

March 13, 2014

Mr. David Fleming
NYS Office of the State Comptroller
110 State Street 11th Floor
Albany, NY 12236

RE: OSC Audit 2012-S-132

Dear Mr. Fleming:

We have reviewed the information in your final report for the audit titled *"Empire BlueCross BlueShield Selected Payments for Special Items for the Period January 1, 2012 Through June 30, 2012"*. We offer the following response to the findings and recommendations and appreciate the opportunity to clarify and document our position. For the remainder of this response, we will refer to Empire BlueCross BlueShield as "Empire" and the New York State Office of the State Comptroller as "OSC".

This confidential information is considered proprietary business information and a trade secret, and if disclosed, would cause substantial injury to the competitive position of Empire BlueCross BlueShield (Empire). Pursuant to the Freedom of Information Act (Public Officer's law Art 6-A) we request that such information be kept confidential and not be disclosed if requested.

AUDIT FINDINGS:

- *Empire did not have adequate controls to ensure special items were paid according to contract provisions. Of the 100 claim payments reviewed, there were errors on 81 claims resulting in a net overpayment of \$391,894. Specifically, 72 claims were overpaid by a total of \$433,222, and 16 were underpaid by a total of \$41,328 (with an adjustment of 7 claims).*
- *(The) projected overpayments for the population of special items totaled at least \$2.1 million.*
- *(Empire has) engaged a consultant to review claims with charges for special items. The consultant will subject special item claims to a computer algorithm, and those which exceed the algorithm's cost parameters will be flagged for review, adjustment, and recovery.*

Empire remains confident that we are able to negotiate contracts with our participating providers that offer the greatest benefits to our customers. We also acknowledge the importance of having the appropriate controls in place to ensure contractual provisions are followed. We do however, respectfully disagree that there were errors on 81 of the 100 claims in the sample. For example, \$11,444 of the \$391,894 net overpayment finding was a result of certain hospitals' inability to provide complete supporting documentation. For this overpayment category, two hospitals were unable to locate documentation acceptable to OSC. While Empire does not recognize dollars in this finding category as true overpayments, we did share the findings with the hospitals and they both honored their agreement with Empire and have refunded these dollars. Additionally, we have been diligently focused on including measureable language in contracts upon renewal.

Empire's internal audit controls are robust and multi-faceted. Your report accurately reports the engagement of an outside consultant tasked with auditing the reimbursement of the special items that have been the focus of the OSC audits. In addition, we continue to perform the many other types of audits as discussed with OSC in prior response letters. These audits are ongoing and closely tracked, and continue to result in savings for Empire and the State of New York.

We have always used the information provided by OSC to supplement our internal audit processes. Throughout this and prior audits, Empire's member hospitals have indicated their willingness to fully comply with the OSC's requests for supporting documentation. As per industry standard, independent hospitals and large hospital systems purchase the items that have been the focus of these audits in bulk at varying frequencies. Consequently, this presents the inherent challenge of linking supporting documentation to a particular patient. In an effort to ensure our member hospitals are providing the most appropriate supporting documentation to the OSC, we have initiated dialog with certain hospitals to gain a better understanding of the challenges they are encountering and to educate them on what documentation is acceptable to both the OSC and to Empire.

Of the 25 hospitals, two hospitals had findings of underpayments. Eleven hospitals agreed with the findings, representing \$166,411, while ten hospitals did not respond to the audit findings. Two hospitals disagreed with their findings, which together totaled \$25,598. Consequently, these findings will be considered unrecoverable. The issue of OSC audit findings continues to be included in our ongoing discussions with Stony Brook.

As has been previously indicated, Empire does not recognize or accept projected findings therefore we are interpreting the second finding as simply a comment and acknowledge that projected findings can be used as a tool to identify possible systemic issues with a particular hospital or hospital system.

The third finding is a confirmation that Empire has made progress in meeting the commitments made to the OSC to implement stronger controls around the reimbursement of special items. We are confident that our partnership with an industry leading vendor gives us the access to the technology and expertise necessary to implement the controls recommended by your office.

AUDIT RECOMMENDATIONS:

1. *Recover the net overpayment of \$391,894 for the improperly paid claims.*
2. *"Ensure that the future agreements with hospitals contain language which: specifies the basis of reimbursement for the purchase and acquisition of special items; and requires hospitals to provide appropriate support documentation upon request."*
3. *"Complete the development and implementation of internal controls to ensure that payments for special items are according to hospital agreements and are supported by appropriate documentation."*

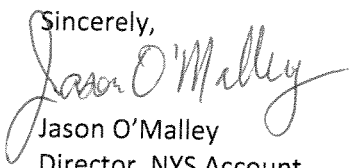
To date, \$366,126 has been recovered, with recoveries pending only from one hospital. This represents 99% of the recoverable findings from this audit. The remaining findings are unrecoverable. We will continue to send your office a quarterly report of the audit recoveries until they are complete.

Empire has been making steady progress in transitioning our member hospitals to a standard Enterprise Facility Agreement (EFA). Our EFA contains consistent language around the definition of special items and the terms for reimbursement. During the negotiation process upon renewal, this language is modified in a manner agreeable to both parties. One of our top priorities is to get measureable language around the reimbursement of special items, however because terms must be agreed upon by our hospitals, there will be language variation regarding special items among our hospital agreements. We agree that specific language is required to have the controls in place to ensure these items are paid accordingly. Empire has made significant progress in the area since 2011. In 2011, over 50% of hospitals eligible for separate reimbursement of special items had some form of limiting language in their agreements around the reimbursement of these items. As of February 2014, this has increased to almost 75%. In addition, Empire is currently in contract negotiations with several hospitals and we expect that number to increase in the coming months.

The controls mentioned in the recommendations refer to Empire's ability to audit the payment of special items and ensure the accuracy of hospital billings. As noted above, Empire's vendor is actively engaged in reviewing reimbursement for specific special items, utilizing a process that is not hindered by the challenge of obtaining supporting documentation. This vendor is also responsible for maintaining a rigorous audit schedule for all hospitals with limiting (and therefore, auditable) language.

These and other audit activities are regularly reported to the Department of Civil Service. Finally, we wish to point out the myriad of systematic and workflow enhancements that stop a claim for review before it is paid, including claim processing edits, cost containment activities tied to data mining, and clinical review work. While not directly focused on the billing of special items, all of these components help to control costs and ensure that claims are paid appropriately.

Our work continues toward full implementation of OSC's recommendations, both in terms of stronger hospital agreement language and hospital audit capabilities. We recognize that these audit reports ultimately help to strengthen internal policies and controls and thus, the quality and value of the hospital coverage offered to your members. Thank you for the courtesy extended throughout the audit process. We value our partnership with the State of New York and welcome any additional comments. Please feel free to contact me with any questions or if you would like to discuss this response further.

Sincerely,

Jason O'Malley
Director, NYS Account
Empire BlueCross BlueShield

Cc: R. Dubois, Department of Civil Service
B. Mason, Office of the State Comptroller
E. Durocher, Office of the State Comptroller
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