



OFFICE OF THE CONTROLLER

Mark Pinsley, MBA Thomas Grogan, CPA
COUNTY CONTROLLER DEPUTY CONTROLLER

TO: Final Distribution
FROM: Mark Pinsley, County Controller
DATE: January 27th, 2021
RE: Performance Audit Highmark Prescription Drug Audit

We have completed our performance audit of the Highmark Prescription Drug Costs for the year 2019. Our report number 21-02 is attached.

Our audit was met with restrictive access to county-incurred drug cost data, withholding/delay of detail of actual costs incurred, and at least passive resistance by county management due to the historical and industry-wide standard of concealment of drug rebate payments.

Even with substantive communication and (county-owned) data restrictions, we were able to quantify over \$1.4 million in savings:

- During 2019, Lehigh county could have received in excess of \$700,000 and \$80,000 in additional prescription drug and medical claim rebates, respectively*;
- Alternative market price comparisons identified 200 cheaper prescription drugs for a total potential savings of over \$650,000.

* Also, if the county had been allowed the option of receiving the higher of actual rebates earned versus a fixed rebate, the total rebate savings for 2017 to 2020 would have been \$1.6 million.

Please feel free to contact me if you have any questions.

AUDITS/HIGHMARKRX AUDIT



COUNTY OF LEHIGH, PENNSYLVANIA
HIGHMARK PRESCRIPTION DRUG COSTS

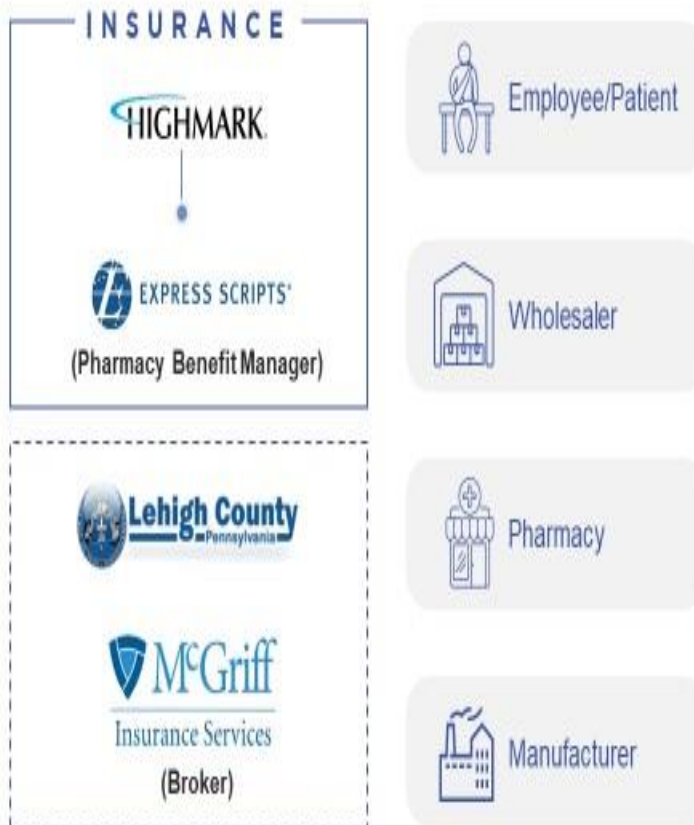
*Performance Audit of Highmark Prescription Drug Costs
for the Year 2019*

REPORT 21-02

COUNTY OF LEHIGH, PENNSYLVANIA
HIGHMARK PRESCRIPTION DRUG COSTS

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THE PLAYERS IN THE DRUG INDUSTRY





Edward Hozza, Jr., Director of Administration
Lehigh County Government Center
17 South Seventh Street
Allentown, PA 18101-2400

We have recently completed a performance audit of Highmark Prescription Drug Costs for the year 2019. 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, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The scope of our detail audit testing was prescription drug claim spending during calendar year 2019. Our consideration of internal control was limited to audit testing required to meet our audit objectives and would not necessarily identify all deficiencies in internal control that might be significant or material weaknesses. Our office performed this audit at this time based on our evaluation of county-wide risk assessment. Claims findings below relate to 200 claims (Highmark contractual limit), as well as the savings when compared to a publicly available drug cost comparison site.

As stated to the Highmark Senior External Audit Support Manager in our May 4, 2020 engagement letter, the objective of the audit was to evaluate the adequacy of controls over prescription drug costs for Lehigh County plan members. We completed our objective by obtaining and analyzing 2019 plan year prescription drug claims to determine:

- If control totals reconcile to claims invoiced and paid;
- The cost spread and utilization of generic, branded, non-formulary, and formulary prescription drugs from highest to lowest;
- Whether the fixed rebate incentives passed through to Lehigh County exceeded the amount of rebates received by Highmark;
- If contract requirements are transparent and if appropriate access to data is permitted;
- If any fraud, waste, and abuse was uncovered;
- Whether there were any employee complaints that have not been resolved;
- If there were any instances of fraud relating to service providers used by Lehigh County plan members;
- Prescription drug prices paid under the plan versus the cost of other sources of prescription drugs;
- The most and least utilized pharmacies;
- Whether there were brand name drugs that could have been prescribed as a generic;
- If the copays made by plan members were greater than the cost of the prescriptions filled;

Audit standards applied in performing the audit included generally accepted government auditing standards, and Government Auditing Standards issued by the Comptroller General of the United States.

We achieved our objectives by examining the actual prescription drug costs during 2019. We believe that the audit evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Our audit included an examination of the 2019 health plan claims records and related documentation, discussions with the management of the Office of Human Resources, the County Administrator, McGriff Insurance and Highmark representatives, and other external parties. We utilized multiple auditing procedures we considered necessary in the circumstances.

We concluded that the adequacy of internal controls over prescription drug costs for Lehigh County plan members are inadequate. County management, McGriff Insurance, and Highmark personnel need to renegotiate the county health care plan contract to ensure cost effective, verifiable practices are put in place immediately. If there is refusal to address inadequate pricing controls and transparency issues, county management and the board of commissioners need to give notice of termination to cancel any contractual obligations with Highmark and prepare a request for proposal for other health care plan service providers.

Our audit was met with restrictive access to county-incurred drug cost data, withholding/delay of detail of actual costs incurred and at least passive resistance by county management due to the historical and industry-wide standard of concealment of drug rebate payments.

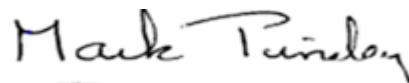
Even with substantive communication and (county-owned) data restrictions, we were able to quantify over \$1.4 million in savings:

- During 2019, Lehigh county could have received in excess of \$700,000 and \$80,000 in additional prescription drug and medical claim rebates, respectively*;
- Alternative market price comparisons identified 200 cheaper prescription drugs for a total potential savings of over \$650,000.

* Also, if the county had been allowed the option of receiving the higher of actual rebates earned versus a fixed rebate, the total rebate savings for 2017 to 2020 would have been \$1.6 million.

Further details concerning issues uncovered during the audit are outlined in the “*Schedule of Audit Findings and Recommendations*” on pages 5-8.

This report is intended for the information and use of the Department of Administration and other affected county offices. This restriction is not intended to limit the distribution of this report, which is a matter of public record. If you have any questions, please feel free to contact me.



MARK PINSLEY
County Controller

January 27th, 2021
Allentown, Pennsylvania

Final Distribution:

Phillips Armstrong, County Executive
Board of Commissioners
Lori Gloninger, Senior External Audit Support
Analyst, Highmark
Edward Hozza, Jr., Director of Administration

Peter Kareha, Employee Benefits Consultant,
McGriff Insurance
Karina Kane, Senior Client Manager, Highmark
Marc Redding, Human Resources Director
Timothy Reeves, Fiscal Officer
Sam Stretton, Solicitor, Office of the Controller
Christie Corado, SVP, Deputy General Counsel
McGriff Insurance
Allison Huddleston, MBA, GBDS, VBS
Director, Account Management & Sr Account
Executive



COUNTY OF LEHIGH, PENNSYLVANIA
2019 HIGHMARK PRESCRIPTION DRUG COSTS AUDIT

Schedule of Audit Findings and Recommendations

1. Full Amount of Prescription Drug Rebates Not Passed Through

Condition: The county made the decision to choose a fixed discount structure (rather than actual rebates), based on historical rebates from prior periods which did not reflect current rebates Highmark negotiated with prescription drug suppliers. Actual prescription rebates exceeded the fixed discount in excess of \$700,000 for the 2019 plan year. Furthermore, if the county was permitted to select the greater of fixed rebate or actual rebates between 2017 and 2020 contract years, the county would have saved in excess of \$1.6 million. Highmark refused to provide rebate details for 2017, 2018, and 2020 plan years.

Recommendation: Management should renegotiate the Highmark contract to allow the county to choose the greater of fixed rebate or actual rebate incentives.

2. Medical Claims Prescription Rebates Not Passed Through

Condition: Industry standards and Lehigh County/Highmark contract provisions do not allow for Lehigh County to share medical claim prescription rebates. For the 2019 contract year, in excess of \$80,000 was retained by Highmark.

Recommendation: Lehigh County should participate in all rebates earned by medical claims experience.

3. Highmark Prescription Drug Costs More Expensive Than Competitors for at least 200 Prescription Drug Claims

Condition: We evaluated 200 prescription drug claims out of 234,969 claim records from Highmark. We uncovered potential savings of \$654,749 in drug costs in comparison to a publicly available website to compare prescription drug pricing.

Recommendation: Management should renegotiate the Highmark/ESI contract to ensure that the County of Lehigh always pays the lowest cost for a prescription drug available in our area and receives the highest rebate. In addition, management should promote the use of locally owned, independent pharmacies, rather than using Highmark's preferred mail order partner, Express Scripts (ESI). Management should consider the using NADAC (National Average Drug Acquisition Cost) as the basis of its price controls and reimbursements. NADAC is the CMS (Centers for Medicare and Medicaid) determined price at which pharmacy's acquire drugs. NADAC is updated on a weekly basis and provides information about drug cost at a unit level (example per pill).

4. Management Did Not Select the Lower Cost Option in the McGriff Cost Pricing Analysis

Condition: McGriff insurance provided the county a number of options to choose from during their competitive analysis of health care plan providers. The county decided on a more expensive option when there was a lower cost option available. We were informed that the selection of the lowest cost alternative provider would have disrupted employee benefits. The detail of the financial impact on employee costs was not provided.

Recommendation: The Controller's office recommends that the COL request a repricing of the drug pricing paid for 2019 with PBM's that are considered by the industry to be "transparent". If a vendor is selected who is not the lowest cost there should be some documentation as to why that decision has been made.

5. Approval from Administration Required/No Standard Independent Right-to-Audit Clause in Contract

Condition: In order to complete an audit or simply request information, Highmark and McGriff Insurance required that the Office of Administration approve the controller's office request before communicating and dissemination information.

Recommendation: Management should require that every future contract negotiated should have a clause that allows the controller to perform an audit, or seek information without obtaining approval from the Office of Administration or any other cabinet level office. Without direct access to the service provider, the Office of Administration could prevent the controller's office from uncovering areas of potential savings from fraud, waste, and abuse or conflicts of interest in the selection and retention of service providers.

The board of commissioners should consider amending the administrative code to include standard right-to-audit-clauses in all future contracts.

6. Contract Language Not Transparent

Condition: The Highmark contract is not transparent to the public, controller, or anyone outside of the Office of Administration or the Office of Human Resources. Reduced transparency allows Highmark to capture additional savings which could have offset the cost of the health care plan and ultimately, the taxpayer.

Based on our review, there were a number of contract transparency issues which included:

- Contract language prevents the disclosure of detailed claim data, excluding personal health information, to other parties for cost comparisons on a routine basis to ensure competitiveness and lowest cost borne to taxpayers.
- Highmark only allows an audit of the most recent contract year and only permits an annual review of 200 paid claims.
- The terms and conditions language in the contract are confidential and prevent the disclosure of claim data and prescription and health claim spending details to ensure competitiveness.

- Contracts, price lists, data reports, techniques, and actual costs are being deemed proprietary information and are not permitted to be shared with anyone without prior written consent from Highmark.
- Any audit to be completed, must be discussed with and approved by Highmark before an audit is allowed to proceed.
- Highmark refuses to disclose contract details such as pricing, claims paid, and other financial details they have with 3rd parties such as Express Scripts (ESI). Therefore, the controller's office was unable to confirm if the price Highmark paid the pharmacy for a specific claim, was the same price Highmark charged the County of Lehigh for that claim.
- Highmark and the plan sponsor (County of Lehigh Administration) must agree on the scope of the audit, before an audit is allowed to commence.

Recommendation: Management should review the contract requirements and change the language to allow greater transparency to the county controller and to the public to ensure the taxpayers are paying the lowest costs for the County of Lehigh health care plan.

7. McGriff Insurance Not a Representative for Lehigh County

Condition: Per a September 14, 2011 letter to McGriff Insurance, the county named McGriff as the broker of record for assistance in the selection and retention of health care providers. Lehigh County has no direct financial relationship between itself and McGriff. The COL pays Highmark and Highmark pays McGriff. This arrangement can lead to confusion as to whom McGriff has fiduciary responsibilities.

Recommendation: County management should negotiate a contract a between the County of Lehigh and McGriff Insurance which requires McGriff to act as a representative for the County of Lehigh, not Highmark.

8. Selection of McGriff Insurance Was Not Approved by Board of Commissioners

Condition: The selection of the broker of record for assistance in the selection and retention of a healthcare plan provider does not require approval by the Lehigh County Board of Commissioners.

Recommendation: The County of Lehigh should require an ordinance from the Board of Commissioners prior to the selection of any provider servicing Lehigh County employees.

9. No Campaign Finance Forms Required for McGriff Insurance

Condition: Lehigh County does not have a contract with McGriff, therefore, no campaign finance report was required.

Recommendation: Management should negotiate a contract with McGriff and require the filing of a county campaign finance reporting form to ensure no conflicts of interest exist.

10. Highmark Refused to Provide Details on Fraud, Waste, Abuse, or Employee Complaints About Service Providers Paid by Highmark.

Condition: The controller's office requested to review any fraud, waste, or abuse cases uncovered by Highmark regarding health plan service providers, but was denied, due to confidentiality.

Recommendation: Management should request Highmark provide a detailed report on any instances of fraud, waste, and abuse cases that resulted in recoveries for Highmark from providers servicing Lehigh County Plan Members. Any recoveries that Highmark obtained, should be refunded to the County of Lehigh. This information should be provided at the request of the controller, or administration, and should be presented on a recurring basis for any future contract years.

11. No Evidence of Medical and Drug Claim Invoice Details Submitted by Human Resources for Payment Requests

Condition: The Office of Human Resources refused to provide evidence supporting medical or prescription drug claim details for invoices submitted to the Office of Fiscal Affairs for payment and the Office of the Controller for review. The controller's office specifically requested the removal of protected health information (PHI) on supporting documentation required, but was repeatedly denied. Section 502, Paragraph (b), of the Lehigh County Administrative Code states that the controller is required to "review all warrants for the expenditures of County monies and review the bidding, contract and other documents constituting the basis for the expenditures and if satisfied that such expenditures are within the budget allotment pertaining thereto and otherwise conform to the applicable legal requirements, shall sign said warrant before it is paid."

Recommendation: The Office of Human Resources should provide supporting claim information, excluding PHI data, on all future requests for payments for medical or prescription drug invoices. Failure to provide the supporting documentation could result in non-payment of invoices until such time that sufficient and appropriate evidence of county incurred expenditures is obtained.



COUNTY OF LEHIGH
Department of Administration

Edward D. Hozza, Jr.
Director of Administration

TO: Mark Pinsley, County Controller

FROM: Edward D. Hozza Jr., Director of Administration

DATE: January 25, 2021

RE: 2019 Performance Audit- Highmark Prescription Drug Costs
Schedule of Audit Findings and Recommendations

As the Director of Administration for the County of Lehigh, I have reviewed the 2019 Performance Audit- Highmark Prescription Drug Costs and the Schedule of Audit Findings and Recommendations dated January 12, 2021 from the Lehigh County Controller. I initially note that this performance audit is not within the Controller's enumerated powers under the Lehigh County Home Rule Charter or the Lehigh County Administrative Code. The Controller is not authorized to conduct performance audits of third-party vendors and contractors. This audit also exceeds the scope of the audit agreement between the County and Highmark and may put the County in breach of its contract with Highmark as a result.

The Administration has been informed by the Lehigh County Solicitor that the release of certain information by the Controller's Office may be treated as a violation of the Proprietary and Confidentiality clauses in the agreement with Highmark Blue Cross and Blue Shield.

BACKGROUND

The current Lehigh County Administration came into office in January 2018. The Administration was made aware that the prior Lehigh County Administration had designated the County's Broker of Record for Health Insurance on or about September 16, 2011 as Caruso Benefits Group, Inc. then on January 1, 2013 with their successor National Penn Insurance Services Group Inc. then on April 1, 2016 with their successor BB&T Insurance Services Inc. and then on June 25th, 2018 with their successor McGriff. McGriff provides consulting services to the Administration related to our Integrated Self-Funded Healthcare, Prescription Drug Coverage, Vision, Dental, Flexible Spending, Cobra and Stop Loss Coverage (the County is self-insured).

In 2017, the prior Administration negotiated and entered into a multi-year contract with Highmark Blue Cross and Blue Shield to provide Healthcare and Prescription Drug Coverage to current and eligible retired employees from 2018 through 2020. That contract was extended for three years in October of 2019, and will expire in 2022.

The current County Administration team, consisting of Mr. Marc Redding, the Human Resource's Officer, Mr. Tim Reeves, the Chief Financial Officer and myself, meet on a regular basis with our consultants from McGriff and with Highmark to continue to provide to our employees, their eligible dependents and eligible retirees a comprehensive cost-effective benefit package.

*Government Center
17 South Seventh Street
Allentown, Pennsylvania 18101-2401
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edhozza@lehighcounty.org*

Highlights of the Timeline of the 2019 Performance Audit-Highmark Prescription Drug Coverage

Notification by the Controller's Office regarding a Prescription Audit began on Thursday, February 28, 2020 9:40 AM by an email from Deputy Controller, Thomas Grogan.

On April 8th, 2020 permission was sought from Highmark to engage their external audit team to evaluate the information requests from the Lehigh County Controller's Office.

On April 27, 2020 Highmark sent a Pharmacy File to the Lehigh County Controller's Office.

On Tuesday, April 28, 2020 Highmark sent a data dictionary to define the Pharmacy File Spreadsheet.

On May 4, 2020 the Controller sent an audit engagement letter to Highmark Blue Cross, Blue Shield.

On May 7, 2020 the Controller sent a letter to Highmark Blue Cross Blue Shield with additional Pharmacy Prescription information requested.

In early June, 2020 The Administration was made aware that Highmark Blue Cross, Blue Shield has serious concerns regarding the potential disclosure by the Controller's Office to competitors of confidential and proprietary data that had been requested in violation of the signed agreement.

On July 5, 2020 Highmark Blue Cross and Blue Shield sent a Notice under the Pennsylvania Right-To-Know Law of Trade Secret and Confidential Proprietary Information Contained in Health Care Contracts.

On Thursday, July 16, 2020 Highmark Blue Cross and Blue Shield sent redacted file layouts from 1/1/19 to 12/31/19 of paid prescription claims.

The Administration has a serious concern that in August of 2020, during the course of the Controller's audit, the Controller asked McGriff to conduct an RFP for Prescription Coverage while the County was still under contract with Highmark with several years remaining in its term. Such a request may only come from the Lehigh County Executive Branch and does not fall under the Controller's Powers and Duties in the Home Rule Charter or the Administrative Code. Additionally, the request failed to comply with section 801.7 of the Administrative Code.

Response to the Schedule of Audit Findings and Recommendations

- 1. The Lehigh County Healthcare/Prescription Contract will be competitively procured in the future, and no later than 2022, following the process set forth in Section 801.7 of the Administrative Code.***
- 2. The Lehigh County Healthcare/Prescription Contract will be competitively procured in the future, and no later than 2022, following the process set forth in Section 801.7 of the Administrative Code.***
- 3. It is the understanding of the Administration that the data used for pricing comparison was taken from the GoodRx website. Such a comparison is not useful in determining what prices are available to Lehigh County and its employees and retirees. Pricing for 2020 from GoodRx***

is not appropriate to compare to 2019 costs for Lehigh County. Pricing from GoodRx requires an employee to use specific pharmacy each time the prescription is filled and perhaps not the same one in order to get the promoted discount/coupon. That suggests that refills would possibly require a transfer of the prescription to a new pharmacy every 30-90 days. Pricing from GoodRx may not be appropriate for specialty pharmacy medications, which local pharmacies do not regularly stock.

- 4. The Lehigh County Healthcare/Prescription Contract will be competitively procured in the future, and no later than 2022, following the process set forth in Section 801.7 of the Administrative Code.*
- 5. The Lehigh County Healthcare/Prescription Contract will be competitively procured in the future, and no later than 2022, following the process set forth in Section 801.7 of the Administrative Code. The Administration takes the selection of Health Care coverage and prescription coverage for the County's employees and retirees seriously. Many factors are involved in the decision, which is not a simple "lowest bidder" situation. In addition to comparing pricing for anticipated procedures (such as pregnant employees, cancer treatments etc.), the breadth and depth of the provider network is important to our employees, their dependents, and retirees, some of whom do not live in Pennsylvania.*
- 6. The Lehigh County Healthcare/Prescription Contract will be competitively procured in the future, and no later than 2022, following the process set forth in Section 801.7 of the Administrative Code. Negotiated audit clauses will continue to be part of the agreements with our health insurance and prescription providers.*
- 7. The Lehigh County Healthcare/Prescription Contract will be competitively procured in the future, and no later than 2022, following the process set forth in Section 801.7 of the Administrative Code.*
- 8. A new Agreement with McGriff has been negotiated and will be brought before the Board of Commissioners in February of this year in compliance with section 801.6 of the Administrative Code.*
- 9. Section 801.6 of the Administrative Code was added in 2017 and requires Commissioner approval of the selection of the County's Broker of Record.*
- 10. A new Agreement with McGriff has been negotiated and will be brought before the Board of Commissioners in February of this year in compliance with section 801.6 of the Administrative Code. The campaign finance forms will be part of the materials presented to the Board of Commissioners for their review.*
- 11. Highmark has shared their processes with the County's Human Resource Officer as required under the contract.*
- 12. The Human Resource Office continues to have serious concerns releasing protected health information (PHI) to anyone. Identifying a particular medical claim may still allow the individual's identity to be known if that claim is unique. Protection of our employees' privacy is important to this Administration.*



January 26, 2021

Via email to markpinsley@lehighcounty.org Mr. Mark Pinsley
County Controller
Lehigh County Government Center
17 South 7th Street
Allentown, PA 18101

Dear Mr. Pinsley:

In furtherance of your correspondence dated January 12, 2021, the following comments are provided on behalf of McGriff Insurance Services, Inc. (“McGriff Insurance”) to the draft *Performance Audit of Highmark Prescription Drug Costs for the Year 2019* (the “Performance Audit”) as prepared by your office.

Reference is made below to the specific sections of the Performance Audit, with commentary on behalf of McGriff Insurance following same.

4. *Management Did Not Select the Lowest Cost Option in the McGriff Cost Pricing Analysis*

McGriff Insurance notes that your initial characterization of its analysis as provided to the management of the County of Lehigh is misleading – while such analysis included pricing information, the collective materials provided to the County of Lehigh reflected all substantive information that, in the opinion of McGriff Insurance, was necessary to allow the County’s management to make a fully informed decision concerning the annual provision of pharmacy benefits to the participants in its group health plan. Because the determination of the appropriate pharmacy benefits arrangement requires consideration by the County of Lehigh of a number of factors – including such items as pharmacy network, potential member disruption among prescribed drugs, and the fact that competitive projections are not guaranteed - the information reflected in this comprehensive analysis was not limited to cost pricing as suggested in the Performance Audit.

5. Approval from Administration Required/No Standard Independent Right-to-Audit Clause in Contract

The Performance Audit indicates in relevant part that “McGriff Insurance required that the Office of Administration approve the controller’s office request before communicating and disseminating information”. This statement suggests that McGriff Insurance exercised arbitrary discretion in determining whether to communicate with the controller’s office.

The relationship between the County of Lehigh and McGriff Insurance requires McGriff Insurance to obtain the approval to disclose any client information to others outside of the authorized members of the County of Lehigh’s Administration Office. Under the scope of the broker of record letter between the parties, and consistent with state insurance regulations and industry practices, McGriff Insurance owes a duty to the County of Lehigh to obtain this approval prior to communicating with others not previously authorized.

7. McGriff Insurance Not a Representative for Lehigh County

This heading is inaccurate. Under the scope of the broker of record letter between the County of Lehigh and McGriff Insurance, the parties previously have established a client relationship. Consistent with that relationship, McGriff Insurance has represented the best interests of its client, the County of Lehigh, since 2011.

The Performance Audit suggests that because there is “no direct financial relationship” between the County of Lehigh and McGriff Insurance, no client relationship exists. This implication is misleading and inaccurate. As you previously have been informed on numerous occasions, a financial arrangement wherein an insurance broker (such as McGriff Insurance) is paid through a health insurance provider (such as Highmark) is common practice in the industry and has no bearing upon the existence of the client relationship. Contrary to your assertion in this section of the Performance Audit, McGriff Insurance has never been confused as to whom it owes its duties of representation, as the broker of record letter memorializes its client relationship with the County of Lehigh.

As to your recommendation that the management of the County of Lehigh negotiate a contract with McGriff Insurance wherein the County will pay fees directly to its health insurance broker, McGriff Insurance notes that this direct payment arrangement has been offered to, and discussed with, the management of the County of Lehigh on several prior occasions. McGriff Insurance expresses no preference as to its payment arrangement with the County of Lehigh. Nevertheless, the parties are currently in the process of negotiating the terms of such a direct payment arrangement. This change in payment structure will not alter the client relationship that already exists between McGriff Insurance and the County of Lehigh.

9. No Campaign Finance Forms Required for McGriff Insurance

As stated, McGriff Insurance and the County of Lehigh currently are negotiating a direct payment contract for health insurance broker services. Following the execution of this contract, McGriff Insurance will continue to abide by all laws and regulations regarding its relationship with the County of Lehigh, including but not limited to any campaign finance reporting requirements.

Should you wish to discuss any of the above comments, please contact the undersigned.

Sincerely,

/S/ Christie Corado

Christie Corado

SVP, Deputy General Counsel

Cc:

Peter Kareha Kevin Burgess Alison Huddleston Charles Bruder

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January 27, 2021

Confidential and Proprietary Information
By E-Mail to markpinsley@lehighcounty.org

Mark Pinsley
County Controller
Lehigh County Office of the Controller
Government Center
Room 465
17 South Seventh Street
Allentown, PA. 18101-2400

Re: Highmark Response to Draft Audit Report

Dear Mr. Pinsley:

I am writing on behalf of our client, Highmark Inc. (“Highmark”), in response to Mr. Pinsley’s memorandum, dated January 12, 2021, to Edward Hozza, Jr. (Director of Administration) and Marc Redding (Human Resources Officer), on which Lori Gloninger of Highmark was cc’d. The memorandum attaches a draft report entitled “Performance Audit of Highmark Prescription Drug Costs for the Year 2019” (the “Audit Report”) and requests a written response to the “Schedule of Audit Findings and Recommendations” on pp. 5-8 of the Audit Report. A copy of the memorandum and the draft Audit Report is attached to this letter.

Attached please find Highmark’s response to the draft Audit Report. We request that this response be included in your final Audit Report, consistent with the placeholder for same in the table of contents of the draft Audit Report.

As we have previously communicated in our letters to you and your counsel, Samuel Stretton, dated December 2, 2020 and December 18, 2020, the draft Audit Report that you have provided contains Highmark confidential and proprietary information which the County has agreed not to disclose to the public in the Master Health Services Agreement, effective January 1, 2018 (the “MHSA”), between Highmark and the County, and the Pharmacy Review Audit Agreement dated July 1, 2020 (the “Audit Agreement”) between Highmark and the County. Among other things, those agreements provide as follows:

- Section P.1 of the MHSA provides that the County and Highmark “acknowledge and agree that the terms and conditions set forth in this Agreement are confidential. Each Party shall maintain the confidentiality of the Agreement, except as necessary to carry out each Party’s responsibilities hereunder and except as may be required by law or regulation.”

- Section P.5 of the MHSA defines “Confidential and Proprietary Information” as including, among other things, “contracts, price lists, provider information, utilization data, reports ...and trade secrets”, as well as written materials pertaining to the same developed by a Party, and each Party agrees such Confidential and Proprietary Information “shall not be disclosed to any third party, except its legal counsel, without the prior express, written consent of the other Party and except as necessary to implement the terms of this Agreement and then only on a need-to-know basis.”
- Section 1 of the Audit Agreement defines the information Highmark provided for purposes of your audit as “Data”, and provides that any Data that is not Protected Health Information, including “financial records, pricing, fees,” “reports” and “any information about the terms, conditions or performance of the audit under this Agreement is sensitive, confidential and proprietary....” The Audit Agreement defines such information as “Confidential Proprietary Information” which “shall be held in strictest confidence, shall be used for purposes of [the] Audit only, and shall not be disclosed or re-released in any manner to any third party without the prior written consent of Highmark.”

Consistent with the provisions of the MHSA and the Audit Agreement, Highmark respectfully requests that any information contained in the Audit Report that constitutes Confidential and Proprietary Information of Highmark under the MHSA or Confidential Proprietary Information under the Audit Agreement be maintained in confidence by the County and distributed only to members of the County administration and the Board of Commissioners, and not released to the public.

We note that the Audit Report is described as relating to a “performance audit”, and Section 502.c. of the County of Lehigh Administrative Code provides that performance audit reports are to be “submitted to the Board of Commissioners and the County Executive.”¹ That provision also references County Ordinance 2011 – No. 163, which provides the Controller “shall provide a final report to the County Executive, the Board of Commissioners, the Lehigh County Fiscal Officer and any other parties in the chain of governance.” Accordingly, we believe the limitations on disclosure described above are consistent with the provisions of the Administrative Code.

While Ordinance 2011 – No. 163 provides that the final reports “shall be available pursuant to the Pennsylvania Right to Know Law” (“RTKL”), as you know, parties whose confidential and proprietary information or trade secrets are contained in public documents have the right to prevent disclosure of such information under the RTKL. Accordingly, Highmark is separately submitting a notice to the Lehigh County Open Records Officer and Director of Administration regarding the Highmark confidential and proprietary information and trade secrets contained

¹ Highmark also notes that Section 502.c provides for “performance audits . . . of any County Department or Agency to evaluate the efficiency and productivity of the Agency or Department.” Because Highmark and its contract with the County are not “Agenc[ies] or Department[s]” of Lehigh County, the entire audit appears to be without basis in the Controller’s enumerated powers to conduct audits.

in the Audit Report, so that Highmark may object prior to any public disclosure thereof.

The information in the Audit Report for which public disclosure is prohibited under the terms of the MHSA, the Audit Agreement and the RTKL includes the following:

- The portion of p. 3 of the Audit Report which reads as follows:

“Even with substantive communication and (county owned) data restrictions, we were able to quantify over \$1.4 million in savings:

- During 2019, Lehigh county could have received in excess of \$700,000 and \$80,000 in additional prescription drug and medical claim rebates, respectively*;
- Alternative market price comparisons identified 200 cheaper prescription drugs for a total potential savings of \$650,000.

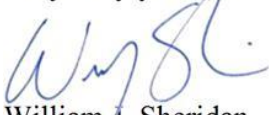
* Also, if the county had been allowed the option of receiving the higher of actual rebates earned versus a fixed rebate, the total rebate savings for 2017 to 2020 would have been \$1.6 million.”

- Items 1, 2, 3, 6 and 10 of the Audit Report’s “Schedule of Audit Findings and Recommendations.”
- Highmark’s response to the Audit Report, attached to this letter.

Highmark sends this letter consistent with its confidentiality rights under the parties’ agreements, and Highmark’s assertion of such rights should not be construed as an acknowledgment that the draft Audit Report is a valid audit or that it accurately represents any purported “savings” available to the County. For the reasons set forth in Highmark’s response to the draft Audit Report, the Controller’s analysis is deeply flawed. Should you have any questions about this letter or the attached document, please feel free to contact the undersigned.

Highmark reserves all of its rights and remedies with respect to this matter, none of which are waived.

very truly yours,



William J. Sheridan
Partner

Attachment

cc: Samuel Stretton, Esq.
Edward Hozza, Jr., Director of Administration
Marc Redding, Human Resources Officer

Mark Pinsley
January 27, 2021
Page

ReedSmith

Thomas Caffrey, County Solicitor
Lori Gloninger

**Highmark Management Response to
Lehigh County Controller on
Performance Audit of Highmark Prescription Drug Costs For the Year 2019**

Highmark has reviewed the draft report of the Lehigh County Controller relating to the above-referenced performance audit (the “Audit Report”), and provides the following responses.

I. General

The Audit Report does not indicate any overpayments or billing mistakes by Highmark, or any other failure on the part of Highmark to perform its obligations under its agreement with Lehigh County in accordance with its terms. Highmark has complied in full with all of its obligations to the County.

The Audit Report asserts that there are “inadequate pricing controls” and that certain provisions of Highmark’s agreement should be modified so as to result in “savings” for the County. For the reasons indicated in our detailed responses to each of the Audit Report’s specific findings and recommendations below, we believe that the purported “savings” identified are generally illusory or overstated. Some of the recommendations would likely increase the County’s costs.

The Audit Report also asserts that there is a lack of needed “transparency,” and that other contract changes should be made to address those concerns. Highmark does not agree. We address the specific findings and recommendations relating to this claim below.

The terms and conditions of Highmark’s agreements were the result of a competitive bidding process conducted by the County. We believe our agreements provide the County and its employees excellent value, taking into account pricing, convenient member access to high-quality providers nationwide, and the range of services we and our network providers provide to minimize total cost of care while maintaining or improving patient outcomes.

Highmark is open to a market check or RFP process, if the County believes it may not be receiving the most competitive terms available in the marketplace. Further, we are open to negotiating certain changes outside of such a process, if requested. We note, however, that a number of the modifications recommended in the Audit Report would require other changes to our contract terms such as increases in Highmark fees, and as such may not result in any savings for the County. Further, as described below, we believe some of the changes recommended would increase the County’s costs or impede plan members’ receipt of high-quality care.

II. Responses on Audit Report’s Schedule of Audit Findings and Recommendations

Highmark’s responses on the Audit Report Schedule of Findings and Recommendations under each of the following headings are set forth below. We have not responded to points that we view as matters primarily for County administration or McGriff.

1. Full Amount of Prescription Drug Rebates Not Passed Through

As the Audit Report states, the decision to receive a fixed, guaranteed discount amount in lieu of the actual manufacturer rebates received by Highmark on prescription drugs covered under the County's pharmacy benefit was the County's, not Highmark's. While the actual rebates were greater than the fixed discounts for 2019, the opposite also could have occurred, and potentially could occur in the future. Taking the lower-risk, guaranteed savings was a reasonable decision on the part of County management.

The amount by which actual pharmacy rebates exceeded the guaranteed discount for 2019 was less than stated in the Audit Report. Further, if the County had elected to receive actual rebates received instead of fixed discounts, a pharmacy administrative fee would have been payable to Highmark—a fact that we communicated in connection with this audit, but was not reflected in the Audit Report. As such, the amount of savings for 2019 would have been significantly less than the amount cited in the Audit Report. The amount cited in the Audit Report for 2017-2020 is also inaccurate, and amounts relating to 2017 were pursuant to different contract terms, as the County's current agreement commenced in 2018. Contrary to the assertion in the Audit Report, Highmark did provide rebate data for 2017, 2018 and a portion of 2020.

The Audit Report recommends that County management “should renegotiate the Highmark contract to allow the county to choose the greater of fixed rebate or actual rebate incentives.” Highmark is willing to negotiate a change to the contract which would provide the County with actual rebates received instead of a fixed discount amount. However, in that case there would be no guaranteed discount, and a pharmacy administrative fee would be payable to Highmark.

2. Medical Claims Prescription Rebates Not Passed Through

As the Audit Report reflects, the terms of Highmark's agreement with the County specifically provide that Highmark is to retain rebates on drugs covered under the medical benefit. The Audit Report also indicates this is an “[i]ndustry standard[,]” a statement with which Highmark agrees. Retention of these amounts enables Highmark to lower the costs of the medical specialty management solutions it provides.

If Highmark were to pass these rebate amounts through, the medical benefit administrative fee would also be increased by a commensurate amount. As such, there are no savings available to the County due to a modification of this aspect of the contract.

3. Highmark Prescription Drug Costs More Expensive Than Competitors For At Least 200 Prescription Drug Claims

The comparison performed by the Controller does not demonstrate the “potential savings” asserted in the Audit Report.

The Controller has informed us that the “publicly-available website” against which a sample of the County’s drug claims were compared was a drug discount website. As an initial matter, the pricing shown on such websites does not represent pricing available to the County (or to Highmark) for all of the prescription needs of the County’s health plan members. To the contrary, it appears that the Controller may have used the lowest price shown on such website for the pharmacies offering discounts through that website (typically there are different prices listed for a given drug, depending on the pharmacy and location). Consequently, those prices are not necessarily available from the pharmacies where County plan beneficiaries actually obtain their drugs—including employees and retirees who live in other states. Moreover, such websites typically focus on discounting select drugs, not all the drugs used by health plan members.

Further, it appears that the Controller may have used prices posted on the website in 2020, when the comparison was performed, rather than prices available at the time the drugs in question were actually dispensed. Prices available for a given drug can change significantly during that timeframe for a variety of reasons, including generic or biosimilar competition, drug shortages (or elimination of an earlier shortage), and manufacturer pricing changes. A lower price found on a website in 2020 does not indicate potential savings if the price was not available when the drug was dispensed in 2019.

Highmark also notes that it is not able to validate that the prices used for purposes of this comparison correctly reflect prices available through the website used. In some cases the website price cited by the Controller in data provided to Highmark was dramatically lower than the lowest current price shown on the website, for drugs which wouldn’t be expected to have large price changes. As a general matter, it is not clear to us what assumptions, methodology and data source(s) were used for purposes of this comparison.

While drug discount websites can sometimes have lower prices, they require that the member pay the pharmacy in full for the prescriptions in cash, rather than only their copayment. Further, prescriptions filled that way do not go through our care and case management review process, creating safety risks and inhibiting care optimization. Consequently, Highmark does not recommend use of such websites to our employer plan customers.

6. Contract Language Not Transparent

Highmark does not agree that there is any lack of transparency under its contract with the County. The confidentiality and audit provisions of Highmark’s contract with the County are consistent with its employer plan contracts generally, and with standard industry practice.

The information that Highmark makes available for audit purposes is as specified in the parties’ agreement, and is appropriate for the purposes of such audits—i.e., validating Highmark’s compliance with the terms of the agreement. Scores of other Highmark clients routinely conduct audits using the same data as was provided to the County, without issue.

Our agreement's provision requiring that its terms, including pricing, be maintained in confidence by the parties, is consistent with normal contracting practices in the health care industry. Such provisions are generally considered pro-competitive, as they allow vendors such as Highmark to make available more advantageous terms to purchasers such as the County. Public disclosure of such favorable terms can chill competition because of the vendor's concern that all purchasers will demand the same improvements. Importantly, the restrictions on public disclosure do not preclude the County administration from knowing the terms of the contract or from receiving competitively-sensitive information.

Highmark either does not have, or is itself prohibited from sharing, some of the extensive information which the Controller requested. In particular, the prices paid by Highmark's pharmacy benefit manager (PBM) to network pharmacies under their contracts is considered highly confidential by both PBMs and pharmacies. However, Highmark does know the price that it pays its PBM for each drug, and the data Highmark provided to the Controller enabled him to verify that the same amount was charged to the County.

For the foregoing reasons, Highmark does not agree with the Audit Report's recommendation to modify the contract terms to permit public disclosure of confidential and proprietary information. Highmark believes that if the County were to insist on such provisions as part of a future RFP, it would receive significantly less competitive offers from bidders, and some competitors might decline to participate at all.

10. Highmark Refused to Provide Details and Fraud, Waste, Abuse, or Employee Complaints About Service Providers Paid by Highmark

Highmark provides reporting to the County upon request with respect to the issues noted in the Audit Report and other fraud, waste and abuse issues. However, the information requested by the Controller is outside of that which Highmark provides as part of an audit pursuant to our agreement and in certain cases would have violated Highmark's policies on disclosing patient confidential information, and accordingly that request was denied.