

The background of the entire page is a blurred medical scene, possibly a patient in a hospital bed. Overlaid on this is a semi-transparent green geometric pattern consisting of various shapes like hexagons, lines, and circles. Within this green pattern are several white icons: a syringe, a pill, a virus/cell, a stethoscope, a group of three people, and a large cross. The right side of the page is a solid dark grey triangle that points towards the bottom left.

NORTH DAKOTA OFFICE OF THE STATE AUDITOR

Public Employees Retirement System Prescription Drug Coverage Performance Audit

Prescription Drug Benefit Plan Review:

January 1, 2019 – December 31, 2021

Health Plan Provider:

Sanford Health Plan

Prescription Benefit Manager:

OptumRx, Inc.



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**MYERS AND
STAUFFER** LC
CERTIFIED PUBLIC ACCOUNTANTS

Independent Accountants Report

North Dakota Office of the State Auditor Dept. 117
600 East Boulevard Avenue
Bismarck, ND 58505

To the North Dakota Office of the State Auditor:

Myers and Stauffer LC (Myers and Stauffer) was engaged to conduct the performance audit of the North Dakota Public Employees Retirement System (NDPERS) Prescription Drug Coverage to analyze claims data and provide recommendations for improvements to the prescription drug coverage benefit. Our audit was performed as a response to the Request for Proposal (RFP) No. 117-21-04. Our audit covered the period of January 1, 2019, through December 31, 2021.

We were engaged to conduct this audit in accordance with the performance audit provisions of Generally Accepted Government Auditing Standards (GAGAS) issued by the Comptroller General of the United States. Those standards require that we plan and performed the audit to sufficiently obtain appropriate evidence to provide a reasonable basis for our findings and conclusions based on the audit objectives and analysis requirements provided by the North Dakota Office of the State Auditor. Except as discussed in the following paragraph, we believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on the audit objectives.

OptumRx did not provide sufficient documentation to support all of the analyses required. We were not able to apply other procedures to perform the required testing. Scope limitations resulting from the lack of sufficient documentation are described in the audit results section of this report.

We are required to be independent and meet our ethical responsibilities in accordance with relevant ethical requirements relating to our audit.

Responses from Sanford Health Plan (SHP) and OptumRx, Inc. (OptumRx) to certain performance categories were requested and these responses are included in this report. We did not audit their responses, and accordingly, we do not provide any assurances on them.

If we can be of any assistance to you, or if you have any questions concerning this report, please contact us.

Sincerely,

Myers and Stauffer LC
Owings Mills, MD
February 2, 2023



Glossary

Administrative Fee – A fee charged by the PBM for processing a prescription claim.

Average Wholesale Price (AWP) – The average price at which wholesalers sell drugs to pharmacies. The AWP is the standard benchmark used to calculate drug costs.

Brand Drug- A Prescription or Over the Counter drug that is sold by a drug manufacturer under a specific name that is protected by a patent.

Clawback – A refund or reimbursement a PBM retroactively assessed to a network pharmacy that reduces the reimbursement originally paid to the pharmacy for the prescription claim.

Contract – A service agreement between the PBM and payor entity.

Dispensing Fee – The charge that may be part of the overall price for a prescription drug claim used to cover the pharmacy cost of dispensing medications. Dispensing fees may generally be applied to all drug claims except for drugs that are reimbursed at the Usual & Customary (U&C) charge.

Dispense as Written (DAW) – An industry standard code of 0-9 that indicates the reason why the prescription for a covered drug was dispensed as a brand or generic drug. If a prescriber or pharmacy indicates a DAW on a prescription it mandates that the prescription drug should be dispensed without substitutions. A DAW value of 9 entered on a prescription claim record means “other/substitution allowed-plan requests Brand dispense”.

Excluded Drugs – Drugs that will not be covered by a health plan.

GAGAS – Generally Accepted Government Auditing Standards

Generic Drug – A drug designed to be the same as an already marketed brand-name drug in dosage, form, effectiveness, strength, stability, and quality. Generic drugs are usually less expensive than their Brand equivalent.

Ingredient Costs – The price the pharmacy receives for the prescription claim from the PBM for a medication not including the dispensing fee or other cost sharing amount. Ingredient cost may be subject to a discount within the payment formula prior to the reimbursement of the claim.

Mail Order Pharmacy – A pharmacy that sends medications to patient by mail or other carrier.

National Average Drug Acquisition Cost (NADAC) - A price basis for prescription drugs established through regular surveys of retail pharmacies of their actual acquisition costs. It was mandated by the Centers for Medicare & Medicaid Services for state Medicaid programs to establish benchmark prices for reimbursement to their pharmacy providers.



National Council for Prescription Drug Programs (NCPDP) – an organization that provides prescription claims files standards and formats used for prescription claims transactions.

National Drug Code (NDC) – A unique identifier that is assigned to all drug products approved by the Food and Drug Administration.

NDPERS – North Dakota Public Employees Retirement System.

Paid Claims Data – Data transmitted in an electronic format, provided by OptumRx that provides details about individual drug claims including financial information such as ingredient costs, copayments, and reimbursement amounts dispensing pharmacies receive for providing prescriptions to covered Plan members.

Pharmacy Benefit Manager (PBM) – A third party company that manages prescription drug benefits on behalf of health insurers and other payers.

Plan Sponsor – An employer or organization that coordinates benefits for its members.

Prior Authorization (PA) - A utilization management approach or pathway PBMs utilize to require plan members to receive a pre-approval to qualify a drug for coverage and to be paid for under their benefit.

Quantity Limit (QL) - A utilization management approach PBM's utilize to ensure plan members receive no more than a maximum number of units or doses over time.

Rebates – Payments provided by drug manufactures to health insurance payers or PBM's for placement on the drug formulary which may reduce the cost of certain drugs.

Reimbursement – The amount paid to a pharmacy by a PBM for a prescription drug claim.

Remittance Advice - The remittance advice is an explanation of the payment, and may outline payment details such as check number, check date, check amount, specific prescription(s) claim number(s) included in the payment, and details of any adjustments made to an individual claim or the final payment amount.

Retail Pharmacy – A community, chain, or independent pharmacy that is licensed as a pharmacy by the state to dispense prescription medications.

SHP – Sanford Health Plan.

Shared Savings – A shared contractual monetary agreement between NDPERS and SHP. The agreement states if NDPERS paid more in premiums than the actual cost of medical and prescription claims, the lesser of 50% or \$1.5 million is retained by SHP and the remainder is refunded to NDPERS. The agreement also states that if NDPERS paid less in premiums than the actual cost of medical and prescription claims, the lesser of 50% or \$3.0 million will be refunded by NDPERS to SHP.



Specialty Pharmacy – Pharmacies that dispense high cost, limited distribution drugs for which patients may require specific dosing guidance and counseling.

Spread Pricing – A pricing practice that occurs when a PBM charges payers more than they paid the pharmacy for a drug claim and the PBM keeps the difference.

Step Therapy (ST) - ST is a utilization management approach or pathway PBMs utilize to require NDPERS members to receive pre-approval to qualify a drug for coverage and to be paid for under their benefit.

Usual and Customary Charge (U&C) – The lowest price the pharmacy charges the general public for a drug medication.



Executive Summary

Introduction

The North Dakota Office of the State Auditor (State Auditor) has contracted with Myers and Stauffer to conduct the NDPERS Prescription Drug Coverage Performance Audit. The audit focused on paid prescription claims with dates of service from January 1, 2019, through December 31, 2021.

NDPERS contracts with SHP for medical and prescription drug coverage benefit plans. NDPERS serves as the plan sponsor that coordinates health benefits for its members. SHP is a provider-owned health plan serving 200,000 members and is one of the largest non-profit, rural health systems in the country with a provider health network that serves North Dakota, South Dakota, Iowa, and Minnesota. SHP utilizes OptumRx for the provision of prescription benefits. OptumRx, is the pharmacy benefit manager (PBM). OptumRx is the PBM arm of United Health Group that provides prescription benefit administrative services to an array of clients including health plans such as SHP in addition to federal, state, and commercial clients and in 2021 managed \$112 billion in pharmaceutical spending for its clients. SHP and OptumRx have entered into a Prescription Drug Benefit Administration Agreement whereby OptumRx provides prescription drug benefit administration and member services for SHP. The following prescription plans are offered as coverage to employees, retirees, and dependents: grandfathered plan, non-grandfathered plan, and high deductible non-grandfathered plan.

The State Auditor has monitored developments of cases filed and decided in state and federal court affecting state oversight and control efforts regarding PBM's administration of prescription drug benefits for members of health plans within North Dakota. After the Supreme Court Ruled in *Rutledge v. Pharmaceutical Care Management Association* that the Employee Retirement Income Security Act (ERISA) did not preempt Arkansas's law regulating PBMs, the United States Court of Appeals for the Eighth Circuit rejected PCMA's challenges in *PCMA v. Wehbi et al*, to block North Dakota laws enacted to impose certain provisions on PBMs. Among the relevant provisions of the 2017 codified laws, North Dakota Century Code section 19-02.1-16.1 stated that *"A pharmacy benefits manager or third-party payer may not directly or indirectly charge or hold a pharmacy responsible for a fee related to a claim: a.) That is not apparent at the time of claim processing; b.) That is not reported on the remittance advice of an adjudicated claim; or 3.) After the initial claim is adjudicated at the point of sale."* North Dakota Century code section 19-02.1-16.2 stated *"If requested by a plan sponsor contracted payer, a pharmacy benefits manager or third-party payer that has an ownership interest, either directly or through an affiliate or subsidiary, in a pharmacy shall disclose to the plan sponsor contracted payer any difference between the amount paid to a pharmacy and the amount charged to the plan sponsor contracted payer."* And *"A pharmacy benefits manager or a pharmacy benefits manager's affiliates or subsidiaries may not own or have an ownership interest in a patient assistance program and a mail order specialty pharmacy, unless the pharmacy benefits manager, affiliate, or subsidiary agrees to not participate in a*



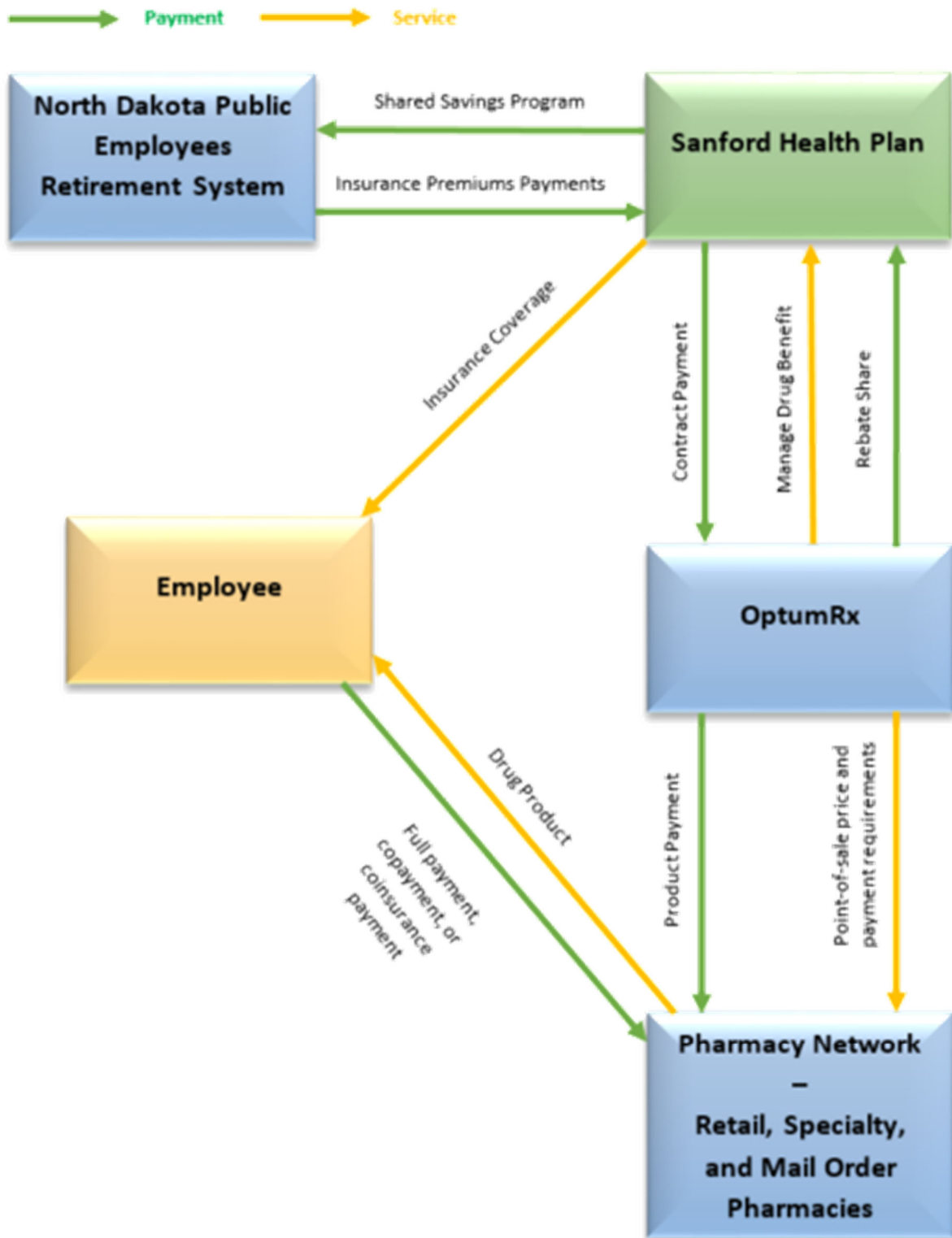
transaction that benefits the pharmacy benefits manager, affiliate, or subsidiary instead of another person owed a fiduciary duty.”

Several aspects of the State Auditor’s audit and analyses design requests were developed to provide further information in review of these case decisions and the codified law.

The following diagram depicts the NDPERS prescription benefit services and the flow of funds between all stakeholders.



NDPERS Prescription Benefit Services and Flow of Funds





NDPERS agreed to a traditional pharmacy arrangement through SHP under the Prescription Drug Benefit Administration Agreement executed between SHP and OptumRx. The traditional pharmacy arrangement was in effect from January 1, 2019, through December 31, 2020.

A traditional pharmacy arrangement is one in which the health plan contracts with the PBM to provide services at stated contractual discounts, dispensing fees, and administrative fees for drug products and services that are provided to the plan's members. If and when the PBM contracts with its retail pharmacy network and other providers for deeper discounts and less expensive fees, it may retain these monies, referred to as "spread" or profit. When a traditional or spread contract is in effect, the health plan understands there is a spread component within the funding it provides to the PBM for prescription benefit services, but it does not have knowledge of the exact percentage discount or fee differentials the PBM achieved or how much these differences equate to in total dollars as spread or profit.

NDPERS and SHP, through the prescription drug benefit administration agreement with OptumRx, modified the pharmacy arrangement to a transparent service agreement (also referred to as a "pass-through" agreement) on January 1, 2021. A transparent pharmacy agreement is one in which the pharmacy discounts, dispensing fees, and drug rebates from pharmaceutical manufacturers are passed through in their entirety to the plan sponsors, such as NDPERS in exchange for a larger administrative fee. Among the features of a transparent agreement that plan sponsors appreciate is the understanding that they will receive the benefit of all improvements to discounts and dispensing fees. This may be of greater value to them throughout the contract due to the improved rates the PBM negotiates during the service period. Knowing the administrative fees they will pay to the PBM are consistent is also beneficial for plan sponsors.

The prescription drug coverage plan includes over 18,000 active employees and approximately 30,700 dependents. Additionally, there are 70 retired employees with just under 400 dependents. In total, there are approximately 49,000 covered members for the plans under review.

Audit Objective

The objective of this performance audit was to conduct a prescription drug coverage audit of the main public employees' retirement system benefit plan. The paid prescription claims data was reviewed in order to analyze claims data and corroborating documentation based on the specific requirements of the State Auditor and to identify the potential for improvements to the prescription drug coverage benefit.

SHP/OptumRx Response:

While SHP and OptumRx agree that, on the surface, Auditor's objective was to 'conduct a prescription drug coverage audit' of the NDPERS plan, we note that no such audit was conducted. As set forth in further detail in SHP/OptumRx responses herein, Auditor did not measure performance of the NDPERS prescription benefit plan under applicable provisions of



law or contract in effect for each of the calendar years within scope of the Audit. Rather, while Auditor attempted to conduct an analysis based on the specific requirements of the State Auditor, Auditor departed from the terms of the applicable agreements themselves. In doing so, Auditor's methodology resulted in repeated failures to accurately identify any relevant prescription claims types or pharmacies, and so reached inaccurate conclusions, and the report contains readily identifiable errors that were not addressed by the Auditor.

Post Sponsors' Response: Commentary and/or Recommendation. The audit was conducted at the request of the North Dakota State Auditor's Office (SAO) pursuant to and in accordance with North Dakota Century Code (N.D.C.C.) Chapter 54-10 and under N.D.C.C. § 54-52.1-04.16. *Exhibit B* in this report contains the letter provided by the Office of Attorney General dated September, 14, 2022, to representatives of SHP and OptumRx seeking information deliverables required for the audit in accordance with N.D.C.C Chapter 54-10 and under N.D.C.C. § 54-52.1-04.16. The objective and scope of the audit was set forth by the SAO.

The information presented is based on the pharmacy claims data provided by OptumRx and data definitions provided by OptumRx and/or SHP used to define claims types and pharmacy classifications. The only "errors" brought to our attention were alternative ways to summarize the claims data based on claim type instead of pharmacy type. Performing the analyses based on claim type or using other criteria was not included in requirements outlined in the methodology and would change the results.

Audit Process

Scope

The scope of this audit includes the review of the prescription drug coverage of North Dakota's main public employees' retirement system benefit plan, including claims data for calendar years 2019, 2020, and 2021.

In gaining an understanding of internal controls, we limited our review to the internal control structure significant to the audit objectives. We developed a detailed operational questionnaire for SHP and OptumRx to provide information regarding claims processing, rebate processing, sources of remuneration, clinical program administration, member enrollment and eligibility processing, and benefit set-up and control procedures. Individual risk interviews were conducted with the State Auditor, SHP, and NDPERS to determine the extent of monitoring and oversight control procedures in place during the review period. There were no deficiencies in internal controls identified. We determined internal control components significant to the audit objective included:

- **Control Activities:** *The actions management establishes through policies and procedures to achieve objectives and respond to risks in the internal control system, which includes the entity's information system.*



- **Monitoring:** *Activities management establishes and operates to assess the quality of performance over time and promptly resolve the findings of audits and other reviews.*

Methodology

We were engaged to conduct this performance audit in accordance with Generally Accepted Government Auditing Standards (GAGAS) which require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on the audit objectives. Except as discussed in the following paragraph, we believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

SHP and OptumRx did not provide sufficient documentation to support all of the analyses described herein. Therefore, we were not able to apply certain procedures to perform the required testing. Any scope limitations are described in the *Audit Results* section of this report.

Audit testing procedures and/or analyses were performed in accordance with requirements set forth by the State Auditor in the following areas:

- *Average Wholesale Price (AWP) pricing errors.*
 - *Analyze claims that were submitted, reversed, and rebilled showing the differences in pricing between the original claim and the resubmitted claim.*
 - *Analyze when the manufacturer updated any pricing information, including Wholesale Acquisition Cost (WAC) and AWP, to determine if there were delays in updating reimbursements to pharmacies.*
- *Average annual dispensing fees for brand drugs.*
- *Analyze the average annual dispensing fee for brand drugs in aggregate and across retail, retail 90, mail, and specialty pharmacies.*
- *Average annual dispensing fees for generic drugs.*
 - *Analyze the average annual dispensing fee for generic drugs in aggregate and across retail, retail 90, mail, and specialty pharmacies.*
- *Average annual ingredient costs for brand drugs by National Drug Code (NDC).*
 - *Analyze the average annual ingredient costs for brand drugs in aggregate and across retail, retail 90, mail, and specialty pharmacies.*
 - *Compare the average annual ingredient costs for brand drugs to the average pricing that would have resulted from the use of pricing based on National Average Drug Acquisition Cost (NADAC). This analysis was performed in aggregate and across retail, retail 90, mail, and specialty pharmacies.*



- Evaluate the drug-by-drug pricing invoiced to SHP by the PBM and compare the drug-by-drug pricing to the pricing that would have been available based on NADAC data.
- Evaluate OptumRx's categorization of "brand drugs" and compare said categorization to Medi-Span categorization using multi-source indicator codes. This was done by reviewing:
 - Average costs provided during the calendar year using the PBM's categorization of drugs.
 - Average costs that would have been provided by the PBM if it used Medi-Span MONY code categorizations.
 - Average costs the auditor believes were available in the marketplace at the time using Medi-Span MONY code categorization, thus providing a market comparison analysis of the pricing in effect for the NDPERS prescription plan.

■ Average annual ingredient costs for generic drugs by NDC.

- Analyze the average annual ingredient costs for generic drugs in aggregate and across retail, retail 90, mail, and specialty pharmacies.
- Compare the average annual ingredient costs for generic drugs to the average pricing that would have resulted from the use of pricing based on NADAC. This analysis was done in aggregate and across retail, retail 90, mail, and specialty pharmacies.
- Evaluate the drug-by-drug pricing invoiced to SHP by the PBM and compare the drug-by-drug pricing to the pricing that would have been available based on NADAC data.
- Evaluate OptumRx's categorization of "generic drugs" and compare said categorization to Medi-Span categorization using multi-source indicator codes. This was done by reviewing:
 - Average costs provided during the calendar year using the PBM's categorization of drugs.
 - Average costs that would have been provided by the PBM if it used Medi-Span MONY code categorizations.
 - Average costs the auditor believes were available in the marketplace at the time using Medi-Span MONY code categorization, thus providing a market comparison analysis of the pricing in effect for the NDPERS prescription plan.

■ Administrative fees invoiced.

- Evaluate OptumRx's administrative fees and compare those fees to the fees that were available in the marketplace.

■ Additional fees invoiced.



- Evaluate OptumRx's additional fees and compare those fees to the fees that were available in the marketplace. Fees were broken down to show prior authorization (PA) fees, formulary management fees, transactions fees, transmission fees, and other fees, as applicable.

■ Drugs for which PAs were implemented during 2021 by NDC.

- Evaluate and identify the PAs that were implemented in 2021. Protocols were requested from SHP and/or OptumRx to support the PAs. Additional drugs for which PAs were imposed and the reasons why.
- Drugs for which PAs were imposed.
- Recommendations for changes to the formulary.

■ Drugs for which step therapies (ST) were implemented during 2021 by NDC.

- Evaluate and identify the ST that were implemented in 2021. Protocols were requested from SHP and/or OptumRx to support the ST.
 - Additional drugs for which ST were imposed and the reasons why.
 - Drugs for which ST were imposed.
 - Recommendations for changes to the formulary.

■ Drugs for which quantity limits (QL) were implemented during 2021.

- Evaluate and identify the QL imposed during 2021 across retail, mail, and specialty drug pharmacies. Protocols were requested from SHP and/or OptumRx to support the QL.
 - Additional drugs for which QL were imposed and the reasons why.
 - Drugs for which QL were imposed.
 - Recommendations for changes to QL to the formulary including:
 - Increasing the QL on the drug.
 - Decreasing the QL on the drug.

■ Spread pricing for retail pharmacy dispensed drugs.

- Compare OptumRx's average reimbursements to retail pharmacies with the invoiced costs for each category of drug.

■ Comparison of differences in reimbursements to different retail pharmacies and differences in invoiced prices from different retail pharmacies.



- *Analyze drugs that were dispensed through retail pharmacies and evaluate:*
 - *Differences in OptumRx's average reimbursements to each of the retail pharmacies for brand and generic drugs.*
 - *Differences in average invoiced costs from each of the retail pharmacies for brand and generic drugs.*
- *Comparison of differences in pricing for retail pharmacy dispensed drugs to mail order pharmacy drugs and to specialty drug pharmacy dispensed drugs.*
 - *Analyze drugs that were dispensed through retail pharmacies and OptumRx's mail order pharmacy and/or specialty pharmacy and compare the PBM's average invoiced prices to the NDPERS for retail dispensed drugs vs. drugs dispensed from the PBM's subsidiary or affiliated mail and specialty drug pharmacies.*
- *Drug utilization to ensure drugs that were to be excluded were excluded.*
 - *Review and analyze drugs that were covered to determine if all drugs contractually required to be excluded were excluded.*
 - *Evaluate whether any drugs or products were dispensed that are not Food and Drug Administration (FDA) approved.*
- *Evaluating Dispense As Written (DAW) 9 dispensed drugs.*
- *Evaluate all DAW9 dispensed drugs and whether DAW9 coding resulted in higher net-cost brand drugs being dispensed.*
- *Evaluation of shared savings program.*
 - *The NDPERS's contract with SHP and relevant amendments contain a formula whereby for each fiscal year, SHP and NDPERS are to review annual costs by calculating: a) the NDPERS's premium, less the costs of drugs, less administrative fees, less certain fees incurred for other programs, and b) thereafter, the parties are to share in certain savings that may have occurred based on a specified formula.*
 - *The auditor will review and evaluate SHP's performance each year under the above formula and the shared savings that resulted.*
 - *The auditor will also evaluate the structure and utility of the formula and how it might be improved under a fully insured prescription drug coverage plan.*
- *Evaluation of rebates*
 - *The NDPERS contract with SHP and relevant amendments contain provisions stating that all rebates collected as a result of medication utilization are applied in two ways, both to reduce the cost of the agreement with NDPERS. First, the claim experience is reduced by the use of the savings caused by rebates, resulting in a premium reduction. Second, rebate savings are*



used to reduce the member cost share paid by the member at the point of sale for all generic medications in the formulary.

- *The auditor will audit the above contract and amendment provision in connection with its audit of the shared savings program.*
- *The auditor will evaluate the meaning, structure, and utility of the above rebate contract provisions and provide the State Auditor with an understanding of any weaknesses in these provisions.*
- *The auditor will also make recommendations concerning future contract provisions related to rebates and other payments that PBMs obtain from drug manufacturers and/or rebate aggregators.*

■ *Evaluation of clawbacks and other changes made to retail pharmacy reimbursement*

- *The NDPERS contract with SHP and relevant amendments contain provisions stating, “Neither SHP nor its contracted PBM will engage in any practice that effectively reduces network pharmacy reimbursement for medication cost and dispensing fees when such claims have been properly submitted by a network pharmacy at the time of adjudication.”*
- *As part of the audit, the auditor will audit any practice by the PBM to alter their pharmacy reimbursement to retail pharmacies after initial reimbursements to the pharmacies through clawbacks or any other changes to the PBM’s initial retail pharmacy reimbursements.*

Review parameters and categories for evaluation were specified by the State Auditor and analyses were developed based on input, documentation, paid claims data, and detail provided by NDPERS, SHP, and OptumRx. These included the service agreement, plan design documentation, implementation forms, paid claims files, rebate files, drug category files, pricing files summaries, contracts, and remittance information.

Some of the categories reviewed required claims testing, and some of the categories were analyses to provide information. For those categories that required claims testing and validation against supplemental documentation, SHP and OptumRx were provided with the opportunity to review and provide a narrative response. These responses have been included in the relevant sections that follow, and SHP and OptumRx were permitted to include any supplemental information or documentation they preferred to incorporate as material to their responses.



Audit Results

Our procedures segregated the performance audit into the audit or analyses categories requested by the State Auditor. The table below details the total number of claims, unique members, and the dollar amount of the total paid claims for 2019, 2020, and 2021. The review focused on retail, specialty, and mail order pharmacy claims; however, the table summarizes the total claims, which includes additional pharmacy types such as Indian Health Service Pharmacy, Military Pharmacy, and Long Term Care Pharmacy designations.

January 1 – December 31, 2019		
Number of Claims	Number of Unique Members	\$ Amount of Paid Claims
429,064	38,738	\$52,619,472.99

January 1 – December 31, 2020		
Number of Claims	Number of Unique Members	\$ Amount of Paid Claims
437,293	37,327	\$64,422,801.23

January 1 – December 31, 2021		
Number of Claims	Number of Unique Members	\$ Amount of Paid Claims
443,391	38,435	\$66,865,151.02

The following table provides a summary of the findings for each of the audit areas reviewed, the observations for each of the initial discrepancies noted, and the potential financial impact to NDPERS if impact could be calculated. A discrepancy is an instance that deviated from the expected outcome of the electronic review, analyses, or inspection of the claims detail and information deliverables utilized to examine the administration of the benefit and the financial transactions associated with the prescription claims or the inability to draw a complete conclusion due to lack of information.

Review Summary		
Audit Category	Observation	Summary
Average Wholesale Price Pricing Errors	No discrepancies observed.	No issues were observed in the review of delays implementing AWP price updates for reimbursements to pharmacies.
Average Annual Dispensing Fees Brand Drugs	Plan Year 2021 demonstrated an increase.	Dispensing fees for all Pharmacy Type category claims increased in plan year 2021 under the transparent model (with the exception of specialty drugs).
Average Annual Dispensing Fees Generic Drugs	Plan Year 2021 demonstrated an increase.	Dispensing fees for all Pharmacy Type category claims increased in plan year



Review Summary		
Audit Category	Observation	Summary
		2021 under the transparent model (with the exception of mail order claims).
Average Annual Brand Ingredient Costs by NDC	NADAC price basis comparison.	A NADAC assigned price basis would have resulted in lower drug costs in all categories except mail order in all three plan years.
	Several claims had MONY codes mis-applied.	Medi-Span MONY codes were not applied in limited instances.
Average Annual Generic Ingredient Costs by NDC	NADAC price basis comparison.	A NADAC assigned price basis would have resulted in lower drug costs in all categories.
	Several claims had MONY codes mis-applied.	Medi-Span MONY codes were not applied in limited instances.
Administrative Fees Invoiced	Full Remittance advices not provided.	Remittance advices were not provided for 2019 and 2020 claims. As a result, the administrative fees in the paid prescription claims data were unable to be reconciled to 2019 and 2020 remittance advices.
	30 claims sampled for administrative fees in 2021.	2021 claims records sampled did not have administrative fees associated with the claims. Market comparison could not be made based on claims.
Additional Fees Invoiced	Full Remittance advices not provided.	Remittance advices were not provided for 2019 and 2020 claims. As a result, the additional fees in the paid prescription claims data were unable to be reconciled to 2019 and 2020 remittance advices.
	30 claims sampled for administrative fees in 2021.	2021 claims records sampled did not have additional fees associated with the claims. Market comparison could not be made based on claims.
PA Drugs Implemented in 2021	16 new PA drugs observed.	No changes recommended to PA drugs.
ST Drugs Implemented in 2021	18 new ST drugs observed.	No changes recommended to ST drugs.
QL drugs Implemented in 2021	3 new QL drugs observed.	No changes recommended to QL drugs.



Review Summary		
Audit Category	Observation	Summary
Spread Pricing: Retail Pharmacy	Remittance advices not provided.	The potential spread pricing for claims filled at retail pharmacies during 2019 and 2020 were unable to be examined as SHP and OptumRx did not provide prescription remittance advices.
Retail Pharmacy Reimbursements	Remittance advices not provided.	Remittance advices were not provided for 2019 and 2020 claims. As a result, the drug costs reimbursed to retail pharmacies were unable to be reconciled to the paid claims data for each retail pharmacy for 2019 and 2020.
Mail Order and Specialty Reimbursements	Remittance advices not provided.	Remittance advices were not provided for 2019 and 2020 claims. As a result, the drug costs reimbursed to retail pharmacies could not be compared to the drug costs reimbursed to mail order and specialty pharmacies.
Excluded Drugs	No discrepancies observed.	No issues were observed in the review for delays in updating excluded drugs that would affect reimbursements to pharmacies.
DAW 9 Dispensed Drugs	DAW9 assigned drugs were costlier to the plan.	DAW9 assigned drugs demonstrated a higher cost to the plan compared to their equivalents.
Rebate Evaluation	Guaranteed rebate dollars levels were achieved.	Rebate guarantee levels were exceeded in plan years 2019 – 2021.
Clawback Evaluation	Network pharmacy surveys indicated clawback payments.	Network pharmacies indicated clawbacks to claims from the 2019 – 2021 plan years.

The analysis and details for these review categories including the assumptions, summary of procedures, and methodologies utilized for the audit, along with the key initial findings, observations, and scope limitations begin on the following page.



Average Wholesale Pricing Price Validation

Objectives

- Each claim submitted, reversed, and rebilled was reviewed to identify any differences in pricing between the original claim and the resubmitted claim.
- Each claim was reviewed from a financial perspective by independently re-pricing each claim using Medi-Span AWP unit costs, if applicable. (Note: OptumRx did not utilize WAC to price paid prescription claims during the review period. This benchmark price was not required to be applied so was not analyzed.)
- Validate 100 percent of the paid prescription claims data to determine if there were delays in updating reimbursement to pharmacies based on AWP unit cost utilized on the date of service for the claim.

Summary of Procedures

- Obtained paid claims file from OptumRx and matched the paid claims file on control totals to verify the file content for the review periods.
- Isolated claims submitted, reversed, and rebilled within the prescription claims data. These claims were paired, then analyzed to determine if there were differences between the submitted, reversed, and rebilled claims.
- Analyzed 100 hundred percent of the paid claims to confirm price basis application accuracy.
- Matched claims pricing fields to Medi-Span drug data price basis fields based on date of service to confirm price basis application and identify any variances.
- Detailed any differences resulting from a date of service pricing application error on a claim basis and reported.

Scope Limitations

There were no limitations to the review.

Results

a. Reprocessed Claims

We reviewed a total of 91,816 claims in 2019; 83,051 claims in 2020; and 74,408 claims in 2021 to verify differences between claims submitted, reversed, and rebilled. Results of our analysis are as follows:

January 1 – December 31, 2019		
	Drug Cost	NDPERS Total
Submitted Claims	\$ 10,440,961.21	\$ 9,052,003.45
Rebilled Claims	\$ 9,796,528.82	\$ 8,617,599.35
Difference	\$ 644,432.39	\$ 434,404.10



January 1 – December 31, 2020		
	Drug Cost	NDPERS Total
Submitted Claims	\$ 10,224,447.07	\$ 8,835,315.10
Rebilled Claims	\$ 9,626,240.52	\$ 8,392,652.16
Difference	\$ 598,206.55	\$ 442,662.94

January 1 – December 31, 2021		
	Drug Cost	NDPERS Total
Submitted Claims	\$ 10,710,286.58	\$ 9,433,513.58
Rebilled Claims	\$ 10,152,703.00	\$ 9,009,190.87
Difference	\$ 557,583.58	\$ 424,322.71

For the three years under review, the rebilling of the claims resulted in a lesser drug cost and plan cost.

b. Variances Due to Untimely Updates

We reviewed a total of 429,064 claims in 2019; 437,293 claims in 2020; and 443,391 claims in 2021 to verify if any drug cost variances were caused by untimely updates of the AWP unit costs. To achieve this, we compared AWP field values and their price extensions based on quantity dispensed by date of service to AWP data obtained from Medi-Span to identify whether there were any variances.

For the three years under audit, we did not identify any instances where there was a variance between the Medi-Span price and the AWP unit prices utilized by OptumRX.

SHP/OptumRx Response:

Auditor's Note: SHP/OptumRx had no comments for this section.



Average Annual Dispensing Fees – Brand Drugs

Objectives

- Review and analyze the average annual dispensing fee for brand drugs in aggregate for each year under review and also for retail, retail 90, mail order, and specialty pharmacy types.

Summary of Procedures

- Obtained paid claims file from OptumRx and matched the paid claims file on control totals to verify the file content for the review periods.
- Analyzed 100 percent of the paid claims for retail, retail 90, mail order, and specialty pharmacies to confirm the average dispensing fee for brand drugs by each pharmacy type.
- Analyzed 100 percent of the paid claims to confirm the average dispensing fee for brand drugs in aggregate for the years under review.

Scope Limitations

There were no limitations to the review.

Results

Dispensing fees are a component of the overall price that the pharmacy network providers receive for providing professional services to transfer covered prescription drugs to NDPERS members. The usual formula established between PBMs and their pharmacy providers for reimbursing the pharmacies is to remit the charge for the ingredient cost of the medication (in some instances at a discounted rate) with an additional dispensing fee. In some cases the dispensing fee rate may be agreed upon to be \$0.00.

It was observed and to be expected under the transparent arrangement that became effective for the 2021 plan year that the dispensing fees would increase as a component of the overall drug charges due to a cost shifting where the discount rate component of the drug charges became greater.

The dispensing fees for brand drugs were assessed based on whether the claims were filled at a retail, retail 90, mail order, or specialty pharmacy type. We also reported the dispensing fees in aggregate for each year under review. There was a notable increase in the average dispensing fees in the third year period of claims analyzed (average specialty pharmacy dispensing fee increasing more than a tenfold factor and the aggregate average dispensing fee more than doubling under the transparent agreement). Results of our analysis are as follows:

January 1– December 31, 2019		
Pharmacy Type	Number of Claims	Average Dispensing Fee
Retail	5,165	\$ 0.49
Retail 90	47,550	\$ 0.49
Mail Order	225	\$ 0.01
Specialty	228	\$ 0.15



January 1– December 31, 2019		
Pharmacy Type	Number of Claims	Average Dispensing Fee
Aggregate	53,168	\$ 0.49

January 1 – December 31, 2020		
Pharmacy Type	Number of Claims	Average Dispensing Fee
Retail	4,996	\$ 0.48
Retail 90	48,771	\$ 0.49
Mail Order	217	\$ 0.00
Specialty	274	\$ 0.12
Aggregate	54,258	\$ 0.49

January 1 – December 31, 2021		
Pharmacy Type	Number of Claims	Average Dispensing Fee
Retail	5,058	\$ 1.13
Retail 90	46,522	\$ 1.03
Mail Order	211	\$ 0.12
Specialty	146	\$ 1.56
Aggregate	51,937	\$ 1.04

SHP/OptumRx Response:

Sanford Health Plan and OptumRx were not given the opportunity to review the data underlying Auditor's analysis. However, errors in the Auditor's Methodology and analysis are evident from the results set forth in the Tables purporting to identify "Average Annual Dispensing Fees – Brand Drugs".

By way of example only, we note that the Prescription Drug Benefit Administrative Agreement between SHP and OptumRx specifies that "Retail 90 pricing is for retail claims greater than 83 days' supply." Based upon this contractual definition that was unchanged through amendments that occurred during the 3 calendar years of the audit. Approximately 32% of NDPERS overall claims qualify as Retail 90. However, Auditor's analysis incorrectly identifies approximately 90% of claims as Retail 90 for calendar years 2019, 2020 and 2021. While a small variance in the results between an auditor's preliminary analysis and actual claims adjudicated might be expected in a typical audit, Auditor's material overstatement of Retail 90 claims reflects an error in application of both the NDPERS prescription drug benefit structure and standard claims data.

We are unable to determine the root cause of Auditor's error without the underlying data of the Auditor's analysis. However, it is clear from the results that Auditor's methodology does not align with the contract terms, which sets forth how claims would be priced and adjudicated for calendar years 2019, 2020, and 2021 of the respective contracts. Fundamental errors in Auditor's Methodology in inaccurately identifying Retail 90 claims indicates errors in Auditor's



identification and calculations of 'Retail', 'Retail 90', and 'Specialty' Pharmacy type, as well as 'Number of Claims' and 'Average Dispensing Fee' in the Table above.

Continued on next page...

Moreover, these material defects in Auditor's methodology are littered throughout the Draft Report, and are readily apparent throughout the following sections, as well as included in market comparisons the Auditor derived using this flawed methodology:

Average Annual Dispensing Fees – Brand Drugs

Average Annual Dispensing Fees – Generic Drugs

Average Annual Ingredient Costs – Brand Drugs

Average Annual Ingredient Costs – Generic Drugs

Additionally, we note that Auditor's observations that seemingly compare dispensing fees under the pass-through contract terms in effect for 2021 to the prior years, and expectations about how dispensing fees would change under such an arrangement, appear to be flawed. The Auditor states: "It was observed and to be expected under the transparent arrangement that became effective for the 2021 plan year that the dispensing fees would increase as a component of the overall drug charges due to a cost shifting where the discount rate component of the drug charges became greater". Applicable dispensing fees for brand and generics at retail, as set forth the amended Prescription Drug Benefit Administration effective between SHP and OptumRx for calendar year 2021, were either *lower* than the discounts in effect for calendar years 2019 or 2020, or neutral. Further, discounts and dispensing fees in the respective agreements are measured and reconciled annually, with the PBM crediting or paying the value of any shortfall in performance. Thus, in addition to the flaws noted in Auditor's overall methodology in approaching the analysis and stated objectives, Auditor's observation demonstrates a failure to examine or apply the provisions of the relevant agreements in order to understand the NDPERS benefit plan itself.

Post Sponsors' Response: Commentary and/or Recommendation. The audit was conducted at the request of The North Dakota SAO pursuant to and in accordance with North Dakota Century Code (N.D.C.C.) Chapter 54-10 and under N.D.C.C. § 54-52.1-04.16. The objective and scope of the audit was set forth by the SAO.

The information presented is based on the pharmacy claims data provided by OptumRx and data definitions provided by OptumRx and/or SHP used to define claims types and pharmacy classifications. All data is available to OptumRx and SHP in the files they provided to apply the audit methodology. Pharmacy classifications of Retail, Mail Order, and Specialty Pharmacy were assigned utilizing the Service Provider Dispenser Type field containing the values of 1 = Retail Pharmacy, 5 = Mail Order Pharmacy, and 15 = Specialty Pharmacy, which are industry standard Dispenser Types supplied by



NCPDP and assigned by OptumRx to their prescription claims. Additional files were obtained from SHP to identify pharmacies opting in to the Retail 90 option.

The Summary of Procedures outlined the pharmacy types to be examined for purposes of data segregation and reporting. The only “errors” brought to our attention were alternative ways to summarize the claims data based on claim type instead of pharmacy type. Performing the analysis based on claim type was not in the requirements and would change the results. For example, a claim classified as a specialty drug may be filled at any of the Service Provider Dispenser Types of Retail, Mail Order, or Specialty Pharmacy; therefore, an analysis conducted to examine a claim type of specialty pharmaceutical rather than assigning the claim to a Provider Dispenser Type would result in an entirely different outcome. A second example would be to sub-classify prescriptions dispensed by pharmacies opting in to the Retail 90 claims according to the associated days supply of each claim. This would result in a different allocation of number of claims and average dispensing fees to the Retail and Retail 90 pharmacy types listed.

The dispensing fees in the Prescription Drug Benefit Administration Agreement between SHP and OptumRx show incremental greater discounts and lower dispensing fee guarantees for each successive year over the three-year term; however, our analysis is based on the dispensing fee paid to the pharmacy captured in the claims data. The average dispensing fees calculated from the claims data show an increase in 2021. Examining annual reconciliations in the respective agreements was not an objective for the above analysis.



Average Annual Dispensing Fees – Generic Drugs

Objectives

- *Review and analyze the average annual dispensing fee for generic drugs in aggregate for each year under review and also for retail, retail 90, mail order, and specialty pharmacy types.*

Summary of Procedures

- *Obtained paid claims file from OptumRx and matched the paid claims file on control totals to verify the file content for the review periods.*
- *Analyzed 100 percent of the paid claims for retail, retail 90, mail order, and specialty pharmacies to confirm the average dispensing fee for generic drugs by each pharmacy type.*
- *Analyzed 100 percent of the paid claims to confirm the average dispensing fee for generic drugs in aggregate for the years under review.*

Scope Limitations

There were no limitations to the review.

Results

Dispensing fees are a component of the overall price that the pharmacy network providers receive for providing professional services to transfer covered prescription drugs to NDPERS members. The usual formula established between PBMs and their pharmacy providers for reimbursing the pharmacies is to remit the charge for the ingredient cost of the medication (in some instances at a discounted rate or in the case of generic drugs the prices are pegged to a specific benchmark) with an additional dispensing fee. In some cases the dispensing fee rate may be agreed upon to be \$0.00.

It was observed and to be expected under the transparent arrangement that became effective for the 2021 plan year that the dispensing fees would increase as a component of the overall drug charges due to a cost shifting where a more favorable discount rate component of the drug charges was implemented and benefited NDPERS.

The dispensing fees for generic drugs were assessed based on whether the claims were filled at a retail, retail 90, mail order, or specialty pharmacy type. We also reported the dispensing fees in aggregate for each year under review. Dispensing fees generally stayed static from the year one period to the second year period, with the exception of drugs dispensed at a specialty pharmacy. There was a significant increase in dispensing fees in the third year period of claims analyzed with the specialty pharmacy category having the most notable increase. Results of our analysis are as follows:



January 1 – December 31, 2019		
Pharmacy Type	Number of Claims	Average Dispensing Fee
Retail	36,910	\$ 0.52
Retail 90	312,311	\$ 0.44
Mail Order	1,651	\$ 0.00
Specialty	58	\$ 0.38
Aggregate	350,930	\$ 0.44

January 1 – December 31, 2020		
Pharmacy Type	Number of Claims	Average Dispensing Fee
Retail	37,014	\$ 0.50
Retail 90	319,062	\$ 0.42
Mail Order	1,819	\$ 0.00
Specialty	74	\$ 1.00
Aggregate	357,969	\$ 0.43

January 1, 2021 through December 31, 2021		
Pharmacy Type	Number of Claims	Average Dispensing Fee
Retail	36,975	\$ 1.67
Retail 90	314,463	\$ 0.77
Mail Order	1,762	\$ 0.00
Specialty	90	\$ 4.35
Aggregate	353,290	\$ 0.86

SHP/OptumRx Response:

Sanford Health Plan and OptumRx were not given the opportunity to review the data underlying Auditor's analysis. However, errors in the Auditor's Methodology and analysis are evident from the results set forth in the Tables purporting to identify "Average Annual Dispensing Fees – Generic Drugs".

Details of these errors are included in the above section "Average Annual Dispensing Fees – Brand Drugs", as the flawed methodology described in the Brand Drugs section remains unchanged in the evaluation of "Average Annual Dispensing Fees – Generic Drugs".

Post Sponsors' Response: Commentary and/or Recommendation. The audit was conducted at the request of The North Dakota SAO pursuant to and in accordance with North Dakota Century Code (N.D.C.C.) Chapter 54-10 and under N.D.C.C. § 54-52.1-04.16. The objective and scope of the audit was set forth by the SAO.



The information presented is based on the pharmacy claims data provided by OptumRx and data definitions provided by OptumRx and/or SHP used to define claims types and pharmacy classifications. All data is available to OptumRx and SHP in the files they provided to apply the audit methodology. The Summary of Procedures outlined the pharmacy types to be examined for purposes of data segregation and reporting. The only “errors” brought to our attention were alternative ways to summarize the claims data based on claim type instead of pharmacy type. Performing the analysis based on claim type was not in the requirements and would change the results.



Average Annual Ingredient Costs – Brand Drugs

Objectives

- *Review and analyze the average annual ingredient costs for brand drugs by NDC in aggregate for each year under review and also for retail, retail 90, mail order, and specialty pharmacy types.*
- *Compare the average annual ingredient costs for brand drugs to the average pricing that would have resulted from the use of pricing based on NADAC in aggregate and also for retail, retail 90, mail order, and specialty pharmacy types.*
- *Evaluate the drug-by-drug pricing invoiced to SHP by OptumRx and compare the drug-by-drug pricing to the pricing that would have been available based on NADAC data.*
- *Evaluate OptumRx's categorization of "brand drugs" and compare the categorization to the Medi-Span categorization using multi-source indicator codes or MONY codes.*
- *Evaluate the cost-savings that would have resulted from the use of Medi-Span categorization and conduct a marketplace comparison of the AWP discounts and dispensing fees utilized by OptumRx to determine the drug costs of the claims.*

Summary of Procedures

- *Obtained paid claims file from OptumRx and matched the paid claims file on control totals to verify the file content for the review periods.*
- *Analyzed 100 percent of the paid claims for retail, retail 90, mail order, and specialty pharmacies to confirm the average ingredient cost by NDC for brand drugs by each pharmacy type and in aggregate.*
- *Analyzed 100 percent of the paid claims to confirm the NADAC based on the NDC and date of service for each claim filled at a retail, retail 90, mail order, and specialty pharmacy and also in aggregate.*
- *Analyzed 100 percent of the paid claims for retail, retail 90, mail order, and specialty pharmacies to confirm the Medi-Span MONY codes on the date of service for the claim by NDC.*
- *Calculated the cost difference between the drug cost utilizing OptumRx's brand categorization and Medi-Span's brand categorization.*
- *Completed a marketplace comparison of the AWP discounts and dispensing fees for retail, retail 90, mail order, and specialty pharmacy types and analyzed the comparison to determine if potential cost savings were present.*
- *Information regarding confidential marketplace rates is not included due to the sensitive nature of the information.*

Scope Limitations

There were no limitations to the review.

The NADAC is a price basis for prescription drugs established through regular surveys of retail pharmacies of their actual acquisition costs. It was mandated by the Centers for Medicare & Medicaid Services for Medicaid programs to establish benchmark prices for reimbursement to their pharmacy providers. The NADAC price basis was utilized for comparative analysis to the actual prices for prescription claims in each plan year. The NADAC comparison bases were made to the price formulas utilized under the prescription drug benefit administration agreement between SHP and OptumRx for claims dispensed at the various Pharmacy Types and/or pharmacy network detailed in the tables that follow. The formulas applied in the contract involve a discount percent off the AWP price plus a dispensing fee (or \$0.00 dispensing fee in some cases) for brand name and specialty drugs, and a MAC price or discount off AWP for generic drugs. If a pharmacy charged a lower usual and customary (U&C) price than the applicable formula cost, the U&C price is charged.

A drug claim dispensed under a “Retail 90” network contract will generally cost less per unit for NDPERS than the same drug dispensed under a standard “Retail” network. Retail 90 network contracts provide deeper discounts off of the AWP price because they allow larger quantities of medication to be provided for each dispensing. This is typically utilized for maintenance drugs that are utilized regularly by NDPER’s members on a daily basis. It provided the members with the option to receive their medications at the retail pharmacy and therefor the retail pharmacy offers a greater discount due to the higher volume of drug claims and higher drug quantities per claim.

Results

a. Average Ingredient Costs and NADAC Price Variances

January 1, 2019, through December 31, 2019

We compared the NADAC prices to the ingredient cost on a claim-by-claim basis. A total of 56,224 brand claims were reviewed for 2019. Of the 56,224 brand claims, 43,500 claims had a NADAC associated with the NDC for the claim. The results of our analysis are as follows:

January 1 – December 31, 2019						
Pharmacy Type	Number of Claims	Ingredient Cost	Average Ingredient Cost	NADAC Cost	Average NADAC Cost	Potential Cost Savings
Retail	4,099	\$ 4,217,280.93	\$ 1,028.86	\$ 4,095,819.89	\$ 999.22	\$ 121,461.04
Retail 90	39,197	\$ 32,687,564.62	\$ 833.93	\$ 31,781,305.19	\$ 810.81	\$ 906,259.43
Mail Order	144	\$ 128,060.93	\$ 889.31	\$ 148,800.68	\$ 1,033.34	\$ (20,739.75)
Specialty	60	\$ 368,406.95	\$ 6,140.12	\$ 360,097.63	\$ 6,001.63	\$ 8,309.32
Aggregate	43,500	\$ 37,401,313.43	\$ 859.80	\$ 36,386,023.39	\$ 836.46	\$ 1,015,290.04



January 1, 2020, through December 31, 2020

We compared the NADAC prices to the ingredient cost on a claim-by-claim basis. A total of 58,892 brand claims were reviewed for 2020. Of the 58,892 brand claims, 44,238 claims had a NADAC associated with the NDC for the claim. The results of our analysis are as follows:

January 1 – December 31, 2020						
Pharmacy Type	Number of Claims	Ingredient Cost	Average Ingredient Cost	NADAC Cost	Average NADAC Cost	Potential Cost Savings
Retail	3,973	\$ 4,728,673.32	\$ 1,190.20	\$ 4,547,774.19	\$ 1,144.67	\$ 180,899.13
Retail 90	40,011	\$ 38,531,243.88	\$ 963.02	\$ 37,559,643.18	\$ 938.73	\$ 971,600.70
Mail Order	150	\$ 159,315.25	\$ 1,062.10	\$ 167,464.03	\$ 1,116.43	\$ (8,148.78)
Specialty	104	\$ 764,683.69	\$ 7,352.73	\$ 737,911.60	\$ 7,095.30	\$ 26,772.09
Aggregate	44,238	\$ 44,183,916.14	\$ 998.78	\$ 43,012,793.00	\$ 972.30	\$ 1,171,123.14

January 1, 2021, through December 31, 2021

We compared the NADAC prices to the ingredient cost on a claim-by-claim basis. A total of 69,192 brand claims were reviewed for 2021. Of the 69,192 brand claims, 42,392 claims had a NADAC associated with the NDC for the claim. Results of our analysis are as follows:

January 1 – December 31, 2021						
Pharmacy Type	Number of Claims	Ingredient Cost	Average Ingredient Cost	NADAC Cost	Average NADAC Cost	Potential Cost Savings
Retail	4,044	\$ 4,683,307.35	\$ 1,158.09	\$ 4,600,451.52	\$ 1,137.60	\$ 82,855.83
Retail 90	38,113	\$ 41,178,422.82	\$ 1,080.43	\$ 40,831,539.21	\$ 1,071.33	\$ 346,883.61
Mail Order	151	\$ 205,445.64	\$ 1,360.57	\$ 215,932.00	\$ 1,430.01	\$ (10,486.36)
Specialty	84	\$ 518,308.27	\$ 6,170.34	\$ 514,116.07	\$ 6,120.43	\$ 4,192.20
Aggregate	42,392	\$ 46,585,484.08	\$ 1,098.92	\$ 46,162,038.81	\$ 1,088.93	\$ 423,445.27

For the three years under examination, the use of the NADAC as a price basis to determine the ingredient costs would have resulted in a lower ingredient cost charged to NDPERS in all categories with the exception of Mail Order.

SHP/OptumRx Response:

Sanford Health Plan and OptumRx were not given the opportunity to review the data underlying Auditor's analysis. As a result, we are unable to determine the root cause of the error in Auditor's methodology. However, errors in the Auditor's Methodology and analysis are evident from the results set forth in the Tables purporting to identify "Claims" by "Pharmacy Type".

By way of example only, we note that whereas Auditor identified only 84 brand claims under "Specialty" Pharmacy Type in 2021, NDPERS in fact had approximately 4,400 Specialty brand claims in 2021. This gross understatement—missing approximately 98.5% of Specialty claims— and failure to correctly



identify NDPERS Specialty claims is material given that Specialty claims make up over 52% of NDPERS claim costs. Additionally, as previously noted, Auditor's overstatement of "Retail 90" claims reflects material miscalculations in the attempted analysis in this section as well. The obvious defects in Auditor's methodology present a distorted view of NDPERS costs in the Draft Report, as well as a distorted "analysis" of those costs compared to 'NADAC Cost'. While a small variance in claim count results might be expected in a typical audit, Auditor's inability to correctly identify pharmacy or claim types, as applicable to the agreements governing the administration of the NDPERS benefit plan, reflects an error in application of standard prescription drug benefit structure and claims data.

Additionally, even apart from Auditor's errors in correctly identifying claim and pharmacy types, we note that Auditor's methodology in comparing NADAC as a price basis omits reference to sufficient, appropriate evidence that would provide a reasonable basis for supporting Auditor's findings and conclusions. Specifically, Auditor's methodology fails to acknowledge or address that the use of NADAC as a price basis is typically accompanied by materially higher dispensing fees. Indeed, North Dakota Medicaid includes NADAC as a price basis in its reimbursement methodology, and affords a professional dispensing fee of \$12.46. In failing to examine the impact of increased dispensing fees under a NADAC price basis, Auditor has not undertaken a complete cost comparison for NDPERS costs under a NADAC price methodology. Applying, by way of example only, the 2021 average retail dispense fee calculated in Auditor's report, which again we believe may itself be miscalculated, application of a similar \$12.46 dispensing fee would represent an increase of over 1000% in dispensing fee costs (i.e., \$1.13 Retail dispensing fee compared to \$12.46 North Dakota dispensing fee). Because the application of NADAC limits the analysis to ingredient cost only, without regard to increased dispensing fees, this presents a distorted view of impact to overall drug cost. Thus, Auditor's methodology fails to achieve an actual 'comparative analysis' of the use of NADAC as a price basis as an alternative to the discounted rates reflected for each of the various terms of the contract during the Audit period.

Post Sponsors' Response: Commentary and/or Recommendation. The audit was conducted at the request of The North Dakota SAO pursuant to and in accordance with North Dakota Century Code (N.D.C.C.) Chapter 54-10 and under N.D.C.C. § 54-52.1-04.16. The objective and scope of the audit was set forth by the SAO.

The information presented is based on pharmacy claims data provided by OptumRx and the data definitions provided by OptumRx and/or SHP used to define claims types and pharmacy classifications, the application of brand name and generic data definitions from Medi-Span, and NADAC prices. The Summary of Procedures outlines the criteria utilized. The only "errors" brought to our attention were alternative ways to summarize the claims data based on claim type instead of pharmacy type. Performing the analysis based on claim type was not in the requirements and would change the results.

The NADAC comparison was based on the NADAC drug cost only when a NADAC drug cost was available for the comparative claim. The addition of a dispensing fee rates was not in the requirements and would result in a different outcome.

b. MONY Code Analysis

Medi-Span is a national drug database utilized by licensees to assign drug attributes to specific drugs. One of the attributes within Medi-Span is the brand and generic designation. Medi-Span uses a value



assignment of “M,” “O,” “N,” “Y,” referred to as MONY codes, to each prescription claim to designate the drug as a brand name drug or generic drug. The code assignment is one attribute that may be utilized in assigning pricing to a drug claim.

We compared the brand categorization OptumRx assigned to each drug in the paid prescription claims data to determine 1) the average costs provided during the calendar year using OptumRx’s categorization of brand and generic drugs, 2) the average costs of brand and generic drugs using Medi-Span’s MONY code categorization, and 3) the discount and dispensing fees available for comparable periods in the marketplace. Results of our analyses are as follows:

January 1, 2019, through December 31, 2019

We analyzed a total of 53,165 brand claims in 2019, categorized as retail, retail 90, mail order, and specialty pharmacy claims. Using OptumRx’s categorization of brand drugs, the average ingredient cost was \$919.10 per claim, average dispensing fee was \$0.49 per claim, and average NDPERS cost was \$806.86 per claim for all brand claims filled within the calendar year.

Average Costs Provided During the Calendar Year Using OptumRx’s Categorization of Drugs				
Pharmacy Type	Number of Claims	Ingredient Cost	Dispensing Fee	NDPERS Total
Retail	5,165	\$1,517.38	\$0.49	\$1,390.88
Retail 90	47,547	\$810.97	\$0.49	\$700.61
Mail Order	225	\$1,658.54	\$0.01	\$1,497.63
Specialty	228	\$9,184.28	\$0.15	\$9,053.24
Aggregate	53,165	\$919.10	\$0.49	\$806.86

The brand categorization used by OptumRx was compared to the Medi-Span MONY code categorization. Each claim was compared to Medi-Span based on the NDC and date of service for the claim. We identified a total of 17 brand claims that were categorized as generic in Medi-Span, but categorized as brand in the paid prescription claims data by OptumRx. If OptumRx had utilized the Medi-Span MONY code that was effective on the date of service for the claim, it would have potentially resulted in an average savings of \$49.76 in ingredient costs and \$0.16 in dispensing fees. This was not a significant finding and illustrates OptumRx demonstrated compliance with the timely assignment of Medi-Span MONY codes.

Average Costs Using Medi-Span MONY Code Categorization Ingredient Cost Analysis				
Pharmacy Type	Number of Claims	Recalculated Ingredient Cost	Ingredient Cost at Point of Sale (POS)	Average Dollar Difference
Retail	3	\$15.05	\$51.89	\$36.84
Retail 90	14	\$19.01	\$71.54	\$52.53
Mail Order	0	\$0.00	\$0.00	\$0.00
Specialty	0	\$0.00	\$0.00	\$0.00
Aggregate	17	\$18.31	\$68.07	\$49.76



Average Costs Using Medi-Span MONY Code Categorization Dispensing Fee Analysis				
Pharmacy Type	Number of Claims	Recalculated Dispensing Fee	Dispensing Fee at POS	Average Dollar Difference
Retail	3	\$0.44	\$0.64	\$0.20
Retail 90	14	\$0.44	\$0.59	\$0.15
Mail Order	0	\$0.00	\$0.00	\$0.00
Specialty	0	\$0.00	\$0.00	\$0.00
Aggregate	17	\$0.44	\$0.60	\$0.16

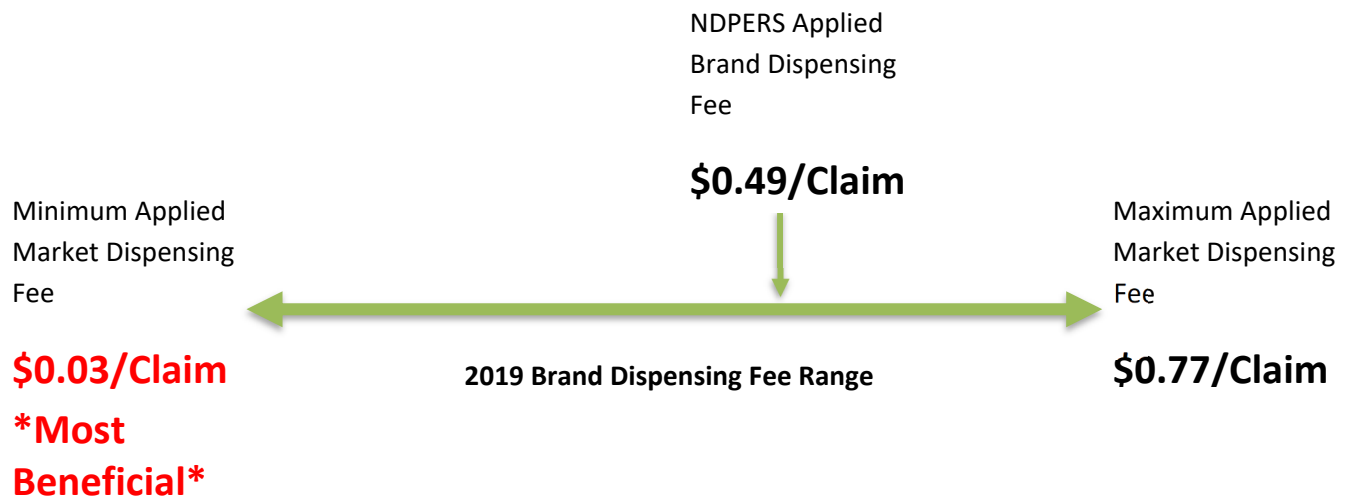
We compared the discount and fee rates that were available for the comparable period in the marketplace based on our experience with similar benefits and are only used for comparative purposes to determine where NDPERS' drug experience fell within that continuum. Using the aggregate average derived from the paid claims data when compared to contracted market rates applied to these claims, we determined the 2019 discount percentage rate was on the lower end of the market. Additionally, the dispensing fees applied to claims in 2019 were average market rates. For 2019, NDPERS and SHP would have benefited from a greater relative effective brand discount.

2019 Market Comparison of Brand Discounts





2019 Market Comparison of Brand Dispensing Fees



January 1, 2020, through December 31, 2020

We analyzed a total of 54,258 brand claims in 2020, categorized as retail, retail 90, mail order, and specialty pharmacy claims. Using OptumRx's categorization of brand drugs, the average ingredient cost was \$1,103.10 per claim, average dispensing fee was \$0.49 per claim, and average NDPERS cost was \$987.72 per claim for all brand claims filled within the calendar year.

Average Costs Provided During the Calendar Year Using OptumRx's Categorization of Drugs				
Pharmacy Type	Number of Claims	Ingredient Cost	Dispensing Fee	NDPERS Total
Retail	4,996	\$1,753.39	\$0.48	\$1,611.81
Retail 90	48,771	\$993.94	\$0.49	\$882.74
Mail Order	217	\$842.70	\$0.00	\$643.68
Specialty	274	\$8,883.91	\$0.12	\$8,565.91
Aggregate	54,258	\$1,103.10	\$0.49	\$987.72

The brand categorization used by OptumRx was compared to the Medi-Span MONY code categorization. Each claim was compared to Medi-Span based on the NDC and date of service for the claim. We identified a total of 6 brand claims categorized as generic in Medi-Span, but OptumRx categorized as brand in the paid prescription claims data. If OptumRx had utilized the Medi-Span MONY code that was effective on the date of service for the claim, it would have potentially resulted in an average savings of \$375.37 in ingredient costs and \$0.11 in dispensing fees. This was not a significant finding and illustrates OptumRx demonstrated compliance with the timely assignment of Medi-Span MONY codes.



Average Costs Using Medi-Span MONY Code Categorization Ingredient Cost Analysis				
Pharmacy Type	Number of Claims	Recalculated Ingredient Cost	Ingredient Cost at POS	Average Dollar Difference
Retail	0	\$0.00	\$0.00	\$0.00
Retail 90	6	\$91.03	\$466.40	\$375.37
Mail Order	0	\$0.00	\$0.00	\$0.00
Specialty	0	\$0.00	\$0.00	\$0.00
Aggregate	6	\$91.03	\$466.40	\$375.37

Average Costs Using Medi-Span MONY Code Categorization Dispensing Fee Analysis				
Pharmacy Type	Number of Claims	Recalculated Dispensing Fee	Dispensing Fee at POS	Dollar Difference
Retail	0	\$0.00	\$0.00	\$0.00
Retail 90	6	\$0.43	\$0.53	\$0.11
Mail Order	0	\$0.00	\$0.00	\$0.00
Specialty	0	\$0.00	\$0.00	\$0.00
Aggregate	6	\$0.43	\$0.53	\$0.11

We compared the discount and fee rates that were available for the comparable period in the marketplace based on our experience with similar benefits and are only used for comparative purposes to determine where NDPERS' drug experience fell within that continuum. Using the aggregate average derived from the paid claims data when compared to contracted market rates applied to these claims, we determined that the 2020 discount percentage was on the lower end of the market. Additionally, the dispensing fees applied to the claims in 2020 were average market rates. For 2020, NDPERS and SHP would have benefited from a greater relative effective brand discount.

SHP/OptumRx Response:

Again, we note that Sanford Health Plan and OptumRx were not given the opportunity to review the data underlying Auditor's analysis. Although we are unable to determine the root cause of errors in Auditor's methodology, Auditor's inability to correctly identify pharmacy or claim types, as applicable to the agreements governing the administration of the NDPERS benefit plan, reflects an error in application of standard prescription drug benefit structure and claims data.

Additionally, SHP and OptumRx have not had an opportunity to review Auditor's "marketplace" comparisons to confirm that Auditor's methodology appropriately identified plans substantially similar to NDPERS for purposes of a "marketplace" comparison. Further, setting aside clear errors in Auditor's classification of pharmacy and claim types, which impact the entire 'analysis', Auditor's methodology is flawed in that it adopts an overly selective approach of examining single price point comparisons (e.g., brand discounts), when an industry standard marketplace comparison would necessarily examine financial terms in the aggregate, on an annual basis. Finally, we note that despite the fact that NDPERS engages expert consultants for



support in its public procurement process, Auditor's methodology is defective in that it does not appear to include a comparative of *actual* pricing specifically offered to NDPERS through the competitive procurement process during the various contract years included in the Audit period.

Post Sponsors' Response: Commentary and/or Recommendation. The audit was conducted at the request of The North Dakota SAO pursuant to and in accordance with North Dakota Century Code (N.D.C.C.) Chapter 54-10 and under N.D.C.C. § 54-52.1-04.16. The objective and scope of the audit was set forth by the SAO.

The information presented is based on pharmacy claims data provided by OptumRx and the data definitions provided by OptumRx and/or SHP used to define claims types, pharmacy classifications, and brand and generic classifications of drug claims. All data is available to OptumRx and SHP in the files they provided to apply the audit methodology. The Summary of Procedures outlines the criteria utilized. There are alternative applications of these definitions that could be applied that would change the results. The only "errors" brought to our attention were alternative ways to summarize the claims data based on claim type instead of pharmacy type. Performing the analysis based on claim type was not in the requirements and would change the results.

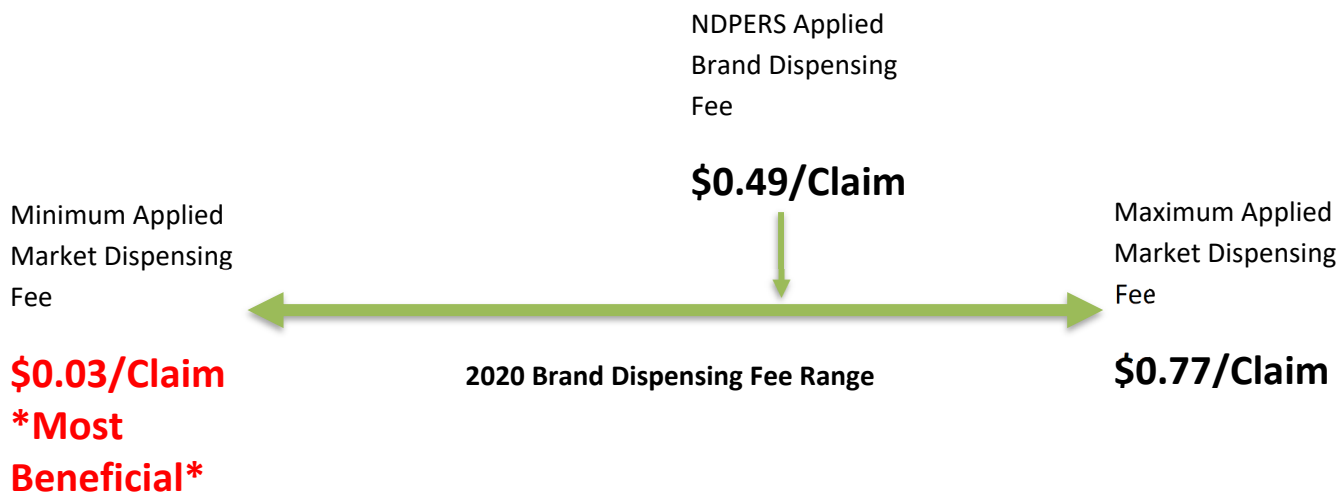
Market rate and fee information utilized within the analyses is based on our awareness of contracted discount rates and dispensing fees in effect during the timeframes represented and is presented as an aggregated-claim-effective ingredient cost with the discount applied or the dispensing-fee-effective bases for brand and generic drugs. Comparable time-period rates and fees are not cited due to the sensitive nature of the information. The results presented were not obtained through a competitive procurement process. The results presented are based on a retrospective analysis of the paid claims data provided by OptumRx.



2020 Market Comparison of Brand Discounts



2020 Market Comparison of Brand Dispensing Fees



January 1, 2021, through December 31, 2021

We analyzed a total of 51,937 brand claims in 2021, categorized as retail, retail 90, mail order, and specialty pharmacy claims. Using OptumRx's categorization of brand drugs, the average ingredient cost was \$1,216.94 per claim, average dispensing fee was \$1.04 per claim, and average NDPERS cost was \$1,106.71 per claim for all brand claims filled within the calendar year.



Average Costs Provided During the Calendar Year Using OptumRx's Categorization of Drugs				
Pharmacy Type	Number of Claims	Ingredient Cost	Dispensing Fee	NDPERS Total
Retail	5,058	\$1,682.67	\$1.13	\$1,557.33
Retail 90	46,522	\$1,141.29	\$1.03	\$1,033.48
Mail Order	211	\$1,200.06	\$0.12	\$988.54
Specialty	146	\$9,209.83	\$1.56	\$9,000.52
Aggregate	51,937	\$1,216.94	\$1.04	\$1,106.71

The brand categorization used by OptumRx was compared to the Medi-Span MONY code categorization. Each claim was compared to Medi-Span based on the NDC and date of service for the claim. We did not identify brand claims that were mis-categorized as brand by OptumRx.

We compared the discount and fee rates that were available for the comparable period in the marketplace based on our experience with similar benefits and are only used for comparative purposes to determine where NDPERS' drug experience fell within that continuum. Using the aggregate average derived from the paid claims data when compared to contracted market rates applied to these claims, we determined that the 2021 discount percentage was at the highest end of the market. Additionally, the dispensing fees applied to the claims in 2021 were higher compared to the rest of the market. This shift would be expected under the newly implemented transparent contract where market discounts were passed-through to NDPERS, but greater dispensing fees are charged as part of the payment equation to compensate for the reduction in the spread that was part of the 2019 and 2020 traditional contract arrangement. For 2021, NDPERS and SHP benefited from deeper discounts and would have benefited from a lower relative effective dispensing fee.

SHP/OptumRx Response:

Again, we note that Sanford Health Plan and OptumRx were not given the opportunity to review the data underlying Auditor's analysis. Although we are unable to determine the root cause of errors in Auditor's methodology, Auditor's inability to correctly identify pharmacy or claim types, as applicable to the agreements governing the administration of the NDPERS benefit plan, reflects an error in application of standard prescription drug benefit structure and claims data.

The description of errors related to the comparison of dispensing fees are included in the above section "Average Annual Dispensing Fees – Brand Drugs", as the flawed methodology described in that section remains unchanged in the evaluation of "2020 Market Comparison of Brand Discounts".

The description of errors related to marketplace comparisons are included in the above section "2019 Market Comparison of Brand Discounts", as the flawed methodology described in that section remains unchanged in the evaluation of "2020 Market Comparison of Brand Discounts".

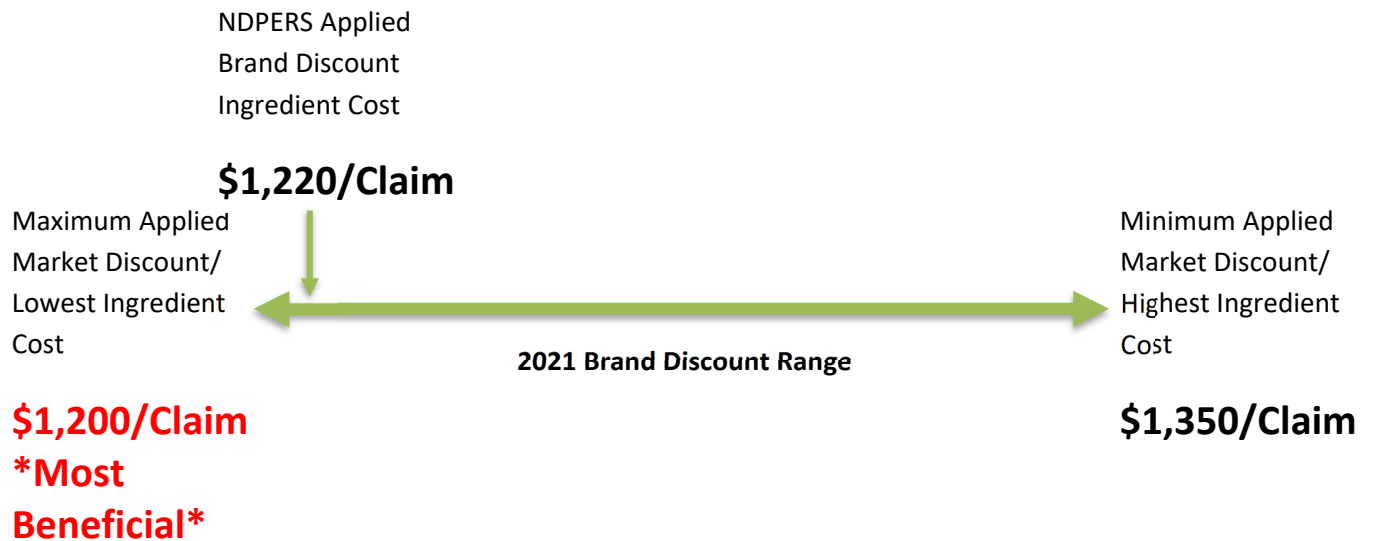
Post Sponsors' Response: Commentary and/or Recommendation. The audit was conducted at the request of The North Dakota SAO pursuant to and in accordance with North Dakota Century Code (N.D.C.C.) Chapter 54-10 and under N.D.C.C. § 54-52.1-04.16. The objective and scope of the audit was set forth by the SAO.

The information presented is based on pharmacy claims data provided by OptumRx and the data definitions provided by OptumRx and/or SHP used to define claims types, pharmacy classifications, and brand and generic classifications of drug claims. The Summary of Procedures outlines the criteria utilized. The only "errors" brought to our attention were alternative ways to summarize the claims data based on claim type instead of pharmacy type. Performing the analysis based on claim type was not in the requirements and would change the results.

Market rate and fee information utilized within the analyses is based on our awareness of contracted discount rates and dispensing fees in effect during the timeframes represented and is presented as an aggregated-claim-effective ingredient cost with the discount applied or the dispensing-fee-effective bases for brand and generic drugs. Comparable time-period rates and fees are not cited due to the sensitive nature of the information. The results presented were not obtained through a competitive procurement process. The results presented are based on a retrospective analysis of the paid claims data provided by OptumRx.



2021 Market Comparison of Brand Discounts



2021 Market Comparison of Brand Dispensing Fees





Average Annual Ingredient Costs – Generic Drugs

Objectives

- *Review and analyze the average annual ingredient costs for generic drugs by NDC in aggregate for each year under review and also for retail, retail 90, mail order, and specialty pharmacy types.*
- *Compare the average annual ingredient costs for generic drugs to the average pricing that would have resulted from the use of pricing based on NADAC in aggregate and also for retail, retail 90, mail order, and specialty pharmacy types.*
- *Evaluate the drug-by-drug pricing invoiced to SHP by OptumRx and compare the drug-by-drug pricing to the pricing that would have been available based on NADAC data.*
- *Evaluate OptumRx's categorization of "generic drugs" and compare the categorization to the Medi-Span categorization using multi-source indicator codes or MONY codes.*
- *Evaluate the cost-savings that would have resulted from the use of Medi-Span categorization and conduct a marketplace comparison of the AWP discounts and dispensing fees utilized OptumRx to determine the drug costs of the claims.*

Summary of Procedures

- *Obtained paid claims file from OptumRx and matched the paid claims file on control totals to verify the file content for the review periods.*
- *Analyzed 100 percent of the paid claims for retail, retail 90, mail order, and specialty pharmacies to confirm the average ingredient cost by NDC for generic drugs by each pharmacy type and in aggregate.*
- *Analyzed 100 percent of the paid claims to confirm the NADAC based on the NDC and date of service for each claim filled at a retail, retail 90, mail order, and specialty pharmacy and also in aggregate.*
- *Analyzed 100 percent of the paid claims for retail, retail 90, mail order, and specialty pharmacies to confirm the Medi-Span MONY codes on the date of service for the claim by NDC.*
- *Calculated the cost difference between the drug cost utilizing OptumRx's generic categorization and Medi-Span's generic categorization.*
- *Completed a marketplace comparison of the AWP discounts and dispensing fees for retail, retail 90, mail order, and specialty pharmacy types and analyzed the comparison to determine if potential cost savings were present.*
- *Information regarding marketplace rates is not included due to the confidential or sensitive nature of the information.*



Scope Limitations

There were no limitations to the review.

Results

a. Average Ingredient Costs and NADAC Price Variances

January 1, 2019, through December 31, 2019

We compared the NADAC prices to the ingredient cost on a claim-by-claim basis. A total of 350,930 generic claims were reviewed for 2019. Of the 350,930 generic claims, 347,154 claims had a NADAC associated with the NDC for the claim. The results of our analysis are as follows:

January 1 – December 31, 2019						
Pharmacy Type	Number of Claims	Ingredient Cost	Average Ingredient Cost	NADAC Cost	Average NADAC Cost	Potential Cost Savings
Retail	36,356	\$ 1,136,849.87	\$ 31.27	\$ 617,444.30	\$ 16.98	\$ 519,405.57
Retail 90	309,107	\$ 9,495,062.04	\$ 30.72	\$ 5,187,125.06	\$ 16.78	\$ 4,307,936.98
Mail Order	1,640	\$ 89,327.65	\$ 54.47	\$ 49,179.79	\$ 29.99	\$ 40,147.86
Specialty	51	\$ 25,965.13	\$ 509.12	\$ 3,784.12	\$ 74.20	\$ 22,181.01
Aggregate	347,154	\$ 10,747,204.69	\$ 30.96	\$ 5,857,533.28	\$ 16.87	\$ 4,889,671.41

January 1, 2020, through December 31, 2020

We compared the NADAC prices to the ingredient cost on a claim-by-claim basis. A total of 357,969 generic claims were reviewed for 2020. Of the 357,969 generic claims, 355,440 claims had a NADAC associated with the NDC for the claim. The results of our analysis are as follows:

January 1 – December 31, 2020						
Pharmacy Type	Number of Claims	Ingredient Cost	Average Ingredient Cost	NADAC Cost	Average NADAC Cost	Potential Cost Savings
Retail	36,546	\$ 1,232,271.29	\$ 33.72	\$ 636,685.61	\$ 17.42	\$ 595,585.68
Retail 90	317,023	\$ 10,237,103.41	\$ 32.29	\$ 5,208,954.90	\$ 16.43	\$ 5,028,148.51
Mail Order	1,813	\$ 87,380.25	\$ 48.20	\$ 40,701.07	\$ 22.45	\$ 46,679.18
Specialty	58	\$ 42,894.41	\$ 739.56	\$ 3,830.25	\$ 66.04	\$ 39,064.16
Aggregate	355,440	\$ 11,599,649.36	\$ 32.63	\$ 5,890,171.84	\$ 16.57	\$ 5,709,477.52

January 1, 2021, through December 31, 2021

We compared the NADAC prices to the ingredient cost on a claim-by-claim basis. A total of 353,290 generic claims were reviewed for 2021. Of the 353,290 generic claims, 351,085 claims had a NADAC associated with the NDC for the claim. Results of our analysis are as follows:



January 1 – December 31, 2021						
Pharmacy Type	Number of Claims	Ingredient Cost	Average Ingredient Cost	NADAC Cost	Average NADAC Cost	Potential Cost Savings
Retail	36,552	\$ 1,010,654.40	\$ 27.65	\$ 570,261.62	\$ 15.60	\$ 440,392.78
Retail 90	312,714	\$ 8,609,317.52	\$ 27.53	\$ 4,662,964.32	\$ 14.91	\$ 3,946,353.20
Mail Order	1,747	\$ 78,996.49	\$ 45.22	\$ 36,907.29	\$ 21.13	\$ 42,089.20
Specialty	72	\$ 8,785.47	\$ 122.02	\$ 4,925.75	\$ 68.41	\$ 3,859.72
Aggregate	351,085	\$ 9,707,753.88	\$ 27.65	\$ 5,275,058.98	\$ 15.03	\$ 4,432,694.90

For the three years under examination, the use of the NADAC as a price basis to determine the ingredient costs would have resulted in a lower ingredient cost.

SHP/OptumRx Response:

Again, we note that Sanford Health Plan and OptumRx were not given the opportunity to review the data underlying Auditor's analysis. Although we are unable to determine the root cause of errors in Auditor's methodology, Auditor's inability to correctly identify pharmacy or claim types, as applicable to the agreements governing the administration of the NDPERS benefit plan, reflects an error in application of standard prescription drug benefit structure and claims data.

The description of errors related to the comparison of NADAC as a price basis are included in the above section "Average Annual Ingredient Costs – Brand Drugs", as the flawed methodology described in that section remains unchanged in the evaluation of "Average Annual Ingredient Costs – Generic Drugs".

Post Sponsors' Response: Commentary and/or Recommendation. The audit was conducted at the request of The North Dakota SAO pursuant to and in accordance with North Dakota Century Code (N.D.C.C.) Chapter 54-10 and under N.D.C.C. § 54-52.1-04.16. The objective and scope of the audit was set forth by the SAO.

The information presented is based on pharmacy claims data provided by OptumRx and the data definitions provided by OptumRx and/or SHP used to define claims types, pharmacy classifications, and brand and generic classifications of drug claims. All data is available to OptumRx and SHP in the files they provided to apply the audit methodology. The Summary of Procedures outlines the criteria utilized. The only "errors" brought to our attention were alternative ways to summarize the claims data based on claim type instead of pharmacy type. Performing the analysis based on claim type was not in the requirements and would change the results.

The NADAC comparison was based on the NADAC drug cost only when a NADAC drug cost was available for the comparative claim. The addition of a dispensing fee to the NADAC drug cost was not in the requirements and would result in a different outcome.

**b. MONY Code Analysis**

We compared the generic categorization of each drug in the paid prescription claims data to determine 1) the average costs provided during the calendar year using OptumRx's categorization of drugs, 2) the average costs of drugs using Medi-Span's MONY code categorization, and 3) the discount and dispensing fees available for comparable periods in the marketplace. Results of our analyses are as follows:

January 1, 2019, through December 31, 2019

We analyzed a total of 350,930 generic claims in 2019, categorized as retail, retail 90, mail order, and specialty pharmacy claims. Using OptumRx's categorization of generic drugs, the average ingredient cost was \$32.43 per claim, average dispensing fee was \$0.44 per claim, and average NDPERS cost was \$21.67 per claim for all generic claims filled within the calendar year.

Average Costs Provided During the Calendar Year Using OptumRx's Categorization of Drugs				
Pharmacy Type	Number of Claims	Ingredient Cost	Dispensing Fee	NDPERS Total
Retail	36,910	\$32.54	\$0.52	\$22.05
Retail 90	312,311	\$32.20	\$0.44	\$21.43
Mail Order	1,651	\$54.88	\$0.00	\$38.27
Specialty	58	\$582.21	\$0.38	\$552.24
Aggregate	350,930	\$32.43	\$0.44	\$21.67

The generic categorization used by OptumRx was compared to the Medi-Span MONY code categorization. Each claim was compared to Medi-Span based on the NDC and date of service for the claim. We did not identify generic claims that were mis-categorized as generic by OptumRx.

We compared the discount and fee rates available for the comparable period in the marketplace based on our experience with similar benefits and are only used for comparative purposes to determine where NDPERS' drug experience fell within that continuum. Using the aggregate average derived from the paid claims data when compared to contracted market rates applied to these claims, we determined the 2019 discount percentage was on the higher end of the market, which was beneficial to NDPERS. Additionally, the dispensing fees applied to the claims in 2019 were average compared to the market.

SHP/OptumRx Response:

Again, we note that although we are unable to determine the root cause of errors in Auditor's methodology, Auditor's inability to correctly identify pharmacy or claim types, as applicable to the agreements governing the administration of the NDPERS benefit plan, reflects an error in application of standard prescription drug benefit structure and claims data. Additionally, we note that Auditor results failed to correctly apply applicable dispensing fees for brand and generics at retail, as set forth the amended Prescription Drug Benefit Administration effective between SHP and OptumRx for calendar year 2019. Under such terms, discounts and dispensing fees in the respective agreements are measured and reconciled annually, with the PBM crediting or paying the value of any shortfall in performance. Thus, in addition to the flaws



noted in Auditor's overall methodology in approaching the analysis and stated objectives, Auditor's observation demonstrates a failure to examine or apply the provisions of the relevant agreements in order to understand the NDPERS benefit plan itself.

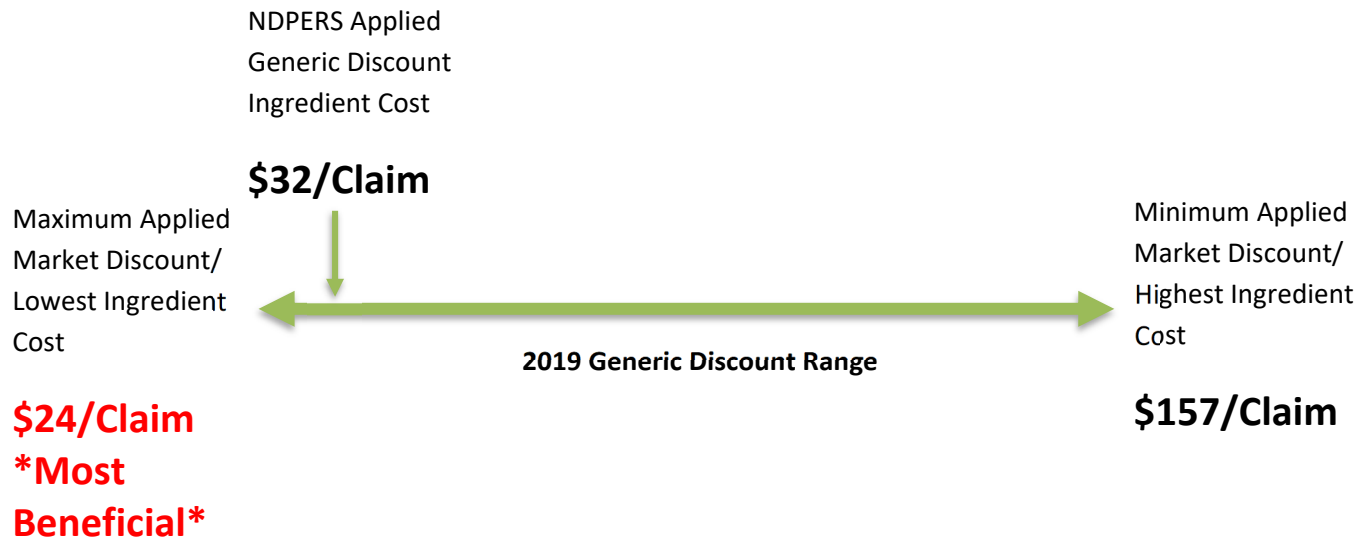
Additionally, errors were noted in relation to marketplace comparisons. The description of these errors are included in the above section "2019 Market Comparison of Brand Discounts", as the flawed methodology described in that section remains unchanged in the evaluation of "Average Annual Ingredient Costs – Generic Drugs".

Post Sponsors' Response: Commentary and/or Recommendation. The audit was conducted at the request of The North Dakota SAO pursuant to and in accordance with North Dakota Century Code (N.D.C.C.) Chapter 54-10 and under N.D.C.C. § 54-52.1-04.16. The objective and scope of the audit was set forth by the SAO.

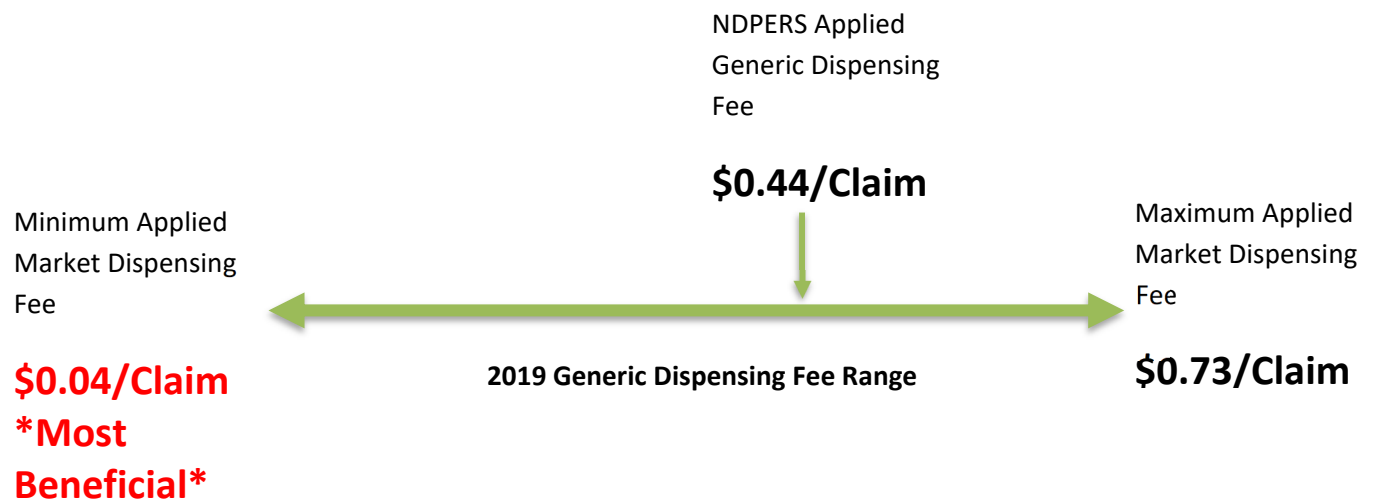
The information presented is based on pharmacy claims data provided by OptumRx and the data definitions provided by OptumRx and/or SHP used to define claims types, pharmacy classifications, and brand and generic classifications of drug claims. The Summary of Procedures outlines the criteria utilized. The only "errors" brought to our attention were alternative ways to summarize the claims data based on claim type instead of pharmacy type. Performing the analysis based on claim type was not in the requirements and would change the results. Examining annual reconciliations in the respective agreements was not an objective for the above analysis.



2019 Market Comparison of Generic Discounts



2019 Market Comparison of Generic Dispensing Fees



January 1, 2020, through December 31, 2020

We analyzed a total of 357,969 generic claims in 2020, categorized as retail, retail 90, mail order, and specialty pharmacy claims. Using OptumRx's categorization of generic drugs, the average ingredient cost was \$33.74 per claim, average dispensing fee was \$0.43 per claim, and average NDPERS cost was \$22.74 per claim for all generic claims filled within the calendar year.



Average Costs Provided During the Calendar Year Using OptumRx's Categorization of Drugs				
Pharmacy Type	Number of Claims	Ingredient Cost	Dispensing Fee	NDPERS Total
Retail	37,014	\$38.44	\$0.50	\$27.21
Retail 90	319,062	\$32.73	\$0.42	\$21.80
Mail Order	1,819	\$48.28	\$0.00	\$31.19
Specialty	74	\$1,692.38	\$1.00	\$1,662.79
Aggregate	357,969	\$33.74	\$0.43	\$22.74

The generic categorization used by OptumRx was compared to the Medi-Span MONY code categorization. Each claim was compared to Medi-Span based on the NDC and date of service for the claim.

We compared the discount and fee rates for the comparable period in the marketplace based on our experience with similar benefits and are only used for comparative purposes to determine where NDPERS' drug experience fell within that continuum. Using the aggregate average derived from the paid claims data when compared to contracted market rates applied to these claims, we determined that the 2020 discount percentage was on the higher end of the market, which was beneficial to NDPERS. Additionally, the dispensing fees that were applied to the claims in 2020 were average compared to the rest of the market.

SHP/OptumRx Response:

Errors noted are included in the above section "2019 Market Comparison of Brand Discounts", as the flawed methodology described in that section remains unchanged in the evaluation of "2019 Market Comparison of Generic Discounts.

Post Sponsors' Response: Commentary and/or Recommendation. The audit was conducted at the request of The North Dakota SAO pursuant to and in accordance with North Dakota Century Code (N.D.C.C.) Chapter 54-10 and under N.D.C.C. § 54-52.1-04.16. The objective and scope of the audit was set forth by the SAO.

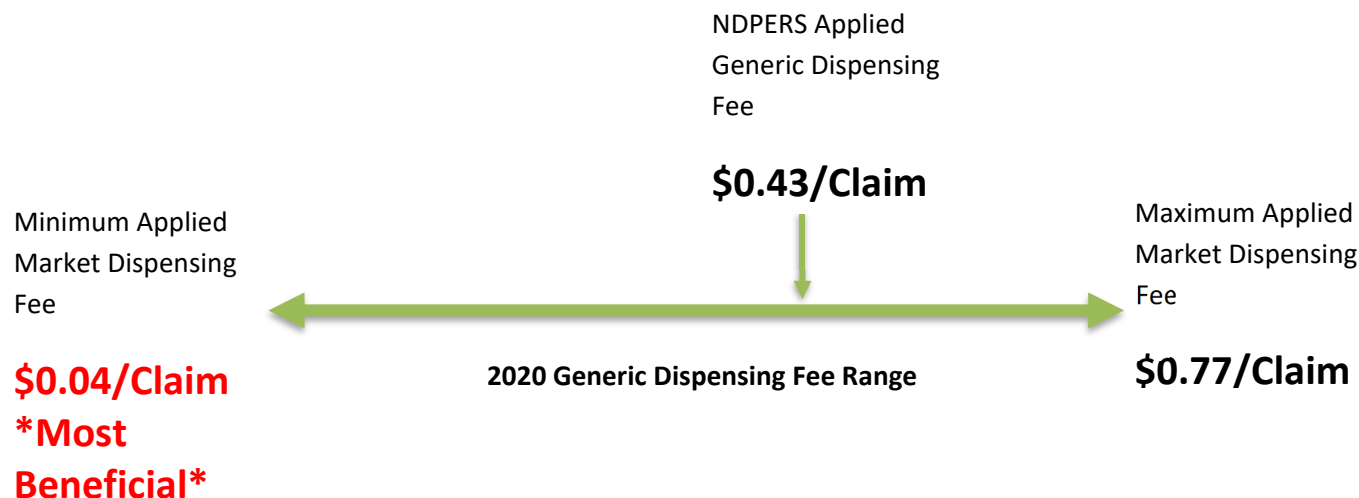
The information presented is based on pharmacy claims data provided by Optum Rx and the data definitions provided by OptumRx and/or SHP used to define claims types, pharmacy classifications, and brand and generic classifications of drug claims. All data is available to OptumRx and SHP in the files they provided to apply the audit methodology. The *Summary of Procedures* outlines the criteria utilized. The only "errors" brought to our attention were alternative ways to summarize the claims data based on claim type instead of pharmacy type. Performing the analysis based on claim type was not in the requirements and would change the results.



2020 Market Comparison of Generic Discounts



2020 Market Comparison of Generic Dispensing Fees



January 1, 2021, through December 31, 2021

We analyzed a total of 353,290 generic claims in 2021, categorized as retail, retail 90, mail order, and specialty pharmacy claims. Using OptumRx's categorization of generic drugs, the average ingredient cost was \$28.15 per claim, average dispensing fee was \$0.86 per claim, and average NDPERS cost was \$17.97 per claim for all generic claims filled within the calendar year.



Average Costs Provided During the Calendar Year Using OptumRx's Categorization of Drugs				
Pharmacy Type	Number of Claims	Ingredient Cost	Dispensing Fee	NDPERS Total
Retail	36,975	\$28.46	\$1.67	\$18.76
Retail 90	314,463	\$27.93	\$0.77	\$17.74
Mail Order	1,762	\$46.52	\$0.00	\$29.54
Specialty	90	\$317.86	\$4.35	\$284.71
Aggregate	353,290	\$28.15	\$0.86	\$17.97

The generic categorization used by OptumRx was compared to the Medi-Span MONY code categorization. Each claim was compared to Medi-Span based on the NDC and date of service for the claim.

We compared the discount and fee rates available for the comparable period in the marketplace based on our experience with similar benefits and are only used for comparative purposes to determine where NDPERS' drug experience fell within that continuum. Using the aggregate average derived from the paid claims data when compared to contracted market rates applied to these claims, we determined the 2021 discount percentage was on the higher end of the market. This shift would be expected under the newly implemented transparent contract where market discounts were passed-through to NDPERS, but greater dispensing fees are charged as part of the payment equation to compensate for the reduction in the spread that was part of the 2019 and 2020 traditional contract arrangement. For 2021, NDPERS benefited from above-average generic discounts and would have benefited from a lower relative effective dispensing fee.

SHP/OptumRx Response:

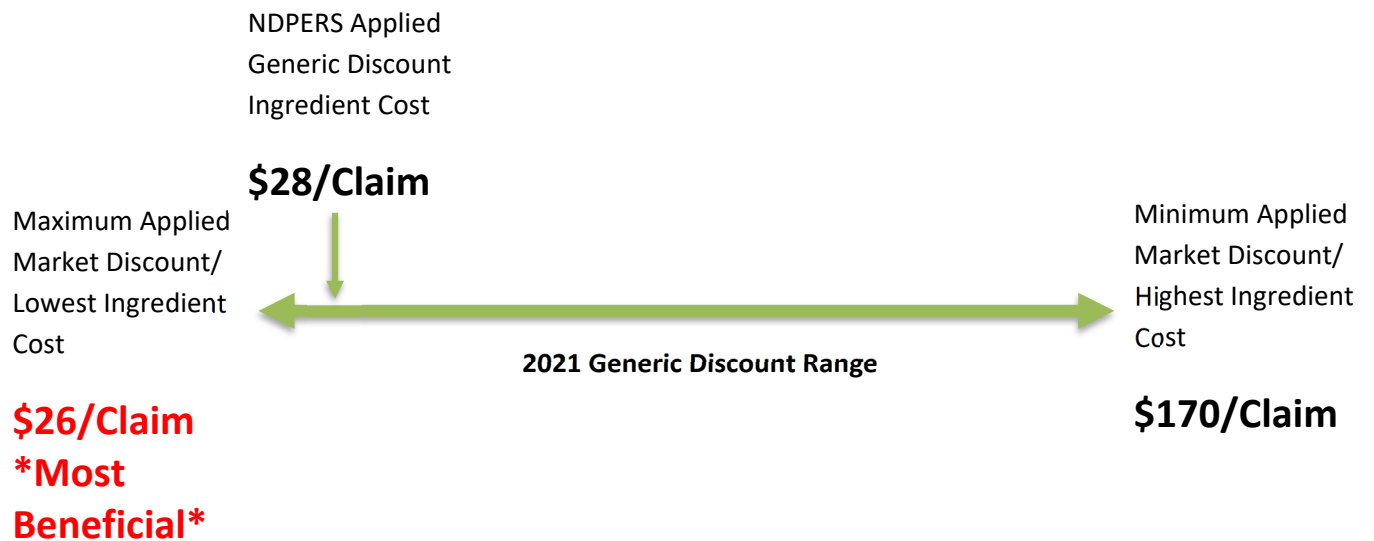
Errors noted are included in the above section "2019 Market Comparison of Brand Discounts", as the flawed methodology described in that section remains unchanged in the evaluation of "2020 Market Comparison of Generic Discounts."

Post Sponsors' Response: Commentary and/or Recommendation. The audit was conducted at the request of The North Dakota SAO pursuant to and in accordance with North Dakota Century Code (N.D.C.C.) Chapter 54-10 and under N.D.C.C. § 54-52.1-04.16. The objective and scope of the audit was set forth by the SAO.

The information presented is based on pharmacy claims data provided by OptumRx and the data definitions provided by OptumRx and/or SHP used to define claims types, pharmacy classifications, and brand and generic classifications of drug claims. The *Summary of Procedures* outlines the criteria utilized. The only "errors" brought to our attention were alternative ways to summarize the claims data based on claim type instead of pharmacy type. Performing the analysis based on claim type was not in the requirements and would change the results. Examining annual reconciliations in the respective agreements was not an objective for the above analysis.



2021 Market Comparison of Generic Discounts



2021 Market Comparison of Generic Dispensing Fees





SHP/OptumRx Response:

Again, we note that although we are unable to determine the root cause of errors in Auditor's methodology, Auditor's inability to correctly identify pharmacy or claim types, as applicable to the agreements governing the administration of the NDPERS benefit plan, reflects an error in application of standard prescription drug benefit structure and claims data.

Additionally, we note that Auditor's observations that seemingly compare dispensing fees under the pass-through contract terms in effect for 2021 to the prior years, and how a "shift" was "to be expected", is flawed. Applicable dispensing fees for brand and generics at retail, as set forth the amended Prescription Drug Benefit Administration effective between SHP and OptumRx for calendar year 2021, were either *lower* than the discounts in effect for calendar years 2019 or 2020, or neutral. Further, discounts and dispensing fees in the respective agreements are measured and reconciled annually, with the PBM crediting or paying the value of any shortfall in performance. Thus, in addition to the flaws noted in Auditor's overall methodology in approaching the analysis and stated objectives, Auditor's observation demonstrates a failure to examine or apply the provisions of the relevant agreements in order to understand the NDPERS benefit plan itself.

Post Sponsors' Response: Commentary and/or Recommendation. The audit was conducted at the request of The North Dakota SAO pursuant to and in accordance with North Dakota Century Code (N.D.C.C.) Chapter 54-10 and under N.D.C.C. § 54-52.1-04.16. The objective and scope of the audit was set forth by the SAO.

The information presented is based on pharmacy claims data provided by OptumRx and the data definitions provided by OptumRx and/or SHP used to define claims types, pharmacy classifications, and brand and generic classifications of drug claims. All data is available to OptumRx and SHP in the files they provided to apply the audit methodology. The *Summary of Procedures* outlines the criteria utilized. The only "errors" brought to our attention were alternative ways to summarize the claims data based on claim type instead of pharmacy type. Performing the analysis based on claim type was not in the requirements and would change the results. Examining annual reconciliations in the respective agreements was not an objective for the above analysis.



Administrative Fees Invoiced & Additional Fees Invoiced

Objectives

- *Administrative fees assigned to each paid prescription claim will be totaled from the historical claim file for each year.*
- *The paid prescription claims data will be programmatically searched for other fees, such as PA fees, formulary management fees, transaction fees, and transmission fees.*
- *The administrative fees and other fees will be compared to the applicable fee line item on the remittance advices for each year.*

Summary of Procedures

- *Obtained paid claims file from OptumRx and matched the paid claims file on control totals to verify the file content for the review periods.*
- *Analyzed the Prescription Drug Benefit Administrative Agreement contract and confirmed the “Administrative Fees for In-house Pharmacy Claims” and “Paper Claim Fees.”*
- *Analyzed 100 percent of the paid claims to confirm the administrative fees and additional fees on each claim.*

Scope Limitations

Requested remittance advices were not provided by SHP or OptumRx for 2019 and 2020. As a result, we were unable to reconcile the administrative fees and additional fees in the paid prescription claims data to the remittance advices for those years for the full paid claims set to confirm conformance with any charge levels or to observe whether or not there were charge levels in the remittances that were not equivalent to the detail within the paid claims detail records.

To obtain some opportunity to review a limited amount of 2021 claims experience, OptumRx agreed to provide remittance advice information for a 30 claim sample for plan year 2021. These claims did not have administrative fees or additional fees associated with them at the claim level. OptumRx isolated and recreated the line-item remittance information for the original statements and these were reviewed. This was a work-around solution undertaken to allow at least a minimum degree of review to be undertaken due to the lack of the provision of the full remittance records.

Results

Finding #1: Remittance advices were not provided for 2019 and 2020 claims.

As a result, the administrative fees in the paid prescription claims data were unable to be reconciled to 2019 and 2020 remittance advices. This prevented the completion of the State Auditor’s required comprehensive analysis per their specifications for these plan years. For the 2021 plan year, OptumRx cited the volume of data as a hindrance to providing remittance advice detail for all 2021 paid claims transactions.



■ **Condition.** Through review of the paid prescription claims data, we found no administrative fees were present in the prescription claims records for calendar years 2019, 2020, and 2021. However, because original remittance advices were not made available by SHP or OptumRx, we were unable to verify the remittance advices for 2019 and 2020 did not contain administrative fees and match that information to the paid claims data. A small sample of 30 remittance advices for 2021 were recreated and sent for review. We were unable to test the full original remittance advices for all 2021 claims.

■ **Criteria.** Per the North Dakota Century Code (NDCC) § 54-52.1-04.16.1.a. Prescription Drug Coverage – Performance Audits, the board must have full access to data regarding:

- Total dollars paid to the PBM by the carrier and the board.
- Total amount of dollars paid to the PBM by the carrier which were not subsequently paid to a licensed pharmacy in the state.
- Payments made to all pharmacy providers.

Per NDCC § 54-52.1-04.16.1.f. Prescription Drug Coverage – Performance Audits, the contract must provide that all drug rebates, financial incentives, fees, and discounts must be disclosed to the board.

The text of House Bill 1004 of the 2021 Legislative Session states that the Auditor, in accordance with North Dakota Century Code (N.D.C.C.) ch. 54-10 and under N.D.C.C. § 54-52.1-04.16, shall complete a performance audit on the prescription drug program of NDPERS. It specifically states that calendar years 2019, 2020, and 2021 are subject to the same manner provided in N.D.C.C. § 54-52.101-04.16. (Please see Exhibit B – State of North Dakota Office of Attorney General Letter to NDPERS Plan Sponsors for the September 14, 2022 request for information by the Office of the Attorney General from SHP and OptumRx).

■ **Cause.** The remittance advices for 2019, and 2020 were not provided to us for the audit. A small sample of 30 remittance advices for 2021 were recreated and sent for review. We were unable to test the full original remittance advices for all 2021 paid claims. SHP stated that data from 2019 and 2020 is not in their possession. Furthermore, SHP states that their interpretation of NDCC 54-52.1-04.16 does not authorize access to the requested data. SHP also stated that the contracts between NDPERS and SHP, and SHP and OptumRx do not allow access to the data. Lastly, SHP asserted that the requested data is out of scope for a performance audit.

Additionally, OptumRx asserts that Myers and Stauffer has received everything required for the audit. OptumRx also states that the data they have contains data from non-NDPERS related prescriptions and that “page level review and redaction is manual and labor intensive.” OptumRx also asserts that they have the same audit rights as SHP, whose agreement did not include an NDPERS-focused audit until 2021. OptumRx believes that SHP and NDPERS have provided all data pertinent to the performance audit, given the statutory and contractual requirements in effect for each year.



- **Effect.** *Myers and Stauffer was unable to compare the administrative fee field amounts from the prescription claims data to the actual amount invoiced within the 2019 and 2020 remittance advices. We were able to test the sample of 30 recreated remittance advices with the provided information for 2021. As such, we were unable to perform this section of the performance audit in its entirety, as stipulated by the requirements provided by the State Auditor.*
- **Recommendation.** *We recommend that SHP and OptumRx provide the original remittance advices for 2019, 2020, and 2021 so this portion of the audit can be validated and completed.*

SHP/OptumRx Response:

Auditor's Observations state that "Remittance advices were not provided for 2019 and 2020 claims. As a result, the administrative fees in the paid prescription claims data were unable to be reconciled to 2019 and 2020 remittance advices." Although Auditor has yet to provide data underlying this analysis, we note fundamental errors in Auditor's methodology to the extent that Auditor suggests that review of *pharmacy remittance data* was necessary to examine application of administrative fees. While Auditor's analysis is correct in noting that the Prescription Drug Benefit Administrative Agreement contract sets forth certain "Administrative Fees for In-house Pharmacy Claims" and "Paper Claim Fees", Auditor failed to recognize that pursuant to the terms of the agreement, such fees are billed and invoiced to SHP, as is standard for such administrative fees. Auditor's error in attempting to review *pharmacy remittance data* to identify amounts billed and invoiced to the *plan* demonstrates a failure to understand standard prescription drug benefit structure.

Auditor's insistence on reviewing remittance advices that would not contain the administrative fees that were the stated subject of the 'performance audit' objective demonstrates a failure to understand standard prescription drug benefit structure. General audit standards recognize that the Auditor's obligation is to measure performance and compliance with **applicable** laws, regulations, and contract standards. In excerpting only certain provisions of N.D.C.C. § 54-52.1-04.16, Auditor has omitted that the statute, effective August 1, 2019, is applicable to contracts entered by the public employees retirement system board **on and after** the effective date of the Act. Specifically, effective August 1, 2019, the statute states: "Except for Medicare part D, prescription drug coverage, the board **may not enter or renew** a contract for prescription drug coverage unless the contract authorizes the board during the term of the contract to conduct a performance audit of the prescription drug coverage and any related pharmacy benefits management services."

As Auditor is aware, no renewal was entered between SHP and NDPERS until the parties entered **First Amendment to the Administrative Services Agreement**, for the period July 1, 2021 through June 30, 2023. In full compliance with the requirements of N.D.C.C. § 54-52.1-04.16, at the time of such renewal, SHP and NDPERS incorporated the provisions of N.D.C.C. § 54-52.1-04.16 in its entirety into the agreement, and agreed a prescription drug performance audit for 2021 calendar year would be conducted in accordance with chapter 54-10 and 54-52.1-04.16 for the 2021 calendar year.

House Bill 1004, passed into law on May 5, 2021, states that State Auditor shall contract to conduct a prescription drug coverage performance audit "in the same manner **as provided for under section 54-52.04.16**, for calendar years 2019, 2020, 2021." As a result, and because the audit authorized under House Bill 1004 is coterminous with, and not more extensive than, the effective provisions in



N.D.C.C. § 54-52.1-04.16, an audit spanning three separate calendar years, 2019, 2020, and 2021, which span three biennium periods under NDPERS' contracts with SHP, necessarily required the Auditor to **apply the law and contract terms in effect for each year** included in the audit period, as applicable. Applicable North Dakota law does not, as Auditor maintains, require or even authorize and a performance audit "that all three plan years be audited in the same manner". Rather, House Bill 1004 simply authorized the State Auditor to conduct an audit of three calendar years.

For calendar years 2019 and 2020, auditors are not permitted to retrospectively apply terms that did not become effective until July 1, 2021 to earlier contract periods which were performed under entirely different contractual terms or regulatory requirements. This is particularly so given that contract performance for each of the earlier years, 2019 and 2020, was fully completed well before either N.D.C.C. § 54-52.1-04.16 or House Bill 1004 were effective. Rather, auditors are required to assess performance for calendar years 2019 and 2020 under the various contract standards and regulations applicable during those years. Under the traditional pricing model effective between OptumRx and SHP for contract years 2019 and 2020, SHP paid fixed pharmacy rates as set forth in the parties' agreement. Under the agreement in effect for these contract years, SHP's audit rights relevant to test OptumRx's performance did not extend to amounts paid to retail pharmacies, as the parties agreed that the amount OptumRx paid to the network pharmacy may vary and may not be equal to the amount billed to SHP, and OptumRx would retain the difference (if any). SHP and OptumRx provided all information needed to complete an assessment of performance to the terms of the contract in place for 2019 and 2020.

For calendar year 2021, consistent with the terms of the renewal entered between SHP and NDPERS under the **First Amendment to the Administrative Services Agreement**, and the requirements of N.D.C.C. § 54-52.1-04.16, which were incorporated by reference therein, and the terms of SHP's agreement with OptumRx, which provided for the facilitation and support for an NDPERS-focused audit of calendar year 2021, Meyers and Stauffer received and had the opportunity to review **100% of the pharmacy claims data** showing complete pharmacy payment details for the NDPERS plan, as well as the copies of the pharmacy remittance advices for the agreed upon sample of remittance advices. For the avoidance of doubt, remittance advices reflect payment details already included in the NDPERS claims data.

In sum, SHP and OptumRx provided all information the Auditor needed to complete an assessment of performance for, and compliance with, the statutory and contractual requirements in effect for each calendar year 2019, 2020, and 2021.

Post Sponsors' Response: Commentary and/or Recommendation. The audit was conducted at the request of The North Dakota SAO pursuant to and in accordance with North Dakota Century Code (N.D.C.C.) Chapter 54-10 and under N.D.C.C. § 54-52.1-04.16. The objective and scope of the audit was set forth by the SAO. To comply with ND state law requirements for audit that all three plan years be audited in the same manner, original remittance advices were required to be provided for each plan year. While our review of the paid prescription claims data did not identify additional fees, we were not able to audit to the original remittance advices. Paper claims fees and In-house pharmacy claims administrative fees can be present in pharmacy claims data when such claims are received by PBMs and



added to the paid claims records. Client incentive fees and other amounts may be included as types of administrative fees included in the paid claims record. As noted in the *Objectives and Summary of Procedures*, remittance advices were to be utilized to validate information present in the paid claims data.

Finding #2: Remittance advices were not provided for 2019 and 2020 claims.

As a result, any additional fees in the paid prescription claims data were unable to be reconciled to 2019 and 2020 remittance advices. This prevented the completion of the State Auditor's required comprehensive analysis per their specifications. For the 2021 plan year, OptumRx cited the volume of data as a hindrance to providing remittance advice detail for all 2021 paid claims transactions.

■ **Condition.** *Through review of the paid prescription claims data, we found no additional fees, such as PA fees, formulary management fees, transaction fees, or transmission fees were added to the prescription claims for 2019, 2020, and 2021. However, we were unable to verify the remittance advices for 2019 and 2020 did not contain additional fees as SHP and OptumRx did not provide prescription remittance advices for these years. A small sample of 30 remittance advices for 2021 were recreated and sent for review. We were unable to test the full original remittance advices for all 2021 claims.*

■ **Criteria.** *Per the NDCC § 54-52.1-04.16.1.a. Prescription Drug Coverage – Performance Audits, the board must have full access to data regarding:*

- *Total dollars paid to the PBM by the carrier and the board.*
- *Total amount of dollars paid to the PBM by the carrier which were not subsequently paid to a licensed pharmacy in the state.*
- *Payments made to all pharmacy providers.*

Per NDCC § 54-52.1-04.16.1.f. Prescription Drug Coverage – Performance Audits, the contract must provide that all drug rebates, financial incentives, fees, and discounts must be disclosed to the board.

The text of House Bill 1004 of the 2021 Legislative Session states that the Auditor, in accordance with North Dakota Century Code (N.D.C.C.) ch. 54-10 and under N.D.C.C. § 54-52.1-04.16, shall complete a performance audit on the prescription drug program of NDPERS. It specifically states that calendar years 2019, 2020, and 2021 are subject to the same manner provided in N.D.C.C. § 54-52.101-04.16. (Please see Exhibit B – State of North Dakota Office of Attorney General Letter to NDPERS Plan Sponsors for the September 14, 2022 request for information by the Office of the Attorney General from SHP and OptumRx).

■ **Cause.** *The remittance advices for 2019, and 2020 were not provided to us for the audit. A small sample of 30 remittance advices for 2021 were recreated and sent for review. We were unable to test the full original remittance advices for 2021. SHP stated that data from 2019 and 2020 is not in their possession. Furthermore, SHP states that their interpretation of NDCC 54-52.1-04.16 does*



not authorize access to the requested data. SHP also stated that the contracts between NDPERS and SHP, and SHP and OptumRx do not allow access to the data. Lastly, SHP asserted that the requested data is out of scope for a performance audit.

Additionally, OptumRx asserts that Myers and Stauffer has received everything required for the audit. OptumRx also states that the data they have contains data from non-NDPERS related prescriptions and that “page level review and redaction is manual and labor intensive.” OptumRx also asserts that they have the same audit rights as SHP, whose agreement did not include an NDPERS-focused audit until 2021. OptumRx believes that SHP and NDPERS have provided all data pertinent to the performance audit given the statutory and contractual requirements in effect for each year.

- **Effect.** *Myers and Stauffer was unable to compare the additional fee field amounts from the prescription claims data to the actual amount invoiced within the 2019 and 2020 remittance advices. We were able to test the sample of 30 recreated remittance advices with the provided information for 2021. As such, we were unable to perform this section of the performance audit in its entirety, as stipulated by the requirements provided by the State.*
- **Recommendation.** *We recommend that SHP and OptumRx provide the original remittance advices for 2019, 2020, and 2021 so this portion of the audit can be validated and completed.*

SHP/OptumRx Response:

See Response to “Administrative Fees Invoiced & Additional Fees Invoiced - Finding #1: Remittance advices were not provided for 2019 and 2020 claims”.

Post Sponsors’ Response: Commentary and/or Recommendation. The audit was conducted at the request of The North Dakota SAO pursuant to and in accordance with North Dakota Century Code (N.D.C.C.) Chapter 54-10 and under N.D.C.C. § 54-52.1-04.16. The objective and scope of the audit was set forth by the SAO. To comply with ND state law requirements for audit that all three plan years be audited in the same manner, original remittance advices were required to be provided for each plan year. While our review of the paid prescription claims data did not identify additional fees, we were not able to audit to the original remittance advices. Paper claims fees and In-house pharmacy claims administrative fees can be present in pharmacy claims data when such claims are received by PBMs and added to the paid claims records. Client incentive fees and other amounts may be included as types of administrative fees included in the paid claims record. As noted in the *Objectives and Summary of Procedures*, remittance advices were to be utilized to validate information present in the paid claims data.



Prior Authorizations Implemented in 2021

Objectives

- Identify paid prescription claims for 2021 with PA flags and/or criteria.
- Identify additional drugs for which PAs were imposed and the reasons why.
- Recommend any changes to the formulary for the current PA rules.

Summary of Procedures

- Reviewed formulary to identify drugs for which new PAs were implemented in 2021.
- Reviewed 100 percent of the paid claims to flag claims with PA codes for drugs for which new PAs were implemented in 2021.
- Reviewed protocols and policies from SHP and/or OptumRx to support the PAs added to the 2021 formulary.
- Recommended changes to the formulary for PAs, as applicable.

Scope Limitations

There were no limitations to the review.

PA is a utilization management approach or pathway PBMs utilize to require NDPERS members to receive a pre-approval to qualify a drug for coverage and to be paid for under their benefit. This is done to ensure the member's condition and medical history warrants the utilization of the drug instead of lower cost alternatives.

Results

Based on our analysis of the formulary, there were 16 new drugs added that required a PA in 2021. These drugs were recently approved therapies for release and appropriate additions for prior authorization to allow for a coverage decision to be made. The PA criteria and policies were provided by SHP, were reviewed for clinical appropriateness, and were deemed appropriate.

Additionally, our analysis did not identify any members receiving a paid claim for any of the new drugs added as a PA to the formulary in 2021. No issues were observed with the PA medications listed on the formulary, and we do not recommended changes to these formulary PA medications or their PA criteria. The chart below includes the PA medications that were added in 2021.

Prior Authorization Medications Implemented in 2021	
Bafiertam	Nurtec
Dojolvi	Oriahn
Enspryng	Oxbryta
Evrysdi	Trikafta
Fintepla	Ubrelvy



Prior Authorization Medications Implemented in 2021	
Isturisa	Vumerity
Jatenzo	Vyndagel
Nexleto/Nexlizet	Zeposia

SHP/OptumRx Response:

Auditor's Note: SHP/Optum had no comments for this section.



Step Therapies Implemented in 2021

Objectives

- Identify paid prescription claims for 2021 with ST flags and/or criteria.
- Identify additional drugs that STs were imposed and the reasons why.
- Recommend any changes on the formulary to the current ST rules.

Summary of Procedures

- Reviewed formulary to identify drugs for which new STs were implemented in 2021.
- Reviewed 100 percent of the paid claims to flag claims that have ST codes for drugs for which new STs were implemented in 2021.
- Reviewed protocols and policies from SHP and/or OptumRx to support the STs added to the 2021 formulary.
- Recommended changes to the formulary for STs, as applicable.

Scope Limitations

There were no limitations to the review.

ST is a utilization management approach or pathway PBMs utilize to require NDPERS members to receive pre-approval to qualify a drug for coverage and to be paid for under their benefit. This is done to ensure that the member has tried and failed less expensive drug therapy alternatives prior to beginning therapy on a more expensive drug.

Results

Based on our analysis of the formulary, there were 18 new drugs added that required ST in 2021. The ST criteria and policies were provided by SHP and were reviewed for clinical appropriateness. A ST requirement for these newly added drugs was deemed appropriate because they have lower cost alternative drug therapies available for their disease states and indications. No issues were observed with the ST medications listed on the formulary, and we do not recommended changes to these formulary ST medications or their ST criteria.

Additionally, our analysis did not identify any members receiving a paid claim for any of the new drugs added as ST to the formulary in 2021. The chart below includes the ST medications added in 2021.

Step Therapy Medications Implemented in 2021	
Adlyxin	Pexeva
Aimovig	Reyvow
Ajovy	Secuado
Caplyta	Travatan Z
Desvenlafaxine ER	Trulance



Step Therapy Medications Implemented in 2021

Emgality	Trulicity
Fetzima	Viibryd
Khedeza	Vyzulta
Orexin	Zioptan

SHP/OptumRx Response:

SHP/OptumRx had no comments for this section.



Quantity Limits Implemented in 2021

Objectives

- *Identify paid prescription claims for 2021 with QL flags and/or criteria.*
- *Identify additional drugs for which QLs were imposed and the reasons why.*
- *Recommend any changes to the formulary for the current QL rules.*

Summary of Procedures

- *Reviewed formulary to identify drugs for which new QLs were implemented in 2021.*
- *Reviewed 100 percent of the paid claims to flag claims with PA codes for drugs for which new QLs were implemented in 2021.*
- *Reviewed protocols and policies from SHP and/or OptumRx to support the QLs added to the 2021 formulary.*
- *Recommended changes to the formulary for QLs, as applicable.*

Scope Limitations

There were no limitations to the review.

QLs are a utilization management approach PBM's utilize to ensure NDPERS members receive no more than a maximum number of units or doses over time. Some specific drugs are assigned specific QLs to help ensure appropriate use of drug therapy, avoid overuse and misuse, and to control drug costs.

Results

Based on our analysis of the formulary, there were three new drugs that had QLs applied in 2021. The QL criteria and policies were provided by SHP and were reviewed for clinical appropriateness. QLs are appropriate to place on approved glucose monitors (Dexcom) and novel drugs with high costs (Piqray). No issues were observed with the medications requiring a QL review listed on the formulary, and we do not recommended changes to the formulary QL medications or any increases or decreases in the assigned quantity limits.

Our analysis did not identify any members receiving a paid claim for the new drugs added to the formulary in 2021 that had QLs in place. The chart lists the medications requiring QLs added in 2021.

There were no instances observed where there were QLs imposed on retail pharmacies in the state that were not applied to any OptumRx subsidiary or affiliated mail order pharmacy, or specialty pharmacy.



Quantity Limits Implemented in 2021

Dexcom G6 MIS Transmit

Piqray 250MG

Piqray 300MG

SHP/OptumRx Response:

Auditor's note: SHP/OptumRx had no comments for this section.



Spread Pricing: Retail Pharmacy

Objectives

- *Review the paid prescription claims history and determine whether the NDPER's calculated obligation on each retail claim corresponds to the amounts OptumRx invoiced SHP for the NDPER's drug experience.*
- *Compare the drug costs in the paid prescription claims data to the drug costs on the remittance advices for each year.*

Summary of Procedures

- *Obtained paid claims file from OptumRx and matched the paid claims file on control totals to verify the file content for the review periods.*
- *Analyzed 100 percent of the paid claims to confirm the drug costs on each claim.*
- *Compared drug costs in the paid prescription claims data to the remittance advices, as applicable, to determine if there were discrepancies in drug costs which would have been indicative of spread pricing.*

Scope Limitations

Requested remittance advices were not provided by SHP or OptumRx for 2019 and 2020. As a result, we were unable to reconcile the price and discount information in the paid prescription claims data to the remittance advices for those years for the full paid claims set to determine whether a spread component existed.

All original remittance advices were requested for 2021. OptumRx agreed to provide remittance advice information, not the original remittance advices, for a sample of 30 claims.

Results

Finding #1: The potential spread pricing for claims filled at retail pharmacies was unable to be calculated since SHP and OptumRx did not provide prescription remittance advices.

- **Condition.** *NDPERS and SHP were in a traditional pharmacy service agreement arrangement for 2019 and 2020, which included a spread pricing component for both years. We are unable to quantify the spread pricing since SHP and OptumRx did not provide remittance advices for 2019 and 2020.*

NDPERS and SHP transitioned to a transparent pharmacy service agreement with NDPERS in 2021. SHP and OptumRx provided isolated single-claim remittance documentation for a selection of 30 prescription claims provided to them by Myers and Stauffer. The review of the documentation of the limited 30 claims supported that spread pricing was not present in those claims. However, we were unable to examine original remittance advices for all the 2021 claims.



■ **Criteria.** *Per the NDCC § 54-52.1-04.16.1.a. Prescription Drug Coverage – Performance Audits, the board must have full access to data regarding:*

- *Total dollars paid to the PBM by the carrier and the board.*
- *Total amount of dollars paid to the PBM by the carrier which were not subsequently paid to a licensed pharmacy in the state.*
- *Payments made to all pharmacy providers.*

Per NDCC § 54-52.1-04.16.1.d. Prescription Drug Coverage – Performance Audits, the board must have full access to data regarding any direct and indirect fees, charges, or recoupment, or any kind of assessments imposed by the PBM on pharmacies licensed with which the PBM shares common ownership or control or is affiliated.

Per NDCC § 54-52.1-04.16.1.e. Prescription Drug Coverage – Performance Audits, the board must have full access to data regarding any direct and indirect fees, charges, or recoupment, or any kind of assessments imposed by PBM on pharmacies licensed in the state.

Per NDCC § 54-52.1-04.16.1.f. Prescription Drug Coverage – Performance Audits, the contract must provide that all drug rebates, financial incentives, fees, and discounts must be disclosed to the board.

The text of House Bill 1004 of the 2021 Legislative Session states that the Auditor, in accordance with North Dakota Century Code (N.D.C.C.) ch. 54-10 and under N.D.C.C. § 54-52.1-04.16, shall complete a performance audit on the prescription drug program of NDPERS. It specifically states that calendar years 2019, 2020, and 2021 are subject to the same manner provided in N.D.C.C. § 54-52.101-04.16. (Please see Exhibit B – State of North Dakota Office of Attorney General Letter to NDPERS Plan Sponsors for the September 14, 2022 request for information by the Office of the Attorney General from SHP and OptumRx).

■ **Cause.** *The remittance advices for 2019, and 2020 were not provided to us for the audit. A small sample of 30 remittance advices for 2021 were recreated and sent for review. We were unable to test the full original remittance advices for 2021. SHP stated that data from 2019 and 2020 is not in their possession. Furthermore, SHP states that their interpretation of NDCC 54-52.1-04.16 does not authorize access to the requested data for audit. SHP also stated that the contracts between NDPERS and SHP, and SHP and OptumRx do not allow access to the data. Lastly, SHP asserted that the requested data is out of scope for a performance audit.*

Additionally, OptumRx asserts that Myers and Stauffer has received everything required for the audit. OptumRx also states that the data they have contains data from non-NDPERS related prescriptions and that “page level review and redaction is manual and labor intensive.” OptumRx also asserts that they have the same audit rights as SHP, whose agreement did not include an NDPERS-focused audit until 2021. OptumRx believes that SHP and NDPERS have provided all data



pertinent to the performance audit, given the statutory and contractual requirements in effect for each year.

■ **Effect.** *Myers and Stauffer was unable to examine either isolated single-claim remittance documentation for a selection of prescription claims from 2019 and 2020 or review original remittance advices for all claims for these years. We were able to test the sample of 30 recreated remittance advices with the provided information for 2021. We were unable to review original remittance advices for all 2021 claims and compare these to the prescription claims data. As such, we were unable to perform this section of the performance audit in its entirety, as stipulated by the requirements provided by the State Auditor.*

■ **Recommendation.** *We recommend that SHP and OptumRx provide the original remittance advices for 2019, 2020, and 2021 so this portion of the audit can be validated and completed.*

SHP/OptumRx Response:

See Response to “Administrative Fees Invoiced & Additional Fees Invoiced - Finding #1: Remittance advices were not provided for 2019 and 2020 claims”.

Post Sponsors’ Response: Commentary and/or Recommendation. The audit was conducted at the request of The North Dakota SAO pursuant to and in accordance with North Dakota Century Code (N.D.C.C.) Chapter 54-10 and under N.D.C.C. § 54-52.1-04.16. The objective and scope of the audit was set forth by the SAO. To comply with ND state law requirements for audit that all three plan years be audited in the same manner, original remittance advices were required to be provided for each plan year. As noted in the *Objectives and Summary of Procedures*, payment information within the remittance advices were to be utilized to determine whether a spread component existed as compared to the detail within paid claims data. We were unable to audit the original remittance advices.



Retail Pharmacy Reimbursements

Objectives

- Review the paid claims history and report the average reimbursement for brand and generic drugs based on the retail pharmacy.
- Compare the average retail brand and retail generic reimbursements to the corresponding remittance advices provided by OptumRx.

Summary of Procedures

- Obtained paid claims file from OptumRx and matched the paid claims file on control totals to verify the file content for the review periods.
- Utilized the NCPDP classification OptumRx assigned to dispensing pharmacies. Only claims with a Service Provider Dispenser Type of "1" are classified as a retail pharmacy and utilized in this analysis. Claims with a Service Provider Dispenser Type of "5" were classified as mail order. Claims with a Service Provider Dispenser Type of "15" were classified as a specialty.

Pharmacy Count by Dispenser Type in Claims Data (1)				
Plan Year	Type 1 - Retail	Type 5 – Mail Order	Type 15 - Specialty	Total
2019	1,791	10	18	1,819
2020	1,638	13	20	1,671
2021	2,056	15	22	2,093

(1) Pharmacy Count by Dispenser Type will not equal the unique pharmacies due to the results organized by year, and reported by Brand dispensing, by generic dispensing, where some pharmacies had instances of filling both Brand and generic prescriptions.

- Analyzed 100 percent of the paid claims to confirm the drug costs on each claim for each retail pharmacy.
- Reconciled drug costs in the paid prescription claims data to the remittance advices, as applicable, by retail pharmacy.

Scope Limitations

Remittance advices were not provided by SHP or OptumRx for 2019 and 2020. As a result, we were unable to reconcile the drug reimbursement costs for each retail pharmacy in the paid prescription claims data to the remittance advices. A small sample of 30 remittance advices for 2021 were recreated and sent for review. We were unable to test the full original remittance advices for 2021.



Results

a. Brand Drugs

We analyzed a total 667 unique retail pharmacies coded as Dispenser Type 1 that filled brand prescriptions for NDPERS members in calendar year 2019. We determined the reimbursement for each pharmacy ranges from \$1.40 to \$21,913.95, averaging \$835.06 for all brand claims.

We analyzed a total 692 unique retail pharmacies coded as Dispenser Type 1 that filled brand prescriptions for NDPERS members in calendar year 2020. We determined the reimbursement for each pharmacy ranges from \$0.01 to \$23,556.08, averaging \$984.68 for all brand claims.

We analyzed a total 1,032 unique retail pharmacies coded as Dispenser Type 1 that filled brand prescriptions for NDPERS members in calendar year 2021. We determined the reimbursement for each pharmacy ranges from \$0.00 to \$26,395.97, averaging \$898.31 for all brand claims.

b. Generic Drugs

We analyzed a total 1,634 unique retail pharmacies coded as Dispenser Type 1 that filled generic prescriptions for NDPERS members in calendar year 2019. We determined the reimbursement for each pharmacy ranges from \$0.76 to \$4,493.24, averaging \$32.68 for all generic claims.

We analyzed a total 1,447 unique retail pharmacies coded as Dispenser Type 1 that filled generic prescriptions for NDPERS members in calendar year 2020. We determined the reimbursement for each pharmacy ranges from \$0.01 to \$9,846.94 averaging \$33.75 for all generic claims.

We analyzed a total 1,605 unique retail pharmacies coded as Dispenser Type 1 that filled generic prescriptions for NDPERS members in calendar year 2021. We determined the reimbursement for each pharmacy ranges from \$0.01 to \$2,150.83, averaging \$28.85 for all generic claims.

Finding #1: Remittance advices were not provided for 2019 and 2020 claims.

As a result, the drug costs reimbursed to retail pharmacies were unable to be reconciled to OptumRx's average invoiced prices for each retail pharmacy for 2019 and 2020. A small sample of 30 remittance advices for 2021 were recreated and sent for review. We were unable to test the full original remittance advices for 2021. This prevented the completion of the State Auditor's required comprehensive analysis per their specifications.

- **Condition.** *During our testing, we were able to compare the various drug reimbursement costs between different retail pharmacies for 2019, 2020, and 2021 by reviewing the paid prescription claims data. However, we were unable to verify the drug reimbursement costs in the paid prescription claims data to the remittance advices for 2019 and 2020 since SHP and OptumRx did not provide prescription remittance advices. A small sample of 30 remittance advices for 2021 were recreated and sent for review. We were unable to test the full original remittance advices for 2021.*



■ **Criteria.** *Per the NDCC § 54-52.1-04.16.1.a. Prescription Drug Coverage – Performance Audits, the board must have full access to data regarding:*

- *Total dollars paid to the PBM by the carrier and the board.*
- *Total amount of dollars paid to the PBM by the carrier which were not subsequently paid to a licensed pharmacy in the state.*
- *Payments made to all pharmacy providers.*

Per NDCC § 54-52.1-04.16.1.b. Prescription Drug Coverage – Performance Audits, the board must have full access to data regarding the average reimbursement by drug ingredient cost, dispensing fee, and any other fee paid by a PBM to licensed pharmacies with which the PBM shares common ownership or control or is affiliated.

Per NDCC § 54-52.1-04.16.1.c. Prescription Drug Coverage – Performance Audits, the board must have full access to data regarding the average reimbursement by drug ingredient cost, dispensing fee, and any other fee paid by a PBM to pharmacies licensed in the state.

Per NDCC § 54-52.1-04.16.1.f. Prescription Drug Coverage – Performance Audits, the contract must provide that all drug rebates, financial incentives, fees, and discounts must be disclosed to the board.

The text of House Bill 1004 of the 2021 Legislative Session states that the Auditor, in accordance with North Dakota Century Code (N.D.C.C.) ch. 54-10 and under N.D.C.C. § 54-52.1-04.16, shall complete a performance audit on the prescription drug program of NDPERS. It specifically states that calendar years 2019, 2020, and 2021 are subject to the same manner provided in N.D.C.C. § 54-52.101-04.16. (Please see Exhibit B – State of North Dakota Office of Attorney General Letter to NDPERS Plan Sponsors for the September 14, 2022 request for information by the Office of the Attorney General from SHP and OptumRx).

■ **Cause.** *The remittance advices for 2019, and 2020 were not provided to us for the audit. A small sample of 30 remittance advices for 2021 were recreated and sent for review. We were unable to test the full original remittance advices for 2021. SHP stated that data from 2019 and 2020 is not in their possession. Furthermore, SHP states that their interpretation of NDCC 54-52.1-04.16 does not authorize access to the requested data. SHP also stated that the contracts between NDPERS and SHP, and SHP and OptumRx do not allow access to the data. Lastly, SHP asserted that the requested data is out of scope for a performance audit.*

Additionally, OptumRx asserts that Myers and Stauffer has received everything required for the audit. OptumRx also states that the data they have contains data from non-NDPERS related prescriptions and that “page level review and redaction is manual and labor intensive.” OptumRx also asserts that they have the same audit rights as SHP, whose agreement did not include an NDPERS-focused audit until 2021. OptumRx believes that SHP and NDPERS have provided all data



pertinent to the performance audit given the statutory and contractual requirements in effect for each year.

- **Effect.** *We were unable to reconcile the drug costs reimbursed to retail pharmacies to the invoiced costs since SHP and OptumRx did not provide remittance advices for 2019 and 2020. We were able to test the sample of 30 recreated remittance advices with the provided recreated information for 2021. As such, we were unable to perform this section of the performance audit in its entirety, as stipulated by the requirements provided by the State Auditor.*
- **Recommendation.** *We recommend that SHP and OptumRx provide the remittance advices for 2019 and 2020 so this portion of the audit can be validated and completed.*

SHP/OptumRx Response:

See Response to “Administrative Fees Invoiced & Additional Fees Invoiced - Finding #1: Remittance advices were not provided for 2019 and 2020 claims”.

Additionally, Sanford Health Plan and OptumRx were not given the opportunity to review the data underlying Auditor’s analysis. However, fundamental errors in Auditor’s Methodology in inaccurately identifying claims and pharmacy types utilizing ‘Dispenser Type’ codes indicate errors in calculations of calculations of ‘Retail’, ‘Mail Order’, ‘Specialty’ in the Tables above.

Post Sponsors’ Response: Commentary and/or Recommendation. The audit was conducted at the request of The North Dakota SAO pursuant to and in accordance with North Dakota Century Code (N.D.C.C.) Chapter 54-10 and under N.D.C.C. § 54-52.1-04.16. The objective and scope of the audit was set forth by the SAO. To comply with ND state law requirements for audit that all three plan years be audited in the same manner, original remittance advices were required to be provided for each plan year. As noted in the *Objectives and Summary of Procedures*, payment information within the remittance advices were to be utilized as an independent source to calculate the average retail brand and retail generic reimbursements. We were unable to audit the original remittance advices.

The information presented is based on pharmacy claims data provided by OptumRx and the data definitions provided by OptumRx and/or SHP used to define claims types, pharmacy classifications, and brand and generic classifications of drug claims. The *Summary of Procedures* outlines the criteria utilized. The only “errors” brought to our attention were alternative ways to summarize the claims data based on claim type instead of pharmacy type.



Mail Order and Specialty Reimbursements

Objectives

- Review the paid claims history and report on the average reimbursement for drugs based on retail pharmacy, mail order, and specialty pharmacies.
- Compare the average retail pharmacy, mail order, and specialty pharmacy reimbursements to the corresponding remittance advices provided by OptumRx.

Summary of Procedures

- Obtained paid claims file from OptumRx and matched the paid claims file on control totals to verify the file content for the review periods.
- Utilized the NCPDP classification OptumRx assigned to dispensing pharmacies. Only claims with a Service Provider Dispenser Type of "1" are classified as a retail pharmacy and utilized in this analysis. Claims with a Service Provider Dispenser Type of "5" were classified as mail order. Claims with a Service Provider Dispenser Type of "15" were classified as a specialty.

Pharmacy Count by Dispenser Type in Claims Data (1)				
Plan Year	Type 1 - Retail	Type 5 – Mail Order	Type 15 - Specialty	Total
2019	1,791	10	18	1,819
2020	1,638	13	20	1,671
2021	2,056	15	22	2,093

(1) Pharmacy Count by Dispenser Type will not equal the unique pharmacies due to the results organized by year, and reported by Brand dispensing, by generic dispensing, where some pharmacy had instances of filling both Brand and generic prescriptions.

- Analyzed 100 percent of the paid claims to confirm the drug costs on each claim for each retail pharmacy.
- Reconciled drug costs in the paid prescription claims data to the remittance advices, as applicable, by retail pharmacy.

Scope Limitations

Remittance advices were not provided by SHP or OptumRx for 2019 and 2020. The remittance advices for 2019, and 2020 were not provided to us for the audit. A small sample of 30 remittance advices for 2021 were recreated and sent for review. We were unable to test the full original remittance advices for 2021. As a result, we were unable to reconcile the drug reimbursement costs for each retail pharmacy, mail order pharmacy, and specialty pharmacy in the paid prescription claims data to the remittance advices.



Results

a. Brand Drugs

We analyzed a total 667 unique retail pharmacies coded as Dispenser Type 1 that filled brand prescriptions for NDPERS members in calendar year 2019. Furthermore, a total of three unique OptumRx affiliated pharmacies coded as Dispenser Type 5 filled mail order claims for NDPERS members, and a total of two unique OptumRx affiliated pharmacies coded as Dispenser Type 15 filled specialty claims for NDPERS members.

January 1 – December 31, 2019	
Pharmacy Type	Average NDPERS Responsibility
Retail	\$ 729.17
Mail Order	\$ 470.44
Specialty	\$ 14,733.27

It should be noted that NDPERS was in a traditional pharmacy arrangement with SHP in 2019. The average NDPERS responsibility is the average cost per claim/per pharmacy type that NDPERS paid.

We analyzed a total 692 unique retail pharmacies coded as Dispenser Type 1 that filled brand prescriptions for NDPERS members in calendar year 2020. Furthermore, a total of four unique OptumRx affiliated pharmacies coded as Dispenser Type 5 filled mail order claims for NDPERS members, and a total of two unique OptumRx affiliated pharmacies coded as Dispenser Type 15 filled specialty claims for NDPERS members.

January 1 – December 31, 2020	
Pharmacy Type	Average NDPERS Responsibility
Retail	\$ 879.77
Mail Order	\$ 589.74
Specialty	\$ 12,978.25

It should be noted that NDPERS was in a traditional pharmacy arrangement with SHP in 2020. The average NDPERS responsibility is the average cost per claim/per pharmacy type that NDPERS paid.

We analyzed a total 1,032 unique retail pharmacies coded as Dispenser Type 1 that filled brand prescriptions for NDPERS members in calendar year 2021. Furthermore, a total of four unique OptumRx affiliated pharmacies coded as Dispenser Type 5 filled mail order claims for NDPERS members, and a total of one unique OptumRx affiliated pharmacy coded as Dispenser Type 15 filled specialty claims for NDPERS members.



January 1 – December 31, 2021	
Pharmacy Type	Average NDPERS Responsibility
Retail	\$ 821.92
Mail Order	\$ 732.34
Specialty	\$ 11,094.39

It should be noted that NDPERS was in a transparent pharmacy arrangement with SHP in 2021. The average NDPERS responsibility is the average cost per claim/per pharmacy type that NDPERS paid.

b. Generic Drugs

We analyzed a total 1,634 unique retail pharmacies coded as Dispenser Type 1 that filled generic prescriptions for NDPERS members in calendar year 2019. Furthermore, a total of five unique OptumRx affiliated pharmacies coded as Dispenser Type 5 filled mail order claims for NDPERS members, and a total of one unique OptumRx affiliated pharmacy coded as Dispenser Type 15 filled specialty claims for NDPERS members.

January 1 – December 31, 2019	
Pharmacy Type	Average NDPERS Responsibility
Retail	\$ 21.50
Mail Order	\$ 34.41
Specialty	\$ 3,382.48

It should be noted that NDPERS was in a traditional pharmacy arrangement with SHP in 2019. The average NDPERS responsibility is the average cost per claim/per pharmacy type that NDPERS paid.

We analyzed a total 1,447 unique retail pharmacies coded as Dispenser Type 1 that filled generic prescriptions for NDPERS members in calendar year 2020. Furthermore, a total of six unique OptumRx affiliated pharmacies coded as Dispenser Type 5 filled mail order claims for NDPERS members, and a total of one unique OptumRx affiliated pharmacy coded as Dispenser Type 15 filled specialty claims for NDPERS members.

January 1 – December 31, 2020	
Pharmacy Type	Average NDPERS Responsibility
Retail	\$ 22.36
Mail Order	\$ 31.64
Specialty	\$ 11,017.90

It should be noted that NDPERS was in a traditional pharmacy arrangement with SHP in 2020. The average NDPERS responsibility is the average cost per claim/per pharmacy type that NDPERS paid.

We analyzed a total 1,605 unique retail pharmacies coded as Dispenser Type 1 that filled generic prescriptions for NDPERS members in calendar year 2021. Furthermore, a total of four unique OptumRx



affiliated pharmacies coded as Dispenser Type 5 filled mail order claims for NDPERS members, while zero unique OptumRx affiliated pharmacies coded as Dispenser Type 15 filled specialty claims for NDPERS members.

January 1, 2021 through December 31, 2021	
Pharmacy Type	Average NDPERS Responsibility
Retail	\$ 17.85
Mail Order	\$ 29.88
Specialty	N/A

It should be noted that NDPERS was in a transparent pharmacy arrangement with SHP in 2021. The average NDPERS responsibility is the average cost per claim/per pharmacy type that NDPERS paid.

Finding #1: Remittance advices were not provided for 2019 and 2020 claims. A small sample of 30 remittance advices for 2021 were recreated and sent for review. We were unable to test the full original remittance advices for 2021. As a result, the drug costs reimbursed to retail pharmacies could not be compared to the drug costs that were reimbursed to mail order and specialty pharmacies. This prevented the completion of the State Auditor's required comprehensive analysis per their specifications.

■ **Condition.** During our testing, we were able to compare the various drug reimbursement costs between retail pharmacies, mail order pharmacies, and specialty pharmacies for 2019, 2020, and 2021 by reviewing the paid prescription claims data. However, we were unable to compare the drug reimbursement costs in the paid prescription claims data to the original remittance advices for 2019 and 2020 since SHP and OptumRx did not provide prescription remittance advices. A small sample of 30 remittance advices for 2021 were recreated and sent for review. We were unable to test the full original remittance advices for 2021.

■ **Criteria.** Per the NDCC § 54-52.1-04.16.1.a. Prescription Drug Coverage – Performance Audits, the board must have full access to data regarding:

- Total dollars paid to the PBM by the carrier and the board.
- Total amount of dollars paid to the PBM by the carrier which were not subsequently paid to a licensed pharmacy in the state.
- Payments made to all pharmacy providers.

Per NDCC § 54-52.1-04.16.1.b. Prescription Drug Coverage – Performance Audits, the board must have full access to data regarding the average reimbursement, by drug ingredient cost, dispensing fee, and any other fee paid by PBM to licensed pharmacies with which the pharmacy benefits manager shares common ownership or control or is affiliated.



Per NDCC § 54-52.1-04.16.1.c. Prescription Drug Coverage – Performance Audits, the board must have full access to data regarding the average reimbursement, by drug ingredient cost, dispensing fee, and any other fee paid by a PBM to pharmacies licensed in the state.

Per NDCC § 54-52.1-04.16.1.f. Prescription Drug Coverage – Performance Audits, the contract must provide that all drug rebates, financial incentives, fees, and discounts must be disclosed to the board.

The text of House Bill 1004 of the 2021 Legislative Session states that the Auditor, in accordance with North Dakota Century Code (N.D.C.C.) ch. 54-10 and under N.D.C.C. § 54-52.1-04.16, shall complete a performance audit on the prescription drug program of NDPERS. It specifically states that calendar years 2019, 2020, and 2021 are subject to the same manner provided in N.D.C.C. § 54-52.101-04.16. (Please see Exhibit B – State of North Dakota Office of Attorney General Letter to NDPERS Plan Sponsors for the September 14, 2022 request for information by the Office of the Attorney General from SHP and OptumRx).

- **Cause.** *The remittance advices for 2019, and 2020 were not provided to us for the audit. A small sample of 30 remittance advices for 2021 were recreated and sent for review. We were unable to test the full original remittance advices for 2021. SHP stated that data from 2019 and 2020 is not in their possession. Furthermore, SHP states that their interpretation of NDCC 54-52.1-04.16 does not authorize access to the requested data. SHP also stated that the contracts between NDPERS and SHP, and SHP and OptumRx do not allow access to the data. Lastly, SHP asserted that the requested data is out of scope for a performance audit.*

Additionally, OptumRx asserts that Myers and Stauffer has received everything required for the audit. OptumRx also states that the data they have contains data from non-NDPERS related prescriptions and that “page level review and redaction is manual and labor intensive.” OptumRx also asserts that they have the same audit rights as SHP, whose agreement did not include an NDPERS-focused audit until 2021. OptumRx believes that SHP and NDPERS have provided all data pertinent to the performance audit given the statutory and contractual requirements in effect for each year.

- **Effect.** *We were unable to reconcile the drug costs reimbursed to retail pharmacies, mail order pharmacies, and specialty pharmacies to the invoiced costs since SHP and OptumRx did not providing remittance advices for 2019 and 2020. As such, we were unable to perform this section of the performance audit in its entirety, as stipulated by the requirements provided by the State Auditor.*
- **Recommendation.** *We recommend that SHP and OptumRx provide the original remittance advices for 2019, 2020, and 2021 so this portion of the audit can be validated and completed.*



SHP/OptumRx Response:

See Response to “Administrative Fees Invoiced & Additional Fees Invoiced - Finding #1: Remittance advices were not provided for 2019 and 2020 claims”.

Additionally, Sanford Health Plan and OptumRx were not given the opportunity to review the data underlying Auditor’s analysis. However, fundamental errors in Auditor’s Methodology in inaccurately identifying claims and pharmacy types utilizing ‘Dispenser Type’ codes indicate errors in calculations of calculations of ‘Retail’, ‘Mail Order’, ‘Specialty’ in the Tables above.

By way of example only, it is noted that whereas Auditor identified only 22 Specialty pharmacies for 2021, in fact 178 pharmacies dispensed Specialty drugs in 2021. While a small variance in the results might be expected in a typical audit, Auditor’s material understatement (missing over 82% of pharmacies dispensing Specialty drugs), and inability to correctly identify specialty claims, reflects an error in application of standard prescription drug benefit structure and claims data.

Post Sponsors’ Response: Commentary and/or Recommendation. The audit was conducted at the request of The North Dakota SAO pursuant to and in accordance with North Dakota Century Code (N.D.C.C.) Chapter 54-10 and under N.D.C.C. § 54-52.1-04.16. The objective and scope of the audit was set forth by the SAO. To comply with ND state law requirements for audit that all three plan years be audited in the same manner, original remittance advices were required to be provided for each plan year. As noted in the *Objectives and Summary of Procedures*, payment information within the remittance advices were to be utilized as an independent source to determine the average retail, mail order, and specialty pharmacy reimbursements by pharmacy type according to brand name and generic indicators of the drug dispensed. We were unable to audit the original remittance advices.

The information presented is based on the data definitions provided by OptumRx and/or SHP used to define claims types and pharmacy classifications. The *Summary of Procedures* outlined the criteria utilized. All data is available to OptumRx and SHP in the files they provided to apply the audit methodology. The only “errors” brought to our attention were alternative ways to summarize the claims data based on claim type instead of pharmacy type.



Excluded Drugs

Objectives

- *Review the paid claims history and report any instances in which excluded drugs were covered by OptumRx.*
- *Review the paid claims history and report any instances in which non-FDA approved drugs were covered by OptumRx.*

Summary of Procedures

- *Obtained paid claims file from OptumRx and matched the paid claims file on control totals to verify the file content for the review periods.*
- *Reviewed the formulary files provided by SHP and OptumRx to verify excluded drug categories. The formulary files provided by SHP and OptumRx contain excluded drug categories consisting of non-FDA approved drugs and compound-kit exclusions.*
- *Analyzed 100 percent of the paid claims to determine whether excluded drugs were included in the paid prescription claims data.*
- *Analyzed 100 percent of the paid claims to determine whether non-FDA approved drugs were included in the paid prescription claims data.*

Scope Limitations

There were no limitations to the review.

Results

We reviewed a total of 429,064 claims in 2019; 437,293 claims in 2020; and 443,391 claims in 2021 to determine whether any excluded drugs or non-FDA approved drugs were erroneously included in the paid prescription claims data. For the three years under audit, we did not identify any instances where OptumRx covered excluded drugs or non-FDA approved drug categories.

SHP/OptumRx Response:

Auditor's note: HP/OptumRx had no comments for this section.



DAW9 Dispensed Drugs

Objectives

- Review paid prescription claims processed with a DAW of “9.”
- Analyze the paid claims history and report any instances in which a DAW of “9” resulted in higher net drug costs.

Summary of Procedures

- Obtained paid claims file from OptumRx and matched the paid claims file on control totals to verify the file content for the review periods.
- Analyzed 100 percent of the paid claims to determine whether instances of DAW9 were included in the paid prescription claims data. The DAW9 value on claims indicates that generic substitution for an equivalent brand claim is permissible according to the member’s physician, but the plan requires the dispensing of the brand name drug.
- Analyzed the generic product identifier (GPI) for all claims that processed with a DAW of “9.” The GPI14 code was pulled for each prescription claim. The use of GPI14 allowed for all generic equivalents to be pulled for a brand drug.
- Pulled the AWP unit costs for each generic equivalent with a multi-source code of “Y.”
- Analyzed the rebate amounts for each paid prescription claim that processed with a DAW of “9” to determine how the rebate impacted the net cost of the claims.
- Compared the net brand cost for the paid prescription claims data, as applicable, to the cost of the equivalent generic drug to determine whether the use of the brand drug resulted in higher net costs.

Scope Limitations

There were no limitations to the review.

Results

In calendar year 2019, we identified a total 294 paid prescription claims that processed a DAW of “9.” Of the 294 paid prescription claims, 224 claims were identified as having an equivalent generic on the date of service. The total brand NDPERS responsibility and brand rebate amounts were \$119,168.48 and \$57,412.55, respectively. It was determined that if the claim was filled with the equivalent generic drug, the generic cost would have resulted in additional cost savings to NDPERS:

January 1 – December 31, 2019		
Net Brand Cost (minus rebates)	\$	61,755.93
Net Generic Cost	\$	19,078.26
Potential Cost Savings	\$	42,677.67



It should be noted that NDPERS was in a traditional pharmacy arrangement with SHP in 2019.

In calendar year 2020, we identified a total 1,402 paid prescription claims that processed a DAW of "9." Of the 1,402 paid prescription claims, 643 claims were identified as having an equivalent generic on the date of service. The total brand NDPERS responsibility and brand rebate amounts were \$274,997.54 and \$150,923.20, respectively. It was determined that if the claim was filled with the equivalent generic drug, the generic cost would have resulted in additional cost savings to NDPERS:

January 1 – December 31, 2020	
Net Brand Cost (minus rebates)	\$ 124,074.34
Net Generic Cost	\$ 46,516.15
Potential Cost Savings	\$ 77,558.19

It should be noted that NDPERS was in a traditional pharmacy arrangement with SHP in 2020.

In calendar year 2021, we identified a total 1,612 paid prescription claims that processed a DAW of "9." Of the 1,612 paid prescription claims, 664 claims were identified as having an equivalent generic on the date of service. The total brand NDPERS responsibility and brand rebate amounts were \$405,966.96 and \$206,442.63, respectively. It was determined that if the claim was filled with the equivalent generic drug, the generic cost would have resulted in additional cost savings to the NDPERS:

January 1 – December 31, 2021	
Net Brand Cost (minus rebates)	\$ 199,524.33
Net Generic Cost	\$ 48,127.06
Potential Cost Savings	\$ 151,397.27

It should be noted that NDPERS was in a transparent pharmacy arrangement with SHP in 2021.

SHP/OptumRx Response:

Auditor's note: SHP/OptumRx had no comments for this section.



Evaluation of Shared Savings Program

Objectives

- *Review the shared savings program between NDPERS and SHP by reviewing applicable contracts.*
- *Independently compute the shared savings due to NDPERS or owed to SHP.*

Summary of Procedures

- *Obtained a copy of the administrative agreement between NDPERS and SHP to gain an understanding of how the shared savings program is computed.*
- *Analyzed documentation supporting premiums paid between July 1, 2019, and June 30, 2021, and independently computed the shared savings based on the documentation received by SHP.*
- *Analyzed SHP's performance under each year and the resulting shared savings.*
- *Reviewed the shared savings formula and made suggestions regarding the structure and utility of the formula.*

Scope Limitations

There were no limitations to the review.

Results

The shared savings program was administered appropriately and the shared savings calculations were accounted for properly.

Recommendation.

The shared savings formula structure is reasonable under both the current service agreement terms or under a fully-insured arrangement and we do not recommend changes. We do recommend NDPERS considers the adjustment of the language in Section 7.3.10 and Section 7.4.9 of the Administrative Agreement between NDPERS and SHP. The agreement states that if the Shared Savings is positive, the lesser of 50% of this amount or \$1,500,000 will be retained by SHP. A more conservative retained dollar value amount should be considered.

We also recommend that SHP and NDPERS work together to re-analyze and proactively adjust the premiums paid per month in future plan years to reduce the likelihood of significant over-funding in the future.

SHP/OptumRx Response:

Auditor's note: SHP/OptumRx had no comments for this section.



Evaluation of Rebates

Objectives

- *Obtain copies of the contracts between SHP and OptumRx to verify minimum rebate guarantees.*
- *Obtain copies of the contracts between NDPERS and SHP to verify the impact of rebates on the shared savings program.*
- *Evaluate the application of the rebates to the shared savings program and determine how the rebates impact reduced member cost and reduced claim experience.*
- *Recommend revisions to future contract provisions related to rebates and other payments that PBMs obtain from drug manufactures and rebate aggregators.*

Summary of Procedures

- *Developed a detailed questionnaire that was provided to SHP and OptumRx. Myers and Stauffer received an explanation of the steps SHP and OptumRx utilized to assign, track, report, pay, and adjust rebates and confirmed the information provided regarding these processes through data comparison and recalculation of rebates.*
- *Obtained information that details the amount of rebate payment passed from OptumRx to SHP.*
- *Reconciled actual rebate payments made with recalculation amounts and noted differences in expected rebate payments.*
- *Accounted for retrospective claim reversals, credits, and rebate payment lag through review of documentation against paid prescription claims data.*
- *Reviewed the application of the rebates to the shared savings program and noted any suggested revisions.*

Scope Limitations

There were no limitations to the review.

Results

The expected rebates were recalculated utilizing the paid claims data and applying the rebate levels to the appropriate plan and category as detailed in the following table. The guarantee file was obtained from OptumRx and cross-referenced to the paid-claims file to determine whether any claims were appropriately removed from rebate consideration for valid reasons. The result of the analysis showed that the minimum rebate guarantee level was achieved.



July 1 – December 31, 2019	
Rebate Type	Rebate Amount
Retail	\$ 1,844,728.50
Retail 90	\$ 621,368.85
Mail Order	\$ 68,122.30
Specialty	\$ 2,244,142.75
Total	\$ 4,778,362.40

January 1 – December 31, 2020	
Rebate Type	Rebate Amount
Retail	\$ 4,780,401.60
Retail 90	\$ 1,638,969.85
Mail Order	\$ 55,809.60
Specialty	\$ 5,107,224.40
Total	\$ 11,582,405.45

January 1 – June 30, 2021	
Rebate Type	Rebate Amount
Retail	\$ 2,942,161.95
Retail 90	\$ 980,820.75
Mail Order	\$ 29,486.40
Specialty	\$ 3,078,742.26
Total	\$ 7,031,211.36

NDPERS entered into a shared savings program with SHP in order to off-set the total costs of the prescription drug benefit. The shared savings program is reconciled every two years, starting July 1. For the audit scope, the rebates for the period of July 1, 2019, through June 30, 2021, are under review. The reconciliation for the shared savings program will not be completed by SHP until 2023.

The “Rebate Amount” dollars expressed in the tables above represent the rebate dollars that SHP will use in the shared savings program calculation for the 2023 biennium reconciliation. Please note that the total rebates are the rebates calculated at the time of the performance audit. The rebate amounts are fluid and may change by the time the shared savings program is reconciled for the period of July 1, 2019, through June 30, 2021.

SHP’s service agreement with OptumRx for 2021 stipulates, “Administrator will remit to Client 100.00% of the Rebates received by Administrator.” The contract further states that the rebates will not be less than the rebate guarantee amounts. If the rebates are less than the guarantee amounts, OptumRx will pay additional monies to SHP. Although the 2019 and 2020 contract does not contain the same language, the rebate guarantees are the greater of 100 percent of the client share of the rebates or the minimum guarantee.

**January 1, 2019, through December 31, 2019**

The rebate guarantees equaled \$4,778,362.40 for calendar year 2019, and the manufacturer payments equaled \$7,425,318.69. Myers and Stauffer validated the rebate guarantee amounts OptumRx applied to the rebatable claims were correctly calculated.

The quantification in the following table demonstrates the variance between the rebate guarantee amount total and the 100 percent of total rebates amount the manufacturers made to OptumRx for the NDPERS rebatable claims. SHP and NDPERS will make the final determination of any additional rebate monies due to adjustments made to the manufacturer payment total based on retrospective rebatable claims adjustments it may receive from OptumRx for the audit period and calculate the resulting variance amount.

Rebate Guarantee Dollars	Rebate Manufacturer Dollars	Variance
\$ 4,778,362.40	\$ 7,425,318.69	\$ (2,646,956.29)

January 1, 2020, through December 31, 2020

The rebate guarantees equaled \$11,582,405.45 for calendar year 2020, and the manufacturer payments equaled \$16,002,472.20. Myers and Stauffer validated the rebate guarantee amounts OptumRx applied to the rebatable claims were correctly calculated.

The quantification in the following table demonstrates the variance between the rebate guarantee amount total and the 100 percent of total rebates amount the manufacturers made to OptumRx for the NDPERS rebatable claims. SHP and NDPERS will make the final determination of any additional rebate monies due to adjustments made to the manufacturer payment total based on retrospective rebatable claims adjustments it may receive from OptumRx for the audit period and calculate the resulting variance amount.

Rebate Guarantee Dollars	Rebate Manufacturer Dollars	Variance
\$ 11,582,405.45	\$ 16,002,472.20	\$ (4,420,066.75)

January 1, 2021, through December 31, 2021

The rebate guarantees equaled \$7,031,211.36 for calendar year 2021, and the manufacturer payments equaled \$8,782,641.78. Myers and Stauffer validated the rebate guarantee amounts OptumRx applied to the rebatable claims were correctly calculated.

The quantification in the following table demonstrates the variance between the rebate guarantee amount total and the 100 percent of total rebates amount the manufacturers made to OptumRx for the NDPERS rebatable claims. SHP and NDPERS will make the final determination of any additional rebate monies due to adjustments made to the manufacturer payment total based on retrospective rebatable claims adjustments it may receive from OptumRx for the audit period and calculate the resulting variance amount.



Rebate Guarantee Dollars	Rebate Manufacturer Dollars	Variance
\$ 7,031,211.36	\$ 8,782,641.78	\$ (1,751,430.42)

Future contract provisions that may benefit NDPERS include more frequent guarantee variance reconciliation and payment transfer such as every 90 days; most favored nation clauses for rebate guarantee dollar levels assigned to paid claims; required annual market checks on rebate dollar levels with automatic adjustments to the guarantee levels; and transparency clauses that require the contracted PBM to disclose all allowances, fees, incentives, and payments received from any and all manufacturers for any promotions, programs, or product placement and/or the provision of NDPER's claims data whether used individually or aggregated.

SHP/OptumRx Response:

Auditor's note: SHP/OptumRx had no comments for this section.



Evaluation of Clawbacks

Objectives

- *Audit any practice by the PBM to alter their pharmacy reimbursement to retail pharmacies after initial reimbursements to the pharmacies through clawbacks or any other changes to the PBM's initial retail pharmacy reimbursements.*

Summary of Procedures

- *Obtained paid claims file from OptumRx and matched the paid claims file on control totals to verify the file content for the review periods.*
- *Sent a questionnaire to SHP and OptumRx to obtain information about their pharmacy reimbursement policies and procedures regarding any changes or clawbacks applied to pharmacy reimbursements.*
- *Sent a questionnaire to 30 pharmacies from the prescription claims data to inquire about returned monies to SHP or OptumRx.*
- *Information regarding specific pharmacies surveyed for the evaluation of clawbacks is not included due to the confidential or sensitive nature of the information.*

Scope Limitations

There were no limitations to the review.

Results

Myers and Stauffer collaborated with the State Auditor to develop a confidential questionnaire for a selection of 30 pharmacies that filled claims for beneficiaries enrolled in prescription drug benefits under NDPERS (see *Exhibit A*). Several items within the questionnaire were designed to collect information (e.g., claim counts and payment totals) to verify whether clawbacks were reclaimed by OptumRx on NDPERS prescription claims previously reimbursed to the network pharmacies during calendar years 2019, 2020, and 2021. Other items within the questionnaire were intended to collect information regarding pharmacy recoupments and adjustments, payments from the pharmacy to OptumRx, and reconciliation of reimbursement reports.

The questionnaire was sent to 30 pharmacies.

Questionnaires were sent on July 29, 2022, with response requested by August 18, 2022. A follow-up email was sent to non-respondent pharmacies on August 12, 2022, and an extension was provided until September 9, 2022, to further encourage participation. Nineteen pharmacies submitted responses (response rate = 63 percent).

The questionnaire included an inquiry regarding the amount of any dollars requested back from OptumRx for NDPERS claims paid from January 1, 2019, through December 31, 2021. Of the 19 responses, 10 pharmacies indicated that \$730,539 dollars collectively were requested from OptumRx for NDPERS claims.

Pharmacies were also asked to provide the last date of adjustments on NDPERS claims if OptumRx had not requested dollars back from the pharmacies for NDPERS claims during the audit period. All of the pharmacies stated that OptumRx did not request monies back on claims experience that was incurred before January 1, 2019.

Additionally, pharmacies were also asked whether they anticipate any amounts to be requested back from OptumRx for NDPERS claims paid from January 1, 2019, through December 31, 2021, at some future date. Of the 19 pharmacies that responded to the questionnaire, four pharmacies stated that they *do* anticipate OptumRx will request monies from them in the form of clawbacks at a future date. Nine pharmacies stated that they *do not* anticipate OptumRx will request monies from them in the future.

Furthermore, the pharmacies were asked if they receive line-item-detail reporting to identify claims that were subject to negative adjustments due to clawbacks. Twelve pharmacies stated that they receive reports from OptumRx or their PSAO that document the amounts due back to OptumRx. The reports include date of dispense, prescription numbers, point-of-sale reimbursement, and the amounts due back to OptumRx. These adjustments may be seen on original remittance advices, which we did not receive and used for comparison to paid claims data, which we did receive.

Finally, pharmacies were asked how often or at what interval OptumRx requires pharmacy recoupment or payment reconciliation. One pharmacy stated that OptumRx requires weekly reconciliations of recoupments or payment reconciliations. Three pharmacies stated that OptumRx requires monthly reconciliations of recoupments or payment reconciliations. Three pharmacies stated that OptumRx requires annual reconciliations of recoupments or payment reconciliations.

The responses indicate that some of the network pharmacies concluded that they had funds attributable to NDPERS prescription claims returned to OptumRx in all three of the plan years reviewed, including the 2021 plan year that was under the transparent agreement. A larger-scale future survey or surveys of network pharmacies for drug claims experience in plan year 2021 and future years in addition to forensic examination and matching of financial transaction detail provided by the pharmacies and OptumRx would be required to qualify and quantify the existence or extent of clawbacks attributable to NDPERS drug claims experience and whether these funds were appropriately credited back to NDPERS.

SHP/OptumRx Response:

As a threshold matter, we note that it is unclear from Auditor's methodology how Auditor arrived at an overly selective sample of 30 pharmacies to receive the questionnaire, or whether the pharmacies selected for the



questionnaire were true independent pharmacies that contract directly with OptumRx, or whether they contract with OptumRx through affiliation with a pharmacy services administrative organization (PSAO). In North Dakota, approximately 45% of community retail pharmacies participating in OptumRx's network contract with OptumRx through PSAOs. Assuming Auditor's sample was randomly selected, a corresponding 45% of pharmacies receiving the questionnaire participate through PSAOs (13-14 of the sample). Given that it is the PSAO and not the PBM that determines whether and how participating pharmacy performance is allocated across member pharmacies in accordance with the contract between the PSAO and the pharmacies, responses to the 'Clawback Questionnaire' were likely incomplete or inaccurate to the extent responding pharmacies attributed PSAO performance allocations or reporting to OptumRx, rather than the PSAO(s) responsible for such reporting.

Moreover, we note that Auditor's methodology is defective to the extent Auditor fails to evaluate performance under the terms of contractual requirements in effect for each of the contract years, which varied. For the only year relevant to the stated objective, specifically whether OptumRx was able to demonstrate compliance with the amended agreement effective January 1, 2021, which was the first year of the pass-through arrangement, we note that Auditor's stated methodology, and our own record of requests made by Auditor during the course of the Audit, reflect that Auditor did not request documentation from SHP or OptumRx regarding such performance in 2021. Instead, Auditor appears to have requested only anecdotal information from selected pharmacies, while doing nothing to evaluate the objectivity, credibility or reliability of such responses.

Post Sponsors' Response: Commentary and/or Recommendation. Pharmacies sent clawback questionnaires included large chain, small chain, independent, and independent through PSAO affiliation. The questionnaire is included as *Exhibit A*. Since the audit was to be conducted in the same manner in all three years, all three years of the audit period were included in the questionnaire.

As noted in the Objectives and Summary of Procedures, payment information within the remittance advices were to be utilized to determine whether a spread component existed as compared to the detail within the paid claims data. We were unable to audit the original remittance advices. No further documentation was requested from SHP and OptumRx because the pharmacies agreed to participate if their responses would remain confidential. The SAO agreed to this request by the pharmacies. This survey was conducted to determine the opinion of the individual pharmacy respondents based on their transactional experience with NDPERS' claims processed by OptumRx.



Exhibit A – Clawback Questionnaire



MYERS AND STAUFFER
CERTIFIED PUBLIC ACCOUNTANTS

**North Dakota Public Employees Retirement System (ND PERS)
Pharmacy Review Questionnaire
Paid Claims Period: January 1, 2019 – December 31, 2021**

Dear Pharmacy Owner, Pharmacist-in-charge, or Manager:

The North Dakota Office of the State Auditor has contracted with Myers and Stauffer LC to assist the State Auditor in its efforts to perform oversight of OptumRx to review compliance with contractual requirements associated with the North Dakota Public Employees Retirement System (NDPERS) pharmacy benefit.

This questionnaire will be used to collect information from your pharmacy regarding OptumRx's reimbursement for claims paid on behalf NDPERS.

Responses to this questionnaire must be limited to prescriptions filled for NDPERS submitted and confirmed as paid claims through OptumRx during the period of January 1, 2019 through December 31, 2021 as well as any positive or negative monetary adjustments that were applied to those claims during that period or subsequently up to your filed response to this questionnaire.

It is preferred that completed questionnaires be returned via email along with related supporting documentation to Myers and Stauffer at cmoore@mslc.com by the due date of August 18, 2022. Word document files, Excel document files, and PDF file versions of scanned documents are preferred.

If you prefer to mail your returned questionnaire and supporting documentation please use the address on page 3.

Questions or clarifications about this questionnaire can be directed to Christianna Moore with Myers and Stauffer via email at cmoore@mslc.com or at 410-581-6493.

We appreciate your time in completing this questionnaire.

Pharmacy Contact Information

Pharmacy Name	<input type="text"/>
Pharmacy NPI	<input type="text"/>
Pharmacy Address	<input type="text"/>
Preparer's Name	<input type="text"/>
Preparer's Phone Number	<input type="text"/>
Preparer's Email	<input type="text"/>



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Pharmacy Recoupments/Payment Adjustments

1. Enter the total in dollars of all amounts requested back from OptumRx for NDPERS claims that were paid from January 1, 2019 through December 31, 2021. This includes penalties for lack of formulary share achievement, missed Brand or Generic Effective Rate (BER/GER) levels, non-compliance with quality measures, and/or any negative adjustment (these are sometimes collectively referred to as "clawbacks") to a paid claim made up to the date of your response to this questionnaire. Please note, this does not include claims that were routinely reversed or initially rejected in the normal course of adjudication. If as of the date of this response there have been no recoupments or adjustments, report \$0.00.

2. If no adjustments listed in question #1 have occurred for the period January 1, 2019 through December 31, 2021, please report the date of the last time that any adjustments were made for NDPERS for the reasons cited in question #1. (Please provide any documentation or remittance advice that supports those adjustments.) If no adjustments have ever been assessed, please indicate "none".

3. Do you anticipate there will be amounts requested back as detailed in question #1 from OptumRx for NDPERS for claims that were paid from January 1, 2019 through December 31, 2021 at some future date after your response to this questionnaire is returned? Please indicate "Yes" or "No".

4. Does the pharmacy receive line-item claim detail reporting to identify claims that were subject to negative adjustments along with the corresponding dollar amount for each individual claim that can be identified by a claim transaction number? If not, please describe the level of reporting that is made available to tie recoupment of monies to the original paid NDPERS claims for the January 1, 2019 through December 31, 2021 timeframe.

5. How often or at what interval did/does OptumRx require pharmacy recoupment or payment reconciliation from your pharmacy for NDPERS claims for claims transacted during the January 1, 2019 through December 31, 2021 timeframe?



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If you reported any fees, adjustments or recoupments for any of the above questions, please provide any documentation available that supports the amount that was paid back to or recouped by ~~OptumRx~~ for a claim reimbursed for NDPERS. To the extent that you can demonstrate the adjustment or recoupment amounts tie to specific NDPERS claim transactions, please do so in your response. Documentation submitted will aid Myers and Stauffer in assisting the State Auditor. Please submit copies rather than original documentation, as documentation will not be returned.

Mailing Address for returned documentation:

Christianna Moore
Myers and Stauffer LC
10200 Grand Central Ave., Suite 200
Owings Mills, MD 21117



Exhibit B - State of North Dakota Office of Attorney General Letter to NDPERS Plan Sponsors



Drew H. Wrigley
ATTORNEY GENERAL

STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL
www.attorneygeneral.nd.gov
(701) 328-2210

September 14, 2022

Sent via email only

Mr. Lafrentz and Ms. Molinar,

I am the Assistant Attorney General who serves as legal counsel for the North Dakota State Auditor's Office and have spoken with you on various calls recently regarding the North Dakota Public Employees Retirement System Pharmacy Benefits Manager audit.

The North Dakota State Auditor's Office (Auditor) through Myers and Stauffer and acting on behalf of the Auditor to perform this Audit, originally requested the 2019, 2020 and 2021 invoices on March 16, 2022, and again on March 22, 2022. Additional follow up was conducted on April 18, 2022, July 13, 2022, and July 26, 2022. To date, this request has not been fulfilled and Myers and Stauffer have been unable to independently data match the invoices with the claims data. As a compromise on August 4, 2022, Myers and Stauffer provided a selection of claims to sample corresponding invoices to be provided by OptumRx from 2019-2021, to test invoicing portions due to the failure of OptumRx to provide the records in full. At that time, no independent invoice data was received, rather the same original paid prescription claim record file with additional reimbursement fields included were provided. By providing these additional fields, OptumRx did not provide any information beyond what Myers and Stauffer was already able to test and allow for an independent validation of the source information. This was explained during our call on August 23, 2022.

The plain language of the legislation that required this Audit; as well as the Scope of Audit; and the contractual obligations between the North Dakota Public Employees Retirement System (NDPERS) and Sanford Health Plan (SHP), including the subcontract between SHP and OptumRx, all require OptumRx to promptly provide these records for audit purposes. OptumRx's repeated failure to provide these records when requested is contrary to its contractual and statutory obligations.

The text of House Bill 1004 of the 2021 Legislative Session states that the Auditor, in accordance with North Dakota Century Code (N.D.C.C.) ch. 54-10 and under N.D.C.C. § 54-52.1-04.16, shall complete a performance audit on the prescription drug program of NDPERS. It specifically states that calendar years 2019, 2020 and 2021 are subject to the same manner provided in N.D.C.C. § 54-52.1-04.16. Although N.D.C.C. § 54-52.1-04.16 was not effective until August 1, 2021, the plain text of HB 1004 states that the audit should be conducted in this same manner for all three years. SHP and OptumRx stated they were both aware of the upcoming audit and in the January 2021 Amendment IV, added language to their contract regarding the NDPERS audit.

When the 66th Legislative Assembly passed HB 1004, they wanted access to the following records:

a. The [NDPERS] board must have full access to data regarding:

(1) The total dollars paid to the pharmacy benefits manager by the carrier and the board;



- (2) The total amount of dollars paid to the pharmacy benefits manager by the carrier which was not subsequently paid to a licensed pharmacy in the state; and
- (3) Payments made to all pharmacy providers.

b. The board must have full access to data regarding the average reimbursement, by drug ingredient cost, dispensing fee, and any other fee paid by a pharmacy benefits manager to licensed pharmacies with which the pharmacy benefits manager shares common ownership or control or is affiliated.

c. The board must have full access to data regarding the average reimbursement, by drug ingredient cost, dispensing fee, and any other fee paid by a pharmacy benefits manager to pharmacies licensed in the state.

d. The board must have full access to data regarding any direct and indirect fees, charges, or recoupment, or any kind of assessments imposed by the pharmacy benefits manager on pharmacies licensed with which the pharmacy benefits manager shares common ownership or control or is affiliated.

e. The board must have full access to data regarding any direct and indirect fees, charges, or recoupment, or any kind of assessments imposed by the pharmacy benefits manager, on pharmacies licensed in the state.

f. The contract must provide that all drug rebates, financial incentives, fees, and discounts must be disclosed to the board.

N.D.C.C. § 54-52.1-04.16(1).

The Audit being conducted is a performance audit as required by the language of HB 1004, in accordance with the records outlined above. The Auditor has authority under N.D.C.C. § 54-10-01(2)(d) to contract with private certified public accountants on the Auditor's behalf, which is also stated in HB 1004. As stated, the Auditor has contracted with Myers and Stauffer to perform this Audit on behalf of the Auditor. The scope of this Audit was contracted to be performed in accordance with the Generally Accepted Government Audit Standards (commonly known as the Yellow Book) which is issued by the Comptroller General of the United States' Government Accountability Office. According to the government auditing standards, a performance audit is designed to provide accountability for legislators, oversight bodies, those charged with governance and the public to know: 1. Management and officials manage government resources and use their authority properly and in compliance with the laws and regulations; 2. Government programs are achieving their objectives and desired outcomes; and 3. Government services are provided effectively, efficiently, economically and ethically.

The Scope of the Audit outlined in the contract between the Auditor and Myers and Stauffer is defined in section 3.2 of Exhibit A to that contract. All requests for data or records made pursuant to this Audit fall directly within the Scope of the Audit. Specifically, the Scope of the Audit requires the following list of items be analyzed using line by line claims data:

- ...
- (6) Administrative fees invoiced.
- (7) Additional Fees invoiced.



As part of the analysis related to sections 6 and 7 the auditor shall evaluate the PBM's administrative fees and additional fees and compare each of those fees to the fees that were available in the marketplace. Fees shall be broken down to show different groups such as prior authorization fees, formulary management fees, transaction fees invoiced, transmission fees, or any other charge that is assessed.

...

11. Spread pricing for retail pharmacy dispensed drugs.

In connection with point 11, the auditor shall compare the PBM's average reimbursements to retail pharmacies with the PBM's invoiced costs for each category of drugs. Brand and generic drugs shall be analyzed separately.

12. Comparison of differences in reimbursements to different retail pharmacies and difference in invoiced prices from different retail pharmacies.

The analysis related to section 12 shall determine the PBM's retail pharmacy dispensed drugs by retail pharmacy and evaluate a) the differences in the PBM's average reimbursements to each of the retail pharmacies for brand and generic drugs; and b) the differences in average invoiced costs from each of the retail pharmacies for brand and generic drugs.

13. Comparison of differences in pricing for retail pharmacy dispensed drugs to mail order pharmacy drugs to specialty drug pharmacy dispensed drugs.

For section 13, the auditor shall identify drugs that were dispensed through both a) retail pharmacies, and b) the PBM's mail order pharmacy and/or specialty drug pharmacy and compare the PBM's average invoiced prices to the State for retail dispensed drugs vs. drugs dispensed from the PBM's subsidiary or affiliated mail and specialty drug pharmacies.

...

NDPERS and SHP entered into Administrative Service Agreement (Contract) on June 30, 2015, with the first Amendment occurring on March 21, 2016, the parties amended it in June of 2017 for a second time and for a third time on June 30, 2019. Section 11.9(A) of the third amendment is stated below:

STATE AUDIT: All records, regardless of physical form, and the accounting practices and procedures of SHP relevant to this Contract are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors, if required. SHP shall maintain all of these records for at least three (3) years following completion of this Contract and be able to provide them upon reasonable notice. STATE, State Auditor, or Auditor's designee shall provide reasonable notice to SHP prior to conducting examination. (Emphasis added.)

The Prescription Drug Benefit Administration Agreement (Agreement) between OptumRx (Administrator) and Sanford Health Plan (Client), was signed and effective on January 1, 2019. The signing of which coincides with the beginning of the Audit scope and is consistent with the time specified in HB 1004. Section 4.3 of that Agreement states:

4.3 Regulatory and Compliance Audits by Governmental Authorities. Administrator agrees to fully cooperate with Client's and its Affiliates' regulators ("Governmental Authorities") in the event of any audit, inspection, or examination by a Governmental



Authority by making available all books, records, documentation, information related to this Agreement, and providing access to facilities, equipment, systems, and personnel used by Administrator and to Client Data, to the Governmental Authority upon reasonable advance written notice to Administrator. Any action regarding an audit may be challenged by the Client and Administrator agrees to assist in such administrative action. Notwithstanding any rights of a Governmental Authority pursuant to applicable law, such **Governmental Authority shall have at least the same audit rights as Client under this agreement.** (Emphasis added.)

This language clearly obligates OptumRx to fully cooperate with SHP in the event of any audit and that the Auditor, as the Governmental Authority, shall have the same audit rights as SHP under the Agreement. OptumRx and SHP amended the Agreement, effective January 1, 2021, to add section 4.2.3 NDPERS – Focused Audit. This amendment did not alter or revise Section 4.3 of the Agreement wherein OptumRx agrees it shall fully cooperate with an audit. Despite this contractual obligation, OptumRx has repeatedly failed to produce the requested documents.

Pursuant to HB 1004, N.D.C.C. § 54-52.1-04.16(1), and the contractual audit obligations of OptumRx, SHP, NDPERS, and the Auditor, the Auditor now and on behalf of Myers and Stauffer (in order to fulfill its contractual obligations), requests the following:

1. Invoices for all claims in the years of 2019, 2020 and 2021; and
2. An unredacted version of the SHP/OptumRx Agreement(s), including all amendments.

The Auditor requests a response to this letter within seven days after receipt and is willing to take any legal actions necessary to compel disclosure of the records.

Sincerely,

Carl M. Karpinski
Assistant Attorney General
General Counsel for the North Dakota State
Auditor's Office