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

Final Audit Report

Audit of the Blue Cross Blue Shield Association's Service Benefit Plan's Retail and Mail Order Pharmacy Programs as Administered by CVS Caremark for Contract Years 2018 Through 2021

Report Number 2024-SAG-013
March 13, 2026

EXECUTIVE SUMMARY

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Why Did We Conduct the Audit?

The objective of the 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 1039 and applicable federal regulations.

What Did We Audit?

The Office of the Inspector General has completed a performance audit of the Blue Cross Blue Shield Association's (Carrier) Service Benefit Plan's retail and mail order pharmacy programs as administered by CVS Caremark (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 2018 through 2021.

Eric W. Keehan
Acting Deputy Assistant Inspector General for Audits

What Did We Find?

We found that the PBM overcharged the Carrier and the FEHBP $615,148,628, including lost investment income, by not passing through all discounts, credits, and financial benefits related to prescription drug pricing as required under the PBM Transparency Standards found in the Carrier's contract with OPM.

Specifically, our audit identified the following three findings that require corrective action. The findings occurred across all years of the audit scope and include lost investment income unless otherwise noted.

- The PBM did not pass through the discounts it negotiated with two of the largest retail pharmacy chains, resulting in a $478,717,560 overcharge to the Carrier and FEHBP.

- The PBM failed to return $108,600,029 in credits for transmission fees that it collected from retail pharmacies to process the Carrier's prescription drug benefits. Instead of passing through these credits, the PBM charged the FEHBP a higher amount than what was actually paid to the retail pharmacies.

- The Carrier overcharged the FEHBP $27,831,039 by paying the PBM an incentive equal to [redacted] percent of excess savings above the retail claims pricing guarantee between the Carrier and the PBM in 2018, 2019, and 2021.

No other findings were identified from our reviews of the administrative fees, annual accounting statements, claims eligibility, drug manufacturer rebates, fraud and abuse program, and performance guarantees.

ABBREVIATIONS

Agreement	**Retail and Mail Order Pharmacy Programs Contract between Blue Cross Blue Shield Association and CVS Caremark**
Carrier	**Blue Cross Blue Shield Association**
Contract	**OPM Contract Number CS 1039**
CY	**Contract Year**
FEHBAR	**Federal Employees Health Benefits Acquisition Regulation**
FEHBP	**Federal Employees Health Benefits Program**
LII	**Lost Investment Income**
OIG	**Office of the Inspector General**
OPM	**U.S. Office of Personnel Management**
PBM	**CVS Caremark (Pharmacy Benefit Manager)**

TABLE OF CONTENTS

I. BACKGROUND

This report details the results of our audit of the Blue Cross Blue Shield Association's (Carrier) Service Benefit Plan's Retail and Mail Order pharmacy programs as administered by CVS Caremark (Pharmacy Benefit Manager or PBM) for contract years (CY) 2018 through 2021. The audit was conducted pursuant to the provisions of the U.S. Office of Personnel Management's (OPM) Contract Number CS 1039 (Contract); the Retail and Mail Order Pharmacy Programs Contract between the Carrier and the PBM (Agreement); and Title 5, Code of Federal Regulations, Part 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, 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 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, OPM contracts with various health insurance carriers that provide service benefits, indemnity benefits, and/or comprehensive medical services. The provisions of the Federal Employees Health Benefits Act are implemented by OPM through regulations codified in Title 5, Code of Federal Regulations, Part 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 is used to develop, allocate, and control costs related to the Carrier's prescription drug programs.

The Carrier contracted with the PBM, CVS Caremark, located in Scottsdale, Arizona, to provide pharmacy benefits and services to FEHBP members for CYs 2018 through 2021. 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 so that the Carrier and FEHBP receive the value of the PBM's negotiated discounts, rebates, credits, and other financial benefits. Our responsibility is to review the performance of the PBM and the Carrier to ensure that the costs charged to the FEHBP, as well as the services provided to its members, are in accordance with the Contract, the Agreement, and federal regulations.

Our previous audit of the Blue Cross Blue Shield Association's Service Benefit Plan's Pharmacy Operations covered CYs 2014 through 2016 and included reviews of the administrative fees,

claim payments, drug manufacturer rebates, fraud and abuse program, and performance guarantees.[1] All findings and recommendations from that audit have been satisfactorily resolved.

The results of our current audit were discussed with the Carrier and PBM officials at an exit conference on January 29, 2025. The Carrier and PBM submitted a combined response to the draft report on August 4, 2025, which is included as an Appendix to this report.

[1] OPM OIG, Audit of the Blue Cross Blue Shield Association's Federal Employee Program Service Benefit Plan's Federal Employees Health Benefits Program Pharmacy Operations as Administered by CVS Health for Contract Years 2014 Through 2016 (1H-01-00-18-020, March 26, 2019).

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 assess the following:

Administrative Fees Review

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

Annual Accounting Statements Review

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

Claims Eligibility Review

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

Claims Pricing Review

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

Drug Manufacturer Rebates Review

- Whether all drug manufacturer rebates, and corresponding administrative fees, were properly credited to the FEHBP.

Fraud and Abuse Program Review

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

Performance Guarantees Review

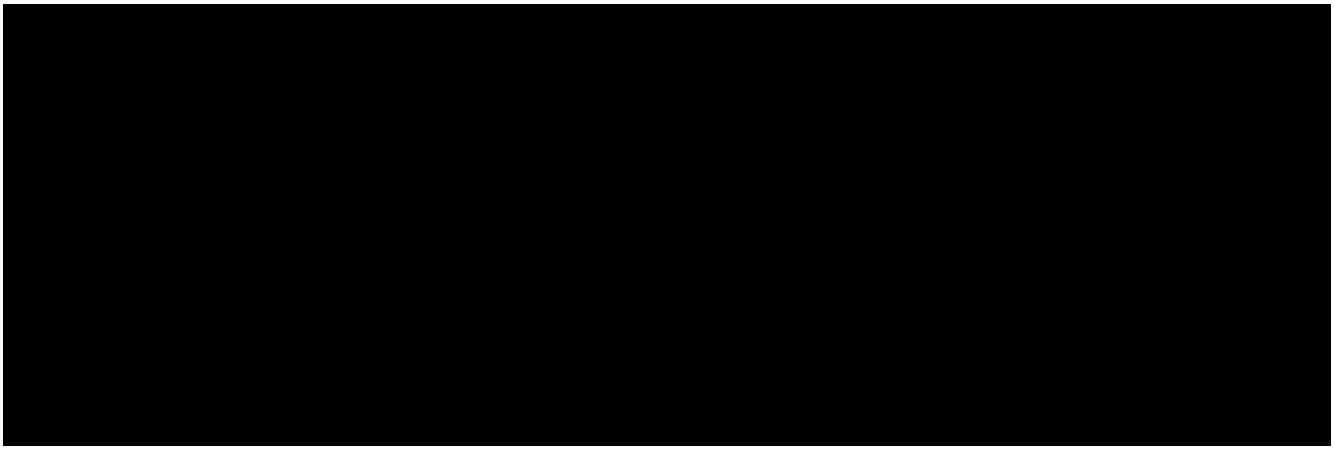
- Whether the PBM performance guarantees were met, and if any penalties were accurately returned/credited to the FEHBP.

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, claims eligibility and pricing, drug manufacturer rebates, fraud and abuse program, and performance guarantees related to FEHBP pharmacy operations for CYs 2018 through 2021. As part of our survey work, we conducted pre-audit meetings with the Carrier and the PBM during the months of February and March of 2024. The audit fieldwork was completed remotely from our offices in Jacksonville, Florida; Washington, D.C.; and Cranberry Township, Pennsylvania from March 20, 2024, through January 29, 2025.

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.



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 selecting areas for 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 on varying degrees of 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 2018 through 2021, we performed the following audit steps:

Administrative Fees Review

- For each CY, we judgmentally selected and reviewed the largest monthly administrative fee invoices for both retail and mail order (sample population of 8 invoices totaling $32,494,863 out of a universe of 96 invoices totaling [redacted]) 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 annual accounting statements to determine if the prescription drug charges and drug manufacturer rebates were properly reported based on a reconciliation with the claims and rebate payment data.

Claims Eligibility Review

- For the most recent CY in our audit scope, 2021, we judgmentally sampled the top 50 dependents over the age of 26 with the highest prescription drug costs, totaling $15,260,310, out of a universe of [redacted] overage dependents, totaling [redacted] to determine if the members were eligible for continued coverage due to a disability that renders them incapable of self-support.
- We compared the Carrier's non-covered drugs list to all claims to determine if any claims 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 4 due to timing and adjustments.

- From the universe of [redacted] retail pharmacy claims totaling [redacted] with an amount paid greater than zero dollars, we randomly selected 25 brand and 25 generic

claims per year using SAS,[2] for a sample of 200 claims totaling $81,638, to determine if the pricing elements were transparent and paid correctly.

- From the universe of [redacted] mail order pharmacy claims totaling [redacted] with an amount paid greater than zero dollars, we randomly selected 25 claims per year using SAS, for a sample of 100 claims totaling $39,427, to determine if the pricing elements were transparent and paid correctly.
- We reviewed all financial pricing guarantees that were paid to the Carrier from the PBM to determine if the amounts were accurate and if the credits were passed through to the FEHBP.

Drug Manufacturer Rebates Review

The rebate total below is higher than the rebates credited in the table on page 4 due to the inclusion of point-of-sale rebates that reduce retail pharmacy drug costs for both members and the Carrier.

- We reviewed rebate guarantee reports and claims data to determine if the PBM paid the rebate guarantees in accordance with the Agreement for each year of the audit scope.
- For each CY, we reviewed a list of rebates received for the PBM's book of business compared to a list of rebates paid to the Carrier to determine if the PBM properly reported and credited all rebates.
- From the universe of rebates billed with [redacted] unique National Drug Codes totaling [redacted], we judgmentally selected the top 10 National Drug Codes with the highest dollar amount of rebates invoiced to drug manufacturers during the scope of our audit, totaling $2,204,434,382, to determine whether the PBM accurately calculated and allocated rebates to the Carrier and the FEHBP based on supporting documentation.

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 OPM 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.

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

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.

III. AUDIT FINDINGS AND RECOMMENDATIONS

Note: All monetary findings in this audit report are subject to lost investment income pursuant to Section 3.4 of OPM's Contract and Federal Employees Health Benefits Acquisition Regulation (FEHBAR) 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

The results of our review showed that the 2018 through 2021 annual accounting statements were accurate and properly reported to OPM.

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. Negotiated Discounts Not Passed Through for Two National Pharmacies $478,717,560

The PBM paid the Carrier's drug claims for two of the largest national pharmacies at a lower discount/higher price than what it negotiated in the retail pharmacy agreements for 2018 through 2021, resulting in a $400,739,825 overcharge to the FEHBP. Additionally, $77,977,735 is due to the FEHBP ($478,717,560 in total) for lost investment income (LII) calculated through June 30, 2025.

Within the PBM industry, there are two primary approaches to drug pricing. The industry uses the term "traditional" or "spread" pricing to describe a pricing model in which the PBM receives the difference in drug price between what the PBM bills the health insurance company (or plan sponsor) and what it reimburses the pharmacy. The difference between these two figures is referred to as "spread" or "margin."

The other, more modern approach to PBM pricing is known as pass-through transparent pricing. In this model, the PBM's profit comes from an administrative fee paid by the health insurance company or plan sponsor. The discounts, rebates, credits, and other financial benefits that the PBM obtains from drug suppliers (e.g., manufacturers) are passed through to the health insurance company or plan sponsor in lieu of the PBM making a spread.

The PBM did not pass through the value of its negotiated discounts with two of the largest national pharmacy chains.

Since 2011, the PBM Transparency Standards contained in Section 1.26(a) of OPM's Contract have explicitly required pass-through transparent pricing in which the Carrier receives the **value of the PBM's negotiated discounts**, rebates, credits or other financial benefits. Additionally, Schedule A of the PBM Agreement, definition 170 states, "'Pass-Through Pricing' means, in the context of the Retail Pharmacy Program, the **actual price negotiated** for drug Ingredient Costs, Dispensing Fees and taxes (collectively, the 'Negotiated Price') between a Pharmacy in the Retail Pharmacy Network and CVS Caremark for Retail Pharmacy Prescriptions Reimbursed. The requirement for 'Pass-Through Pricing' **prohibits a Network Pharmacy spread beyond the Negotiated Price** for Retail Pharmacy Prescriptions Reimbursed." Finally, improper payments in the federal government are defined as payments that should not have been made or that were made in an incorrect amount.

During our review of drug claim pricing for retail pharmacies, we selected a random sample of 25 brand and 25 generic pharmacy claims for each year of the audit scope to ensure that the FEHBP received pass-through transparent pricing based on the value of the PBM's negotiated discounts with retail pharmacies. Using the discounts listed in the retail pharmacy agreements, we found that the Carrier received a lower discount and was charged a higher price than what was stated in the contracts for two of the largest national pharmacies during the scope of our audit. We requested that the PBM reprice these two pharmacy chains at the value of the negotiated discount, but the PBM stated that it was unable to perform that service since FEHBP groups do not have a reconciliation process to compare pass-through transparent pricing in the retail pharmacy program. The OIG then repriced all the Carrier's retail drug claims for these two national pharmacies over the four-year audit scope using the negotiated discount listed in the pharmacy agreements and determined that the Carrier and FEHBP were overcharged $400,739,825. The overcharges were primarily due to generic drugs and included any offset for brand drug discounts at each pharmacy. We would like to note that our 2019 audit of Caremark (report issued in 2020) identified the same finding with these two pharmacies.[3] The net questioned costs for both pharmacies by year are shown in the following table.

Contract Year	2018	2019	2020	2021	Total
Finding Amount	$182,210,330	$74,807,647	$130,853,386	$12,868,462	**$400,739,825**

[3] OPM OIG, Audit of CareFirst BlueChoice's Federal Employees Health Benefits Program Pharmacy Operations as Administered by CVS Caremark for Contract Years 2014 Through 2017 (1H-07-00-19-017, July 20, 2020).

The PBM did not provide pass-through transparent drug pricing during the scope of the audit for these two large national retail pharmacies because it reimbursed the FEHBP's claims at a lower discount/higher price than the discount negotiated in the two retail pharmacy agreements. This occurred because the agreements with these two national pharmacies contained overall effective discounts that allowed the PBM flexibility to choose what amount to reimburse claims as long as the overall effective discounts for the PBM's book of business (i.e., all carriers/clients who use the PBM) equaled the discounts negotiated in the retail pharmacy agreements. The flexibility of applying variable reimbursement rates to achieve an overall effective discount creates a risk that the PBM can reimburse pharmacy claims for transparent pass-through clients (like the FEHBP) at a lower discount/higher cost, while making a greater spread on traditional clients. In this scenario, drug claims of transparent pass-through clients are paid by the PBM at a lower discount/higher cost than what the PBM reimbursed pharmacies for traditional "spread" clients. The drug claims for traditional spread clients (health insurance carriers and employer groups) are paid to the pharmacy at a higher discount/lower cost because the contractual arrangement between the PBM and its traditional clients allows the PBM to mark up the price when billing traditional clients, thereby resulting in increased profits for the PBM. This, in effect, allows the PBM to subsidize higher discounts with more spread for traditional clients.

When this risk was first identified by the OIG in the prior 2019 audit of Caremark (1H-07-00-19-017), the PBM argued that the exact value of the negotiated discount does not have to be passed through and any amount it pays the pharmacy can be charged to the Carrier. This position is invalid since the actual amount paid to the pharmacy is the negotiated discount, just on an aggregate level reflecting the PBMs book of business across all government and non-government clients. The purpose of including pass-through transparent pricing requirements in OPM contracts was to receive the value of the negotiated discounts with retail pharmacies, which is why OIG auditors have explicit rights to trace discounts back to the negotiated rates in the retail pharmacy agreements as evidence. We were not aware, prior to 2019, that the PBM established overall discounts that allowed it to price individual drugs at any amount so long as its book of business met the negotiated discounts in these retail pharmacy agreements at the end of the year. The negotiated discount is still what is ultimately paid to the retail pharmacy, just on an aggregate basis.

In *U.S. ex rel. Behnke v. CVS Caremark Corp et al.* (*Behnke*), a federal judge in Pennsylvania recently ordered CVS Health to pay $289 million in damages under the False Claims Act as part of a long-running whistleblower case that was unsealed in 2018. The whistleblower alleged that Caremark paid the same two national pharmacies, that we are questioning, at a lower amount for prescription drugs than what Caremark charged the federal government for Medicare Part D. The scheme involved applying higher prices/lower discounts to Medicare Part D drug claims while paying lower prices/higher discounts for prescription drugs filled by other commercial clients. In describing the spread pricing manipulation at issue, the court wrote the following: "Caremark knew that the more it paid for Part D drugs, the less it had to

pay for commercial drugs. Caremark knew that if it paid less on commercial drugs, it could earn more spread." By inflating Medicare Part D costs, Caremark could subsidize lower commercial drug prices, essentially using taxpayer funds to enhance its competitive position in the commercial market while maximizing profit margins through spread pricing differentials.

While we recognize that different authorities apply to pricing under the FEHBP and Medicare Part D programs, *Behnke* is illustrative because it describes problematic pricing practices similar to those at issue in our audit. *Behnke* is also relevant because the PBM failed to identify this whistleblower lawsuit during our pre-audit request for all judicial cases that may affect the FEHBP and its drug pricing. Even after presenting our finding to the PBM and clearly showing a similar scenario as the basis for our questioned costs, the PBM never disclosed its knowledge of the alleged fraud scheme. Rather, we independently learned of *Behnke* after finalizing our audit findings.

As a result of having less favorable discounts applied by the PBM to the Carrier's retail drug claims with these two pharmacies when compared to the actual discounts negotiated and shown in the pharmacy agreements, the FEHBP was overcharged $400,739,825 from 2018 through 2021. Additionally, the FEHBP is due $77,977,735 for LII calculated through June 30, 2025 (totaling $478,717,560 for this finding).

Recommendation 1

We recommend that the PBM return $400,739,825 to the Carrier and FEHBP for overcharges where the PBM paid retail drug claims at a less favorable discount than what the PBM had negotiated in its agreements with two of the largest retail pharmacies from 2018 through 2021. The negotiated discount is the amount ultimately paid to the retail pharmacies when measured in aggregate for the PBM's book of business on an annual basis.

Carrier and PBM's Response:

BCBSA and Caremark disagreed with the finding based in part on the argument that future contract changes by OPM were applied retroactively to the audit period. Specifically, the Carrier and the PBM stated that when OPM first defined pass-through transparent pricing within a separate and distinct list of definitions in 2020, the word "full" was added to the word "value" thereby materially changing the previous 2011 requirement that the PBM pass-through the "value" of the PBM's negotiated discounts, rebates, credits or other financial benefits. The Carrier and PBM suggest that passing through the "full value" of all discounts, rebates, credits and financial benefits has a different meaning than passing through the "value" of all discounts, rebates, credits and financial benefits. The Carrier and PBM therefore insisted that any amount Caremark paid the pharmacy should be considered pass-through pricing since providing the "full value" of negotiated discounts was not yet

required during the scope of our audit and passing through some or partial value of the discounts could be deemed acceptable. Additionally, the Carrier and PBM stated that the Overall Effective Rates negotiated with these two pharmacies in the retail pharmacy agreements are not negotiated discounts since they are complex and hard to calculate among all clients, representing more of a "targeted rate." For additional details, please see the Carrier and PBM's full response attached as an appendix to this report.

OIG Comments:

The PBM Transparency Standards included in contracts between OPM and the Carriers have been changed during successive contract years. Much of the response submitted by the PBM and the Carrier focused on which set of standards the OIG applied in performing this audit. We agree with the Carrier and the PBM that standards in effect *after* the contract years at issue (2019-2021) should not be used as criteria for audit. We therefore take the opportunity to clarify that, for purposes of this audit, the OIG applied the Transparency Standards as they were updated in 2011 and in effect during the audit scope. For reference, the Transparency Standards provide, in relevant part:

"(a)Transparency Standards

(1) The PBM is not majority-owned or majority-controlled by a pharmaceutical manufacturing company. The PBM must disclose to the carrier and OPM the name of any entity that has a [controlling interest in] the PBM.

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

(i) The PBM shall charge the Carrier no more than the amount it pays the pharmacies in its retail network for brand and generic drugs plus a dispensing fee.

(ii) 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 (WAC).

(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. Manufacturer payments

also include any fees received for sales of utilization data to a pharmaceutical manufacturer.

(3) The PBM must identify sources of profit to the Carrier and OPM as it relates to the FEHB contract.

(4) The PBM's administrative fees, such as dispensing fees, must be clearly identified to retail claims, mail claims and clinical programs, if applicable. The PBM must agree to disclose sources of each administrative fee to the Carrier and OPM."

As an initial matter, we would like to address four aspects of the relevant version of the Transparency Standards. First, the standards use the term "pass-through transparent pricing." This term is well understood in the industry as a pricing model in which the PBM's profit comes from an administrative fee, not a "spread" or "margin" as occurs in "traditional spread pricing." Under the PBM's interpretation of these standards, the PBM can obtain the benefit of *both* pricing models, receiving both an administrative fee ($334 million during the contract years at issue) and the ability to obtain additional profit in the form of spread derived by charging higher costs to the Carrier/FEHBP than what it negotiated in its retail pharmacy agreements. We believe this is counter to the pricing model negotiated between OPM and the Carriers because it contravenes the common understanding of the term pass-through transparent pricing.

Second, we note that the standards require the PBM to identify all sources of profit to the Carrier and OPM. This language reflects an understanding that profits under the contract will come from defined, identified sources (such as an administrative fee), not profits derived from opaque pricing practices only discovered during the course of an audit. The PBM's additional source of profit – obtained by reimbursing pharmacies at a higher amount for FEHBP claims to facilitate reimbursement at a lower amount for other clients – was not clearly disclosed to OPM prior to our audits. In fact, employees in the OPM division that oversees this contract were unaware of this additional source of profit until discussions with OIG auditors.

Third, we disagree with the PBM and Carrier's interpretation of the requirement that the Carrier receive *the value* of the PBM's negotiated discounts, rebates, credits or other financial benefits. Under the PBM and Carrier's interpretation, this requirement is satisfied if the carrier receives "some" value. We do not believe it is logical to interpret this requirement to allow the PBM to both charge administrative fee *and* to pass through whatever value it wishes to pass through by selectively charging certain rates, especially when – as discussed above – this practice was unknown to OPM and contravenes the industry understanding of the term.

Fourth, as the Carrier and the PBM correctly acknowledge, a key principle of contract interpretation is that a contract must be read to give effect to all its parts. This principle is relevant here in that Section 1.26(a)(10) of the Transparency Standards

grants the OIG the ability to access all PBM contracts with pharmaceutical manufacturers and participating pharmacies. More specifically, Section 1.26(a)(10) provides:

> ***"In accordance with FEHBAR 1652.204-74, FAR 52.215-2 and FEHBAR 1652.246-70, all contracts and other documentation that support amounts charged to the Carrier contract are fully disclosed to and auditable by the OPM Office of Inspector General (OPM OIG). The PBM must provide the OPM OIG upon request all PBM records including, but not limited to:***
>
> ***(i) All PBM contracts with Participating Pharmacies;***
> ***(ii) All PBM contracts with Pharmaceutical Manufacturers;***
> ***(iii)All PBM contracts with third parties purchasing or using claims data;***
> ***(iv) All PBM transmittals in connection with sales of claims data to third parties; and***
> ***(v) All PBM Maximum Allowable Cost (MAC) price lists."***

The function of Section 1.26(a)(10) is to allow the OIG to examine negotiated discounts at a per-claim rate. If this information was irrelevant to the determination of appropriate pricing practices under the contract, and the PBM could use an overall effective rate model to simply select the portion of the discount it wished to pass through, the transparency standards would not explicitly require the disclosure of this information. Accordingly, reading the transparency standards as allowing the PBM's application of an overall effective rate model with variable discounts would render Section 1.26(a)(10) of the Contract obsolete. Again, as the Carrier and PBM correctly acknowledge, interpreting a contract requires reading its various clauses in totality to avoid interpretations that render certain sections inoperative.

Having addressed these four aspects of the relevant standards, we now respond separately to various comments made by the PBM and the Carrier.

As an overarching matter, we question why the Carrier adopted the PBM's response to our findings without having any knowledge or insight into the PBM's negotiated discounts with retail pharmacies. This information was reported as confidential and proprietary by the PBM, and the auditors were instructed not to share the pharmacy discounts with the Carrier. We note that the Carrier's obligation should be to protect its members from improper payments and unnecessary premium increases by recovering all overcharges by the PBM as a large provider.

In 2020, OPM updated the transparency standards to include a definitions section which clarified that the PBM was required to pass through the *full* value of the negotiated discounts. The PBM argues that, prior to the effective date of the 2020

standards, pass-through pricing meant sharing only *some or partial* discounts. For the reasons discussed above, we believe that the 2011 standards make clear that the pass-through of the value of all discounts has always been required of the PBM, regardless of the subsequent clarifying edits to the standards that added the word "full" before value. We note also that the transparency standards have never contained language allowing "some" or "partial" pass through of the negotiated discounts.

The Carrier and PBM also argue that the amount paid to the pharmacy can be charged to the Carrier and the FEHBP. We agree with that statement but clarify that the amount paid to these two retail pharmacies is based on an overall period where the PBM commingled all its clients' (i.e., both traditional and pass-through clients) claim payments to be measured and compared in aggregate to the negotiated discounts in the retail pharmacy agreements.

The Carrier and the PBM's argument that the amount paid to the pharmacy can be charged to the Carrier and the FEHBP is based on the subordinate clause in the following portion of the Transparency Standards:

> ***"(2) The PBM agrees to provide pass-through transparent pricing based on the PBM's cost for drugs (as described below) in which the Carrier receives the value of the PBM's negotiated discounts, rebates, credits or other financial benefits."* – Parent clause**
>
> > ***(i) The PBM shall charge the Carrier no more than the amount it pays the pharmacies in its retail network for brand and generic drugs plus a dispensing fee."* – Subordinate clause**

The Carrier and the PBM's interpretation, that any amount paid to the pharmacy can be charged to the FEHBP, does not account for the effect of the parent clause, which must be read in conjunction with the subordinate clause. This interpretation disregards the fact that, when read together, the two clauses require the PBM to charge no more than the amount it pays the pharmacies in its retail network *while also* providing pass-through transparent pricing at the value of the negotiated discounts. The phrase "pass-through transparent pricing" must be read to have some effect in this instance, since the PBM is required to obtain profit from an administrative fee as opposed to pricing differentials. In other words, the subordinate clause should be read as requiring the PBM to charge the Carrier no more than the amount paid for brand and generic drugs *while simultaneously* honoring the profit-source concepts inherent in a pass-through pricing model. That is why the value of the negotiated discount in the parent clause comes before the subordinate clause, and the subordinate clause cannot stand alone. What is ultimately paid to the retail pharmacy is the value of the negotiated discounts. Without the parent clause, the PBM could ignore its negotiated discounts and pass through any amount, including overpayments, since whatever is

paid to the pharmacy would be considered acceptable under their argument. Pass-through transparent pricing would have no meaning and fail to exist.

In another portion of their response to our draft audit report, the Carrier and PBM state that another PBM was identified as failing to pass through its negotiated discounts with retail pharmacies. Therefore, the PBM argues that the two PBMs combined failure to comply with FEHBP requirements should be considered the industry standard. We believe that two examples of non-compliance do not create an industry standard, and that the other PBM is still responsible for its overcharges.

The PBM's response also details its creation of a new FEHBP-specific network retroactive to 2022, which contains its own discount structure for retail pharmacy reimbursement. The PBM did not provide any information regarding how the new pharmacy discounts for this FEHBP-specific network compared to the PBM's previously negotiated discounts for its commercial book of business. Furthermore, there is no evidence to show that the new FEHBP specific network rates are more advantageous than the previously negotiated discounts. Accordingly, we caution that the creation of a new FEHBP specific structure likely serves as evidence that the FEHBP was not receiving pass-through pricing at the value of the negotiated discounts with retail pharmacies. We maintain that the only reason to renegotiate FEHBP specific rates with retail pharmacies was because the FEHBP was not receiving the original negotiated discounts.

In their response, the Carrier and the PBM also assert that OPM OIG audits have frequently reviewed their network pharmacy pricing approach without questioning it. This assertion is unfounded since the OIG specifically disputed the validity of this practice as early as contract years 2014 through 2017 in Report Number 1H-07-00-19-017.

Similarly, in several sections of their response, the Carrier and the PBM imply that OPM itself approved their pricing model. To try and support this argument, the Carrier provided documentation submitted to OPM as part of the Large Provider Agreement review process. Under this process, OPM has the option to provide review and comment on an agreement between a Carrier and a provider who will provide a substantial volume of services through the FEHBP (e.g., pharmacy benefit management, mental health management, or substance abuse management services). Submitting documentation through the Large Provider Agreement review process does not necessarily mean that a practice has been approved by OPM. In fact, FEHBAR 1604.7201 explicitly provides that "[t]he contracting officer's review of any Large Provider agreement, option, renewal, or modification <u>will not constitute a determination of the acceptability of terms or conditions of any provider agreement or the allowability of any costs</u> under the carrier's contract, nor will it relieve the carrier

of any responsibility for performing the contract." Notwithstanding the foregoing, the OIG reviewed the materials the Carrier provided to try and support its argument that OPM was aware of its network pharmacy pricing practices. The OIG found no evidence to support the Carrier's assertion that OPM approved a PBM agreement with pricing structures different than pass-through at the value of the PBM's negotiated discounts with retail pharmacies.

Furthermore, as part of our audit, the OIG had several conversations with the OPM employees responsible for administering the contract between the Carrier and OPM. OPM employees gave no indication that they were aware of – let alone had approved – the pricing practices identified by this audit. Contrary to this argument, the Carrier and the PBM have shown no indication that they measured or verified pass-through pricing at the value of the PBM's negotiated discounts with retail pharmacies. The Carrier and the PBM have yet to define the numerical values for which they consider to be the negotiated discounts that are required to be passed through to the FEHBP. We also note that the PBM was not willing to reprice claims from these two retail pharmacies at the discount reflected in their pharmacy agreements, a task that took a significant amount of time for the audit team to complete. And on a final note, the amount of costs questioned in this report that represents the auditors repricing these two pharmacies was not disputed for accuracy, just the premise of using the overall effective discounts as "the negotiated discount."

Ultimately, the federal government was charged higher prices due to the PBM applying lower discounts than what the PBM negotiated in its agreements with the two retail pharmacies. To reiterate, the final amount paid to these two retail pharmacies was an aggregate of the PBM's book of businesses where payments were commingled with <u>all</u> clients so that the PBM could select what discount to reimburse each client's pharmacy claims. The overall effective discount that was negotiated by the PBM in its pharmacy agreements was measured at the end of the period for all PBM business. We found that the PBM overpaid FEHBP claims by applying lower discounts for pharmacy costs submitted to the Carrier thereby allowing it to keep higher spreads from other traditional clients or even recover money from the retail pharmacies at the end of the year. This was the same risk area identified in our prior audits, where we found that the Carrier and FEHBP received a lower discount/higher price than what the PBM negotiated with these same two retail pharmacies on generic drugs.

<u>Recommendation 2</u>

We recommend that OPM's Contracting Officer assess $77,977,735 for LII on the questioned costs due to the FEHBP for this finding, calculated through June 30, 2025. The LII should be adjusted to account for the date the questioned costs are returned to the program.

Carrier and PBM's Response:

BCBSA and Caremark disagree with recommendation 2 for the same reason stated in their response to recommendation 1.

OIG Comments:

The Carrier agreed to LII on questioned costs in its signed contracts with OPM.

Recommendation 3

We recommend that the Carrier adopt new controls to ensure that the PBM charges no greater than the value of the PBM's negotiated discounts with each retail pharmacy that was in effect at the time the claim was adjudicated.

Carrier and PBM's Response:

BCBSA and Caremark renegotiated the PBM agreement, effective January 1, 2022, to comply with OPM's FEHBP contract.

OIG Comments:

Evidence was not provided to show that new controls were implemented in 2022 to ensure that the PBM charges no greater than the value of its negotiated discounts with each retail pharmacy. Additionally, the PBM indicated that, prior to establishing new FEHBP specific network discounts in 2022, it did not have the ability or the controls to ensure that its negotiated discounts with each retail pharmacy were passed through to the Carrier and FEHBP.

Prior to the 2022 network change, the PBM did not provide an end of the year true up for retail pharmacy operations. Accordingly, there was no method of measuring the discount provided against the amount specified in the retail pharmacy agreements (i.e. pass-through pricing). The PBM was unable to reprice the claims at the value of the negotiated discount since the FEHBP claims were commingled with the PBM's other clients for its book of business discounts and payments.

The PBM asserts that it was providing pass-through pricing prior to the 2022 network change. If the PBM was passing through the value of the negotiated discounts, rebates, credits or other financial benefits prior to the 2022 network change, we question why the PBM now needs to carve out FEHBP specific rates with retail pharmacies and request higher administrative costs.

2. Pass-Through of Credits for Retail Pharmacy Transmission Fees $108,600,029

The PBM overcharged the Carrier and the FEHBP $92,429,243 during the scope of the audit as a direct result of reducing payments to retail pharmacies for transmission fees/credits collected by the PBM while charging the Carrier and the FEHBP the full claim amounts for prescription drug benefits. Additionally, $16,170,786 is due to the FEHBP ($108,600,029 in total) for LII calculated through June 30, 2025.

The PBM kept credits for retail pharmacy transmission fees by collecting higher payments from the Carrier than what was actually paid to retail pharmacies.

The 2011 version of the PBM Transparency Standards, contained in Section 1.26(a) of OPM's Contract, state that the PBM agrees to provide pass-through transparent pricing in which the Carrier receives the value of all discounts, rebates, **credits**, and other financial benefits. Additionally, the PBM Transparency Standards provide that the PBM shall charge the Carrier no more than the amount it pays pharmacies in its retail network for brand and generic drugs plus a dispensing fee. Furthermore, Section 1 of Schedule C in the PBM Agreement states that the Carrier will pay the PBM **a base administrative fee** for every transaction processed by the PBM under the Retail Pharmacy Program **that includes electronic claims processing and pharmacy reimbursement**. Finally, improper payments in the federal government are defined as payments that should not have been made or that were made in an incorrect amount. FEHBAR 1652.216-71 plainly requires all benefit costs to be actual, allowable, allocable, and reasonable, **net of any refunds, rebates, allowances, or other credits received**.

Based on a prior audit in 2022, report number 2022-SAG-029, we discovered that some PBMs were collecting a "backdoor" fee from retail pharmacies to offset claim costs on a per-transaction level. Because all credits were due to the FEHBP under the PBM Transparency Standards, OPM provided an example in the FEHBP contracts that this specific fee was to be returned to the FEHBP since it was a credit that PBMs were keeping. During this audit, we asked the PBM to disclose all credits that it received in the form of retail transaction fees allocable to the Carrier's FEHBP claims. The PBM provided all relevant information, in which we found that the PBM does collect a per-transaction "transmission fee" from retail pharmacies for use of its electronic claims adjudication system. The PBM stated that it can turn this fee on and off on a per carrier/client basis, and that the credit amount varies among retail pharmacies.

Our review showed that transmission fee payments are credited back to the PBM from retail pharmacies by reducing the amount paid for drug claims processed by the pharmacy in each period. Because retail pharmacy claims data provided by the PBM only contained the final adjudicated claim detail and not the pharmacy payment, we relied on the PBM to provide the

monthly claim counts and transmission fees collected from each retail pharmacy to appropriately determine net drug costs after the credits. The PBM determined that it collected $92,429,243 in transmission fees that were applicable to the Carrier's FEHBP retail claims during the scope of our audit, all of which offset payments to the retail pharmacies as shown in the following table.

Contract Year	2018	2019	2020	2021	Total
Transmission Fee Amount	$14,215,144	$20,439,963	$26,585,070	$31,189,066	**$92,429,243**

Because all credits received by the PBM are to be passed through to the Carrier and the FEHBP, and the Carrier already pays a per-claim administrative fee to cover the cost of electronic claims processing and pharmacy reimbursement, the reduction of any claim payments to pharmacies must be passed through to the Carrier and the FEHBP in accordance with the PBM Transparency Standards. It is considered an improper payment when the PBM charges the Carrier and the FEHBP a higher price than what was actually paid to the retail pharmacy.

The PBM explained that it collects transmission fees, which offset claim costs to retail pharmacies, as a source of revenue to pay for network expenses that include pharmacy access to electronic claim adjudication and 24-hour support services. Our concern with these credits is that (1) they were not passed through to the Carrier and the FEHBP as required by PBM Transparency Standards, (2) they resulted in billed charges exceeding what was allowable under the Carrier's contract, thereby making them improper payments, and (3) the Carrier already pays a fee that covers "electronic claims processing and pharmacy reimbursement." Due to the PBM's billing practices regarding these transmission fee credits, the FEHBP was overcharged $92,429,243 during the scope of the audit. Additionally, the FEHBP is due $16,170,786 for LII calculated through June 30, 2025 (totaling $108,600,029 for this finding).

Recommendation 4

We recommend that the PBM return $92,429,243 to the Carrier and the FEHBP for transmission fees that were credited to the PBM as retail pharmacy payment offsets for the Carrier's prescription drug benefits during the scope of our audit.

Carrier and PBM's Response:

BCBSA and Caremark disagreed with the finding, arguing that future contract changes by OPM were applied retroactively to the audit period. Specifically, the Carrier and the PBM stated that transmission fees were not required to be passed through until OPM's 2024 PBM transparency standards listed these fees as an example of credits back from the retail

pharmacies. The Carrier and PBM also stated that transmission fees are to cover pharmacy services within a network and are not considered a component of drug pricing. Additionally, the Carrier also argued that transmission fees were assessed every time a pharmacy submitted a claim, regardless of the claim being approved and paid. For additional details, please see the Carrier and PBM's full response attached as an appendix to this report.

OIG Comments:

As discussed in report Section III(D) - Finding #1 above, we applied the 2011 transparency standards in conducting this audit. Our finding does not rest on clarifying statements made in the 2024 FEHB contracts where examples of credits were provided. Instead, we are using the original 2011 definition, as originally implemented, which provides that all credits were to be passed through to the Carrier and the FEHBP under OPM's PBM transparency standards.

We found that failing to include credits received for transmission fees as amounts to be passed through to the Carrier was inappropriate for several reasons. First, FEHBAR 1652.216-71 plainly requires all benefit costs to be actual, allowable, allocable, and reasonable, net of any refunds, rebates, allowances, or other credits received. The PBM is a large provider who reports the pharmacy payments as benefit costs, yet it offsets these costs for transmission fee credits. These become improper payments when the PBM charges the Carrier and the FEHBP more than it actually paid the retail pharmacies.

Additionally, as specified in the agreement between the PBM and the Carrier, the Carrier already pays a service fee to the PBM that includes "electronic claims processing and pharmacy reimbursement." We contend that credits received from retail pharmacies for transmissions fees are not reimbursement for an expense when the service fee already paid by the Carrier is reportedly for the same expense. That practice is simply obtaining income from two different sources for the same purpose.

As discussed extensively in Section III(D)- Finding #1 above, the aim of pass-through transparent pricing is to provide a clear and upfront understanding of what the costs associated with particular services will be. During the audit, the auditees argued that they had previously provided OPM with documentation that explained their pharmacy benefit pricing model. We reviewed copies of this documentation and found that it contained no mention, let alone clear disclosure, of the fact that the PBM intended to receive payment for electronic claims processing and pharmacy reimbursement while simultaneously charging approximately $90 million from retail pharmacies for the same services.

In their response to our draft audit report, the Carrier and the PBM argued that for transmission fees to be subject to pass-through treatment, they would need to be a component of the cost of a drug. We disagree with this position. The PBM Transparency Standards make no reference to component; instead, they provide that the PBM agrees to pass-through transparent pricing "based on the PBM's cost for drugs … in which the Carrier receives the value of the PBM's … credits or other financial benefits."

In support of their argument that only components of the cost of a drug are subject to pass-through treatment, the Carrier and the PBM note that a transmission fee is collected not only for each successfully processed claim, but also for each reversal, rejection, resubmission, eligibility inquiry, or other use of the PBM's system that provides network pharmacy administrative services. Thus, the Carrier and the PBM argue that because some uses of the system do not directly result in a drug being dispensed, transmission fees are therefore not a component of the cost of drugs and are not subject to pass-through transparent pricing. This reasoning is flawed. Although we did not specifically audit the ratio of successful claims to other uses of the system, we should acknowledge that the majority usage of the system involves the successful submission of claims, which in turn reduces the cost paid for a particular drug. The Carrier and the PBM allow the minority exception (a system use that does not result in payment) to prevail over the more common practice (a system use that does result in payment). Even adopting – for the sake of discussion – the Carrier and the PBM's narrow interpretation, we believe that an action that routinely and directly reduces the cost that the PBM pays for a drug is a "component" of the cost of that drug. Stated inversely, if a charge that routinely and directly reduces the cost that a PBM pays for a drug is not to be considered a component of drug pricing, we question what is then considered a component of drug pricing. Using the Carrier and PBM's rationale, virtually any business cost could be charged as a fee to the Carrier so long as it was not considered a "component" of drug pricing. This rationale fails to comply with pass-through transparent pricing.

Again, the PBM transparency standards provide that "[t]he PBM shall charge the Carrier no more than the amount it pays the pharmacies in its retail network for brand and generic drugs plus a dispensing fee." The problem that the Carrier and PBM fail to recognize is that the PBM did in fact charge the Carrier and FEHBP more than the amount it pays the pharmacies in its retail network for brand and generic drugs. This is because the weekly payments to the retail pharmacies are reduced by the credit the PBM receives for transmission fees. Using a basic example, if the PBM owes the retail pharmacy $100 less $5 in transmission fees, then the payment made to the retail pharmacy is $95. Because all credits are due to the Carrier and FEHBP under OPM's PBM Transparency Standards, $95 should be charged to the Carrier and FEHBP, not $100. The plain language of the quoted portion of transparency standards expressly

provides for only two acceptable categories of charges – the drug cost and the dispensing fee. Despite this, the PBM is charging the Carrier and the FEHBP for a third category of fees – the transmission fee.

We note that the PBM charges different rates of transmission fees for retail pharmacies, with some pharmacies not paying any fees. Additionally, the PBM can charge or not charge transmission fees depending on which carrier/client claims are being paid. We believe these inconsistencies show that transmission fees are not obtained for a standard expense, or each pharmacy and client would be charged in the same manner. As stated by the PBM below in its response to Recommendation 6, "*Because this action will prohibit Caremark from retaining compensation for the network administration services it provides to retail network pharmacies, we expect Caremark's bids for FEHBP business will charge Carriers a higher administrative fee to offset this shift of costs from the pharmacies to the Carriers,*" the credits that offset claim costs function as another source of revenue, which are actually paid by the Carrier when drug costs exceed the payments made to the retail pharmacies, also known as "spread."

The underlining issue with the accounting practice identified by this finding is that the weekly payments to retail pharmacies are reduced, yet the PBM charges a higher unsupported amount to the Carrier. This process must end for transparent clients where all credits are due to the Carrier, and in this case, the FEHBP.

Recommendation 5

We recommend that OPM's Contracting Officer assess $16,170,786 for LII on the questioned costs due to the FEHBP for this finding, calculated through June 30, 2025. The LII should be adjusted to account for the date the questioned costs are returned to the program.

Carrier and PBM's Response:

BCBSA and Caremark disagree with recommendation 5 for the same reason stated in their response to recommendation 4.

OIG Comments:

The Carrier agreed to LII on questioned costs in its signed contracts with OPM.

Recommendation 6

We recommend that the Carrier adopt new controls to ensure that the FEHBP receives the value of all credits under pass-through transparent pricing since the transmission fee credits offset the PBM's payments to retail pharmacies.

Carrier and PBM's Response:

Caremark has reportedly taken action to meet this recommendation. Specifically, Caremark has adjusted its underwriting practices for FEHBP Carrier clients. As Carrier contracts, including the BCBSA contract, renew or are replaced, Caremark will begin passing through the value of all transmission fee credits to BCBSA and the FEHBP. Because this action will prohibit Caremark from retaining compensation for the services it provides to retail network pharmacies, Caremark will likely need to increase administrative fees to offset this shift of value to the Carrier, resulting in a net neutral position.

OIG Comments:

No evidence was provided showing that new controls were implemented to ensure that the FEHBP receives the value of all credits from retail pharmacies under pass-through transparent pricing since the transmission fee credits offset the PBM's payments to retail pharmacies.

3. Improper Performance Incentive Paid to PBM $27,831,039

The Carrier agreed to a PBM performance incentive that failed to ensure that the FEHBP received 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 with retail pharmacies. Specifically, the Carrier charged the FEHBP and paid the PBM an additional $23,916,120 in incentives (in excess of the paid drug claims) during the scope of our audit due to actual pharmacy costs being lower than the PBM's maximum pricing guarantee sold to the Carrier. The fallacy in this performance incentive is that additional money is paid to the PBM when pass-through pricing is more advantageous than the PBM's guaranteed discount, thereby eliminating a percentage of the savings gained by OPM's transparency requirement. This, in turn, reduces the value of the discount that is received by the FEHBP, which is no longer receiving the full value of pass-through pricing. While this practice may be allowable in the PBM's other business dealings under traditional spread pricing, it is contrary to the established PBM transparency standards. The FEHBP was therefore overcharged $23,916,120, plus $3,914,919 due to the FEHBP ($27,831,039 in total) for LII calculated through June 30, 2025.

The Carrier incorrectly applied a performance incentive without first verifying pass-through transparent pricing.

The 2011 Transparency Standards, contained in Section 1.26(a) of OPM's Contract, state that the PBM agrees to provide pass-through transparent pricing in which the Carrier receives the value of all discounts, rebates, credits, or other financial benefits. The Transparency Standards also provide that the PBM shall charge the Carrier no more than the amount it pays retail pharmacies for brand and generic drugs, plus a service fee to process the claims. FEHBAR 1652.216-71 requires all costs to be actual, allowable, allocable, and reasonable net of any refunds, rebates, allowances, or other credits received**.**

In addition to promising pass-through transparent pricing at the value of the PBM's negotiated discounts with retail pharmacies, pricing guarantees in the agreement between the PBM and the Carrier limit the maximum cost for prescription drugs. These pricing guarantees exist in part because the PBM's pharmacy discounts were confidential and unknown to the Carrier during PBM solicitation. These guarantees are meant to pay the Carrier additional funds if pass-through pricing was less advantageous than the guarantee, never the reverse. The PBM cannot charge additional money when pass-through pricing discounts are more advantageous than the maximum pricing guarantee sold to the Carrier.

During our review of retail pricing guarantees between the Carrier and the PBM, we found that the Carrier agreed to a performance incentive that paid the PBM additional funds when pharmacy costs beat the maximum pricing guarantee sold by the PBM to the Carrier. The specific clause in the Agreement states that "the PBM receives a performance incentive payment equal to [redacted] percent of additional savings achieved by the Carrier." Our review showed that the PBM received $23,916,120 in incentive payments from the Carrier for contract years 2018, 2019, and 2021 for actual pharmacy charges being lower than the PBM's guaranteed maximum pricing for brand and generic drugs in its Retail Pharmacy Program. Because the FEHBP should receive the better of either pass-through transparent pricing or the PBM's maximum guaranteed pricing in accordance with OPM's Contract and the PBM Agreement, a reconciliation must be performed similar to the Carrier and PBM's Mail Order Program to ensure pass-through of actual costs. Our review showed that there was no reconciliation performed to ensure pass-through pricing at the PBM's negotiated discounts with retail pharmacy in compliance with OPM's PBM transparency standards. The only verification performed by the PBM and the Carrier was comparing what was paid to the pharmacies in relation to the PBM's maximum pricing guarantee sold to the Carrier.

Contract Year	2018	2019	2021	Total
Incentive Payment	$2,520,147	$2,558,199	$18,837,774	**$23,916,120**

The Carrier stated that it allowed the [redacted] percent performance incentives in good faith to achieve the best pricing for its Retail Pharmacy Program, but there was no consideration given to pass-through of the PBM's negotiated discounts with retail pharmacies in accordance with OPM's PBM Transparency Standards. Both the PBM and Carrier admitted that they did not verify pass-through of the discounts that the PBM negotiated with retail pharmacies, nor was the PBM able to reprice the claims at the discounts shown in the pharmacy agreements, as stated during our audit. Instead, the PBM and the Carrier used the amounts paid for pharmacy claims as the only "benchmark" (i.e., a point of reference) for measuring pass-through pricing. In other words, the amount the PBM paid for FEHBP pharmacy claims was never measured or compared to the negotiated discounts between the PBM and the retail pharmacies. Furthermore, if the exact amounts paid by the PBM to the retail pharmacies were considered "pass-through" by the Carrier and PBM, then the Carrier should not have made any additional payments to the PBM with FEHBP funds since the additional incentives would exceed pass-through pricing.

PBM's offer pricing guarantees as a maximum amount chargeable under transparent contracts because pass-through pricing is unknown to the Carrier during PBM solicitation. The guarantee is only implemented when pass-through transparent pricing fails to meet the guaranteed discounts sold to the Carrier. The Carrier cannot pay the PBM additional FEHBP funds when pass-through pricing equals or is more advantageous than the pricing guarantees since any additional incentive would therefore exceed pass-through pricing. As a result, there is no justification to charge the Carrier and the FEHBP an additional $23,916,120 on top of the actual retail pharmacy claim payments. In addition to recovering the overcharges, the FEHBP is due $3,914,919 for LII calculated through June 30, 2025 (totaling $27,831,039 for this finding).

Recommendation 7

We recommend that the Carrier amend its PBM agreement by removing the [redacted] percent performance incentive language for retail pharmacy claims.

Recommendation 8

We recommend that the PBM and Carrier return $23,916,120 to the FEHBP for improper payments related to the pass-through of retail pharmacy discounts that exceeded the guarantee between the Carrier and the PBM by [redacted] percent each applicable year.

Carrier and PBM's Response:

BCBSA and Caremark disagreed with the finding using the argument that future contract changes by OPM were applied retroactively to the audit period. Specifically, the Carrier and the PBM stated that OPM's PBM Transparency Standards from the scope of the audit

did not require the Carrier and the PBM to conduct any true-up/reconciliations to ensure that the FEHBP received the better of the PBM's guarantees or the negotiated discounts found in the PBM's retail pharmacy contracts. For additional details, please see the Carrier and PBM's full response attached as an appendix to this report.

OIG Comments:

As discussed previously, the OIG used OPM's 2011 version of the PBM Transparency Standards and did not retroactively apply contract changes to arrive at this finding. Instead, we found that this incentive fee structure was at odds with the PBM Transparency Standards for several reasons.

First, the PBM Transparency Standards require that the PBM charge the Carrier no more than the amount it pays retail pharmacies for brand and generic drugs, plus a dispensing fee. The PBM is, in fact, charging the Carrier more than the amount paid to pharmacies in its retail network because it is adding a substantial incentive fee on top of the drug charges. Furthermore, another section of the standards requires the pass through of the "value of all discounts." The value of all discounts received by the PBM is not truly being passed through to the Carrier because the value of these discounts is offset through the payment of the incentive fee.

Second, like the other practices identified in this audit, this incentive fee structure allows the PBM to earn an additional profit above and beyond the administrative fee charged to the contract. This contradicts the terms of the transparency standards, which provide, in relevant part, that profits obtained under the contract should come from clearly identified sources (i.e., the administrative service fee).

Third, the Carrier and the PBM stated multiple times during the audit and in their combined response to the draft report that the PBM provided pass-through transparent pricing to the Carrier and FEHBP. If the amount charged to the Carrier for FEHBP retail claims was pass-through pricing as claimed, and the pass-through amount was more advantageous than the guaranteed discounts sold by the PBM (which it was since there was no penalty payment), then there is zero justification for the Carrier to pay the PBM additional lump sum payments of $24 million during the scope of the audit since pass-through pricing was required by the PBM Transparency Standards. The Carrier's argument is therefore invalid, and the additional $24 million paid to the PBM cannot be tied to any benefit charges or claims in accordance with FEHBAR. These are clearly unsupported charges that are due back to the FEHBP as overpayments.

Recommendation 9

We recommend that OPM's Contracting Officer assess $3,914,919 for LII on the questioned costs due to the FEHBP for this finding, calculated through June 30, 2025. The LII should be adjusted to account for the date the questioned costs are returned to the program.

Carrier and PBM's Response:

BCBSA and Caremark disagree with recommendation 9 for the same reason stated in their response to recommendations 7 and 8.

OIG Comments:

The Carrier agreed to LII on questioned costs in its signed contracts with OPM.

E. DRUG MANUFACTURER REBATES REVIEW

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

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 (exclusive of any overcharges to the Carrier and the FEHBP identified in this report).

G. PERFORMANCE GUARANTEES REVIEW

The results of our review showed that the PBM's performance guarantees were accurately reported (exclusive of any pricing guarantees), and any applicable penalties were properly paid to the Carrier and the FEHBP.

APPENDIX

August 4, 2025

BlueCross BlueShield Association
750 9th St. NW.
Washington, D.C. 20001
www.BCBS.com

James L. Tuel, Jr.
Chief, Special Audits Group
U.S. Office of Personnel Management

VIA Email

Re: Audit of the Blue Cross Blue Shield Association's Service Benefit Plan's Retail and Mail Order Pharmacy Programs as Administered by CVS Caremark for Contract Years 2018 through 2021

Report Number 2024-SAG-013

Dear Mr. Tuel:

Enclosed is the response to the revised audit report on the Blue Cross Blue Shield Association's Service Benefit Plan Retail and Mail Order Pharmacy Programs, managed by CVS Caremark.

Caremark, in conjunction with Blue Cross Blue Shield Association, submits its formal response to the draft audit findings outlined in Attachment A. This submission addresses the monetary findings and recommendations related to the administration of the Retail and Mail Order Pharmacy Programs.

For a thorough explanation of Caremark's position and any proposed corrective actions, please consult **Attachment A**.

If you have any questions, please contact me at the number above. Please also confirm receipt of this email.:

Sincerely,

[redacted]
Blue Cross Blue Shield Association

ATTACHMENT A

CVS Caremark
2100 E. Lake Cook Rd., 5th Floor

VIA ELECTRONIC MAIL
August 4, 2025

[redacted]
BlueCross BlueShield Association
750 9th Street, NW
Washington, DC 20001

Dear [redacted]:

As a follow-up to our discussion from June 11, 2025, please find attached for your consideration the CVS Caremark revised response to the above referenced audit report. The arguments detailed in the attached are largely consistent with our prior positioning. While we considered several other potential arguments, it was ultimately determined that the best course of action was not to confuse already persuasive positioning, particularly since OPM OIG has failed to effectively refute any of the points raised.

I would appreciate the opportunity to review the final BlueCross BlueShield Association ("BCBSA") response to this latest audit report prior to its release to OPM OIG. Also, if there is an occasion to discuss this matter directly with OPM OIG, Caremark would welcome the chance to participate.

Please review and feel free to reach out to me directly at (847) 257-6948 or michael.perry@cvshealth.com if have any questions or would like to discuss this positioning more generally. Caremark values our longstanding relationship with BCBSA and we look forward to working with you through this issue and continuing to serve as your prescription benefit manager.

Sincerely
[redacted]
CVS Health

I. BACKGROUND

In its Revised Draft Audit Report dated June 2, 2025 ("Draft Audit Report"), Office of Personnel Management ("OPM"), Office of Inspector General ("OPM OIG") presented the results of its performance audit of the Carrier Blue Cross Blue Shield Association's ("BCBSA") Federal Employees Health Benefits Program ("FEHBP") Service Benefit Plan's retail and mail order pharmacy programs as administered by its Pharmacy Benefit Manager ("PBM"), CVS Caremark ("Caremark") for Contract Years 2018 through 2021 (the "Audit Period"). In the Draft Audit Report, OPM OIG identified the following three findings:

(1) OPM OIG alleges that FEHBP did not receive Pass-Through Transparent Pricing (as defined below) from Caremark for two of the largest national retail pharmacies (i.e., [redacted]), resulting in a $478,717,560 overcharge to FEHBP.
(2) OPM OIG alleges that Caremark failed to return $108,600,029 in retail pharmacy claim transmission fees that it was credited for BCBSA's retail prescription drug benefits.
(3) OPM OIG alleges that BCBSA overcharged FEHBP $27,831,039 as a direct result of paying Caremark a performance incentive payment equal to [redacted] of excess savings above the retail claims pricing guarantee between BCBSA and Caremark in 2018, 2019, and 2021.

For the reasons set forth below, BCBSA and Caremark disagree with OPM OIG's findings as all three findings are based on OPM OIG's incorrect reading of the applicable contract standards during the Audit Period and the improper retroactive application of amendments OPM made to the FEHBP Standard Fee-For-Service Carrier CS 1039 Contract between BCBSA and OPM ("OPM Contract CS 1039") that were not in effect during, and therefore inapplicable to, the Audit Period.

II. BCBSA CAREMARK RESPONSE

A. OPM OIG Audit Finding #1: Pass-Through of Two National Retail Pharmacies' Negotiated Discounts

In its Draft Audit Report, OPM OIG claims that BCBSA and FEHBP did not receive Pass-Through Transparent Pricing from Caremark for two of the largest national retail pharmacies (i.e., [redacted] during the Audit Period, resulting in a $400,739,825 overcharge to FEHBP. Additionally, OPM OIG alleges that $77,977,735 is due to FEHBP ($478,717,560 in total) for lost investment income ("LII") calculated through June 30, 2025.

OPM OIG Recommendation #1:

OPM OIG recommends that Caremark return to BCBSA and FEHBP $400,739,825, the alleged portion of two retail pharmacies' negotiated discounts not passed through to FEHBP for drug claims during the Audit Period.

BCBSA Caremark Executive Summary:

BCBSA and Caremark continue to disagree with OPM OIG's assertion that Caremark's approach to pharmacy pricing did not comply with OPM Contract CS 1039 and the applicable OPM Transparency Standards for Arrangements with PBMs (collectively, the "OPM Standards") when

it passed through the value of Caremark's negotiated discounts with two national retail pharmacies to BCBSA. First, pursuant to the OPM Standards in effect at the time, Caremark: (1) agreed to "provide pass-through transparent pricing based on [Caremark's] cost for drugs…"; and (2) "charge [BCBSA] no more than the amount [Caremark] pays the pharmacies in its retail network for brand and generic drugs plus a dispensing fee." During the Audit Period, which predated the changes to the OPM Standards implemented in 2020 and 2022, Caremark did in fact "charge [BCBSA] no more than the amount [Caremark] pa[id] the pharmacies in its retail network for brand and generic drugs plus a dispensing fee" in full compliance with the then-applicable OPM Standards. Second, the OPM Standards in effect during the Audit Period did not include language requiring Caremark to pass through the "full value" of its "negotiated discounts, rebates, credits, or other financial benefits", or its "financial guarantees including any true-up or reconciliation" in its Pass-Through Transparent Pricing (as defined below). OPM did not amend and revise its FEHBP Standard Contract terms for Fee-For-Service Carriers implemented in OPM Contract CS 1039 to include this obligation until 2022. Finally, there is no legal basis to support OPM OIG's attempt to apply its expressly forward-looking 2020 and 2022 revisions to the OPM Standards on a retroactive basis to claims paid during the Audit Period. As noted in OPM Benefits Administration Letter No. 96-04, OPM has previously demonstrated that if OPM intends to make a contract amendment retroactive, it will specifically state that the change will be retroactive. OPM OIG does not provide any legal or factual support for its retroactive application of the 2020 and 2022 revisions to the OPM Standards.

BCBSA Caremark Response to Recommendation #1:

1. Timeline of Revisions to OPM Standards

To clarify the OPM Standards applicable during the Audit Period, we provide this table summarizing the evolution of OPM's Pass Through Pricing requirements since 2011. The table is followed by a more detailed timeline that sets forth BCBSA's implementation of each phase of OPM's Pass Through Pricing Requirement, including (i) OPM's amendments to the OPM Standards, (ii) the corresponding deadlines for incorporating the revised language in Carriers' contracts with PBMs, and (iii) the date on which BCBSA implemented the OPM Standards—all in relation to the scope of the Audit Period.

Evolution of OPM Standards for Pass Through Pricing			
OPM Standard	**Date of OPM's Amendments**	**OPM Deadline for Incorporation**	**Date of BCBSA's Implementation**
OPM STANDARDS **Section 1.26(a)(2):** "The PBM agrees to provide Pass-Through Transparent Pricing based on the PBM's cost for drugs (as described below in Section 1.26(a)(2)(i) in which the Carrier receives the value of the PBM's negotiated discounts, rebates, credits or other financial benefits."	January 1, 2011	January 1, 2013	*In effect during 2015 BCBSA Caremark PBM Agreement*

Evolution of OPM Standards for Pass Through Pricing			
OPM Standard	**Date of OPM's Amendments**	**OPM Deadline for Incorporation**	**Date of BCBSA's Implementation**
Section 1.26(a)(2)(i): "The PBM shall charge the Carrier no more than the amount it pays the pharmacies in its retail network for brand and generic drugs plus a dispensing fee."			
2020 OPM REVISED STANDARDS **Section 1.26(a)(6):** "Pass-Through Transparent Pricing" means drug pricing in which the Carrier receives ***the full value*** of the PBM's negotiated discounts, rebates, credits, or other financial benefits.	January 1, 2020	January 1, 2023	January 1, 2022
2022 OPM REVISED STANDARDS **Section 1.26(a)(5):** "Pass-Through Transparent Pricing" means drug pricing in which the Carrier receives the full value of the PBM's negotiated discounts, rebates, credits, or other **financial guarantees or adjustments including any true up or reconciliation."**	January 1, 2022	January 1, 2025	January 1, 2022
2024 OPM REVISED STANDARDS **Section 1.26(a)(5):** "Pass-Through Transparent Pricing" means drug pricing in which the Carrier receives the full value of the PBM's negotiated discounts, rebates, credits, or other financial guarantees or adjustments including any true up or reconciliation." **Section 1.26(b)(2):** "The PBM shall agree to provide Pass-Through Transparent Pricing as defined above for the following categories: (i) Retail Pharmacies: The PBM shall charge the Carrier no more than the amount as determined by Pass-Through Transparent Pricing paid to the pharmacy for each drug plus a dispensing fee. **The value of the discounts negotiated in each pharmacy agreement must be passed-through to the Carrier including all transaction fees, credits, true-ups and other amounts collected back from the pharmacies."**	January 1, 2024	January 1, 2027	To come via contract amendment in 2025.

Audit Response Timeline

- ***February 22, 2010.*** OPM issued FEHB Program Carrier Letter No. 2010-04 articulating new transparency standards for arrangements with PBMs (the aforementioned OPM Standards), including, but not limited to, the following:
    - "Pass-through transparent pricing is an arrangement based on the PBM's cost for drugs in which the Carrier receives the value of the PBM's negotiated discounts, rebates, or other credits."
- ***January 1, 2011.*** OPM implemented new OPM Standards via contractual amendment to Section 1.26 of its FEHBP Standard Contract for Fee-for-Service Carriers. Effective January 1, 2011, Carriers were required to implement the following language in their PBM contracts:
    - Section 1.26(a)(2): "The PBM agrees to provide Pass-Through Transparent Pricing based on the PBM's cost for drugs (as described below in Section 1.26(a)(2)(i)) in which the Carrier receives the value of the PBM's negotiated discounts, rebates, credits **or** other financial benefits."
    - Section 1.26(a)(2)(i): "The PBM shall charge the Carrier no more than the amount it pays the pharmacies in its retail network for brand and generic drugs plus a dispensing fee."
- ***January 1, 2015.*** BCBSA and Caremark entered into a PBM contract (the "2015 BCBSA Caremark PBM Agreement") whereby Caremark agreed to provide retail pharmacy network services to BCBSA. This 2015 BCBSA Caremark PBM Agreement is the relevant contract in effect between BCBSA and Caremark during the Audit Period.
- ***January 1, 2018 – December 31, 2021.*** The OPM OIG Audit Period.
- ***January 1, 2020.*** OPM issued new OPM Standards at Section 1.26 of its FEHBP Standard Contract for Fee-for-Service Carriers modifying the pass-through pricing requirement. The new OPM Standards required that going forward, Carriers receive ***the full value*** of the PBM's negotiated discounts, rebates, credits, or other financial benefits (the "2020 OPM Revised Standards"):
    - Section 1.26(a)(6): "Pass-Through Transparent Pricing" means drug pricing in which the Carrier receives ***the full value*** of the PBM's negotiated discounts, rebates, credits, or other financial benefits.
    - Section 1.26(b)(2): "The PBM shall charge the Carrier no more than the amount paid to the retail pharmacy for each drug plus a dispensing fee." (emphasis added)

  The revised FEHBP Standard Contract for Fee-for-Service Carriers required that Carriers include new language in any ***new, renewing, or amended*** Carrier contracts with PBMs ***effective on or after January 1, 2020***. As stated in the January 1, 2020, OPM Contract CS 1039 Amendment No. 2020A Section 1.26 "Standards for Pharmacy Benefit Management Company (PBM) Arrangements", the new OPM Standards were not required to take effect before expiration of the Carrier's current contract but were required to be implemented no later than January 2023. **Notably, the 2020 OPM Revised Standards were not required to be implemented during the Audit Period.**
- ***January 1, 2022.*** OPM further revised the OPM Standards at Section 1.26 of its FEHBP Standard Contract for Fee-for-Service Carriers to require that going forward, "Pass-Through Transparent Pricing" means drug pricing in which the Carrier receives the full value of all discounts, rebates, credits or other **financial guarantees or adjustments including any true up or reconciliation** (the "2022 OPM Revised Standards"):

- Section 1.26(a)(5): "Pass-Through Transparent Pricing" means drug pricing in which the Carrier receives the full value of the PBM's negotiated discounts, rebates, credits, or other **financial guarantees or adjustments including any true up or reconciliation."**
- Section 1.26(b)(2): "The PBM shall agree to provide Pass-Through Transparent Pricing as defined above for the following categories:
  - Retail Pharmacies: The PBM shall charge the Carrier no more than the amount as determined by Pass-Through Transparent Pricing paid to the pharmacy for each drug plus a dispensing fee."

This language was required to be included in ***new, renewing, or amended*** Carrier contracts with their PBMs that were ***effective on or after January 1, 2022***. As stated in the January 1, 2022 OPM Contract CS 1039 Amendment No. 2022A Section 1.26 "Standards for Pharmacy Benefits Management Company (PBM) Arrangements", the revised standards were not required to take effect before expiration of the Carrier's current contract but were required to be implemented no later than January 2025. **Notably, the 2022 OPM Revised Standards were not required to be implemented during the Audit Period.**

- ***January 1, 2022.*** BCBSA and Caremark entered into a new PBM contract (the "2022 BCBSA Caremark PBM Agreement") that implemented the 2020 OPM Revised Standards and the 2022 OPM Revised Standards.
- ***January 1, 2024.*** OPM again changed the OPM Standards at Section 1.26 of its FEHBP Standard Contract for Fee-For-Service Carriers to modify that going forward, "**transaction fees**" collected from pharmacies must be included in Pass-Through Transparent Pricing (the "2024 OPM Revised Standards"):
  - Section 1.26(a)(5): "Pass-Through Transparent Pricing" means drug pricing in which the Carrier receives the full value of the PBM's negotiated discounts, rebates, credits, or other financial guarantees or adjustments including any true up or reconciliation."
  - Section 1.26(b)(2): "The PBM shall agree to provide Pass-Through Transparent Pricing as defined above for the following categories: (i) Retail Pharmacies: The PBM shall charge the Carrier no more than the amount as determined by Pass-Through Transparent Pricing paid to the pharmacy for each drug plus a dispensing fee. **The value of the discounts negotiated in each pharmacy agreement must be passed-through to the Carrier including all transaction fees, credits, true-ups and other amounts collected back from the pharmacies."**

  This language was required to be included in ***new, renewing, or amended*** Carrier contracts with their PBMs that were ***effective on or after January 1, 2024***. As stated in the January 1, 2024 OPM Contract CS 1039 Amendment No. 2024A Section 1.26 "Standards for Pharmacy Benefits Management Company (PBM) Arrangements", the revised standards were not to take effect before expiration of the Carrier's current contract but were required to be implemented no later than January 2027. **Notably, the 2024 OPM Revised Standards were not required to be implemented during the Audit Period.**

Timeline Takeaways. On page 7 of the Draft Audit Report, OPM OIG notes that the OPM Standards applicable during the Audit Period stated that the OPM Contract CS 1039 "requires pass-through transparent pricing in which the Carrier receives the value of the PBM's negotiated discounts, rebates, credits or other financial benefits to include any true-ups or reconciliations." However, as demonstrated above, the OPM Standards in effect during the Audit Period did not

require pass-through pricing to include: (1) the "full value" of any negotiated discount until the 2020 OPM Revised Standards; or (2) the "full value" of "financial guarantees or adjustments including any true up or reconciliation" until the 2022 OPM Revised Standards. Those obligations did not apply to Caremark until BCBSA and Caremark implemented the 2020 and 2022 OPM Revised Standards via the 2022 BCBSA Caremark PBM Agreement on January 1, 2022.

2. No Legal Authority for Retroactive Application of 2020 and 2022 OPM Revised Standards

Below, we (i) explain the overall effective rate guarantees at issue in OPM OIG Finding #1, (ii) demonstrate how Caremark's pricing model was compliant with the then-applicable 2015 BCBSA Caremark PBM Agreement and OPM Standards, and (iii) prove that OPM OIG has no legal basis for retroactively applying the expressly forward-looking 2020 and 2022 OPM Revised Standards to claims paid during the Audit Period.

Under the 2015 BCBSA Caremark PBM Agreement in effect during the Audit Period, BCBSA participated in Caremark's national commercial retail network, along with thousands of commercial clients and a small number of government-sponsored program clients. During the Audit Period, Caremark annually processed hundreds of millions of pharmacy claims from this network across thousands of pharmacies. The retail pharmacy national network structure generally adopted by PBMs prior to the changes to the 2020 and 2022 OPM Revised Standards (which were not applicable during the Audit Period) did not support drug claim reconciliation at the individual client level, contrary to what OPM OIG now incorrectly asserts was required during the Audit Period.

Each individual claim was adjudicated and reimbursed in accordance with Caremark's pharmacy and client agreements. As OPM OIG correctly observes, Schedule A of the 2015 BCBSA Caremark PBM Agreement, definition 170 defined "Pass-Through Pricing" to be "the actual price negotiated for drug Ingredient Costs, Dispensing Fees and taxes (collectively, the 'Negotiated Price') between a Pharmacy in the Retail Pharmacy Network and CVS Caremark for Retail Pharmacy Prescriptions Reimbursed." The "Ingredient Cost," in turn, was defined to be "the lesser of the following 4 categories (i.e., the Discounted AWP; the MAC Price; the Usual and Customary Charge; Submitted Charges)," each of which was clearly and specifically defined. In other words, the 2015 BCBSA Caremark PBM Agreement accurately defines the "Pass-Through Pricing" obligations on an individual prescription basis, not an aggregate basis. Caremark adjudicated BCBSA FEP claims in accordance with this framework, and reimbursed pharmacies based on those adjudicated amounts consistent with the OPM Standards applicable at that time.

Under Caremark's national network model in effect during the Audit Period, which is still utilized by Caremark and other PBMs today for clients other than FEHBP, pharmacies are reimbursed based on thousands of different client arrangements. For [redacted], Caremark also committed to achieve, in aggregate across the entire network, at a least minimum guaranteed average discount off of AWP across all drugs dispensed by the pharmacy regardless of the client – a brand drug effective rate ("BER") and a generic drug effective rate ("GER") (collectively, the "Overall Effective Rates"). The Overall Effective Rates Caremark negotiated with [redacted] were effectively a "one-way floor rate". That is, if, in aggregate, Caremark's

reimbursement to [redacted] failed to achieve the guaranteed Overall Effective Rates, Caremark was obligated to pay [redacted] additional sum to make up the difference out of its own funds. Caremark has no ability to go back to BCBSA (or BCBSA to OPM) and receive additional funds to cover the cost of reconciliation payments Caremark makes to ensure that any pharmacies paid, in aggregate, less than the Overall Effective Rate receive the remaining balance between the Overall Effective Rate and the amounts the pharmacies were actually reimbursed. In other words, reconciliation of the Overall Effective Rates under this one-way floor structure may result in additional payments to the retail pharmacies, but never result in payments or additional financial benefit to Caremark.

Overall Effective Rates are Not Negotiated Discounts

The complexity of managing these Overall Effective Rate arrangements across thousands of pharmacies, thousands of clients, millions of members, and hundreds of millions of claims cannot be overstated. Simply put, there is no way to untangle the mass of claims and data down to a specific claim, member, and/or client in the context of how the broader network was structured to operate. Caremark disagrees with OPM OIG's assertion that PBMs are able to isolate pharmacy reimbursement for any one client under an Overall Effective Rate model that has been negotiated in reliance on a PBM's highly complex book of business. An Overall Effective Rate does not represent an adjudicated claim rate that Caremark has agreed to reimburse any particular pharmacy, for any particular claim, or for any particular client. Rather, it is understood and agreed that an Overall Effective Rate is merely a targeted rate for all claims that run through that network to ensure that the pharmacies receive a minimum aggregate payment amount.

OPM received the value of this contracting approach and received a deeper discount that Caremark was able to negotiate when leveraging scaled book-of-business contracting. Once the OPM Standards changed in 2020 and 2022, effectively prohibiting this approach, Caremark was required to contract for and implement a separate retail network specific to the FEHBP Carriers, which required elimination of the Overall Effective Rate.

Caremark's Pricing Model during the Audit Period was Compliant with OPM Standards

Caremark processed all BCBSA claims in compliance with the applicable OPM Standards during the Audit Period.

In the Draft Audit Report, OPM OIG implies that because Caremark's contracts with [redacted] required a pricing true-up and reconciliation with the pharmacy to an annualized Overall Effective Rate (across all applicable pharmacies, for all clients, and all claims), Caremark was required to pass through any results from this pharmacy-specific true-up to BCBSA. However, reconciliation of the Overall Effective Rates is a component of the pharmacy reimbursement process separate and apart from negotiated discounts, rebates, credits, or other financial benefits to Caremark. Moreover, the only party who benefited from the one-way reconciliation of the Overall Effective Rate was the retail pharmacy – who was guaranteed to receive the Overall Effective Rate (paid by Caremark) as a minimum payment across all claims it dispensed. As Overall Effective Rates do not fall within the definition of "Pass-Through

Transparent Pricing", the reconciliation to the Overall Effective Rate was correctly not included in the OPM Standards applicable during the Audit Period.

As noted above, during the Audit Period, the 2015 BCBSA Caremark PBM Agreement and the applicable OPM Standards required Caremark to provide Pass-Through Transparent Pricing based on the PBM's cost for drugs in which BCBSA receives the value of Caremark's negotiated discounts, rebates, credits, or other financial benefits. During the Audit Period, Caremark's costs for drugs were established at the point of adjudication and passed-through to BCBSA and FEHBP. OPM OIG incorrectly asserts that the applicable OPM Standards also required Caremark to true-up each BCBSA claim to incorporate application of the [redacted] Overall Effective Rates. However, Section 1.26(a)(2)(i) of the applicable OPM Standards (during the Audit Period) expressly states Caremark's obligations with respect to retail pharmacy network claims. This subsection requires that "[t]he PBM shall *charge the Carrier no more than the amount it pays the pharmacies in its retail network for brand and generic drugs plus a dispensing fee*." This is precisely what Caremark did. OPM OIG does not cite to any instance where the reimbursement Caremark collected from BCBSA exceeded the amount Caremark paid to [redacted] for that same claim. That is, Caremark did not charge BCBSA more than the amount it paid the pharmacies for each individual drug claim.

The applicable OPM Standards clearly specify Caremark's obligations with respect to Pass-Through Transparent Pricing for reimbursement of retail pharmacy claims, and do not include any discussion of incorporating true-ups or reconciliation. Caremark adjudicated and paid BCBSA pharmacy claims at negotiated, contracted rates and passed along the value of such negotiated, contracted rates to BCBSA without markup in compliance with the then-applicable OPM Standards. OPM OIG's finding comes up short in supporting its assertion that a "PBM's negotiated discounts" includes reconciling (or truing-up) to the Overall Effective Rates to the exclusion of any other terms in the pharmacy contracts and reimbursement structure. The Draft Audit Report's assertion necessarily infers language that did not exist in the OPM Standards applicable to the Audit Period, or under the definition of "Pass-Through Pricing" in the 2015 BCBSA Caremark PBM Agreement. As discussed below, OPM OIG cannot read an additional requirement into the then-applicable OPM Standards that did not exist until years later when the OPM Standards were subsequently changed in 2020 and 2022.

A plain reading of Caremark's network pharmacy agreements does not support the OPM OIG position that the "PBM's negotiated discount" is equivalent to the Overall Effective Rates, because Overall Effective Rates do not establish how much the PBM will pay the pharmacy for any claim. That is accomplished through other contractual provisions. For example, one network pharmacy agreement defines "Generics" in relevant part as "drugs paid by Caremark based on a generic discount, MAC-based discount, or a non-MAC generic discount." Another provides for claims to be reimbursed at the lower of a listing that includes MAC plus dispensing fee less member cost share. Caremark's network pharmacy agreements confirm that Caremark and retail pharmacies do not negotiate Overall Effective Rates as adjudication rates.

The Draft Audit Report cites Caremark for a network pharmacy pricing approach of which OPM was well aware. Not only was the use of Overall Effective Rates a well-established industry standard, that network pharmacy contracting approach has been reviewed through numerous OPM

OIG audits for years without issue. PBMs and Carriers alike, including Caremark and BCBSA, have, in their course of performance, reasonably relied on the plain language of the then applicable OPM Standards as well as OPM's understanding and implicit approval of this pharmacy reimbursement model. It is important to note that irrespective of OPM's sudden shift in its view of retail pharmacy contracting models and use of the Overall Effective Rate, Caremark still, in all instances, complied with the then-applicable OPM Standards.

Caremark and BCBSA reasonably relied on the plain reading of the OPM Standards in effect during the Audit Period as the basis for their performance. If OPM had intended the OPM Standards applicable to the Audit Period to require adjudication of all FEHBP claims at the Overall Effective Rate, and/or to require the incorporation of any true-up or reconciliation process conducted with the pharmacy into the delivery of pass-through pricing, it could have made that intent clear in the OPM Standards. However, that was not the requirement during the Audit Period. OPM OIG acknowledged in the Draft Audit Report that the OPM Standards set forth in the FEHBP Standard Contract for Fee-for-Service Carriers during the Audit Period did not reflect the requirements that OPM OIG is retroactively applying. As a result, when OPM desired to change its position and incorporate these additional requirements, it formally amended and revised the OPM Standards. Indeed, as demonstrated in the timeline at Section II.A above, OPM's obligations imposed upon Carriers and their PBMs have evolved considerably over the last fifteen years, and continue to evolve today. It defies reason, logic, and applicable law for OPM OIG to now claim an audit finding when the expressly forward-looking standard being used to justify that finding was not implemented or announced until well after the Audit Period in question.

OPM's Intent is Expressed in Specific Distribution Channel Provisions

In its Draft Audit Report, OPM OIG relies upon the OPM Standards set forth in the introductory clause of Section 1.26(a), which contains a high-level statement about the nature of pass-through pricing without reference to how it is applied to each specific distribution channel. This is a generalized statement that applies to all channels and categories of services, regardless of what (or if) financial benefits actually exist within any such channel or category. This general statement is immediately followed by very specific requirements related to retail network pharmacies, mail order pharmacies, and manufacturer payments, each with its own specific details and requirements for what the general statement means with respect to the given channel. *See* OPM Standards Section 1.26(a)(2)(i)-(iii). As it relates to retail network pharmacy pricing, the general introductory clause of Section 1.26(a) is immediately followed and further clarified by specific requirements in Section 1.26(a)(2)(i) which directs the way in which pass-through pricing is to be applied to retail network pharmacies and claims within the scope of the Audit.

As noted above, the language of Section 1.26(a)(2)(i) governing retail network pharmacies requires only that the PBM may charge the Carrier no more than the amount that the PBM pays a pharmacy in its retail network for brand and generic drugs. Despite this specific and very clearly worded obligation, OPM OIG disregards this specific provision and asserts that the introductory provision in Section 1.26(a)(2) somehow required Caremark to pass through a target network reimbursement rate, the Overall Effective Rate, that was impossible to distill and apply at the claim or client level across the entire national network. OPM OIG ignored and failed to explain how the Overall Effective Rate, a minimum reimbursement reconciliation rate applied across all clients and all

claims (as opposed to a client-specific discounted rate), could be applied for a single plan given this well-established national network.

Absent any clear indication to the contrary, it is a well-established principle of contract interpretation that more specific language and terms will control over more general terms. This standard was clearly articulated and applied to OPM contracts by the Federal Appeals Court in *Transitional Learning Cmty. At Galveston, Inc. v. OPM,* 220 F.3d 427, 431 (5th Cir. 2000). The court's opinion in that case underscored this tenant of contractual interpretation standard, stating that "the specific trumps the general." *Id*. at 432. This principle has been repeatedly upheld in interpretation of government contracts; for example, in *Abraham v. Rockwell Int'l Corp.*, 326 F.3d 1242 (Fed. Cir. 2003), the Federal Circuit reviewed conflicting clauses in a Department of Energy contract and held that, "where specific and general terms in a contract are in conflict, those which relate to a particular matter control over the more general language." The provisions of Section 1.26(a)(2)(i) are very clear and specific, and should be interpreted as prevailing over the vague and imprecise language of Section 1.26(a)(2). In *CEMS, Inc. v. United States*, 59 Fed. Cl. 168 (2003), the court confirmed that standards setting forth specific language in one subsection will prevail over general language in another subsection. *See also Yee v. United States,* 777 Fed. Appx. 484, 487 (Fed. Cir. 2019) ("It is settled law that where an agreement contains general and specific provisions that conflict, the provision directed to a particular matter controls over the provision which is general in its terms." (internal quotation marks omitted)).

As explained above, the plain language of the OPM Standards in effect during the Audit Period does not support OPM OIG's interpretation. That is confirmed by the fact that OPM deemed it necessary to amend and revise the OPM Standards in 2020 and 2022. But even assuming, purely for the sake of argument, that those amendments were meant only to "clarify" the preexisting language as OPM OIG now claims, the fact that such clarification was necessary would only demonstrate that, at a minimum, the preexisting language was ambiguous. In that event, as a matter of black-letter contract law, any ambiguity would be interpreted against OPM, as the drafter of that language, and in favor of BCBSA. This doctrine of "contra proferentem," under which ambiguous language is construed against the party that drafted it, is applicable to the federal government just as to other contracting parties. *See HPI/GSA-3C, LLC v. Perry*, 364 F.3d 1327, 1334 (Fed. Cir. 2004). As such, "[t]he Government, as the author, has to shoulder the major task of seeing that within the zone of reasonableness the words of the agreement communicate the proper notions—as well as the main risk of a failure to carry that responsibility." *WPC Enters., Inc. v. United States*, 323 F.2d 874, 877 (Ct. Cl. 1963).

Caremark and BCBSA were correct in interpreting Section 1.26(a)(2) the way they did, and they were not alone in their interpretation. Multiple Carriers and at least two PBMs shared a similar interpretation of the relevant OPM Standards. *See* OPM OIG Final Audit Report No. 2022-SAG-029, dated March 27, 2024, at pp. 9-10, in which the American Postal Worker Union and its PBM, Express Scripts, Inc., explain a similar understanding of the OPM wording used in Section 1.26(a)(2), with respect to retail pharmacy pass-through pricing obligations. Furthermore, OPM OIG acknowledged in the Draft Audit Report that OPM had to revise the OPM Standards to address the fact that multiple PBMs interpreted this provision in a similar manner. BCBSA and Caremark also

shared this view as evidenced by the Pass-Through Pricing terms in the PBM Contract, that again were applied consistent with their common understanding of the plain reading of the OPM Standards.

This common understanding of the OPM Standards was also shared by FEHBP plans, as well as divisions within OPM itself, as reflected in OPM OIG's Final Audit Report No. 1H-99-00-20-016, dated July 29, 2021. In that report, OPM OIG recommended (at pp. 10) that carrier contracts be amended to require a "true up to ensure that each carrier receives the full value of all discounts, rebates, credits, or any other financial guarantees or adjustments included within the PBM's contracts with pharmacies." Responding to the draft of that recommendation, Aetna (at App'x A), GEHA (at App'x C), and the National Rural Letter Carriers' Association (NRLCA) (at App'x E) submitted responses opposing OPM OIG's recommendation, explaining the role of MAC pricing, and warning that OPM OIG's recommendation would effectively change the Pass-Through Transparent Pricing standard as applied to retail pharmacies. OPM's own Federal Employee Insurance Operations ("FEIO") even submitted a letter opposing OPM OIG's recommendation (at App'x F), explaining that "**OPM has already addressed the issue** this recommendation would be aimed toward in its **2021 amendments to the FEHB contracts."** Thus, even OPM FEIO is on record as disagreeing with OPM OIG.

BCBSA and Caremark, like the other Carriers and PBMs that have faced similar findings, have worked in good faith to comply with a reasonable and common understanding of OPM Standards. It serves no interest for OPM OIG to now seek to enforce a retroactive change to the OPM Standards. OPM OIG cannot prevail in a dispute by retroactively asserting that contract terms—widely understood and relied upon by Carriers and their PBMs to mean one thing—imposed a different requirement, particularly where OPM subsequently changed those same terms (on an expressly looking-forward basis) to reflect its updated interpretation. *Helene Curtis Indus., Inc. v. United States*, 312 F.2d 774, 778 (Ct. Cl. 1963) ("[T]he Government—where the balance of knowledge is so clearly on its side—can no more betray a contractor into a ruinous course of action by silence than by the written or spoken word.").

Retroactive Application of Contract Amendments

Irrespective of whether that decision was to effectuate OPM's evolving perspective on Pass-Through Transparent Pricing or for some other reason, the outcome is the same. OPM changed its standards via the 2020 and 2022 OPM Revised Standards. The 2020 OPM Revised Standards were changed to require PBMs to pass through the "full value" of their negotiated discounts – recognizing that the existing OPM Standards (which were applicable to the Audit Period) did not capture and require pass through of all possible pharmacy price value. More significantly, the new language in Section 1.26(b)(2) of the 2022 OPM Revised Standards added a new and separate definition of "Pass-Through Transparent Pricing", contained in Section 1.26(a). The new definition of "Pass-Through Transparent Pricing" added a material new requirement to the Carrier contracts. Specifically, it added the new concept that PBMs must incorporate the results of any adjustments resulting from true-ups or reconciliations of financial guarantees with the retail network pharmacies. This change constituted a very significant modification of the contractual obligations. For the first time, OPM required PBMs to factor in the results of any pharmacy true-up or reconciliation activity (including Overall Effective Rates) within the scope of the pass-through pricing it must provide to

a Carrier. In so doing, OPM enacted a new standard for retail pharmacy pass through – a prospective standard that wasn't required to be implemented until January 1, 2023.

OPM OIG cannot now enforce this expressly forward-looking change on a retrospective basis to encompass the Audit Period. Courts have held that a prospective amendment to a contract cannot be viewed as "providing a retroactive resolution to a long-standing dispute." *See Kaiser Aluminum & Chemical Corp. v. United States*, 181 Ct. Cl. 902 (1967). Contracts are "negotiated bargains" that do not "mean one thing today and another tomorrow." *City Crescent Ltd. P'ship v. United States*, 71 Fed. Cl. 797, 806 (2006). The essence of a contract is mutual assent, and therefore the government cannot "lawfully alter a material condition . . . upon which the parties relied." *Id.*

Even if a retroactive amendment was permissible (which it is not), OPM never intended to apply these changes retroactively. It is important to note that when OPM issued the above referenced contract changes, it included the customary forward-looking, phase-in structure. As noted above, CS 1039 Amendment 2022A required the 2022 OPM Revised Standards to be included in "new, renewing or amended contracts with Pharmacy Benefit Managers (PBMs) providing services to Enrollees and family members ***effective on or after January 1, 2022***." Moreover, the CS 1039 Amendment 2022A incorporating the 2022 OPM Revised Standards further clarified that "the revisions to Section 1.26 shall not take effect before the expiration of the Carrier's current contract (including the exercise of an existing option to extend the term by not more than one year at a time) but ***not later than January 2025***." The forward-looking, phase-in structure of the 2022 OPM Revised Standards makes clear that OPM recognized that this material change in terms was a modification of the OPM Standards, not a mere clarification—for if it were only a clarification of existing obligations, there would have been no need to phase the new terms in on a forward-looking basis and over time at contract renewal. Furthermore, the additions made in the amendments to the OPM Standards were not minor adjustments. OPM significantly modified the definition of Pass-Through Transparent Pricing to add a concept never previously included.

As anticipated by OPM's use of a phase-in approach to the 2022 OPM Revised Standards, implementation of the new pass-through requirements necessitated prospective operational changes by Caremark. Caremark had to contract a new retail pharmacy network dedicated exclusively to FEHBP Carriers and implement customized programming to adjudicate claims so that Caremark could perform reconciliation at the client level. It is well-established that a contract must be read to give meaning to all its terms. *Transitional Learning Cmty.*, at 431. This rule of construction applies not only to provisions within the original contract, but also to the changes that occurred in the amendments, as compared to the previous requirements of the language being amended. The changes in the 2022 OPM Revised Standards' definition of "Pass-Through Transparent Pricing" must properly be read in a way that gives them meaning. OPM added a new obligation to the OPM Standards, and those changes were subject to a forward-looking, phase-in provision. The proper interpretation of this language is, as stated by the court, to "presume[e] that every provision was intended to accomplish some purpose." *Id.* The 2022 OPM Revised Standards added new and forward-looking requirements to the retail pharmacy pass-through obligations that did not exist during the Audit Period. This addition undermines any effort to claim the forward-looking obligations existed during the Audit Period, and therefore undermines the draft finding. For

all the reasons set forth above, BCBSA and Caremark disagree with OPM OIG Audit Finding #1, Recommendation #1.

OPM OIG Recommendation # 2

OPM OIG recommends that OPM's Contracting Officer assess $77,977,735 for LII on the questioned costs due back to FEHBP for this finding, calculated through June 30, 2025. The LII should be adjusted to account for the date the questioned costs are returned to the program.

BCBSA Caremark Response to Recommendation #2:

BCBSA and Caremark disagree for the reasons stated above in the BCBSA Caremark Response to Recommendation #1.

OPM OIG Recommendation #3

OPM OIG recommends that BCBSA adopt new controls to ensure that Caremark charges no greater than the value of Caremark's negotiated discounts with each retail pharmacy that was in effect at the time the claim was adjudicated.

BCBSA Caremark Response to Recommendation #3:

BCBSA and Caremark amended their PBM Agreement effective January 1, 2022, to ensure, on a prospective basis, that BCBSA is charged for retail pharmacy claims in compliance with the 2022 OPM Revised Standards.

B. OPM OIG Audit Finding #2: Pass-Through of Credits for Retail Pharmacy Transmission Fees

OPM OIG maintains that Caremark overcharged BCBSA and FEHBP $92,429,243 during the Audit Period as a direct result of reducing payments to retail pharmacies for transmission fees/credits collected by Caremark while charging BCBSA and FEHBP the full claim amounts for prescription drug benefits. In addition to the assessed transmission fee amounts allegedly owed, OPM OIG alleges that $16,170,786 is due to FEHBP ($108,600,029 in total) for LII calculated through June 30, 2025.

OPM OIG Recommendation #4

OPM OIG recommends that Caremark return $92,429,243 to BCBSA and FEHBP for transmission fees that were credited to Caremark via payment offsets to retail pharmacies that were allocable to BCBSA's prescription drug benefits during the scope of the Audit Period.

BCBSA Caremark Executive Summary:

BCBSA and Caremark reject OPM OIG's assertion that retail pharmacy transmission fees are a component of Pass-Through Transparent Pricing because transmission fees are untethered to

"pricing based on the PBM's cost for drugs." Pharmacies pay the transmission fees in exchange for a myriad of services Caremark provides. This is underscored by the fact that the transmission fee is assessed every time a pharmacy utilizes Caremark's electronic claim adjudication system, whether or not the claim ever actually processes. In the 2024 OPM Revised Standards, OPM changed the wording of Section 1.26(b)(2) to add significant and material new requirements, including this sentence: "The value of the discounts negotiated in each pharmacy agreement must be passed-through to the Carrier including all *transaction fees*, credits, true-ups, and other amounts collected back from the pharmacies." (emphasis added.) The law does not support any attempt by OPM OIG to apply the expressly forward-looking 2024 OPM Revised Standards retroactively to transactions that occurred during the Audit Period, including payment of transmission fees to Caremark.

BCBSA Caremark Response to Recommendation #4:

Below, we (i) explain why retail pharmacy "transmission fees" are not included in Pass-Through Transparent Pricing, and (ii) prove that OPM OIG has no legal basis for retroactively applying the expressly forward-looking 2024 OPM Revised Standards to claims paid during the Audit Period.

Retail Pharmacy Transmission Fees are not Included in Pass-Through Transparent Pricing

BCBSA and Caremark continue to maintain transaction fees (a/k/a transmission fees) are paid separately to Caremark in exchange for services provided to retail pharmacies. As will be described in greater detail below, the fees apply to every adjudication system "ping" even if a drug is not dispensed. For these reasons, transmission fees (i) are not associated in any way with Caremark's, and by extension BCBSA's or OPM's, cost for drugs; (ii) do not constitute "pricing based on the PBM's cost for drugs" under Section 1.26(a)(2); and (iii) are not a component of Pass-Through Transparent Pricing. We also disagree with OPM OIG's assertion that the transmission fees are credits against the cost of drugs. Caremark's transmission fee revenue and drug costs are wholly separate general ledger records.

As we have previously explained, network pharmacies pay transmission fees in exchange for services that include: (a) help desk/IT/telecom services including 24/7 support; (b) follow up support and communications specific to network pharmacy inquiries; (c) third party vendor software certification; and (d) desk and onsite audits. That is, transmission fees are paid by the retail network pharmacies for services provided to those pharmacies by Caremark in order to support general pharmacy network administration. The 2015 BCBSA Caremark PBM Agreement does not include any language that suggests, let alone states, the administrative fee completely covers all costs Caremark incurs for the pharmacy network administration services described in items (a) through (d).

OPM OIG Finding #2 accurately quotes the OPM Standards set forth in Section 1.26(a)(2)(i) that were applicable during the time period being audited, which required, "The PBM shall charge the Carrier *no more than the amount it pays the pharmacies* in its retail network for brand and generic drugs plus a dispensing fee." (emphasis added.) As explained in Caremark's reply to the OIG's Information Request #47 during the performance of this audit, the transmission fees at issue are not in any way related to payments made to a retail pharmacy "for a brand [or] generic drug", nor are

they a reduction in such compensation. The transmission fees are, plain and simple, service-related fees charged to retail pharmacies for services provided by Caremark to such pharmacies in exchange for the network pharmacy administrative services described above.

Section 1.26(a)(2) of the applicable OPM Standards indicated that Pass-Through Transparent Pricing is "based on the PBM's cost for drugs". In order for transmission fees to fall within the scope of Section 1.26(a)(2)(i), the transmission fees would need to be a component of the cost of a drug. As noted above, they are not a component of the cost of a drug, but rather a fee for an administrative service Caremark provides to retail pharmacies. This is underscored by the fact that the fee is assessed from the retail pharmacies every time they utilize the electronic claim adjudication system, whether or not any claim actually processes. As we disclosed previously, Caremark's retail pharmacy Provider Manual clearly states a transmission fee is collected [redacted]. Therefore, if a pharmacy submits and reverses a claim for a BCBSA member, but never resubmits the claim, Caremark collects [redacted] transmission fees from the pharmacy for accessing the claims system even though no claim is ever billed to BCBSA. If no claim is billed, the transmission fees cannot rationally be a component of the price of a drug.

As detailed below, if OPM had intended the language of the pre-2024 OPM Standards to include pass-through of these service fees paid by the pharmacies, it should have explicitly stated as such. Notably, it did not do so until it implemented the requirement for PBMs to pass-through transaction fees via the 2024 OPM Revised Standards.

OPM's Intent Is Expressed in Specific Distribution Channel Provisions

In its Draft Audit Report, OPM OIG relies upon the OPM Standards set forth in the introductory clause of Section 1.26(a), which contains a high-level statement about the nature of pass-through pricing without reference to how it is applied to each specific distribution channel. This is a generalized statement that applies to all channels and categories of services, regardless of what (or if) financial benefits actually exist within any such channel or category. This general statement is immediately followed by very specific requirements related to retail network pharmacies, mail order pharmacies, and manufacturer payments, each with its own specific details and requirements for what the general statement means with respect to the given channel. *See* OPM Standards Section 1.26(a)(2)(i)-(iii). As noted above in the BCBSA Caremark Response to Recommendation #1, the language of Section 1.26(a)(2)(i) governing retail network pharmacies clarified the obligation with respect to such retail network pharmacies and mandated, exclusively, passing through a charge no greater than the amount that *the PBM pays a pharmacy* in its retail network "for brand and generic drugs." Thus, the applicable OPM Standards limited Caremark's reimbursement to pharmacies, and thus its charge to BCBSA, to the amount Caremark paid the pharmacy for the cost of drugs.

Absent any clear indication to the contrary, it is a well-established principle of contract interpretation that more specific language and terms will control over more general terms. This standard was clearly articulated and applied to OPM contracts by the Federal Appeals Court in *Transitional Learning Cmty. At Galveston, Inc. v. OPM,* 220 F.3d 427, 431 (5th Cir. 2000). The court's opinion in that case underscored this tenant of contractual interpretation standard, stating that "the specific trumps the general." *Id*. at 432. This principle has been repeatedly upheld in

interpretation of government contracts; for example, in *Abraham v. Rockwell Int'l Corp.*, 326 F.3d 1242 (Fed. Cir. 2003), the Federal Circuit reviewed conflicting clauses in a Department of Energy contract and held that, "where specific and general terms in a contract are in conflict, those which relate to a particular matter control over the more general language." The provisions of Section 1.26(a)(2)(i) are very clear and specific, and should be interpreted as prevailing over the vague and imprecise language of Section 1.26(a)(2). In *CEMS, Inc. v. United States*, 59 Fed. Cl. 168 (2003), the court confirmed that standards setting forth specific language in one subsection will prevail over general language in another subsection. *See also Yee v. United States,* 777 Fed. Appx. 484, 487 (Fed. Cir. 2019) ("It is settled law that where an agreement contains general and specific provisions that conflict, the provision directed to a particular matter controls over the provision which is general in its terms." (internal quotation marks omitted)).

As explained above, the plain language of the OPM Standards in effect during the Audit Period does not support OPM OIG's interpretation. That is confirmed by the fact that OPM deemed it necessary to amend the OPM Standards in 2024 to say what OPM OIG now claims they meant all along. But even assuming, purely for the sake of argument, that those amendments were meant only to "clarify" the preexisting language as OPM OIG now claims, the fact that such clarification was necessary would only demonstrate that, at a minimum, the preexisting language was ambiguous. In that event, as a matter of black-letter contract law, any ambiguity would be interpreted against OPM, as the drafter of that language, and in favor of BCBSA. This doctrine of "contra proferentem," under which ambiguous language is construed against the party that drafted it, is applicable to the federal government just as to other contracting parties. *See HPI/GSA-3C, LLC v. Perry*, 364 F.3d 1327, 1334 (Fed. Cir. 2004) (contra proferentem applies to contracts drafted by the federal government as it does to other parties). As such, "[t]he Government, as the author, has to shoulder the major task of seeing that within the zone of reasonableness the words of the agreement communicate the proper notions—as well as the main risk of a failure to carry that responsibility." *WPC Enters., Inc. v. United States*, 323 F.2d 874, 877 (Ct. Cl. 1963).

Caremark and BCBSA were correct in interpreting Section 1.26(a)(2) the way they did, and they were not alone in their interpretation. Multiple carriers and at least two PBMs shared the same interpretation of the provision (at least until OPM modified it in the 2024 OPM Revised Standards), which interpretation conflicts with the interpretation put forth by OPM OIG. *See* OPM OIG Final Audit Report No. 2022-SAG-029, dated March 27, 2024, at pp. 16-18, in which the American Postal Worker Union and its PBM, Express Scripts, Inc., explain the same understanding of the OPM wording used in Section 1.26(a)(2) with respect to transmission fees as Caremark holds. Furthermore, OPM OIG acknowledged in the Draft Audit Report that OPM had to revise the OPM Standards to address the fact that multiple PBMs interpreted this provision in a similar manner. BCBSA and Caremark also shared this understanding as evidenced by the Pass-Through Pricing terms in their own 2015 BCBSA Caremark PBM Agreement, that again were applied consistent with the common understanding of the plain reading of the OPM Standards.

BCBSA and Caremark, like the other Carriers and PBMs that have faced similar findings, have worked in good faith to comply with a reasonable and common understanding of OPM Standards. It serves no interest for OPM OIG to now seek to enforce a retroactive change in the OPM Standards. OPM OIG cannot prevail in a dispute by retroactively asserting that contract terms—widely understood and relied upon by Carriers and their PBMs to mean one thing—imposed a

different requirement, particularly where OPM subsequently changed those same terms (on an expressly looking-forward basis) to reflect its updated interpretation. *Helene Curtis Indus., Inc. v. United States*, 312 F.2d 774, 778 (Ct. Cl. 1963) ("[T]he Government—where the balance of knowledge is so clearly on its side—can no more betray a contractor into a ruinous course of action by silence than by the written or spoken word.").

Retroactive Application of Contract Amendments

As noted above and evidenced by the manner in which this change was implemented, OPM decided to modify the Pass-Through Transparent Pricing requirements from its established 2011 OPM Standards. Irrespective of whether that decision was to effectuate OPM's evolving perspective on pass-through transparent pricing or for some other reason, the outcome is the same. The 2024 OPM Revised Standards were changed to add significant and material new requirements to the Carrier contracts. Specifically relevant to OPM OIG's Finding #2, OPM added this sentence: "The value of the discounts negotiated in each pharmacy agreement must be passed-through to the Carrier including all *transaction fees*, credits, true-ups, and other amounts collected back from the pharmacies." (emphasis added.) This change constituted a very significant modification of the contractual obligations. For the first time, OPM required PBMs to include the fees for any service performed for a retail pharmacy to be deemed part of the cost of the drug. In so doing, OPM enacted a new standard for retail pharmacy pass through – a prospective standard that wasn't required to be implemented until January 1, 2027. Regardless, OPM OIG cannot now enforce this expressly forward-looking change on a retrospective basis so as to encompass the scope of the Audit Period. Courts have held that a prospective amendment to a contract cannot be viewed as "providing a retroactive resolution to a long-standing dispute." *See Kaiser Aluminum & Chemical Corp. v. United States*, 181 Ct. Cl. 902 (1967).

It is important to note that when OPM issued the above-mentioned contract changes, it included the customary, forward-looking phase-in structure. As noted above, the CS 1039 Amendment 2024A required the 2024 OPM Revised Standards to be included in "new, renewing or amended contracts with Pharmacy Benefit Managers (PBMs) providing services to Enrollees and family members ***effective on or after January 1, 2024***." Moreover, the CS 1039 Amendment 2024A incorporating the 2024 OPM Revised Standards further clarified that "the revisions to Section 1.26 shall not take effect before the expiration of the Carrier's current contract (including the exercise of an existing option to extend the term by not more than one year at a time) ***but not later than January 2027***." The forward-looking, phase-in structure of the 2024 OPM Revised Standards makes clear that OPM recognized that this material change in terms was a modification of the OPM standards, not a mere clarification, but a revision. For if it were only a clarification of existing obligations, there would have been no need to phase the new terms in on a forward-looking basis and over time at contract renewal. Furthermore, the additions made in the amendments to the 2024 OPM Revised Standards were not minor adjustments. OPM significantly modified the definition of Pass-Through Transparent Pricing to add concepts never previously included, more than doubling the length of Section 1.26(b)(2)(i).

As anticipated by OPM's use of a phase-in approach to the 2024 OPM Revised Standards, implementation of the new pass-through requirements necessitated prospective operational changes by Caremark. It is well-established that a contract must be read to give meaning to all its

terms. *Transitional Learning Cmty*., at 431. This rule of construction applies not only to provisions within the original contract, but also to the changes that occurred in the amendments, as compared to the previous requirements of the language being amended. The changes in the 2024 OPM Revised Standards' definition of "Pass-Through Transparent Pricing" must properly be read in a way that gives them meaning. OPM added new obligations to the OPM Standards, and those changes were subject to a forward-looking, phase-in provision. The proper interpretation of this language is, as stated by the court, to "presume[e] that every provision was intended to accomplish some purpose." *Id.* The 2024 OPM Revised Standards added new and forward-looking requirements to the retail pharmacy pass-through obligations that did not exist during the Audit Period. This addition undermines any effort to claim the forward-looking obligations existed during the Audit Period, and therefore undermines the draft finding. For all the reasons set forth above, BCBSA and Caremark disagree with OPM OIG Audit Finding #2, Recommendation #4.

OPM OIG Recommendation #5

OPM OIG recommends that OPM's Contracting Officer assess $16,170,786 for LII on the questioned costs due back to FEHBP for this finding, calculated through June 30, 2025. The LII should be adjusted to account for the date the questioned costs are returned to the program.

BCBSA Caremark Response to Recommendation #5:

BCBSA and Caremark disagree for the reasons noted above in the BCBSA Caremark Response to Recommendation #4.

OPM OIG Recommendation #6

OPM OIG recommends that BCBSA adopt new controls to ensure that FEHBP receives the full value of all credits under pass-through transparent pricing (i.e., claim transmission fees) that Caremark collects to offset its payments to retail pharmacies.

BCBSA Caremark Response to Recommendation #6:

Despite the fact that the 2024 OPM Revised Standards are not required to be implemented until January 1, 2027, Caremark has already begun implementing practices consistent with the 2024 OPM Revised Standards. Specifically, Caremark has adjusted its underwriting practices for FEHBP Carrier clients. As Carrier contracts, including the BCBSA contract, renew or are replaced, Caremark will begin passing pharmacy transmission fees through to the Carrier. Because this action will prohibit Caremark from retaining compensation for the network administration services it provides to retail network pharmacies, we expect Caremark's bids for FEHBP business will charge Carriers a higher administrative fee to offset this shift of costs from the pharmacies to the Carriers.

C. OPM OIG Audit Finding #3: Improper Performance Incentive Paid to PBM

OPM OIG alleges that BCBSA improperly charged FEHBP and paid Caremark $23,916,120 during the Audit Period by allowing Caremark to keep an incentive payment (equal to [redacted]

[redacted] of savings above the retail pricing guarantee negotiated between BCBSA and Caremark) without first ensuring Caremark's charges for pharmacy pricing complied with OPM OIG's improper retroactive application of the 2020 and 2022 OPM Revised Standards. In addition to the performance incentive payments, OPM OIG alleges FEHBP is owed $3,914,919 ($27,831,039 in total) for LII calculated through June 30, 2025.

OPM OIG Recommendation #7

OPM OIG recommends that BCBSA amend the current BCBSA Caremark PBM Agreement to either remove the [redacted] performance incentive language for retail pharmacy claims or add language requiring BCBSA and Caremark to first verify Pass-Through Transparent Pricing of Caremark's negotiated discounts with retail pharmacies prior to BCBSA paying Caremark any additional incentive for exceeding the retail pricing guarantees.

OPM OIG Recommendation #8

OPM OIG further recommends that Caremark and BCBSA return $23,916,120 to FEHBP for "improper payments related to the pass-through of retail pharmacy discounts that exceeded the retail pricing guarantee between BCBSA and Caremark by [redacted] each year." OPM OIG argues additionally that the incentive payments can only be made if the PBM exceeds both pass-through transparent pricing at the value of the negotiated discounts with retail pharmacies and the PBM's guarantees.

BCBSA Caremark Executive Summary:

The OPM Standards in effect during the Audit Period did not prohibit the performance incentive structure set forth in Schedule C of the 2015 BCBSA Caremark PBM Agreement. The applicable OPM Standards required Caremark to reimburse pharmacies at negotiated rates and charge BCBSA the same amount without markup, which Caremark did. As noted in our response to Recommendation #1 above, the OPM Standards in effect during the Audit Period did not require BCBSA and Caremark to conduct a true-up or reconciliation to ensure that FEHBP received the better of the retail drug reimbursement guarantee set forth in Schedule C or the negotiated Overall Effective Rates set forth in Caremark's retail pharmacy contracts. Furthermore, as noted below, the current BCBSA Caremark PBM Agreement is fully compliant with, and incorporates, the 2020 and 2022 OPM Revised Standards. Accordingly, BCBSA and Caremark are not required to amend their current PBM Agreement to remove the performance incentive language.

BCBSA Caremark Response to Recommendation #7 and Recommendation #8

Caremark and BCBSA disagree with OPM OIG's assertion that the PBM performance incentive payment set forth in Schedule C of the 2015 BCBSA Caremark PBM Agreement was improper. As explained in further detail below and in our response to Recommendation #1, BCBSA's payments to Caremark for the cost of drugs during the Audit Period complied with the Pass-Through Transparent Pricing requirements in effect during the Audit Period, and the incentive payment structure set forth in the 2015 BCBSA Caremark PBM Agreement complied with OPM Standards. OPM OIG asserts that the performance incentives should not have been paid and should

be returned to BCBSA because Caremark allegedly failed to pass through the value of its negotiated discounts with retail pharmacies. OPM OIG reached this conclusion by retroactive application of the 2020 and 2022 OPM Revised Standards. OPM OIG provides no basis for this assertion and Caremark rejects this claim for the reasons set forth in the BCBSA Caremark Response to Recommendation #1 above, as Caremark complied with the OPM Standards applicable during the Audit Period. Notably, the OPM Standards applicable during the Audit Period did not prohibit payment of performance incentives to PBMs, nor was the performance incentive contingent upon compliance with future revised, forward-looking, OPM Standards.

As stated in our response to Recommendation #1, the OPM Standards applicable during the Audit Period required Caremark to pay pharmacy claims at rates it negotiated with retail pharmacies and charge BCBSA no more than the amount that it paid to retail pharmacies for those claims. During the Audit Period, Caremark did in fact pay pharmacy claims at the rates it negotiated with retail pharmacies and charged BCBSA no more than the amount it paid such pharmacies. Neither the OPM Standards in effect during the Audit Period nor the PBM Agreement between Caremark and BCBSA required that BCBSA and Caremark to conduct a reconciliation or true-up against any negotiated discount or Overall Effective Rate set forth in Caremark's pharmacy contracts. The OPM Standards certainly did not require such an infeasible and unanticipated process prior to BCBSA making the additional PBM incentive payment to which the parties agreed in the 2015 BCBSA Caremark PBM Agreement.

The performance incentives, which are detailed in Schedule C of the 2015 BCBSA Caremark PBM Agreement, are paid by BCBSA to Caremark for achieving a discount greater than the guaranteed minimum discount level for ingredient cost on certain brand drug and generic drug claims as specified in the Agreement. If Caremark delivers a lower overall cost to BCBSA than the applicable guarantees, Caremark is entitled to an incentive payment of [redacted] of the savings realized by BCBSA. Under the performance incentive structure, BCBSA does not pay Caremark more than Caremark pays the pharmacies based on Caremark's cost for drugs; rather, BCBSA makes a separate payment to Caremark based on Caremark's overperformance against a drug reimbursement guarantee negotiated between BCBSA and Caremark. This incentive payment is limited to [redacted] of savings, which allows BCBSA and thus FEHBP to retain [redacted] of savings achieved by Caremark securing a lower overall drug cost to BCBSA and FEHBP. Shared savings or incentive models have been widely adopted by payers, including federal and state governments, to better align incentives and improve performance while also reducing cost. This model is no different. BCBSA should be credited for managing a reimbursement structure that incentivizes the active management of highly variable network reimbursement to produce additional savings for FEHBP. Instead, OPM OIG seeks to punish Caremark and BCBSA for their innovative efforts to drive additional savings to FEHBP.

Under the currently applicable OPM Standards (i.e., the 2024 Revised OPM Standards), Caremark is required to pass through the full value of its negotiated discounts in its pharmacy contracts, including by performing a true-up or reconciliation against any negotiated Overall Effective Rates. BCBSA and Caremark acknowledge that for contract year 2022 going forward, BCBSA and

Caremark have and will continue to account for any required reconciliation when calculating Caremark's performance payment incentive.[4]

OPM OIG Recommendation #9

OPM OIG recommends that OPM's Contracting Officer assess $3,914,919 for LII on the questioned costs due back to FEHBP for this finding, calculated through June 30, 2025. The LII should be adjusted to account for the date the questioned costs are returned to the program.

BCBSA Caremark Response to Recommendation #9:

BCBSA and Caremark disagree for the reasons stated above in the BCBSA Caremark Response to Recommendation #7 and Recommendation #8.

[END]

[4] We note that, the performance incentive payment is: (a) specifically provided for under the 2015 BCBSA Caremark PBM Agreement; (b) not prohibited under the OPM Standards; and (c) due for any overperformance. As detailed herein, the minimum ingredient cost discount commitments in the 2015 BCBSA Caremark PBM Agreement establish a floor for Caremark's performance.

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