



United HealthCare

New York State Health Insurance Program Payments for Prescription Drugs Dispensed by Kings Pharmacy Under the Empire Plan

Report 2010-S-43



Thomas P. DiNapoli

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Table of Contents

	Page
Authority Letter	5
Executive Summary	7
Introduction	9
Background	9
Audit Scope and Methodology	9
Authority	11
Reporting Requirements	11
Contributors to the Report	11
Audit Findings and Recommendations	13
Control Weaknesses and Excessive Payments	13
Recommendations	16

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State of New York Office of the State Comptroller

Division of State Government Accountability

January 27, 2011

Ms. Paula A. Gazeley-Daily, R.Ph.
Strategic Client Executive, Empire Plan Rx Program
United HealthCare
900 Watervliet Shaker Road - Suite 105
Albany, New York 12205

Dear Ms. Gazeley-Daily:

The Office of the State Comptroller is committed to providing accountability for tax dollars spent to support government operations. This fiscal oversight is accomplished, in part, through our audits, which determine whether entities contracting with the State are fulfilling contract responsibilities. Audits can also identify strategies for reducing costs, improving operations and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the New York State Health Insurance Program entitled United HealthCare, Payments for Prescription Drugs Dispensed by Kings Pharmacy Under the Empire Plan. This audit was done according to the provisions of the contract between the Department of Civil Service and United HealthCare and the State Comptroller's authority under 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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State of New York Office of the State Comptroller

EXECUTIVE SUMMARY

Audit Objective

The objective of our audit was to determine the extent to which the State overpaid United HealthCare (United) because of improper claim payments to Kings Pharmacy. We also sought to determine the reasons for the overpayments.

Audit Results - Summary

The New York State Health Insurance Program (NYSHIP) 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 and includes prescription drug coverage. The Department of Civil Service (Department) contracts with United to provide prescription drug coverage under the Plan. United subcontracted its claims processing and payment functions for drug coverage to Medco Health Solutions, Incorporated (Medco). For the period from January 1, 2008 through July 9, 2010, the State paid United almost \$5.9 million for 30,066 prescriptions (47,780 claims) that were reported by Kings Pharmacy.

Using data analysis, Medco determined that the billing patterns of Kings Pharmacy were highly irregular. As a result, Medco conducted an on-site audit of Kings Pharmacy in April 2009. From its review of 232 judgmentally selected claim payments, Medco identified overpayments totaling \$124,280 from 59 (24 percent) of the claims tested.

Given the amounts of overpayments identified and the potential for fraud, United and Medco should have expanded the audit work to more fully determine the extent of the overpayments made to Kings Pharmacy. Instead, Medco sent letters to prescribers and patients to confirm the authenticity of certain prescriptions and claim payments. However, the low response rate (17 percent) to the confirmation letters, along with the lack of other additional meaningful audit steps, limited Medco's ability to accurately determine the full extent of the overpayments. We examined the population of prescriptions and corresponding claim payments that were outside the scope of Medco's work. From a random sample of 250 prescriptions, we identified a net overpayment of \$48,078. An extrapolation of this overpayment to the broader population of prescriptions, using statistically valid methods and a 95 percent single-sided confidence level, resulted in a projected overpayment of at least \$451,817.

We also identified a net overpayment of \$139,382 from 19 judgmentally selected high risk prescriptions for treating cancer. Thus, through our random and judgmentally selected samples, we concluded that the State overpaid Kings Pharmacy by at least \$591,199 (\$451,817 + \$139,382) more than Medco had identified.

Most of the overpayments we identified pertained to prescriptions that physicians denied preparing. We contacted the physicians noted on the claims, and they advised us that they had no records in patients' medical files for 21 of the prescriptions we tested. In one instance, for example, we contacted a doctor to verify a prescription that was "phoned-in." The doctor, however, had no recollection of the patient in question. We also concluded that there was considerable risk that the signatures on certain prescriptions were likely forgeries.

Our report contains three recommendations to recover the \$591,199 in overpayments we identified, to investigate and assess the factors which led to the submission of the improper claims, and to develop and implement policies and practices to efficiently and comprehensively review high risk claim payments.

However, United officials have indicated they no longer consider statistical sampling to be an appropriate method to use in recovering overpayments from pharmacies, even though it is a proven audit technique recognized by professional standards and upheld in court cases. Instead, they assert that all claims must be examined individually. Given United's contractual responsibility to pursue recoveries where significant errors or potential fraud exists, United must re-evaluate all claims it has paid to Kings Pharmacy for Empire Plan members if its management continues to refuse to recover overpayments based on the more efficient sampling approach that we recommend.

This report, dated January 27, 2011, is available on our website at: <http://www.osc.state.ny.us>. Add or update your mailing list address by contacting us at: (518) 474-3271 or
Office of the State Comptroller
Division of State Government Accountability
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Introduction

Background

The New York State Health Insurance Program (NYSHIP or Program) 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 of Civil Service (Department) contracts with United HealthCare (United) to administer the prescription drug benefit portion of the Plan. United subcontracted its claims processing and payment functions for drug coverage to Medco Health Solutions, Incorporated (Medco). Based on the primary contract, the Department reimburses United for all properly adjudicated claims paid by Medco.

Kings Pharmacy is an independently owned pharmacy located in Long Beach, New York. Medco performed an on-site audit of Kings Pharmacy in April 2009 and identified material problems with many of the claims examined. At that time, Medco officials also learned that the Federal Bureau of Investigation (FBI) and Drug Enforcement Agency (DEA) were investigating fraudulent and other potentially illegal activities at Kings Pharmacy.

For the period from January 1, 2008 through July 9, 2010, United charged the State almost \$5.9 million for 30,066 prescriptions (corresponding to 47,780 claims) that were reported by Kings Pharmacy. (Note: Due to refills, multiple claims often result from a single prescription.) Further, in July 2010 (subsequent to our audit period), Kings Pharmacy came under new ownership.

Audit Scope and Methodology

The objective of our audit was to determine the extent to which the State overpaid United because United/Medco made improper claim payments to Kings Pharmacy. We also sought to determine the reasons for the overpayments. Our audit covered the period from January 1, 2008 through July 9, 2010.

To accomplish our objective, we obtained a list of the 135 prescriptions (corresponding to 232 claim payments) Medco reviewed during its audit. We excluded these prescriptions/claim payments from our audit population. From the remaining 29,931 prescriptions (47,548 claims) totaling about \$5.4 million, we identified 19 prescriptions (34 claims) totaling \$219,059 for five cancer drugs that were of particularly high risk of overpayment. We reviewed each of these 19 prescriptions, and from the remaining 29,912 prescriptions totaling about \$5.2 million,

we selected a random sample of 250 prescriptions (509 claims) totaling \$233,765. Thus, we reviewed a total of 269 prescriptions (543 claims) for which the State paid \$452,824.

We visited Kings Pharmacy and interviewed the pharmacists, the current owner, and the current store manager. We obtained copies for all prescriptions in our sample that were located on-site. We contacted the FBI and DEA in regard to their investigations of Kings Pharmacy. In addition, we interviewed an oncologist who purportedly prescribed many of the cancer drugs pertaining to claim payments made to Kings Pharmacy. We also contacted all 166 prescribers of the 269 prescriptions in our sample to verify the dates the prescriptions were written, the patients' names, the drugs prescribed, the dosages, strengths, quantities, and numbers of refills, if authorized. In certain instances, we asked physicians to verify the signatures on the prescriptions.

In preparing this report, we excluded certain details relating to the claims we reviewed due to the proprietary nature of United's and Medco's policies and procedures. However, we provided specific details of all the transactions in question to United officials for their review and resolution, as appropriate.

We conducted our performance audit according to 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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 systems; 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 management functions do not affect our ability to conduct independent audits of program performance.

Authority The audit was done according 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. The audit was also done pursuant to provisions in the contract between the State and United.

Reporting Requirements We provided preliminary copies of the matters contained in this report to United officials for their review and comments. Their comments have been taken into consideration in preparing this report.

Within 90 days of the final release of this report, we request United officials to report to the State Comptroller advising what steps were taken to implement the recommendations included in this report.

Contributors to the Report Major contributors to this report were David Fleming, Wendy Matson, Andrea Dagastine, Sally Perry, Steven Sossei and Brian Mason.

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Audit Findings and Recommendations

Control Weaknesses and Excessive Payments

United should only charge the State for prescriptions filled in compliance with the contract between the Department and United as well as Medco's agreements with its network of pharmacies. New York State laws require pharmacies to maintain prescriptions for at least six years. All prescriptions must contain the name of the drug, the date prescribed, the drug's strength and quantity, and the name of the physician. In addition, physicians must prescribe medications within their scope of practice.

The Department's contract with United requires United to have a comprehensive pharmacy audit program. United is required to identify pharmacies that deviate significantly from normal dispensing patterns and target these pharmacies for audit. United subcontracted the audit function to Medco. United is also required to reimburse the State for overpayments identified during audits. In cases involving fraud, United is required to pursue recovery of overpayments and remit any recoveries to the State.

Using data analysis, Medco determined that the billing patterns of Kings Pharmacy were highly irregular. As a result, Medco conducted an on-site audit of Kings Pharmacy in April 2009. From its review of 232 judgmentally selected claims (derived from 135 prescriptions), Medco identified overpayments totaling \$124,280 from 59 (24 percent) of the claims tested. Some of the overpayments might have resulted from prescriptions with forged signatures. Further, during the course of the audit, Medco officials learned that the FBI and DEA were conducting independent investigations of Kings Pharmacy for fraudulent and other illegal activities.

Given the amounts of overpayments identified and the potential for fraud, United and Medco should have expanded the audit work to more fully determine the extent of the overpayments made to Kings Pharmacy. Medco sent letters to prescribers and patients to confirm the authenticity of certain prescriptions and claim payments. However, the low response rate (17 percent) to the confirmation letters, along with the lack of other additional meaningful audit steps, limited Medco's ability to accurately determine the full extent of the overpayments.

We examined the population of prescriptions and corresponding claim payments that were outside the scope of Medco's work. As noted previously, we selected a random sample of 250 prescriptions and a judgmental sample of 19 prescriptions for high cost cancer drugs. From

our random sample of 250 prescriptions, we identified a net overpayment of \$48,078. We also identified a net overpayment of \$139,382 from the 19 cancer-related prescriptions we examined. Thus, we identified a total of \$187,459 (\$48,077 + \$139,382) in overpayments from the samples reviewed, as summarized in the following table.

Reason Prescription Was Improper	Random Sample of 250 Prescriptions		Judgmental Sample of 19 Prescriptions		Totals	
	No. That Were Improper	Amount Overpaid	No. That Were Improper	Amount Overpaid	No. That Were Improper	Amount Overpaid
Prescriber Denied Authorizing Prescription	14	\$25,683	7	\$78,022	21	\$103,705
Prescription Was Not Billed As Prescribed	10	\$20,475	4	\$61,360	14	\$81,835
Prescription Was Not For Plan Member	3	\$ 1,793	-	-	3	\$1,793
Pharmacy Could Not Locate Prescription	1	\$82	-	-	1	\$82
Prescription Was Outside The Prescriber's Scope of Practice	1	\$45	-	-	1	\$45
Totals	29	\$48,078	11	\$139,382	40	\$187,460

As the table indicates, a majority (\$103,705) of the overpayments we identified pertained to prescriptions that physicians denied preparing. We contacted the physicians in question, and they advised us that they had no records of the prescriptions in the patients' medical files. In one instance, for example, we contacted a doctor to verify a prescription that was purportedly "phoned-in." The doctor, however, had no recollection of the patient in question. Further, the doctor stated that he does not phone-in prescriptions for the particular drug indicated on the claim. We also asked the physicians to review the signatures on certain prescriptions, and they advised us that they had not signed many of them. Consequently, we concluded that there was considerable risk that the signatures on certain prescriptions were likely forgeries.

Most of the remaining overpayments were attributable to claims that were inconsistent with their corresponding prescriptions. For example, on one claim, the prescription indicated that 90 units of a particular drug were to be dispensed to the patient. However, Kings billed for 360 units (four times the amount actually authorized by the physician).

Moreover, an extrapolation of the overpayments from the random sample of 250 prescriptions to the broader population of paid claims, using statistically valid methods and a 95 percent single-sided confidence level,

resulted in a projected overpayment of at least \$451,817. Therefore, when combined with the overpayments for the 19 cancer-related prescriptions, we conclude that the State overpaid Kings Pharmacy by at least \$591,199 (\$451,817 + \$139,382) more than Medco previously identified.

At the time of Medco's on-site audit, Medco's pharmacy manual provided for the use of statistical sampling and extrapolation (projection) methods to calculate overpayments on audits with discrepancies exceeding \$500. Although Medco's findings were well in excess of \$500, Medco chose not to use statistical sampling and projections. Consequently, Medco was unable to determine the full extent of the overpayments made to Kings Pharmacy. Medco has subsequently deleted the provision for audit disallowances based on statistical projections from its pharmacy manual and United officials have stated they will not recognize extrapolation as a method for pharmacy claims recovery. Instead, they assert that all claims must be examined individually.

We note that the use of statistical sampling is appropriate and acceptable for the conduct of audits. We conduct our audits in accordance with Generally Accepted Government Auditing Standards. These standards are issued by the U.S. Government Accountability Office under the direction of the Comptroller General of the United States. Moreover, these standards formally authorize the use of statistical sampling and projections. This enables audit work to be completed efficiently and reliably by drawing conclusions for a defined population based on a review of a random sample of units from that population.

The Office of the State Comptroller has successfully applied statistical sampling techniques on various types of audits over the years to identify and recover material amounts of improper payments of State funds. Moreover, the statistical sampling projections resulting from such audits, when challenged, have routinely been affirmed through judicial proceedings. Thus, we maintain that statistical sampling methodologies are appropriate for contemporary professional audit practice and should be applied when circumstances warrant.

In this case, should United's management choose not to comply our recommendation to recover and remit the additional \$591,199 in overpayments to New York State, United should re-examine each claim paid to Kings Pharmacy for Empire Plan members for the period of this audit and recover all overpayments.

- Recommendations**
1. Recover the \$591,199 in overpayments made to Kings Pharmacy, as identified by the audit. Remit the recoveries to the State.
 2. Formally investigate and assess the factors which led to the submission of improper claims by Kings Pharmacy. Take actions, as warranted, to remediate any improper policies and practices that are identified. Such actions should include referrals to law enforcement officials, as appropriate.
 3. Develop and implement policies and practices to efficiently and comprehensively review high risk claim payments, such as those made to Kings Pharmacy. As appropriate, use progressive audit techniques, such as statistical sampling and projections, to accurately determine the full extent of improper claims and payments.