

May 9, 2014

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

RE: OSC Audit 2013-S-28

Dear Mr. Fleming:

We have reviewed the information in the final report for the audit titled "*Empire BlueCross BlueShield Selected Payments for Special Items for the Period July 1, 2012 Through December 31, 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 made a net overpayment of \$898,541 on 96 of the 100 claims reviewed.*
- *Empire has engaged a consultant to review claims with charges for special items*

There have been multiple revisions to the findings since the issuance of the final audit report. Specifically, when details on the initial findings were shared with one large hospital system, it was determined that the overpayment calculations were incorrect, based on an inaccurate interpretation of the contract language regarding reimbursement for special items. The subsequent recalculation and revision of findings for the impacted hospitals reduced the total OSC findings to \$847,320.

Additionally, Empire utilized the detailed finding information provided by OSC to work collaboratively with facilities to identify any potential concerns and/or improvements in the audit process. This involved on site meetings, conference calls, and regular exchange of information with the positive effect of more frequent and open dialog between Empire and hospital officials who are closest to the issues spotlighted in this audit. It is essential that hospitals are given not just their findings per audited claim, but the details behind them. Hospitals are far more responsive when they can understand how OSC determined a unit price for an item, how the hospital's cost for an item was obtained, and how the overpayment was calculated. They cannot respond to audit findings effectively without this information. A number of hospitals made corrections to the OSC calculations with explanations and/or submitted additional documentation supporting their calculations. As a result, Empire has made further reductions to the findings assessed by your office. At this time, we recognize findings totaling \$587,563

for this audit, with the expectation of further adjustments, as there is ongoing discussion regarding the findings for three hospitals, and we currently have an open review in progress for one claim.

This was an audit of payments made for special items billed on one hundred (100) claims by twenty five (25) hospitals, and paid between July 1, 2012 and December 31, 2012. OSC broke the hospitals into four (4) separate regions. For the remainder of this letter, we will address the audit findings per region, and send your office a breakdown of the regional findings, with Empire's adjustments, per hospital, under separate cover. The issue of recoveries will be addressed under the Audit Recommendations section of this letter.

Region I was comprised of seven (7) hospitals, which are part of a single hospital system. This hospital system added limiting language around their reimbursement for special items effective 7/1/12. The total OSC findings for this region were \$303,767. We have worked collaboratively with representatives from the hospitals in this region to review the OSC findings and validate the basis of their disagreement with the findings via additional supporting documentation and corrections to calculations. At this time, Empire recognizes total findings for the Region I hospitals of \$128,608. This dollar amount does not include the findings for three hospitals, which are still under discussion and the dollars associated with the open review currently in progress (\$64,449).

This audit facilitated useful discussion regarding the billing and reimbursement of special items, and the appropriate course of action when discrepancies are identified. Unofficially, the hospital system has indicated agreement with findings recognized by Empire and a willingness to refund those overpayments. We are awaiting their formal response to this audit and will share it with your office upon receipt.

Region II was comprised of three (3) hospitals with total OSC findings totaling \$34,496. Empire made no revisions to these findings. One of the three (3) hospitals had zero findings, the other hospital agreed with the findings and refunded the overpayment, and the third hospital did not respond to the audit report.

Region III was comprised of eight (8) hospitals with total OSC findings of \$241,950. Four (4) of the hospitals agreed with their audit findings and have refunded. One (1) hospital did not respond to the audit report. Three (3) hospitals successfully disputed their findings with Empire, which resulted in a reduction of the Region III findings by \$50,313 to \$191,637.

Region IV was comprised of seven (7) hospitals with total OSC findings of \$267,107. One (1) of these hospitals was underpaid. Five (5) hospitals did not respond to their audit reports. Four (4) of the five (5) hospitals are all within the same hospital system. The issue of audit findings for this hospital system was addressed with hospital officials and is being taken into consideration for the upcoming contract renegotiation.

Empire made adjustments to the findings of one (1) hospital in this region for several reasons. OSC disallowed one of their claims because the documentation provided by the hospital was deemed unacceptable. Upon review of the information, it was determined that our internal audit department would have accepted the documentation, so we recalculated the disallowance using the documentation as our basis of measurement. We also made the determination that a portion of their findings should not be categorized as findings, as the overpayments cited by OSC are not defined in the Hospital Agreement as overpayments. Therefore, Empire recognizes \$232,822 in findings for Region IV, which is a reduction of \$34,285.

In our response to the Preliminary Audit Report, we indicated our intention to engage in direct discussions with hospitals to identify the root cause for the discrepancies noted between the hospital billing and the documentation provided. Those conversations have begun. An area of contention with the audits is what constitutes acceptable documentation supporting the hospital's cost of a special item. OSC is very strict and specific about what document is necessary. If that document is not provided, OSC disallows the entire special item payment.

The majority of hospitals in this audit, and prior similar audits, have indicated that the documentation required by the OSC is time consuming to obtain and very difficult to link back to a specific patient, as these items are often purchased in bulk. It is not uncommon for these items to come in cases of 10 or 100, then requiring the calculation of a per unit price. The audit results reflect the inherent differences between OSC's determination of a special item's specific cost and the realities of how hospitals are able to account for and bill these items.

We categorize the second finding in the report as a statement of fact regarding Empire's engagement of a vendor to audit special items. This is an accurate statement and an initial review of claims data has been completed by the vendor.

#### **AUDIT RECOMMENDATIONS:**

1. *"Recover the net overpayment of \$898,541 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 supporting documentation upon request."*
3. *"Complete the development and implementation of internal controls to ensure that payments for special items are made in accordance with hospital agreements and are supported by appropriate documentation."*

Please note, the findings documented by OSC were reduced to \$847,320 after this report was issued, and subsequently further reduced to \$587,563 during Empire's review of OSC's detailed finding calculations. To date \$136,115 has been recovered and credited back to New York State. The findings for one hospital are still under review by Empire and the findings for three Region 1 hospitals are being discussed with the hospital system. The recoveries for the Region 1 hospitals are being addressed collectively by the hospital system and we expect to receive their response to the audit in the near future. Recoveries have been initiated on all other claims in the audit. Your office will continue to receive 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 this area since 2011. In 2011, just 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

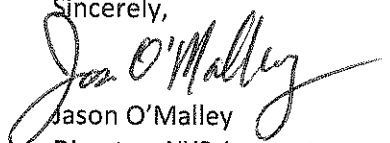
nearly 75%. In addition, Empire is currently in contract negotiations with several hospitals and we expect this number to increase in the coming months.

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 previously mentioned, Empire's has created a process to review reimbursement for specific special items. This process began the third quarter of 2013 with the review and analysis of claims processed in the prior twelve months. These audit results continue to be shared with identified facilities.

Empire continues to actively oversee audits in other areas that impact hospital claims. This audit activity is closely monitored, and the reports have shown significant recoveries for the New York State account reported for 2014. All audit activities and results are reported to the Department of Civil Service.

Our work continues toward full implementation of OSC's recommendations, both in terms of stronger hospital agreement language and enhanced 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: D. Boland, Department of Civil Service  
E. Durocher, Office of the State Comptroller  
L. Brown, Office of the State Comptroller  
E. Graber, Empire BlueCross BlueShield  
D. DePiano, Empire BlueCross BlueShield  
A. Blessing, Empire BlueCross BlueShield  
B. Sargent, Empire BlueCross BlueShield