DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF BENEFITS ADMINISTRATION

# AUDIT AND MONITORING REPORT

## CONTRACT COMPLIANCE FOR CVS/CAREMARK PURSUANT TO PUBLIC ACT 408 OF THE 108TH GENERAL ASSEMBLY

1900 WRS TENNESSEE TOWER
312 ROSA L. PARKS AVE
NASHVILLE, TENNESSEE
37243

# AUDIT AND MONITORING REPORT

## TCA §4-3-1021(a) STATUTORY REQUIREMENT

The Department of Finance and Administration, Division of Benefits Administration, has generated this report pursuant to Public Act 408 of the 108th General Assembly. Public Act 408 of the 108th General Assembly requires the Department of Finance and Administration to monitor, and cause to be audited, the state-sponsored public sector health plans' Pharmacy Benefit Manager's compliance with the Pharmacy Benefits Manager contract. This report represents the results of the state's audit and monitoring plan. For this reporting period, the state's qualified independent auditor is Aon Hewitt and the state's contracted Pharmacy Benefits Manager is CVS/caremark. Public Act 408 of the 108th General Assembly requires this report be delivered annually on or before July 1st to the Lieutenant Governor, the Speaker of the House of Representatives and the Fiscal Review Committee.

## TCA §4-3-1021(b) FIRST YEAR RISK ASSESSMENT

Public Act 408 of the 108th General Assembly subsection 1(b) requires the Department of Finance and Administration to conduct a risk assessment within one year of entering into a Pharmacy Benefits Management contract. The current Pharmacy Benefits Management contract was entered into on January 1, 2015 (benefits go-live date). Therefore, the requirement of Public Act 408 subsection 1(b) will be reviewed during calendar year 2015 and will be addressed in this deliverable during spring/early summer, 2016.

## TCA §4-3-1021(c)(1) REPRICING OF PHARMACY CLAIMS AT THE DRUG LEVEL

Aon Hewitt audited CVS/caremark's compliance with this requirement and presented their findings in a report entitled *Prescription Drug Audit Findings Financial Evaluation January 1, 2013 through December 31, 2013*. Aon Hewitt presented this audit's results to the state on April 2, 2015. The purpose of this audit was to perform a review of CVS/caremark's administration of the state's Pharmacy Benefits Management program and to validate CVS/caremark's performance of financial guarantees for the period of January 1, 2013-December 31, 2013.

Aon Hewitt auditors re-adjudicated 100% of paid claims electronically (by complete file load and re-priced against an independent data source) to confirm accurate application of ingredient cost discounts and dispensing fees. Auditors re-adjudicated 100% of paid prescription drug claims (retail, mail order and specialty) processed during calendar year 2013 to:

- Electronically re-price all pharmacy claims against an independent data source in accordance with the contractual arrangements in effect from January 1 through December 31, 2013 to examine the accuracy of the claim payments.

- Compare actual discounts and dispensing fees achieved against contract guarantees and compare CVS/caremark's year-end reconciliation report for calendar 2013.

For the period of January 1, 2013-December 31, 2013, CVS/caremark reported to the state that it had failed to meet some of its discount and dispensing fee guarantees required in the contract. CVS/caremark reimbursed the state 100% of the shortfall, per the contract. Aon Hewitt auditors verified that CVS/caremark's reimbursement calculation was within acceptable variance from auditor's calculations, and no additional issues were noted.

## TCA §4-3-1021(c)(2) VALIDATION OF THE NATIONAL DRUG CODE (NDC) USAGE

Aon Hewitt monitored CVS/caremark's compliance with this requirement in an audit entitled *Prescription Drug Audit Findings Financial Evaluation January 1, 2013 through December 31, 2013*. Aon Hewitt presented this audit's results to the state on April 2, 2015. The pharmacy audit scope period was for pharmacy claims processed for the state account from January 1, 2013 through December 31, 2013.

Auditors reviewed the National Drug Codes (NDC) received and matched them with their internal data (purchased from Medispan) to ensure that CVS/caremark used valid NDCs for claims adjudication. Auditors then used the NDCs to verify that the Average Wholesale Prices (AWP) that CVS/caremark used were correct as a basis of the pricing for each claim (based on the date the claim was processed). The auditors did not find any issues related to the usage of the NDCs. Auditors compared independently purchased pricing from Medispan to the pricing used by the PBM for adjudication. Auditors confirmed that discounts achieved were achieved to the independent data source for AWP. The auditors' pricing database is a retrospective database, and the audit is retrospective, so all daily pricing updates are included in the audit.

## TCA §4-3-1021(c)(3) APPROPRIATENESS OF THE NATIONALLY RECOGNIZED REFERENCE PRICES, OR AVERAGE WHOLESALE PRICE (AWP) IN ACCORDANCE WITH TCA §56-7-3104

TCA §56-7-3104 reads as follows:

> ***56-7-3104. Calculation of reimbursement of pharmacy benefits manager.***
>
> ***(a)*** *Reimbursement by a pharmacy benefits manager under a contract to a pharmacist or pharmacy for prescription drugs and other products and supplies that is calculated according to a formula that uses a nationally recognized reference in the pricing calculation shall use the most current nationally recognized reference price or amount in the actual or constructive possession of the pharmacy benefits manager or its agent.*
>
> ***(b)*** *For purposes of compliance with this section, pharmacy benefits managers shall be required to update the nationally recognized reference prices or amounts used for calculation of reimbursement for prescription drugs and other products and supplies no less than every three (3) business days.*

Aon Hewitt audited CVS/caremark's compliance with this requirement in an audit entitled *Prescription Drug Audit Findings Financial Evaluation January 1, 2013 through December 31, 2013*. Aon Hewitt presented this audit's results to the state on April 2, 2015.

CVS/caremark has contractual guarantees with the state to achieve prescription discounts (compounds excluded) from the AWP. The amount of the discount is dependent upon whether the prescription is brand or generic and the distribution type (retail, retail 90, mail order or specialty). The discounts are also dependent upon the calendar year, per the contract between CVS/caremark and the Insurance Committees (State, Local Education and Local Government).

Auditors reviewed the National Drug Codes (NDC) received and matched them with their internal data (purchased from Medispan) to ensure that CVS/caremark used valid NDCs for claims adjudication. Auditors then used the NDCs to verify that the Average Wholesale Prices (AWP) that CVS/caremark used were correct as a basis of the pricing for each claim (based on the date the claim was processed). The auditors did not find any issues related to the usage of the NDCs. Auditors compared independently purchased pricing from Medispan to the pricing used by the PBM for adjudication. Auditors confirmed that discounts achieved were achieved to the independent data source for AWP. The auditors' pricing database is a retrospective database, and the audit is retrospective, so all daily pricing updates are included in the audit.

Therefore, the Department of Finance and Administration agrees that the AWP is appropriate in accordance with TCA §56-7-3104.

## TCA §4-3-1021(c)(4) ELIGIBILITY OF BENEFICIARIES FOR PHARMACY CLAIMS PAID

The state monitored CVS/caremark's compliance with this requirement in-house in May 2014-April 2015.

The Department of Finance and Administration, Division of Benefits Administration's Program Integrity Group performed a review to determine whether the members for whom claims were paid each month from May 2014-April 2015 were in fact eligible for the benefit. The Program Integrity Group obtained an extract from CVS/caremark's data warehouse of all pharmacy claims paid during this time period. There were 4,368,338 pharmacy claims paid during May 2014-April 2015. The Program Integrity Group obtained an eligibility extract from Edison for the beginning of each month reviewed. The Program Integrity Group performed a data match against the pharmacy claims file and the state's own eligibility file. From the data match and subsequent research, the Program Integrity Group did not note any material findings. The Program Integrity Group continues to monitor pharmacy claims monthly for member eligibility.

## TCA §4-3-1021(c)(5) FOR PHARMACY BENEFITS CONTRACTS ENTERED INTO OR RENEWED ON OR AFTER JULY 1, 2013, RECONCILIATION OF THE PHARMACY BENEFITS MANAGER'S PAYMENTS TO PHARMACIES WITH THE STATE'S REIMBURSEMENT TO THE PHARMACY BENEFIT MANAGER

The state's current PBM contract with CVS/caremark began January 1, 2015 and runs through December 31, 2019. Aon Hewitt audited CVS/caremark's compliance with this requirement and presented findings in a report entitled *Prescription Drug (Rx) Audit Findings*. Aon Hewitt

presented this audit's results to the state on May 28, 2015. Aon Hewitt conducted a retail transparency review, a Maximum Allowable Cost price review and an invoice reconciliation review as part of this audit.

Aon Hewitt examined a sample of claims from twenty-five (25) pharmacies paid during January 2015. Included in this sample were mixtures of pharmacies: chain, independent, rural, hospital, and specialty. Auditors further sampled a mixture of claims from each of these pharmacies: brand and generic, as well as those where days' supply was under 31 days and others where days' supply was over 31 days (where applicable). Auditors went onsite at CVS/caremark headquarters in Northbrook, Illinois to review the contracts and compare pricing observed in the claim sample to rates specified in the retail contracts. Aon Hewitt's comparison of the Client Amount Due on the paid claims data to invoiced amounts billed to the State confirms that CVS/caremark invoicing accurately reflects actual the State's utilization for the audit study period to within $0.00 (i.e. no variance was noted).

## TCA §4-3-1021(c)(6) CONFIRMATION THAT THE PHARMACY BENEFITS MANAGER'S PAYMENTS TO PHARMACIES DO NOT REFLECT DISPARITY AMONG NETWORK PHARMACIES ATTRIBUTABLE TO PREFERENTIAL TREATMENT OF ONE (1) OR MORE PHARMACIES

Aon Hewitt audited CVS/caremark's compliance with this requirement for calendar year 2013 and presented findings in a report entitled *Prescription Drug Audit Findings Retail Pharmacy Pricing Comparison*. Aon Hewitt presented this audit's results to the state in April 2015.

Aon Hewitt calculated the price (discounted ingredient cost) per unit for the top 25 drugs for each of four different groups of drugs: Retail Brand Claims (claims for brand drugs with days' supply < = 83), Retail Generic claims (generics for < = 83 days' supply), Retail 90 Brand claims (claims for brand drugs with > 83 days' supply), and Retail 90 Generic claims (claims for generics with > 83 days' supply). These four drug types were separated by year, and further separated into six month reconciliation periods for a more granular view of the data. The data evaluated were incurred and paid claims in 2013. All brand claims were compared where the brand pricing was based on an AWP discount type (i.e. Usual and Customary [U&C] claims were excluded from the analysis). All generic claims were compared where the pricing type was MAC pricing only, and U&C claims were similarly excluded. Comparison for all generic claims was reported by month to more accurately portray pricing. Each drug has a unique identifier called NDC that is provided by the manufacturer. The 11-digit NDC is specific for that drug, strength, dosage form, package size, and manufacturer. Brands were compared at the 9-digit NDC level which is unique for drug, strength, dosage form and manufacturer, but not package size. This was to prevent any issues with package size becoming a factor in the comparison.

Aon concluded: "…the analysis indicates that almost all of the Top 25 drugs in each category were priced fairly and within reasonable variation [Delta <.05] from CVS/caremark pricing…Based on high relativity in price at the various retail pharmacy groups accessed, there does not appear to be a favorable pricing arrangement where CVS/caremark pays their own CVS pharmacies a different amount than they are paying their other big chains or independent pharmacies….With the knowledge obtained during this pricing review, Caremark, the PBM for the State of Tennessee, is fairly paying all their retail network pharmacies at relatively the same reimbursement rate."

## TCA §4-3-1021(c)(7) RECALCULATION OF DISCOUNT AND DISPENSING FEE GUARANTEES

Aon Hewitt audited CVS/caremark's compliance with this requirement for calendar year 2013 and presented findings in a report entitled *Prescription Drug Audit Findings Financial Evaluation January 1, 2013 through December 31, 2013*. Aon Hewitt presented this audit's results to the state on April 2, 2015. The pharmacy audit scope period was for pharmacy claims processed for the state account from January 1, 2013 through December 31, 2013.

For the period of January 1, 2013-December 31, 2013, CVS/caremark reported to the state that it had failed to meet some of its discount and dispensing fee guarantees required in the contract. CVS/caremark reimbursed the state 100% of the shortfall, per the contract. Aon Hewitt auditors verified that CVS/caremark's reimbursement calculation was within acceptable variance from auditor's calculations, and no additional issues were noted.

## TCA §4-3-1021(c)(8) REVIEW OF THE STATE'S CLAIM UTILIZATION TO ENSURE THAT PER CLAIM REBATE GUARANTEES WERE ACCURATELY CALCULATED BY THE PHARMACY BENEFIT MANAGER

Aon Hewitt audited CVS/caremark's compliance with this requirement in an audit entitled *Rebate Audit Findings.* Aon Hewitt presented this audit's results to the state in a report dated April 2015.

Aon Hewitt's sub-contractor (Caribou Systems, Inc.) auditors (approved in advance by Benefits Administration) traveled onsite to the CVS/caremark Northbrook, Illinois facility to review the rebate related provisions of the contracts between CVS/caremark and five drug manufacturers selected by the Department of Finance and Administration, Division of Benefits Administration. Benefits Administration and Aon Hewitt selected three top drug manufacturers by rebates invoiced as well as two other small drug manufacturers from a smaller class that is not typically selected for audits. Auditors noted that the contract between the Insurance Committees (State, Local Education and Local Government) and CVS/caremark stipulates that CVS/caremark pass-through 100% of rebate and administrative fee manufacturer dollars to the state. The Aon Hewitt auditors' aggregate rebate/administrative figures were within -0.14% of CVS/caremark's calculations for the in scope manufacturers and quarters. Rebate/administrative fees paid to the state were lower than the fees the auditors calculated, however auditors considered the -0.14% variance immaterial. In the auditors' opinion, these results confirm, within acceptable limits, that invoiced amounts credited to the state by CVS/caremark accurately reflected manufacturer contract terms and the state's utilization. The onsite review identified claims associated with a single drug from one manufacturer that were rebate eligible but did not receive a rebate as expected. Auditors estimated this resulted in a shortfall of $11,054.12. CVS/caremark was in agreement and issued a check to the Division of Benefits Administration for this amount on May 12, 2015.

## TCA §4-3-1021(c)(9) REVIEW OF REBATE CONTRACTS BETWEEN THE PHARMACY BENEFIT MANAGER AND FIVE (5) DRUG MANUFACTURERS, TO BE SELECTED BY THE BENEFTS ADMINISTRATION DIVISION OF THE DEPARTMENT, AND THE CONTRACTED AUDITOR TO ENSURE THAT ELIGIBLE REBATE UTILIZATION WAS ACCURATELY INVOICED ON BEHALF OF THE STATE

Aon Hewitt audited CVS/caremark's compliance with this requirement in an audit entitled *Rebate Audit Findings.* Aon Hewitt presented this audit's results to the state in April 2015.

The five manufacturers selected by the Department of Finance and Administration, Division of Benefits Administration for this audit were Novo Nordisk, Astra Zeneca, Daiichi Sankyo, Eli Lilly & Co., and GlaxoSmithKline. Aon Hewitt auditors reviewed all claims associated with these five manufacturers. Those claims are included in the over 4,000,000 total claims reviewed to arrive at the conclusions reported pursuant to TCA §4-3-1021(c)(8) and TCA §4-3-1021(c)(10).

CVS/caremark is contractually obligated to pay to the state the greater of the guaranteed minimum average rebate Per Claim or 100% of the rebates collected from manufacturers. Aon Hewitt found that CVS/caremark passed through materially 100% of rebates paid by the above referenced manufacturers for the time period audited, and because the Pass Through rebates exceeded the guaranteed minimum Per Rx rebates, the state is not owed additional monies other than a minor $11,054.12 that was not previously invoiced on a particular drug from one manufacturer. CVS/caremark was in agreement with this finding and issued a check to the Division of Benefits Administration on May 12, 2015.

## TCA §4-3-1021(c)(10) COMPARISON OF TOTAL REBATES COLLECTED BY THE PBM (PASS-THROUGH REBATES) TO THE MINIMUM REBATE GUARANTEES (PER CLAIM REBATES) TO ENSURE ANNUAL RECONCILIATION OF REBATE PAYMENTS TO THE STATE REPRESENTED THE GREATER OF THE TWO (2) AMOUNTS

Aon Hewitt monitored CVS/caremark's compliance with this requirement in an audit entitled *Rebate Audit Findings.* Aon Hewitt presented this audit's results to the state in April 2015.

For the audit period, auditors confirmed CVS/caremark reconciliation, where Pass Through rebates paid to the state during the time period exceeded the Per Rx minimum rebates guaranteed in the contract between CVS/caremark and the three Insurance Committees. Aon Hewitt concluded *"Auditors confirmed that 99.33% of invoiced rebates were paid out to the State of Tennessee."* CVS/caremark was asked to comment on the 0.67% variance noted in the rebates invoiced versus rebates actually paid. Per CVS/caremark, *"...this is the amount that has been collected as of the report run date…"* Based on auditor experience, this level of variance is considered reasonable and within expected limits.

## TCA §4-3-1021(c)(11) MONITOR THE ACTIVITIES OF THE PHARMACY BENEFITS MANAGER TO ENSURE THAT THE CONTRACTOR IS CONDUCTING AUDITS AND OTHER REVIEWS OF PHARMACIES AS PROVIDED IN THE CONTRACTOR'S SCOPE OF SERVICES

The Pharmacy Benefits Manager contract requires CVS/caremark to conduct annual audits of network pharmacies, including a certain percentage of field audits. CVS/caremark currently delivers quarterly reports, called "Quarterly Field Audit/Daily Review Discrepant Amount Recovery," to meet the annual obligation. The state considers these contractually required reports as sufficient monitoring of CVS/caremark's obligation to conduct audits and other reviews of pharmacies as provided in their contracted scope of services. During the quarterly desk and field audits of network pharmacies, CVS/caremark staff audit for: different drugs billed or filled than what was written on the prescription, missing prescriptions, over billed quantities, early refills, insufficient directions for use, wrong patient or plan member, a denied patient or a denied prescriber. The PBM's reports to the Division of Benefits Administration detail: the number of new audits performed, the number of audits still open from the prior reporting period and the number of audits closed.

## TCA §4-3-1021(c)(12) CONSIDERATION OF OTHER INDUSTRY RELATED RISKS TO REDUCE THE RISK OF FINANCIAL LOSSES DUE TO FRAUD, WASTE AND ABUSE

After consultation with the state's qualified independent actuary, the Division of Benefits Administration has identified a potential industry risk associated with individuals abusing prescription narcotics or pain medications, commonly referred to as "doctor shopping". CVS/caremark has protocols in place for flagging an individual's record for further review by one of CVS/caremark's clinical pharmacists. If the CVS/caremark clinical pharmacist suspects abuse, the individual's pharmaceutical record is referred to the Chief Pharmacist, Department of Mental Health and Substance Abuse Services, who occasionally advises the Division on certain clinical pharmaceutical reviews. If the Chief Pharmacist believes that an individual's history warrants locking that individual into one (1) single pharmacy, they advise the Division of Benefits Administration. Locking the member into a single pharmacy causes all prescriptions to be filled at just one pharmacy. That single pharmacy and their associated pharmacists will see in real time if a member is trying to fill more than a normal quantity of a particular type of medication.

The Division of Benefits Administration has identified a potential industry risk of abuse of certain drug classes used to treat narcolepsy. The drugs *Provigil* and *Nuvigil*, which are used for narcolepsy or to improve the wakefulness in patients diagnosed as having Shift Work Disorder, are increasingly abused nationwide. Members who wish to fill one of these medications must receive a prior authorization from the Pharmacy Benefits Manager (via their doctor providing to the Pharmacy Benefits Manager various medical records for review). Without a prior authorization, the Pharmacy Benefits Manager will not allow a fill of this type of prescription and the state plans would not pay for it. Also, the state Division of Benefits Administration has implemented prior authorization requirements for any drug compound with a cost over $300, and also has begun to exclude coverage of certain topical agents and bulk powders due to an increase nationwide in fraudulent billing of these types of medications by some pharmacies. This is something that has affected not just the state-sponsored plans, but employer groups and health plans nationwide.