ethical. During this period, Davis Ethical was owned and operated by William Davis, a licensed pharmacist. In December 2011, Davis Ethical was sold. We limited our audit to claim payments made to Davis Ethical during the time it was owned by William Davis.

We issued our initial report on August 13, 2013. The objective of the audit was to determine if Davis Ethical inappropriately billed NYSHIP for prescription medications. The audit covered the period from January 1, 2008 through December 13, 2011. Our initial audit found that NYSHIP made improper payments totaling \$137,459 for 147 (26 percent) of the 572 prescriptions we selected for testing. Based on information obtained from the prescribers (the physicians indicated on the claims), auditors determined that Davis Ethical likely fabricated nearly all of the improper claims. Auditors found that Davis Ethical processed many of the improper claims well outside of normal business hours; some NYSHIP members were not patients of the purported prescribing physicians at the time the medications were prescribed; and the pharmacy often lacked records verifying that patients actually picked up the drugs billed to United.

Moreover, as a result of our audit, we concluded that Davis Ethical routinely submitted fraudulent claims to NYSHIP and received payments for those claims. We recommended that United: coordinate with the NCDA, DFS, and other authorities as requested in any further investigation and recover the \$137,459 in improper payments; formally assess the \$5.8 million in prescription payments we did not test; and formally assess the conduct of William Davis to determine whether he should be allowed to continue to participate in NYSHIP.

The objective of our follow-up was to assess the extent of implementation, as of February 9, 2016, of the three recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

United officials made progress implementing the recommendations we made in the initial audit report. At the time of our follow-up review, William Davis pleaded guilty to Grand Larceny in the Second Degree and made full restitution of the \$137,459 identified in our initial audit report. Of the initial report's three audit recommendations, two were implemented and one was no longer applicable.

Follow-Up Observations

Recommendation 1

Coordinate with the NCDA, DFS and other authorities as requested in any further investigation and recover the \$137,459 in improper payments, as identified by this audit. Credit the recoveries to the State.

Status - Implemented

Agency Action - On December 10, 2015, William Davis pleaded guilty to Grand Larceny in the Second Degree in Nassau County District Court. William Davis was sentenced on February 9, 2016, and made restitution of \$231,919 to the State, of which \$137,459 was paid to the Plan for the improper payments identified in the initial audit report.

In addition to our audit of claims submitted by Davis Ethical under the NYSHIP program, the State Comptroller concurrently audited claims submitted by Davis Ethical under the New York State Medicaid program. A separate report (2012-S-11), addressed to the New York State Department of Health, includes details of improper claims submitted by Davis Ethical under Medicaid. Accordingly, the remaining restitution of \$94,460 (\$231,919 - \$137,459) will be paid to the New York State Medicaid program in satisfaction of OSC audit report 2012-S-11.

Recommendation 2

Formally assess the \$5.8 million in prescription payments we did not test and determine the extent to which Davis Ethical submitted other fraudulent or improper claims. Recover improper payments, as warranted, and credit the recoveries to the State.

Status - Implemented

Agency Action - Express Scripts assessed the payments and performed an on-site review of Davis Ethical's claims during our initial audit. Express Scripts found discrepancies on 751 claims that William Davis submitted to the Plan. As a result of the review, William Davis paid \$85,502 back to Express Scripts for the discrepancies. Subsequently, Express Scripts properly adjusted the 751 claims to credit \$85,502 back to United, which in turn credited the Plan.

Recommendation 3

Formally assess the conduct of William Davis and determine if he should be allowed to continue to participate in NYSHIP or face other sanctions. Consider referring William Davis to the State Education Department for assessment of his professional conduct.

Status - No Longer Applicable

Agency Action - The Department's contract with United to administer the prescription drug benefit portion of the Plan ended on December 31, 2013. Consequently, United and its subcontractor, Express Scripts, are no longer responsible for adjudicating the Plan's prescription drug claims. Moreover, United is not responsible for maintaining the Plan's network of participating pharmacies. Therefore, United is no longer responsible for determining if William Davis should be allowed to continue to participate in the NYSHIP program. Regarding William Davis' status with the State Education Department, we determined that William Davis no longer has an active license to practice in New York State.

Major contributors to this report were Daniel Towle, Emily Proulx, and Innocentia Freeman.

We thank the management and staff of United for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Warren Fitzgerald
Audit Manager

cc: Mr. David Boland, Department of Civil Service
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