U.S. OFFICE OF PERSONNEL MANAGEMENT
OFFICE OF THE INSPECTOR GENERAL
OFFICE OF AUDITS

Final Audit Report

Audit of the American Postal Workers Union Health Plan's Pharmacy Operations as Administered by Express Scripts, Inc. for Contract Years 2016 through 2021

Report Number 2022-SAG-029
March 27, 2024

EXECUTIVE SUMMARY

Audit of the American Postal Workers Union Health Plan's Pharmacy Operations as Administered by Express Scripts, Inc. for Contract Years 2016 through 2021

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Why Did We Conduct the Audit?

The objective of this audit was to determine whether costs charged to the Federal Employees Health Benefits Program (FEHBP) and services provided to its members were in accordance with the U.S. Office of Personnel Management (OPM) Contract Number CS 1370 and applicable Federal regulations.

What Did We Audit?

The Office of the Inspector General has completed a performance audit of the American Postal Workers Union (Carrier) Health Plan's pharmacy operations as administered by Express Scripts, Inc. (Pharmacy Benefit Manager or PBM). Our audit consisted of reviewing the administrative fees, annual accounting statements, claims eligibility and pricing, drug manufacturer rebates, fraud and abuse program, and performance guarantees for FEHBP pharmacy operations during contract years 2016 through 2021. Audit work was completed remotely from our office locations in Jacksonville, Florida and Cranberry Township, Pennsylvania.

Michael R. Esser
Assistant Inspector General for Audits

What Did We Find?

We found that the PBM overcharged the Carrier and the FEHBP $44,882,688 (including lost investment income) by not passing through all discounts and credits related to prescription drug pricing that were required under the PBM Transparency Standards found in the Carrier's contract with OPM.

Specifically, our audit identified the following six findings that require corrective action. The findings occurred across all years of the audit scope unless otherwise noted.

- The Carrier overstated pharmacy costs in its annual accounting statements for 2018 through 2021.
- The FEHBP did not receive pass-through transparent drug pricing from the PBM for retail pharmacy claims, resulting in a $14,368,884 overcharge.
- The FEHBP did not receive several of the drug purchasing discounts collected by the PBM for drugs filled by its own mail order warehouses and specialty pharmacies, resulting in a $6,823,263 overcharge.
- The PBM failed to return $2,568,765 in retail pharmacy claim transaction fees that it was credited for the Carrier's retail prescription drug benefits.
- The FEHBP did not receive a portion of the drug manufacturer rebates collected by the PBM, resulting in a $5,281,746 overcharge.
- The PBM's sister company, Ascent Health Services, erroneously withheld a portion of the FEHBP's drug manufacturer rebates in 2019 and 2020, resulting in $15,840,030 due to the Carrier and FEHBP.

No exceptions were identified from our reviews of the administrative fees, claims eligibility, fraud and abuse program, and performance guarantees.

ABBREVIATIONS

5 CFR 890	**Title 5, Code of Federal Regulations, Part 890**
AAC	**Actual Acquisition Cost**
AAS	**Annual Accounting Statements**
Act	**Federal Employees Health Benefits Act**
Agreement	**The Pharmacy Benefit Management Agreement between the Carrier and the PBM**
Carrier	**American Postal Workers Union Health Plan**
Contract	**OPM Contract Number CS 1370**
CY	**Contract Year**
FEHBP	**Federal Employees Health Benefits Program**
HIO	**Healthcare and Insurance Office**
LII	**Lost Investment Income**
LOCA	**Letter of Credit Account**
NDC	**National Drug Code**
NFR	**Notification of Finding and Recommendation**
OIG	**Office of the Inspector General**
OPM	**U.S. Office of Personnel Management**
PBM	**Express Scripts, Inc. (Pharmacy Benefit Manager)**

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I. BACKGROUND

This report details the results of our audit of the American Postal Workers Union (Carrier) Health Plan's pharmacy operations as administered by Express Scripts, Inc. (Pharmacy Benefit Manager or PBM) for contract years (CY) 2016 through 2021. The audit was conducted pursuant to the provisions of the U.S. Office of Personnel Management's (OPM) contract number CS 1370 (Contract); the PBM Agreement with the Carrier (Agreement); and Title 5, Code of Federal Regulations, Part 890 (5 CFR 890). The audit was performed by OPM's Office of the Inspector General (OIG), as established by the Inspector General Act of 1978, as amended.

The Federal Employees Health Benefits Program (FEHBP) was established by the Federal Employees Health Benefits Act (Act), Public Law 86-382, enacted on September 28, 1959. The FEHBP was created to provide health insurance benefits for Federal employees, annuitants, and dependents. OPM's Healthcare and Insurance Office (HIO) has the overall responsibility for the administration of the FEHBP, including the publication of program regulations and agency guidance. As part of its administrative responsibilities, HIO contracts with various health insurance carriers that provide service benefits, indemnity benefits, and/or comprehensive medical services. The provisions of the Act are implemented by OPM through regulations codified in 5 CFR 890 and the Contract.

The PBM is primarily responsible for processing and paying prescription drug claims. The services provided typically include retail pharmacy, mail order, and specialty drug benefits. For drugs acquired through retail, the PBM contracts directly with retail pharmacies located throughout the United States. For maintenance prescriptions that typically do not need to be filled immediately, the PBM offers the option of mail order pharmacy benefits. The PBM also provides specialty pharmacy services for members with rare and/or chronic medical conditions. The PBM is used to develop, allocate, and control costs related to the prescription drug program.

The Carrier contracted with the PBM, Express Scripts, located in St. Louis, Missouri, to provide pharmacy benefits and services to FEHBP members for CYs 2016 through 2021. Cigna Health acquired the PBM in December 2018, at which point Cigna Health became the parent company and the PBM became its subsidiary. Section 1.11 of the Contract includes a provision that allows for audits of the program's operations. Additionally, section 1.26 of the Contract outlines transparency standards that require the PBM to provide pass-through pricing based on its cost for drugs. Our responsibility is to review the performance of the PBM and the Carrier to ensure that costs charged to the FEHBP, and services provided to its members, are in accordance with the Contract, the Agreement, and Federal regulations.

There were no prior audits of the Carrier's pharmacy operations as administered by the PBM during the last five years. The results of our current audit were discussed with the Carrier and PBM officials at an exit conference on June 20, 2023. The Carrier submitted its response to the draft report on September 12, 2023, with input from the PBM, which has been included as an Appendix.

II. OBJECTIVES, SCOPE, AND METHODOLOGY

OBJECTIVES

The main objective of this audit was to determine whether costs charged to the FEHBP, and services provided to its members, were in accordance with the terms of the Contract, the Agreement, and applicable Federal regulations.

Our specific audit objectives were to determine if:

Administrative Fees Review

- The Carrier paid the PBM's administrative fees in accordance with the Agreement.

Annual Accounting Statements Review

- The Carrier accurately reported to OPM the prescription drug charges and drug manufacturer rebates for FEHBP operations.

Claims Eligibility Review

- Any claims were paid for ineligible dependents age 26 and older, excluded drugs, or members enrolled in another group.

Claims Pricing Review

- The pricing elements for retail, mail order, and specialty drug claims were transparent and priced correctly in accordance with the Contract.
- The financial pricing guarantees were met, and if any penalties were accurately returned/credited to the FEHBP.

Drug Manufacturer Rebates Review

- All drug manufacturer rebates and corresponding administrative fees were properly credited to the FEHBP.

Fraud and Abuse Program Review

- The Carrier and the PBM complied with the FEHBP's fraud and abuse program requirements.

Performance Guarantees Review

- The PBM performance guarantees were met, and if any penalties were accurately returned/credited to the FEHBP.

SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient and appropriate evidence to provide a reasonable basis for our findings and conclusions based on the audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on the audit objectives.

This performance audit included a review of the administrative fees, annual accounting statements (AAS), claims pricing and eligibility, drug manufacturer rebates, performance guarantees, and fraud and abuse program related to FEHBP pharmacy operations for CYs 2016 through 2021. As part of our survey work, we conducted pre-audit meetings with the Carrier and PBM during the month of September 2022. The audit fieldwork was completed remotely from our offices in Jacksonville, Florida and Cranberry Township, Pennsylvania from September 28, 2022, through June 20, 2023.

The Carrier is responsible for providing FEHBP members with medical and prescription drug benefits. To meet its responsibility for pharmacy operations, the Carrier contracted with the PBM to process prescription drug claims and collect rebates on its behalf. The PBM submitted the following invoice totals to the Carrier for pharmacy operations during the scope of our audit.

Contract Year	Total Amount Paid to PBM	PBM Administrative Fees	Pharmacy Claims Paid	Drug Manufacturer Rebates Credited
2016	$191,235,209	$9,733,278	$239,564,177	$58,062,245
2017	$185,758,683	$9,078,067	$245,933,543	$69,252,926
2018	$161,870,588	$6,066,765	$220,460,719	$64,656,897
2019	$170,772,130	$6,045,825	$233,100,827	$68,374,523
2020	$178,091,129	$6,884,340	$233,001,511	$61,794,722
2021	$159,611,518	$6,963,198	$227,081,683	$74,433,363
Total	**$1,047,339,257**	**$44,771,473**	**$1,399,142,460**	**$396,574,676**

In planning and conducting the audit, we obtained an understanding of the Carrier's and the PBM's internal control structures to help determine the nature, timing, and extent of our auditing procedures. This was determined to be the most effective approach to select areas of audit. For those areas selected, we primarily relied on substantive tests of transactions and not tests of controls. Additionally, since our audit would not necessarily disclose all significant matters in the internal control structures, we do not express an opinion on the Carrier's and the PBM's systems of internal controls taken as a whole.

We also conducted tests of accounting records and other auditing procedures as we considered necessary to determine compliance with the Contract, the Agreement, and Federal regulations. Exceptions noted in the areas reviewed are set forth in the "Audit Findings and Recommendations" section of this report. With respect to the items not tested, nothing came to our attention that caused us to believe that the Carrier and the PBM had not complied, in all material respects, with those provisions.

In conducting the audit, we relied to varying degrees on computer-generated data provided by the Carrier and the PBM. Due to time constraints, we did not verify the reliability of the data generated by the various information systems involved. However, while utilizing the computer-generated data during our audit, nothing came to our attention to cause us to doubt its reliability. We believe that the data was sufficient to achieve our audit objectives.

To determine whether costs charged to the FEHBP, and services provided to its members, were in accordance with the terms of the Contract, Agreement, and applicable Federal regulations for CYs 2016 through 2021, we performed the following audit steps:

Administrative Fees Review

- For each CY, we reviewed the monthly administrative fee invoices and line items to determine if the PBM's fees were properly calculated and supported in accordance with the terms of the Agreement.

Annual Accounting Statements Review

- For each CY, we reviewed the AAS to determine if the prescription drug charges and drug manufacturer rebates were properly reported based on a reconciliation with the claims data and the Letter of Credit Account (LOCA).

Claims Eligibility Review

- We identified and reviewed all dependents 26 years of age and older from the 2021 paid claims data (the most recent year of our audit scope) to determine if the members were eligible for coverage due to a disability and incapable of self-support.
- We compared the Carrier's non-covered drugs list to all claims to determine if any were paid for excluded drugs during the scope of our audit.
- We reviewed all claims to determine if any were paid for non-FEHBP members or members enrolled in another FEHBP plan in which the Carrier participates.

Claims Pricing Review

The paid claims data below differs from the amounts reported in the table on page 3 due to timing and adjustments.

- From a population of 5,391,103 retail pharmacy claims, totaling $426,432,502, we randomly selected 120 claims using SAS[1], totaling $16,702, to determine if the pricing elements were transparent and if the claims were paid correctly.
- From a population of 2,475,873 mail order pharmacy claims, totaling $940,016,723, we randomly selected 120 claims using SAS, totaling $116,846, to determine if the pricing elements were transparent and if the claims were paid correctly.
- From a population of 7,155 specialty pharmacy claims, totaling $47,891,228, we randomly selected 120 claims using SAS, totaling $428,052, to determine if the pricing elements were transparent and if the claims were paid correctly.

Drug Manufacturer Rebates Review

The rebate universe below differs from the amount reported in the table on page 3 due to timing, adjustments, and additional documentation provided that led to an audit finding.

- We judgmentally selected and reviewed the top 10 drug manufacturer rebates by National Drug Code (NDC) with the highest amount invoiced over all six years of the audit scope (sample of 10 NDCs totaling $123,326,464 from a universe of 2,102 NDCs totaling $399,881,978 for CYs 2016 through 2021) to determine if the rebates were accurately calculated and fully remitted to the Carrier and the FEHBP.

Fraud and Abuse Program Review

- We reviewed all potential fraud and abuse cases that were reported by the PBM to the Carrier during the scope of our audit to determine if those cases were properly referred to the OIG.
- We reviewed the Carrier and PBM’s policies and procedures for fraud and abuse to ensure that they complied with the most recent carrier letter guidelines published by OPM.

Performance Guarantees Review

- For each CY, we reviewed the PBM’s performance and its guarantees to determine if the results were accurately reported to the Carrier and if any penalties were properly credited to the FEHBP.

The samples that we selected and reviewed in performing the audit were not statistically based. Consequently, the results were not projected to the universe since it is unlikely that the results are representative of the universe taken as a whole.

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[1] SAS is a statistical software suite developed by SAS Institute for data management, advanced analytics, multivariate analysis, business intelligence, criminal investigation, and predictive analytics.

III. AUDIT FINDINGS AND RECOMMENDATIONS

All monetary findings in this audit report are subject to lost investment income pursuant to Section 3.4 of OPM's Contract and the Federal Employees Health Benefits Acquisition Regulation 1652.215-71.

A. ADMINISTRATIVE FEES REVIEW

The results of our review showed that the PBM's administrative fees were paid accurately in accordance with the Agreement.

B. ANNUAL ACCOUNTING STATEMENTS REVIEW

1. Overstated Pharmacy Costs — Procedural

The Carrier overstated its pharmacy costs by $44.5 million in its 2018 through 2021 AAS by erroneously including a portion of its paid medical claims with its paid pharmacy claims, resulting in a procedural finding only.

Section 3.2(a) of the Contract states, "In preparing the accounting, the Carrier shall follow the reporting requirements and statement formats prescribed by OPM in the OPM Annual and Fiscal Year Financial Reporting Instructions." The Financial Reporting and Audit Guide states that the purpose is to "Obtain assurance that carriers of experience-rated plans submit financial statements that are fairly stated in all material respects, prepared and audited in accordance with prescribed guidelines."

APWU's annual accounting statements were materially misstated for contract years 2018 through 2021.

During our review of the Carrier's AAS, we found discrepancies between the amounts reported by the Carrier for annual drug claims paid and the corresponding amounts in the paid claims data for pharmacy costs. Specifically, the AAS overstated drug claims paid by $44.5 million in comparison to the actual claims data for 2018 through 2021. When we inquired about the differences, the Carrier found that medical claims containing pharmacy benefits were inappropriately being included as pharmacy costs in the AAS due to how its systems pull information for the reports. We conducted a thorough review of the Letter of Credit Account (LOCA) drawdowns and verified that this was only a procedural finding since pharmacy costs were properly charged to the LOCA after the removal of the medical claims in question. The Carrier agrees with the procedural finding and will correct the reporting error.

Because the Carrier inaccurately reported drug claims paid in its 2018 through 2021 AAS, OPM did not receive a true representation of the pharmacy costs for those years.

Recommendation 1

We recommend that OPM's Contracting Officer require the Carrier to correct its 2018 through 2021 AAS by reporting actual drug claims paid exclusive of medical claims.

Carrier's Response:

"APWUHP requests that the Contracting Officer not require these AAS corrections for prior years for there is no material change to the actual overall claims amount reported on the 'Health Benefit Charges Paid' tab. Starting in 2023, APWUHP will report the PBM pharmacy costs which will not include the Medical pharmacy costs on the 'Health Benefit Charges Paid' tab of the AAS."

OIG Comments:

The OIG still recommends that the errors be corrected on the 2018 through 2021 AAS since OPM relies on this historical information for multiple purposes and/or comparisons.

Recommendation 2

We recommend that OPM's Contracting Officer require the Carrier to develop and implement new controls to ensure that its AAS contains actual and allowable pharmacy costs that are fairly stated.

Carrier's Response:

"APWUHP has already completed the changes on the internal report used for recording the 'Drug' cost for the AAS that excludes the medical pharmacy costs from the total drug cost."

OIG Comments:

This recommendation can be resolved and closed once the Contracting Officer verifies that the new control is in place.

C. CLAIMS ELIGIBILITY REVIEW

The results of our review showed that the Carrier and the PBM had sufficient policies and procedures in place to help prevent ineligible pharmacy claims from being processed.

D. CLAIMS PRICING REVIEW

1. Pass-Through of Retail Pharmacy Discounts $14,368,884

The PBM did not provide pass-through transparent pricing to the Carrier and the FEHBP at the value of the PBM's negotiated discounts found in its retail pharmacy agreements, leading to an overcharge of $12,484,472 to the FEHBP for CYs 2016 through 2021. Additionally, $1,884,412 is due to the FEHBP ($14,368,884 in total) for lost investment income (LII) calculated through December 31, 2023.

Section 1.26 of the Contract lists PBM transparency standards that the PBM and Carrier must follow no later than January 1, 2013. Additionally, section 1.26(a)(2) of the Contract states that "The PBM agrees to provide pass-through transparent pricing based on the PBM's cost for drugs … in which the Carrier receives the value of the PBM's negotiated discounts, rebates, credits or other financial benefits." Finally, section 1.26 (9)(i) of the Contract states that the PBM must provide OPM OIG with complete copies of its participating pharmacy agreements.

The FEHBP did not receive pass through pricing on retail drugs as required by the Contract's PBM Transparency Standards.

As part of our review for retail pharmacy claims pricing, we requested full unredacted copies of the PBM's top 10 retail pharmacy agreements in our pre-audit information request, along with a handful of retail pharmacies selected to review in our retail claims sample. During our review of the retail claims sample, we found that the PBM only provided us with its internal reimbursement schedules that had most of the pharmacies receiving the same discount. Since these reimbursement rates were created by the PBM for its clients, and not negotiated with the retail pharmacies, we re-requested that the PBM provide us with its actual pharmacy agreements beginning with the top four largest utilized retail pharmacies. After obtaining these four retail pharmacy agreements, we found that the PBM applied less of a discount to the FEHBP retail claims for all four pharmacies, resulting in an overcharge of the retail claims. We then requested that the PBM reprice all retail claims from the scope of our audit by using the actual discount negotiated in each pharmacy agreement. The PBM identified $12,484,472 in overcharges related to the Carrier and FEHBP's retail pharmacy claims for CYs 2016 through 2021.

Because the PBM used its own internal pricing with a higher reimbursement rate for FEHBP claims rather than the discounts negotiated in its retail pharmacy agreements, the FEHBP was overcharged $12,484,472 for CYs 2016 through 2021. Additionally, the FEHBP is due $1,884,412 for LII calculated through December 31, 2023 (totaling $14,368,884 for this finding).

Recommendation 3

We recommend that OPM's Contracting Officer require the PBM and Carrier to return $12,484,472 to the FEHBP for its portion of retail pharmacy pricing discounts not received from the PBM for CYs 2016 through 2021.

Carrier's Response:

"APWUHP understands ESI's disagreement with this recommendation. ESI believes the Inspector General's conclusion inappropriately assumes that the OPM's requirement for pass-through transparent pricing extends to compensation that the PBM collects from retail pharmacies independent of individual FEHB prescription orders. It does not. For the calendar years in question (2016 through 2021), the contract between APWUHP and Express Scripts, Inc. (ESI) included OPM-drafted language defining the term 'pass-through transparent pricing' as it applied to retail prescription orders:

16.1.2 ESI agrees to provide pass-through transparent pricing based on ESI's cost for drugs (as described below) in which the APWUHP receives the value of ESI's negotiated discounts, rebates, credits or other financial benefits.

16.1.2.1 ESI shall charge the APWUHP no more than the amount it pays the pharmacies in its retail network for brand and generic drugs plus a dispensing fee. …

ESI explains that it charged APWUHP for FEHB retail prescriptions in accordance with this language. ESI maintains that it charged APWUHP no more than the amount it pays to pharmacies in its retail network plus a dispensing fee, and APWUHP received the value of ESI's negotiated discounts, rebates, credits, or other financial benefits that could be attributed to FEHB prescriptions.

According to ESI, the assertion that APWUHP and OPM are entitled to receive $12.5 million in additional payments in consideration of other compensation that ESI received from retail pharmacies is not supported by the OPM contract language. This compensation is not attributed to FEHB prescription orders, but to other aspects of ESI's services.

ESI believes not only that it earned such compensation, but that ESI would retain it. Schedule K to the APWUHP-ESI contract, which was added by Amendment dated January 1, 2018, discloses the sources of compensation that ESI earns in its role as PBM. It specifically identifies fees that retail pharmacies pay to ESI for 'non-client specific aggregate guarantees,' 'to access ESI's pharmacy claims systems,' and to participate in ESI's 'preferred value or quality networks.'

ESI explains that it may maintain non-client specific aggregate guarantees with pharmacies and may realize positive margin. ESI may charge pharmacies standard transaction fees to access ESI's pharmacy claims systems and for other related administrative purposes. ESI may also maintain certain preferred value or quality networks; pharmacies participating in those networks may pay or receive aggregated payments related to these networks.

Furthermore, ESI maintains that the fee that it earns from APWUHP for its PBM services is based on the fact that ESI retains compensation unrelated to the cost of drugs needed to fill FEHB prescriptions. If ESI were required to convey $12.5 million collected from retail pharmacies to APWUHP and OPM, ESI would likely seek a commensurate increase in the amount of its administrative fee."

OIG Comments:

The OIG reiterates that the negotiated discounts in the retail pharmacy agreements were greater than the discounts that the PBM provided to the Carrier. OPM requires audit rights that allow the OIG to trace discounts back to the retail pharmacy agreements. This explicit right is to ensure that the negotiated discounts found in the retail pharmacy agreements match the discounts given by the PBM to the Carrier, thereby verifying pass-through transparent pricing in which the Carrier receives "the value of the PBM's negotiated discounts" in accordance with Contract clause 16.1.2.

The PBM's argument is that the negotiated discounts do not have to be passed through to the Carrier at the amounts listed in the retail pharmacy agreements as long as the Carrier receives a portion of those negotiated discounts. This arbitrary amount that the PBM chose to pass through to the Carrier was a lower discount than what was negotiated in the retail pharmacy agreements. Pharmacies allow PBMs to fluctuate the pricing of retail pharmacy claims as long as total business (all clients) equals the negotiated discount in the pharmacy agreements. The PBM's discounts given to the Carrier are not the negotiated discount, but instead are the discounts that align closest to the guarantee found in the Carrier's PBM agreement. This industry standard is used by PBMs under traditional spread pricing arrangements, not transparent pricing arrangements. Under the transparent pricing arrangement required for the FEHBP, the PBM is to pass through the negotiated discounts found in the retail pharmacy agreements. This is the exact reason why OPM has audit rights allowing access to the retail pharmacy agreements for which the OIG audits as evidence to support the negotiated discount that is to be passed through to the Carrier.

Recommendation 4

We recommend that OPM's Contracting Officer assess the PBM and Carrier $1,884,412 for LII on the questioned costs due back to the FEHBP for this finding, calculated through

December 31, 2023. The LII should be adjusted to account for the date the questioned costs are returned to the program.

__Carrier's Response__:

"APWUHP appreciates ESI's stated understanding of the OPM PBM Transparency Standards and that it disagrees with the OIG's assertion that ESI's failure to provide pass-through transparent pricing causes an overcharge to the FEHBP. For this reason, there is no basis for the OPM Contracting Officer to assess APWUHP any amount for Lost Investment Income.

If the OPM elects to make this assessment, we understand that ESI will be entitled to an equitable adjustment of its contract price to the extent of the assessment. APWUHP reserves the right to seek an equitable adjustment of the prime contract to the extent of the adjustment granted to ESI."

__OIG Comments__:

LII is applied to the overcharges identified when the Carrier and the FEHBP did not receive the value of the PBM's negotiated discounts in its retail pharmacy agreements as required by the FEHBP's Transparency Standards. Any renegotiation of the PBM agreement is between the Carrier and the PBM. Please note that the PBM was already paid a service fee to cover profit and administrative costs under the transparent pass-through pricing arrangement.

__Recommendation 5__

We recommend that OPM's Contracting Officer require the Carrier to adopt new controls to ensure that the PBM charges no greater than the value of the PBM's negotiated discounts with each retail pharmacy in effect at the time of claim adjudication. True-ups to any retail pricing guarantees should be performed quarterly or annually in accordance with the Carrier's PBM agreement.

__Carrier's Response__:

"APWUHP recognizes ESI's stated understanding of the OPM PBM Transparency Standards. For this reason, there is no basis for the OPM to require APWUHP or ESI to adopt new controls or to require periodic true-ups to retail pricing.

If the OPM elects to adopt new controls or to require periodic true-ups to retail pricing, we understand that ESI will be entitled to an equitable adjustment of its contract price. APWUHP reserves the right to seek an equitable adjustment of the prime contract to the extent of the adjustment granted to ESI."

OIG Comments:

New controls are needed because the Carrier and the FEHBP did not receive the value of the PBM's negotiated discounts in its retail pharmacy agreements as required by the FEHBP's Transparency Standards. Any renegotiation of the PBM agreement is between the Carrier and the PBM. Please note that the PBM was already paid a service fee to cover profit and administrative costs under the transparent pass-through pricing arrangement.

2. Pass-Through of Drug Inventory Purchasing Discounts $6,823,263

The PBM did not pass through to the Carrier or the FEHBP several of the drug inventory purchasing discounts that it received from manufacturers and wholesalers related to its cost of drugs filled by its own mail-order warehouses and specialty pharmacies during CYs 2016 through 2021, resulting in a $5,911,973 overcharge to the FEHBP. Additionally, $911,290 is due to the FEHBP ($6,823,263 in total) for LII calculated through December 31, 2023.

Section 1.26(a)(2) of the Contract states that "The PBM agrees to provide pass-through transparent pricing based on the PBM's cost for drugs … in which the Carrier receives the value of the PBM's negotiated discounts, rebates, credits or other financial benefits." The cost of drugs filled by the PBM's own "mail order warehouses and specialty pharmacies shall be based on the actual cost, plus a dispensing fee. Costs shall not be based on industry benchmarks … ."

The FEHBP did not receive any of the PBM's non specific drug purchasing discounts.

Additionally, the PBM agreement states, "the term 'Total Rebates' means all concurrent, past, and future revenue/financial benefits and credits ESI receives from outside sources attributable to APWUHP's utilization or enrollment in programs to the extent [not otherwise provided] to APWUHP in the form of a price reduction or discount (i.e., as provided in the Actual Acquisition Cost Guarantee or Component Discount Guarantees), as required by and in compliance with the OPM Transparency Standards."

During our review of pass-through pricing and actual acquisition cost for drugs filled by the PBM's own inventory for mail-order warehouses and specialty pharmacies, we requested information related to all purchasing discounts received by the PBM for its cost of drugs from wholesalers and manufacturers. The PBM disclosed all drug manufacturer and wholesaler discounts including those it termed "non-specific drug discounts" for inventory. [redacted] We then requested confirmation from the PBM that it passed through all non-specific drug discounts to the FEHBP, or that the PBM determine the amount of non-specific drug discounts that were allocable to the FEHBP for CYs 2016 through 2021. The PBM identified $5,911,973 in non-specific drug purchasing discounts attributed to the FEHBP that were not passed through to the Carrier for CYs 2016 through 2021.

The PBM stated that because the credits for non-specific drug discounts are received based on the total purchases made from drug manufacturers and wholesalers for the PBM's inventory, not each individual drug filled by the PBM, it did not consider these discounts as pass-through amounts under the FEHBP's PBM Transparency Standards. The PBM also determined it was justified to keep these non-specific drug discounts since they represent less than one percent of the total mail and specialty aggregated acquisition cost. As a result of the PBM not passing through all its drug inventory purchasing discounts to the Carrier, we found that the FEHBP was overcharged $5,911,973 for CYs 2016 through 2021. Additionally, the FEHBP is due $911,290 for LII calculated through December 31, 2023 (totaling $6,823,263 for this finding).

Recommendation 6

We recommend that OPM's Contracting Officer require the PBM and Carrier to return $5,911,973 to the FEHBP for its portion of the PBM's non-specific drug inventory purchasing discounts that were not received for CYs 2016 through 2021.

Carrier's Response:

"APWUHP acknowledges ESI's disagreement with this draft finding. As their name suggests, non-specific drug discounts are minor price adjustments to inventory purchasing that are not attributable to a specific drug, a specific prescription order, a specific carrier, or a specific plan. They fall outside the scope of the OPM's pass-through transparent pricing requirement and are already reflected in the pricing arrangement set forth in ESI's contract with APWUHP. Even if required to fall under the OPM's pass-through transparent pricing requirement – a proposition we contend is misplaced – the total value of the non-specific drug discount amount represented an exceeding small percentage of the overall total amount of inventory drug purchase discounts that were, in fact, applied to APWUHP's pricing. At a minimum, OIG's finding should be more accurate in that regard than to issue a finding that implies no drug purchasing inventory discounts were passed through to APWUHP.

For mail order pharmacy claims, the PBM Transparency Standard in effect from 2016 to 2021 define pass-through transparent pricing as follows: 'The PBM shall charge the Carrier the cost of drugs at mail order pharmacies based on the actual cost, plus a dispensing fee. Costs shall not be based on industry benchmarks, for example, Average Acquisition Cost (AAC) or Wholesale Acquisition Cost.'

ESI maintains that it meets this requirement by charging the APWUHP the purchase price that it pays for the ingredients used to fill a particular prescription, plus the dispensing fee. ESI explains that it identifies and adjusts the ingredient purchase price each month to reflect pre- and post-invoice discounts. This computation yields the actual acquisition cost of drugs dispensed by the mail order pharmacies. ESI has used this approach consistently since the OPM pass-through transparent pricing requirements were introduced in 2011. Contrary to the assertion of this finding that ESI did not pass through any of the drug purchasing inventory discounts, this is simply not the case and a mischaracterization of the actual pricing discounts that were applied here. The actual acquisition cost methodology applied by ESI to APWUHP's pricing yielded drug specific discount value which was substantial and included all of the drug specific purchasing inventory discounts. Non-specific drug discounts, even if required to be passed through, – a proposition ESI asserts is misplaced – represented an exceedingly small percentage of the overall aggregate drug inventory purchase discounts that were applied to APWUHP's pricing.

ESI maintains that its focus on the cost of ingredients used to fill FEHB prescriptions is consistent with the OPM requirement. The text of the OPM transparency standard refers specifically to the actual cost of drugs. A charge that is based on the actual cost of drugs is necessarily tied to an individual prescription order.

ESI also notes that OPM revised the PBM Transparency Standard in 2021 for the 2022 plan year to incorporate cost adjustments arising from a 'true up or reconciliation.' This was a substantive and material change, and ESI has adjusted its invoicing practices accordingly.

There was no language expressly requiring ESI to credit the APWUHP or OPM with adjustments that are independent of individual prescription orders prior to January 1, 2022, and we are not aware of any guidance suggesting that the APWUHP or OPM intended this approach."

<u>OIG Comments</u>:

The Contract's Transparency Standards state that the "full value" or "value of the PBM's negotiated discounts, rebates, credits or other financial benefits" were to be passed through to the Carrier and the FEHBP. The wording difference between full value and value was merely a 2020 clarification of the transparency standards. At no time was the pass-through value of the PBM's negotiated discounts, rebates, credits or other financial benefits to be interpretated as partial value, yet the PBM stated, "Non-specific drug discounts, even if required to be passed through, …represented an exceedingly small percentage of the overall aggregate drug inventory purchase discounts that were applied to APWUHP's pricing." The PBM would not have received these non-specific drug discounts without the FEHBP drug utilization, therefore even if these discounts may not be attributed to a certain drug, they are attributable to an entire client group.

Recommendation 7

We recommend that OPM's Contracting Officer assess the PBM and Carrier $911,290 for LII on the questioned costs due back to the FEHBP for this finding, calculated through December 31, 2023. The LII should be adjusted to account for the date the questioned costs are returned to the program.

Carrier's Response:

"APWUHP understands ESI's stated reasoning of the OPM PBM Transparency Standards and agrees there is no basis for the OPM Contracting Officer to assess APWUHP any amount for Lost Investment Income.

If the OPM elects to make this assessment, we understand that ESI will be entitled to an equitable adjustment of its contract price to the extent of the assessment. APWUHP reserves the right to seek an equitable adjustment of the prime contract to the extent of the adjustment granted to ESI."

OIG Comments:

LII is applied to the overcharges identified when the Carrier and the FEHBP did not receive all the discounts that the PBM collected from the purchase of its drug inventory as required by the FEHBP's Transparency Standards. Any renegotiation of the PBM agreement is between the Carrier and the PBM.

Recommendation 8

We recommend that OPM's Contracting Officer require the PBM and Carrier to return the FEHBP's portion of the PBM's "non-specific drug discounts" going back to the start of the Carrier's transparent agreement with the PBM, specifically for the period of CYs 2012 through 2015. The PBM has already identified an additional $1,397,520 in drug inventory purchasing discounts for CY 2015 that should be returned to the FEHBP as overcharges.

Carrier's Response:

"See our response for Recommendation #6."

Recommendation 9

We recommend that the Carrier adopt new controls to ensure that the PBM passes through all its drug inventory purchasing discounts associated with the Carrier and FEHBP in accordance with the PBM Transparency Standards for mail order and specialty drug actual acquisition costs.

Carrier's Response:

"APWUHP recognizes ESI's stated understanding of the OPM PBM Transparency Standards. For this reason, APWUHP feels it does not need to adopt new controls to ensure that the PBM passes through all its drug inventory purchasing discounts.

If APWUHP adopts new controls, ESI will be entitled to an equitable adjustment of its contract price. APWUHP reserves the right to seek an equitable adjustment of the prime contract to the extent of the adjustment granted to ESI."

OIG Comments:

New controls are needed because the Carrier and the FEHBP did not receive all the discounts that the PBM collected from the purchase of its drug inventory as required by the FEHBP's Transparency Standards. Any renegotiation of the PBM agreement is between the Carrier and the PBM.

3. Pass-Through of Credits for Retail Pharmacy Transaction Fees $2,568,765

The PBM withheld $2,279,264 from the Carrier in retail pharmacy claim transaction fees that it was credited for the Carrier's retail prescription drug benefits during CYs 2016 through 2021. Additionally, $289,501 is due to the FEHBP ($2,568,765 in total) for LII calculated through December 31, 2023.

The PBM withheld retail pharmacy claim transaction fees that it was credited for the Carrier's retail prescription drug benefits.

Section 1.26(a)(5) of the Contract states that "'Pass-Through Transparent Pricing' means drug pricing in which the Carrier receives the value of all discounts, rebates, credits or other financial guarantees and adjustments including any true up or reconciliations."

Additionally, Section 1.26(b)(2)(i) of the Contract states that "The PBM shall charge the Carrier no more than the amount paid to the retail pharmacy for each drug plus a dispensing fee." Therefore, any credit that the PBM receives back from retail pharmacies related to the processing of the Carrier's prescription drug benefits should be deducted from the cost of drugs since the PBM is already paid an administrative fee by the Carrier that covers all administrative expenses and profit under pass-through transparent pricing in accordance with the PBM agreement.

Finally, Section 4.1 of Schedule B in the PBM agreement states that the Carrier will pay the PBM a base administrative fee per transaction processed by the PBM under the Retail Pharmacy Program that includes electronic claims processing and pharmacy reimbursement.

During our review of the retail pharmacy claims pricing, we found that the PBM was collecting a per transaction fee from the retail pharmacies as shown in the individual retail pharmacy agreements. The PBM worked with us to identify all transaction fees that were credited back to the PBM for the Carrier's retail pharmacy claims. The total amount determined by the PBM was $2,279,264 for CYs 2016 through 2021. Although we agree with the PBM that these credits are not calculated within the individual pricing of each retail claim, the total credits received by the PBM must be passed through to the Carrier since the Carrier is already paying an administrative fee per transaction that includes electronic claims processing and pharmacy reimbursement. This monetary recovery from each retail pharmacy claim is just another source of profit for the PBM that should be passed through to the Carrier and FEHBP under a transparent pricing arrangement.

Because the PBM failed to return all credits to the Carrier that it received from retail pharmacy claim transaction fees, the PBM earned additional revenue on top of the set administrative fees already paid by the Carrier to cover its administrative expenses and profit as stated under pass-through transparent pricing in both the Contract and PBM agreement. As a result, the Carrier and the FEHBP were overcharged $2,279,264 for prescription drug benefits during CYs 2016 through 2021. Additionally, the FEHBP is due $289,501 for LII calculated through December 31, 2023 (totaling $2,568,765 for this finding).

Recommendation 10

We recommend that Carrier collect $2,279,264 in claim transaction fees that were credited back to the PBM by retail pharmacies for the Carrier's CY 2016 through 2021 prescription drug benefits.

Carrier's Response:

"APWUHP acknowledges ESI's disagreement with this draft finding. ESI contends that the OPM Transparency Standard does not extend to ESI services that are not tied specifically to the cost of drugs needed to fill FEHB prescription orders. ESI observes, at the outset, that the finding appears to rely on Section 1.26(a)(5) as the OPM requirement being applied here. But, Section 1.25(a)(5), as set forth above, was part of OPM's adoption of revised standards that did not take effect until after 2021 or, in

other words, until after the applicable audit period. That notwithstanding the fees in question here are transaction fees for services that ESI provides to retail pharmacies, and the services and fees are not tied to the cost of prescription drugs. These services include: (a) real-time point-of-sale adjudication services; (b) help desk/IT/telecom services; (c) concurrent drug utilization review (i.e., real-time drug utilization analysis at the point of prescription dispensing to prevent adverse drug interactions); (d) automated prior authorization processes, which reduce the need for telephone calls to and from the pharmacy; and (e) maintaining industry standards (e.g., NCPDP). ESI explains that such pharmacy transaction fees offset the cost of providing these services and reduce the fees paid by the carrier and are standard in the industry and apply in all instances, not only in spread-pricing arrangements but also in pass-through transparent pricing arrangements.

According to ESI, it collects and retains these fees is reflected in the administrative fee that ESI earns for its services. If ESI were required to credit the OPM with these transaction fees, ESI would likely seek a commensurate increase in the amount of its administrative fee."

OIG Comments:

The OIG disagrees with the PBM's assertion that the pharmacy transaction fees are not exclusive of the drug cost, since the transaction fees would not have been paid to the PBM without the FEHBP prescription being filled. As stated in the contract "Pass-Through Transparent Pricing" means drug pricing in which the Carrier receives the value of all discounts, rebates, credits or other financial guarantees and adjustments including any true-ups or reconciliations. Furthermore, Section 1.26(a)(5) is not to be considered a new rule, only a clarification of current rules that have been in effect since 2011, the inception of the pass-through transparency standards. Because the transaction fees paid to the PBM by retail pharmacies result in the PBM being credited the fee amounts, these credited amounts are required to be passed through to the Carrier and the FEHBP, especially since the Carrier's administrative fee paid to the PBM already includes electronic claims processing and pharmacy reimbursement under the Retail Pharmacy Program.

Recommendation 11

We recommend that OPM's Contracting Officer assess the PBM and Carrier $289,501 for LII on the questioned costs due back to the FEHBP for this finding, calculated through December 31, 2023. The LII should be adjusted to account for the date the questioned costs are returned to the program.

<u>Carrier's Response</u>:

"APWUHP notes ESI's stated understanding of the OPM PBM Transparency Standards. For this reason, there is no basis for the OPM Contracting Officer to assess APWUHP any amount for Lost Investment Income.

If the OPM elects to make this assessment, ESI will be entitled to an equitable adjustment of its contract price to the extent of the assessment. APWUHP reserves the right to seek an equitable adjustment of the prime contract to the extent of the adjustment granted to ESI."

<u>OIG Comments</u>:

LII is applied to the overcharges identified when the Carrier and the FEHBP did not receive the value of ESI's negotiated discounts, rebates, credits, or other financial benefits. Any renegotiation of the PBM agreement is between the Carrier and the PBM.

<u>Recommendation 12</u>

We recommend that the PBM adopt policies and procedures to ensure that the Carrier receives the value of all credits (i.e., claim transaction fees) that the PBM collects from retail pharmacies under pass-through transparent pricing.

<u>Carrier's Response</u>:

"As noted above, APWUHP does not need to adopt new controls to ensure that the PBM collects from retail pharmacies under pass-through transparent pricing."

<u>OIG Comments</u>:

New controls are needed because the Carrier and the FEHBP did not receive the total value of ESI's negotiated discounts, rebates, credits, or other financial benefits as required by the FEHBP's Transparency Standards. The PBM is already paid an administrative fee by the Carrier that includes electronic claims processing and pharmacy reimbursement within the Retail Pharmacy Program. This administrative fee also includes the PBM's profit under the transparency standards. Any credit received back from a retail pharmacy related to the processing of an FEHBP claim needs to be returned to the Carrier and the FEHBP. The PBM receiving back a partial refund on any claim, no matter what it's called, results in additional profit. This backdoor approach to collecting more revenue on each FEHBP retail claim was unknown by us until this audit.

E. DRUG MANUFACTURER REBATES REVIEW

1. Underpayment of Rebates Received $5,281,746

The PBM did not pass through a portion of the drug manufacturer rebates that were allocable to the Carrier, resulting in an underpayment of $4,907,110 to the FEHBP for CYs 2016 through 2021. Additionally, $374,636 is due to the FEHBP ($5,281,746 in total) for LII calculated through December 31, 2023.

The FEHBP did not receive all the drug manufacturer rebates collected by the PBM.

Section 1.26 of the Contract required PBM transparency standards for the FEHBP, effective no later than January 1, 2013. This section states, "The PBM agrees to provide pass-through transparent pricing based on the PBM's cost for drugs (as described below) … (iii) The PBM, or any other entity that negotiates and collects Manufacturer Payments allocable to the Carrier, agrees to credit to the Carrier either as a price reduction or by cash refund the value of all Manufacturer Payments properly allocated to the Carrier. Manufacturer Payments are any and all compensation, financial benefits, or remuneration the PBM receives from a pharmaceutical manufacturer, including but not limited to, discounts; credits; rebates, regardless of how categorized; market share incentives, chargebacks, commissions, and administrative or management fees."

Additionally, section 15.2 of the PBM agreement states that the PBM will provide the Carrier with 100 percent pass-through of actual rebates received.

During our review of drug manufacturer payments, we found that the PBM collected $399,681,590 in rebates allocable to the Carrier and the FEHBP during CYs 2016 through 2021. The PBM paid the Carrier a total of $394,774,480 in rebates (including $1,869,029 in point-of-sale rebates) from the amount collected, leading to a shortage of $4,907,110 in rebates due back to the Carrier and the FEHBP. When we presented this error to the PBM, it agreed to return $1,800,196 to the Carrier and the FEHBP for manual adjustments that were incorrectly made during the rebate process for 2021. However, the PBM has yet to identify or explain why there is still a shortage of an additional $3,106,914 in rebates payable to the Carrier and the FEHBP for CYs 2016 through 2021. Our observations and review showed that the cause of these errors was primarily due to manual adjustments and a lack of policies and procedures being followed during the rebate allocation process.

Because the PBM improperly accounted for rebates received during CYs 2016 through 2021, in comparison to the payments made to the Carrier, the FEHBP was overcharged $4,907,110. The PBM agreed to return $1,800,196 on June 27, 2023, leaving a remaining amount of $3,106,914 due back to the Carrier and the FEHBP. Additionally, the FEHBP is due

$374,636 for LII calculated through December 31, 2023 (totaling $5,281,746 for this finding).

<u>Recommendation 13</u>

We recommend that the PBM return the remaining amount of $3,106,914 to the Carrier and the FEHBP for the underpayment of drug manufacturer rebates that were collected during CYs 2016 through 2021.

<u>Carrier's Response</u>:

"First, this finding inappropriately includes the sum of $1,800,196, which was the amount of an incorrect adjustment taken during the payment cycles for plan year 2021. This was the result of a human error. ESI has acknowledged this error and has taken steps to correct it. This was credited back to the health plan on 6/27/23 under invoice 47125921C.

Secondly, APWUHP acknowledges ESI's disagreement that the data file that your office used to calculate rebates is an interim rebate reporting file that does not reflect claim reversals and pullbacks. ESI explains that the amount of the rebates reflected in this finding is thus overstated. The appropriate claim level detail appears in the file named '11043ESI001_SAG_FEHBP_APWU_ESI_NFR_2_Claim Level Detail,' which ESI provided to your office via FTP transfer."

<u>OIG Comments</u>:

We acknowledge that the PBM agreed with and returned the $1,800,196 error on June 27, 2023, but while that amount is not included in the recommendation to be returned, it is still a part of the finding. The PBM has yet to provide any support to prove that the shortage of $3,106,914 in rebates was due to "claim reversals and pullbacks."

<u>Recommendation 14</u>

We recommend that OPM's Contracting Officer assess the PBM and Carrier $374,636 for LII on the questioned costs due back to the FEHBP for this finding, calculated through December 31, 2023. The LII should be adjusted to account for the date the questioned costs are returned to the program.

Carrier's Response:

"APWUHP recognizes ESI's stated understanding of the OPM PBM Transparency Standards. For this reason, there is no basis for the OPM Contracting Officer to assess APWUHP any amount for Lost Investment Income.

If the OPM elects to make this assessment, ESI will be entitled to an equitable adjustment of its contract price to the extent of the assessment. APWUHP reserves the right to seek an equitable adjustment of the prime contract to the extent of the adjustment granted to ESI."

OIG Comments:

LII is applied to the overcharges identified when the Carrier and the FEHBP did not receive all rebates collected by the PBM in accordance with the Contract and PBM agreement. Any renegotiation of the PBM agreement is between the Carrier and the PBM.

Recommendation 15

We recommend that the PBM adopt controls to ensure that all drug manufacturer rebates are properly allocated and passed through to the FEHBP.

Carrier's Response:

"APWUHP concurs that ESI has always and continues to contract for rebates on its own behalf, and shares those rebates with APWUHP and OPM based on the terms of the PBM agreement. ESI's contract with APWUHP requires pass-through to APWUHP of a certain percentage of rebates that it receives or a guaranteed amount. During the audit period in question, ESI correctly shared the greater of the Rebate amounts received by ESI or the guaranteed rebate amount per the PBM Agreement."

OIG Comments:

New controls are needed because the Carrier and the FEHBP did not receive all rebates collected by the PBM in accordance with the Contract and PBM agreement. The PBM admitted to an error of $1,800,196 and repaid that amount. The additional $3,106,914 is still in question because no support was provided by the PBM to prove otherwise.

2. Pass-Through of Drug Manufacturer Rebates from Sister Company $15,840,030

The PBM did not pass through all drug manufacturer rebates collected by its sister company, Ascent Health Services, resulting in $14,452,616 due back to the Carrier and the FEHBP for the period of June 1, 2019, through December 31, 2020. Additionally, $1,387,414 is due to the FEHBP ($15,840,030 in total) for LII calculated through December 31, 2023.

The PBM established a group purchasing organization under its parent company Cigna, who then kept a portion of the rebates.

Section 1.26(b)(2) of the Contract states that "The PBM [agrees] to provide pass-through transparent pricing based on the PBM's cost for drugs (as described below) … (iii) The PBM or any other [Third Party] that negotiates and collects Manufacturer Payments allocable to the Carrier agrees to credit to the Carrier either as a price reduction or by cash refund the value of all Manufacturer Payments properly allocated to the Carrier." Manufacturer Payments are "any and all compensation, financial benefits, or remuneration the PBM [or any Third Party] receives from a pharmaceutical manufacturer … , including by not limited to, discounts, credits, rebates (regardless of how categorized), market share incentives, chargebacks, commissions, [and] administrative or management fees … ."

Cigna Health acquired ESI in 2018. In 2019, ESI partnered with a co-founder to establish a group purchasing organization (GPO) known as Ascent Health Services to handle all drug manufacturer rebate administration. Based on 2019, 2021, and 2023 SEC filings, Ascent Health Services was set up as a subsidiary of Cigna Health under its Evernorth division making it a sister company to ESI. We reviewed ESI's drug manufacturer agreements (used by both ESI and its sister company) to verify full pass-through of the rebate amounts due back to the FEHBP from either the PBM, Ascent, or any third-party rebate aggregator. We found that there was a shortfall in the contracted rebate percentages compared to what was received by the Carrier and the FEHBP. As a result, we inquired through ESI to identify the rebate amounts withheld by Ascent for the period of June 1, 2019, through December 31, 2020. ESI provided evidence showing that Ascent withheld $14,452,616 in rebates for APWU.

ESI reported that once it established Ascent Health Services in 2019, all its rebate administration was switched over to Ascent except for Medicare. ESI realized that this was inadequate for federal business and pulled the rebate administration back after 2020 without any monetary adjustments. The differences in rebate percentages between what was received by the Carrier and the FEHBP in comparison to ESI's drug manufacturer agreements were due to lower rebate percentages agreed to internally between ESI and Ascent, thereby allowing Ascent to keep the portion of rebates that we are questioning. Although contractual interpretations may vary, the PBM asked to resolve the finding expeditiously and willfully credited the Carrier $14,452,616 on February 20, 2024, for rebates withheld by Ascent in 2019 and 2020. The PBM also noted that although ESI and Ascent are both subsidiaries under Cigna's umbrella, ESI does not consider Ascent to be a sister company since it currently has two other co-owners.

Recommendation 16

We recommend that OPM's Contracting Officer ensure that the PBM's credit of $14,452,616 is fully returned to the FEHBP by having the Carrier offset future prescription drug invoices. The PBM and the Carrier agree that it will take several billing cycles for the credit to be depleted, during which the FEHBP and Carrier will have no payments made to the PBM for prescription drug invoices.

Carrier and PBM's Response:

The PBM assisted in identifying this finding after issuance of the draft report and requested that we expedite the process. In return, the PBM agreed to pay back the funds as a credit to the Carrier, and the Carrier agreed to use the credit to offset future charges from the PBM for FEHBP operations. The email correspondence in response to this finding has not been included in the Appendix due to confidential information.

Recommendation 17

We recommend that OPM's Contracting Officer assess the PBM and Carrier $1,387,414 for LII on the questioned costs due back to the FEHBP for this finding, calculated through December 31, 2023. The LII should be adjusted to account for the date the questioned costs are fully returned to the program.

F. FRAUD AND ABUSE PROGRAM REVIEW

The results of our review showed that the Carrier and the PBM had sufficient policies and procedures in place to help prevent fraud and abuse.

G. PERFORMANCE GUARANTEES REVIEW

The results of our review showed that the PBM's performance guarantees were accurately reported and credited to the Carrier and the FEHBP.

APPENDIX A

September 15, 2023

Mr. Jim Tuel
Group Chief Special Audits
Office of Personnel Management
Office of Inspector General
1900 E Street, NW - Room 6400
Washington, D.C. 20415

Dear Mr. Tuel:

Enclosed is the APWU Health Plan's response to the draft audit report 2022-SAG-029 dated August 18, 2023, issued by the Office of Inspector General. If after you review the enclosed responses, you are not in agreement with the Plan's stated position, we respectfully request that the APWU Health Plan be afforded the opportunity to meet with you or the OIG staff regarding those items on which we disagree. We believe that this will assure fair resolution of differences at the lowest cost to all parties and allow for the final report to be complete, accurate, fair and as free from errors of fact or omission as our combined efforts can make them.

Since the findings and recommendations in the draft report may change based on additional information provided, the APWU Health Plan reserves the right to review and modify its responses prior to the issuance of the final report.

I would like to reaffirm the American Postal Workers Union's commitment to responsible administration of the FEHB Program. If you have any questions, please contact Tim Erwin, CFO at the APWU Health Plan, at (410) 424-1561.

Cordially,
American Postal Workers Union Health Plan

Randy P. Griffin
CEO & Chief Operating Manager

Attachments
cc: Ronald Rheinhardt

American Postal Workers Union Health Plan

2023 OIG Audit Response

Section: Draft Report Response

In response to the OIG issued draft report 2022-SAG-029 APWUHP Draft Report.pdf, American Postal Workers Union Health Plan (APWUHP) is issuing the following responses to address recommendations made within the report. APWUHP and Express Scripts takes any audits conducted by OIG very seriously and strives to cooperate with the OIG personnel involved during all steps of an audit. **As our contracted Pharmacy Benefit Manager, ESI has contributed to the responses below**.

For purposes of organization, APWUHP has crafted responses based on draft report area, section, and recommendation number. Below are the responses to the recommendations, categorized by the areas within the draft report.

OIG Recommendation 1
We recommend that OPM's Contracting Officer require the Carrier to correct its 2018 through 2021 AAS by reporting actual drug claims paid exclusive of medical claims.

APWUHP Response
APWUHP requests that the Contracting Officer not require these AAS corrections for prior years for there is no material change to the actual overall claims amount reported on the "Health Benefit Charges Paid" tab. Starting in 2023, APWUHP will report the PBM pharmacy costs which will not include the Medical pharmacy costs on the "Health Benefit Charges Paid" tab of the AAS.

OIG Recommendation 2
We recommend that OPM's Contracting Officer require the Carrier to develop and implement new controls to ensure that its AAS contain actual and allowable pharmacy costs that are fairly stated

APWUHP Plan Response
APWUHP has already completed the changes on the internal report used for recording the "Drug" cost for the AAS that excludes the medical pharmacy costs from the total drug cost.

OIG Recommendation 3
We recommend that OPM's Contracting Officer require the PBM and Carrier to return $12,484,472 to the FEHBP for its portion of retail pharmacy pricing discounts not received from the PBM for CYs 2016 through 2021.

APWUHP Plan Response
APWUHP understands ESI's disagreement with this recommendation. ESI believes the Inspector General's conclusion inappropriately assumes that the OPM's requirement for pass-through transparent pricing extends to compensation that the PBM collects from retail pharmacies independent of individual FEHB prescription orders. It does not. For the

calendar years in question (2016 through 2021), the contract between APWUHP and Express Scripts, Inc. (ESI) included OPM-drafted language defining the term “pass-through transparent pricing” as it applied to retail prescription orders:

16.1.2 ESI agrees to provide pass-through transparent pricing based on ESI’s cost for drugs (as described below) in which the APWUHP receives the value of ESI’s negotiated discounts, rebates, credits or other financial benefits.

16.1.2.1 ESI shall charge the APWUHP no more than the amount it pays the pharmacies in its retail network for brand and generic drugs plus a dispensing fee.

[APWUHP-ESI PBM Services Agreement, Schedule G.]

ESI explains that it charged APWUHP for FEHB retail prescriptions in accordance with this language. ESI maintains that it charged APWUHP no more than the amount it pays to pharmacies in its retail network plus a dispensing fee, and APWUHP received the value of ESI’s negotiated discounts, rebates, credits, or other financial benefits that could be attributed to FEHB prescriptions.

According to ESI, the assertion that APWUHP and OPM are entitled to receive $12.5 million in additional payments in consideration of other compensation that ESI received from retail pharmacies is not supported by the OPM contract language. This compensation is not attributed to FEHB prescription orders, but to other aspects of ESI’s services.

ESI believes not only that it earned such compensation, but that ESI would retain it. Schedule K to the APWUHP-ESI contract, which was added by Amendment dated January 1, 2018, discloses the sources of compensation that ESI earns in its role as PBM. It specifically identifies fees that retail pharmacies pay to ESI for “non-client specific aggregate guarantees,” “to access ESI’s pharmacy claims systems,” and to participate in ESI’s “preferred value or quality networks.”

ESI explains that it may maintain non-client specific aggregate guarantees with pharmacies and may realize positive margin. ESI may charge pharmacies standard transaction fees to access ESI’s pharmacy claims systems and for other related administrative purposes. ESI may also maintain certain preferred value or quality networks; pharmacies participating in those networks may pay or receive aggregated payments related to these networks.

Furthermore, ESI maintains that the fee that it earns from APWUHP for its PBM services is based on the fact that ESI retains compensation unrelated to the cost of drugs needed to fill FEHB prescriptions. If ESI were required to convey $12.5 million collected from retail pharmacies to APWUHP and OPM, ESI would likely seek a commensurate increase in the amount of its administrative fee.

<u>OIG Recommendation 4</u>

We recommend that OPM’s Contracting Officer assess the PBM and Carrier $1,579,978 for LII on the questioned costs due back to the FEHBP for this finding, calculated through June 30, 2023. The LII should be adjusted to account for the date the questioned costs are returned to the program.

APWUHP Plan Response

APWUHP appreciates ESI's stated understanding of the OPM PBM Transparency Standards and that it disagrees with the OIG's assertion that ESI's failure to provide pass-through transparent pricing causes an overcharge to the FEHBP. For this reason, there is no basis for the OPM Contracting Officer to assess APWUHP any amount for Lost Investment Income.

If the OPM elects to make this assessment, we understand that ESI will be entitled to an equitable adjustment of its contract price to the extent of the assessment. APWUHP reserves the right to seek an equitable adjustment of the prime contract to the extent of the adjustment granted to ESI.

OIG Recommendation 5

We recommend that OPM's Contracting Officer require the Carrier to adopt new controls to ensure that the PBM charges no greater than the value of the PBM's negotiated discounts with each retail pharmacy in effect at the time of claim adjudication. True ups to any retail pricing guarantees should be performed quarterly or annually in accordance with the Carrier's PBM agreement.

APWUHP Plan Response

APWUHP recognizes ESI's stated understanding of the OPM PBM Transparency Standards. For this reason, there is no basis for the OPM to require APWUHP or ESI to adopt new controls or to require periodic true-ups to retail pricing.

If the OPM elects to adopt new controls or to require periodic true-ups to retail pricing, we understand that ESI will be entitled to an equitable adjustment of its contract price. APWUHP reserves the right to seek an equitable adjustment of the prime contract to the extent of the adjustment granted to ESI.

OIG Recommendation 6

We recommend that OPM's Contracting Officer require the PBM and Carrier to return $5,911,973 to the FEHBP for its portion of the PBM's drug inventory purchasing discounts that were not received for CYs 2016 through 2021.

APWUHP Plan Response

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APWUHP acknowledges ESI's disagreement with this draft finding. As their name suggests, non-specific drug discounts are minor price adjustments to inventory purchasing that are not attributable to a specific drug, a specific prescription order, a specific carrier, or a specific plan. They fall outside the scope of the OPM's pass-through transparent pricing requirement and are already reflected in the pricing arrangement set forth in ESI's contract with APWUHP. Even if required to fall under the OPM's pass-through transparent pricing requirement – a proposition we contend is misplaced – the total value of the non-specific drug discount amount represented an exceeding small percentage of the overall total amount of inventory drug purchase discounts that were, in fact, applied to APWUHP's pricing. At a minimum, OIG's finding should be more accurate in that regard than to issue a finding that implies no drug purchasing inventory discounts were passed through to APWUHP.

For mail order pharmacy claims, the PBM Transparency Standard in effect from 2016 to 2021 define pass-through transparent pricing as follows: “The PBM shall charge the Carrier the cost of drugs at mail order pharmacies based on the actual cost, plus a dispensing fee. Costs shall not be based on industry benchmarks, for example, Average Acquisition Cost (AAC) or Wholesale Acquisition Cost.”

ESI maintains that it meets this requirement by charging the APWUHP the purchase price that it pays for the ingredients used to fill a particular prescription, plus the dispensing fee. ESI explains that it identifies and adjusts the ingredient purchase price each month to reflect pre- and post-invoice discounts. This computation yields the actual acquisition cost of drugs dispensed by the mail order pharmacies. ESI has used this approach consistently since the OPM pass-through transparent pricing requirements were introduced in 2011. Contrary to the assertion of this finding that ESI did not pass through any of the drug purchasing inventory discounts, this is simply not the case and a mischaracterization of the actual pricing discounts that were applied here. The actual acquisition cost methodology applied by ESI to APWUHP’s pricing yielded drug specific discount value which was substantial and included all of the drug specific purchasing inventory discounts. Non-specific drug discounts, even if required to be passed through, – a proposition ESI asserts is misplaced – represented an exceedingly small percentage of the overall aggregate drug inventory purchase discounts that were applied to APWUHP’s pricing.

ESI maintains that its focus on the cost of ingredients used to fill FEHB prescriptions is consistent with the OPM requirement. The text of the OPM transparency standard refers specifically to the actual cost of drugs. A charge that is based on the actual cost of drugs is necessarily tied to an individual prescription order.

ESI also notes that OPM revised the PBM Transparency Standard in 2021 for the 2022 plan year to incorporate cost adjustments arising from a “true up or reconciliation.” This was a substantive and material change, and ESI has adjusted its invoicing practices accordingly.

There was no language expressly requiring ESI to credit the APWUHP or OPM with adjustments that are independent of individual prescription orders prior to January 1, 2022, and we are not aware of any guidance suggesting that the APWUHP or OPM intended this approach.

OIG Recommendation 7

We recommend that OPM’s Contracting Officer assess the PBM and Carrier $767,126 for LII on the questioned costs due back to the FEHBP for this finding, calculated through June 30, 2023. The LII should be adjusted to account for the date the questioned costs are returned to the program.

APWUHP Plan Response

APWUHP understands ESI’s stated reasoning of the OPM PBM Transparency Standards and agrees there is no basis for the OPM Contracting Officer to assess APWUHP any amount for Lost Investment Income.

If the OPM elects to make this assessment, we understand that ESI will be entitled to an equitable adjustment of its contract price to the extent of the assessment. APWUHP reserves the right to seek an equitable adjustment of the prime contract to the extent of the adjustment granted to ESI.

OIG Recommendation 8

We recommend that OPM's Contracting Officer require the PBM and Carrier to return the FEHBP's portion of the PBM's "non-specific drug discounts" going back to the start of the Carrier's transparent agreement with the PBM, specifically for the period of CYs 2012 through 2015. The PBM has already identified an additional $1,397,520 in drug inventory purchasing discounts for CY 2015 that should be returned to the FEHBP as overcharges.

APWUHP Plan Response

See our response for Recommendation #6.

OIG Recommendation 9

We recommend that the Carrier adopt new controls to ensure that the PBM passes through all its drug inventory purchasing discounts associated with the Carrier and FEHBP in accordance with the PBM Transparency Standards for mail order and specialty drug actual acquisition costs.

APWUHP Plan Response

APWUHP recognizes ESI's stated understanding of the OPM PBM Transparency Standards. For this reason, APWUHP feels it does not need to adopt new controls to ensure that the PBM passes through all its drug inventory purchasing discounts.

If APWUHP adopts new controls, ESI will be entitled to an equitable adjustment of its contract price. APWUHP reserves the right to seek an equitable adjustment of the prime contract to the extent of the adjustment granted to ESI.

OIG Recommendation 10

We recommend that Carrier collect $2,279,264 in claim transaction fees that were credited back to the PBM by retail pharmacies for the Carrier's CY 2016 through 2021 prescription drug benefits.

APWUHP Plan Response

APWUHP acknowledges ESI's disagreement with this draft finding. ESI contends that the OPM Transparency Standard does not extend to ESI services that are not tied specifically to the cost of drugs needed to fill FEHB prescription orders. ESI observes, at the outset, that the finding appears to rely on Section 1.26(a)(5) as the OPM requirement being applied here. But, Section 1.25(a)(5), as set forth above, was part of OPM's adoption of revised standards that did not take effect until after 2021 or, in other words, until after the applicable audit period. That notwithstanding the fees in question here are transaction fees for services that ESI provides to retail pharmacies, and the services and fees are not tied to the cost of prescription drugs. These services include: (a) real-time point-of-sale adjudication services; (b) help desk/IT/telecom services; (c) concurrent drug utilization review (i.e., real-time drug utilization analysis at the point of prescription dispensing to prevent adverse drug interactions); (d) automated prior authorization processes, which reduce the need for telephone calls to and from the pharmacy; and (e) maintaining industry standards (e.g., NCPDP). ESI explains that such pharmacy transaction fees offset the cost of providing these services and reduce the fees paid by the carrier and are standard in the industry and apply in all instances, not only in spread-pricing arrangements but also in pass-through transparent pricing arrangements.

According to ESI, it collects and retains these fees is reflected in the administrative fee that ESI earns for its services. If ESI were required to credit the OPM with these transaction fees, ESI would likely seek a commensurate increase in the amount of its administrative fee.

OIG Recommendation 11
We recommend that OPM's Contracting Officer assess the PBM and Carrier $233,921 for LII on the questioned costs due back to the FEHBP for this finding, calculated through June 30, 2023. The LII should be adjusted to account for the date the questioned costs are returned to the program.

APWUHP Plan Response
APWUHP notes ESI's stated understanding of the OPM PBM Transparency Standards. For this reason, there is no basis for the OPM Contracting Officer to assess APWUHP any amount for Lost Investment Income.

If the OPM elects to make this assessment, ESI will be entitled to an equitable adjustment of its contract price to the extent of the assessment. APWUHP reserves the right to seek an equitable adjustment of the prime contract to the extent of the adjustment granted to ESI.

OIG Recommendation 12
We recommend that the PBM adopt policies and procedures to ensure that the Carrier receives the value of all credits (i.e., claim transaction fees) that the PBM collects from retail pharmacies under pass-through transparent pricing.
APWUHP Plan Response
As noted above, APWUHP does not need to adopt new controls to ensure that the PBM collects from retail pharmacies under pass-through transparent pricing.

OIG Recommendation 13
We recommend that the PBM return $4,907,110 to the Carrier and the FEHBP for the underpayment of drug manufacturer rebates that were collected during CYs 2016 through 2021.

APWUHP Plan Response
First, this finding inappropriately includes the sum of $1,800,196, which was the amount of an incorrect adjustment taken during the payment cycles for plan year 2021. This was the result of a human error. ESI has acknowledged this error and has taken steps to correct it. This was credited back to the health plan on 6/27/23 under invoice 47125921C.

Secondly, APWUHP acknowledges ESI's disagreement that the data file that your office used to calculate rebates is an interim rebate reporting file that does not reflect claim reversals and pullbacks. ESI explains that the amount of the rebates reflected in this finding is thus overstated. The appropriate claim level detail appears in the file named "11043ESI001_SAG_FEHBP_APWU_ESI_NFR_2_Claim Level Detail," which ESI provided to your office via FTP transfer.

OIG Recommendation 14
We recommend that OPM's Contracting Officer assess the PBM and Carrier $297,740 for LII on the questioned costs due back to the FEHBP for this finding, calculated through June

30, 2023. The LII should be adjusted to account for the date the questioned costs are returned to the program.

APWUHP Plan Response
APWUHP recognizes ESI's stated understanding of the OPM PBM Transparency Standards. For this reason, there is no basis for the OPM Contracting Officer to assess APWUHP any amount for Lost Investment Income.

If the OPM elects to make this assessment, ESI will be entitled to an equitable adjustment of its contract price to the extent of the assessment. APWUHP reserves the right to seek an equitable adjustment of the prime contract to the extent of the adjustment granted to ESI.

OIG Recommendation 15
We recommend that the PBM adopt controls to ensure that all drug manufacturer rebates are properly allocated and passed through to the FEHBP.

APWUHP Plan Response
APWUHP concurs that ESI has always and continues to contract for rebates on its own behalf, and shares those rebates with APWUHP and OPM based on the terms of the PBM agreement. ESI's contract with APWUHP requires pass-through to APWUHP of a certain percentage of rebates that it receives or a guaranteed amount. During the audit period in question, ESI correctly shared the greater of the Rebate amounts received by ESI or the guaranteed rebate amount per the PBM Agreement.

Name: Randy P. Griffin	Name: ______
Title: CEO & Chief Operating Manager	Title: ______
Signature: Randy P. Griffin	Signature: ______
Date: 9/15/2023	Date: ______

APPENDIX B

Nicole S. Jones
Executive Vice President, Chief Administrative Officer
and General Counsel

Routing W361A
900 Cottage Grove Road
Hartford, CT 06152

April 24, 2024

VIA FIRST CLASS MAIL AND ELECTRONIC MAIL (NGOreportcommentstoOIG@opm.gov)

Krista A. Boyd
Inspector General
U.S. Office of Personnel Management 1900 E Street, N.W.
Room 6400
Washington, D.C. 20415

Re: OIG Audit of American Postal Workers Union Health Plans' Pharmacy Operations as Administered by Express Scripts, Inc. (Audit) (Report No. 2022-SAG-029)

Dear Inspector General Boyd:

On March 29, 2024, the U.S. Office of Personnel Management (OPM) issued correspondence to The Cigna Group (Cigna) regarding the above-referenced Audit conducted by the Office of the Inspector General (OIG) of the American Postal Workers Union Health Plans' (APWU) pharmacy operations as administered by Cigna's subsidiary, Express Scripts, Inc. (ESI). The Audit also references other Cigna subsidiaries, including Evernorth Health, Inc. and Ascent Health Services, LLC.

Pursuant to Public Law 117-263, section 5274, your office provided Cigna 30 days to submit a written response to provide clarifying comments or additional context regarding the Audit. To the extent we do not address all 17 Audit Recommendations in this correspondence, this does not mean that Cigna (or ESI) agrees or concedes with the Recommendations not addressed, rather that ESI relies on its prior responses and statements to OIG in connection with the Audit.

Recommendations 3-5: Pass-Through of Retail Pharmacy Discounts ($14,368,884)

We respectfully disagree with the "Pass-Through of Retail Pharmacy Discounts" findings for several reasons and provide the following additional statement:

It is our understanding that, prior to January 1, 2022, any compensation ESI received from retail pharmacies, independent of the prescription orders of APWU (Carrier) members, fell outside the scope of the OPM's pass-through transparent pricing standards and, at all relevant times, ESI's operations with respect to the pass-through of retail pharmacy discounts for the Carrier were appropriate and compliant.

There was no language in the Carrier's PBM Agreement with ESI requiring to pass through the value it receives for *other* carriers' prescription orders prior to January 1, 2022, and we are not aware of any guidance suggesting that the Carrier or OPM intended this approach. Additionally, as of 2018, the Agreement between Carrier and ESI specifically contemplated that ESI *may* maintain non-client specific guarantees and realize positive margin therein.

In 2021, OPM revised the PBM Transparency Standard for the 2022 plan year to incorporate cost adjustments arising from a 'true up or reconciliation.' This was a substantive and material change, and ESI adjusted its operations accordingly to comply after enactment, but this new standard cannot fairly be used to support a finding with respect to the applicable years under audit review that precede such changes (2016-2021).

OIG also asserted that ESI withheld requested contract information during the Audit by producing "internal reimbursement schedules [...] created by the PBM for its clients [...] that were not negotiated with the retail pharmacies" in response to the request for pharmacy contracts. This is incorrect. The pricing schedules provided to OIG were legitimate reimbursement schedules of the agreements between ESI and the retail pharmacies that applied to the claims in question. These schedules were passively added to the relevant pharmacy agreements, and passive amendments are expressly permitted under those agreements. Additionally, we are not aware of any standard or guidance from OPM that prevents a PBM and a pharmacy from agreeing to amend their respective agreements through a passive amendment process.

As a result, we disagree that there is any amount due to Carrier for these findings, and therefore no resulting Lost Investment Income (LII).

Recommendation 6-9: Pass-Through of Drug Inventory Purchasing Discounts ($6,823,263)

We respectfully disagree with the "Pass-Through of Drug Inventory Purchasing Discounts" findings for several reasons and provide the following additional statement:

It is our understanding that ESI complied with applicable language of the Carrier's PBM Agreement and OPM's pass-through transparent pricing standards during the entire audit period. In accordance with the PBM Agreement, the Carrier was charged the cost of drugs at mail order pharmacies based on the actual cost, plus a dispense fee. Costs were not "based on industry benchmarks, for example, Average Acquisition Cost (AAC) or Wholesale Acquisition Cost." There was no language requiring ESI to credit Carrier with adjustments that were unrelated to

Carrier's individual prescription orders, and we are not aware of any guidance suggesting that the Carrier or OPM intended this approach. Non-specific drug purchase discounts fell outside the scope of the OPM's pass-through transparent pricing standards and, at all times, ESI's operations with respect to pass-through of drug inventory purchase discounts were appropriate and compliant.

As a result, we disagree that there is any amount due to the Carrier for these findings, and therefore no resulting LII.

Recommendations 10-12: Pharmacy Transaction Fees ($2,568,765)

We respectfully disagree with the "Pharmacy Transaction Fees" findings for several reasons and provide the following additional statement:

It is our understanding that retail pharmacy transaction fees fall outside the scope of the OPM's pass-through transparent pricing standards and, at all relevant times, ESI's operations with respect to such retail pharmacy transaction fees were appropriate and compliant.

The assessed transaction fees in question are to compensate ESI for pharmacy network services that it provides to retail pharmacies. These services fees are not part of the drug pricing to Carrier or its members. OPM Transparency Standards do not extend to ESI services that are not tied specifically to drug pricing and the cost of Carrier's prescription orders.

As of 2018, the PBM Agreement between Carrier and ESI specifically contemplated that ESI may assess and retain such transaction fees. Additionally, there was no language requiring ESI to pay the Carrier or OPM such transaction fees, and we are not aware of any guidance suggesting that the Carrier or OPM intended this approach.

As a result, we disagree that there is any amount due to the Carrier for these findings, and therefore no resulting LII.

Recommendations 13-15: Underpayment of Rebates Received ($5,281,746)

We respectfully disagree with the "Underpayment of Rebates Received" findings for several reasons and provide the following additional statement:

It is our understanding that ESI identified an error in manual adjustments resulting in $1,800,196 to Carrier related to allocable rebates and this amount was credited back to Carrier.

With respect to the remaining alleged shortage of $3,106,914, it is our understanding that ESI reiterated throughout the audit process that OIG calculated this figure by using an interim data file that did not reflect prescription claims reversals and pullbacks. ESI and Carrier both informed the OIG of this error and pointed the OIG back to the correct data file - 11043ESI001_SAG_FEHBP_APWU_ESI_NFR_2_Claim Level Detail.

In the Audit, OIG failed to acknowledge this issue and simply stated, "the PBM has yet to provide any support to prove that the shortage of $3,106,914 in rebates was due to 'claim reversals and pullbacks.'" OIG did not address why it did not review the correct data file or whether the correct data file addressed the discrepancy, but stated that ESI failed to provide "any support" to address this finding. This is incorrect. If OIG reviewed the correct data file it would have determined there was no shortage or underpayment of pharmaceutical manufacturer rebates.

As a result, other than the $1,800,196 that has already been credited to Carrier, because OIG mistakenly calculated a shortage of $3,106,914 which does not exist, the corresponding LII of $374,636 was also calculated in error. Had the OIG reviewed the correct data file, the perceived shortage would have been correctly calculated at a prorated amount based on the correct amount of $1,800,196. Furthermore, as this balance was paid on June 27, 2023 that should also be the date the LII is determined instead of the December 31, 2023 date used in the audit report.

Recommendations 16-17: Pass-Through of Drug Manufacturer Rebates from Sister Company ($15,840,030)

Ascent Health Services, LLC is a group purchasing organization (GPO) that aggregates purchasing volume to negotiate greater savings through rebates with pharmaceutical manufacturers. It is partially owned by Cigna Spruce Holdings GmbH (a wholly-owned subsidiary of Cigna), and other third parties. The Audit refers to Ascent as ESI's "sister" company. We disagree with that characterization.

In the Audit, ESI reported that from June 1, 2019 through December 31, 2020, ESI contracted with Ascent to perform rebate management services in connection with ESI's Agreement with Carrier. The Audit states that ESI "realized" that contracting through Ascent to process rebates for FEHBP business during this short time period was "inadequate."

It is our understanding that throughout the audit process, ESI reiterated that its operations were appropriate and compliant under the Agreement, however understood that OIG took the position that contracting through Ascent for this short period of time without providing a monetary adjustment was inadequate. While contractual interpretations may vary, given its commitment to its FEHB customers, ESI voluntarily agreed to credit the amount to APWU rather than contest OIG's position, and will also credit LII upon validation of the calculated amount.

***

We thank you for the opportunity to provide these additional comments and context. Please do not hesitate to reach out if you have any questions or concerns.

Sincerely,

Nicole S. Jones

Nicole S. Jones

Executive Vice President, Chief Administrative Officer
and General Counsel

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