

Prescription Drugs | PBM Express Scripts Did Not Pass Along Rebates to New York's Employee Health Program, Lawsuit Alleges

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New York Attorney General Eliot Spitzer (D) on Wednesday filed suit against pharmacy benefit manager [Express Scripts](#) -- which manages drug benefits for New York state employees - alleging the company defrauded the state of up to \$100 million over five years, [USA Today](#) reports (Appleby, *USA Today*, 8/5). Spitzer and state Civil Service Commissioner Daniel Wall allege Express Scripts violated its \$600,000 contract to negotiate lower drug prices for state workers and pass the rebates on to the state ([AP/Long Island Newsday](#), 8/5). According to the lawsuit, filed with the New York State Supreme Court, Express Scripts kept millions of dollars in rebates negotiated with pharmaceutical companies that should have gone to the state by classifying them as "administrative" or "management" fees. The suit also alleged that the company inflated the cost of generic drugs and switched patients to drugs for which the company received money from the manufacturers, sometimes resulting in higher copayments or more doctor visits for patients (*USA Today*, 8/5). The suit also names two subsidiaries of Cigna, which provides insurance to New York state employees (Lauerman/Mumma, [Bloomberg/Philadelphia Inquirer](#), 8/5). According to Spitzer, the lawsuit will seek up to \$100 million in restitution to the state and undetermined restitution to people who contributed unnecessary copays for drugs and medical services. Spitzer said he filed the suit after negotiations between the state and Express Scripts over a settlement broke down ([AP/Long Island Newsday](#), 8/5). "We are clearly far apart in the valuation of the harm done to New York," he said ([Reuters/Los Angeles Times](#), 8/5).

Reaction

Spitzer said that Express Scripts officials were using their "role as an intermediary not to live up to their fiduciary duty to their clients but to line their own pockets. This is an unfortunate tale, a violation of trust, a violation of duty" (Heldt Powell, [Boston Herald](#), 8/5). "They were simply committing fraud," he added ([AP/Long Island Newsday](#), 8/5). In a statement, Express Scripts said it "strongly denies" the allegations and intends to defend itself "vigorously" in court. The company also said it had saved New York state more than \$2 billion in drug costs since 1998 (Martinez, *Wall Street Journal*, 8/5). The company added that under the contract, the state got "all rebates for which it contracted, and more rebates than guaranteed" ([AP/Long Island Newsday](#), 8/5). Express Scripts said it would set aside \$15 million to \$20 million for its legal defense costs. Cigna spokesperson Wendell Potter said in a statement that Express Scripts had primary responsibility for providing prescription drug benefits to New York state employees, and the suit "focuses on Express Scripts' administration of the pharmacy benefit plan" ([Bloomberg/Philadelphia Inquirer](#), 8/5).

Part of Wider Investigations

According to *USA Today*, the suit against Express Scripts is "the latest in a series of lawsuits and investigations involving pharmacy benefit managers" (*USA Today*, 8/5). Last week, Express Scripts announced that 20 states have launched investigations into company business practices ([Kaiser Daily Health Policy Report](#), 8/4). In addition, [Caremark Rx](#) announced last month that it is being investigated by attorneys general from 19 states, and in April, [Medco Health Solutions](#) agreed to pay \$29.3 million to settle charges from officials in 20 states that it induced physicians to switch patients' prescriptions and sometimes failed to pass on savings to clients (*USA Today*, 8/5). According to *Reuters/Los Angeles Times*, Spitzer said that abusive practices are common throughout the PBM industry (*Reuters/Los Angeles Times*, 8/5). "There are certain behavior patterns that we find problematic," he said. He added, however, that he "certainly [doesn't] want to tar an entire industry" ([AP/Long Island Newsday](#), 8/5).