



May 1, 2013

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

RE: OSC Audit 2011-S-17

Dear Mr. Fleming:

We have reviewed the information in your final report titled "*Empire BlueCross BlueShield Selected Payments for Special Items for the Period January 1, 2011 Through March 31, 2011*". 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 excessive payments to certain hospitals that did not have formal contract provisions limiting reimbursements for special items. On four such claims, Empire paid hospitals about \$279,000 (or 344 percent) more than the costs of the special items in question.*
- *(OSC was) unable to obtain supporting documentation from 13 hospitals for 44 selected claims for special items. If Empire paid these hospitals 344 percent more than the costs of the items, the hospitals could have generated profits of nearly \$1.6 million on these claims.*

In total there were twenty six (26) hospitals in this audit. Eleven (11) of the hospitals had language in their contract limiting the reimbursement for special items, while contracts for fifteen (15) of the hospitals did not include this language. Of the fifteen (15) hospitals without limiting language on special items, two (2) agreed to provide documentation showing the invoice cost of the items. We appreciate the transparency and cooperation shown by these two hospitals for this audit. The remaining thirteen (13) hospitals did not provide documentation regarding the cost of their special items, as their contract does not provide a basis for payment using invoice cost. Similar to concerns we have expressed in the past, we strongly disagree with the projection of gross overpayment for these thirteen (13) hospitals on the basis of four (4) judgmentally selected claims from two (2) hospitals completely unrelated to the thirteen (13) hospitals that did not provide documentation. .

We recognize the point OSC is attempting to demonstrate as well as the value of including this language in our facility contracts. However, we again feel it necessary to question the appropriateness and

request that OSC discontinue the practice of making broad based statements based on extremely limited sample sizes that include judgmentally selected (high dollar) claims which skew the result. Your report states that generally accepted government auditing standards require that you “plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for (your) findings and conclusions based on (your) audit objective”. This is not sufficient evidence to warrant an audit report that asserts overpayments of this magnitude. These assertions are routinely taken out of context when the final reports are published and this has resulted in negative media attention as well as hindered hospital negotiations.

This audit focused on only the reimbursement for special items and how this one area was addressed in the hospital agreements. We remind OSC again that although some of our hospital agreements may not include specific language limiting special item reimbursement, these agreements still include other cost containment provisions that permit Empire to audit and recover any applicable overpayments. These hospitals have contract language that limits their markup for specific goods and services, including special items, to a certain percentage per year, and gives Empire the right to audit those payments. That contractual right is currently exercised by Empire today and has resulted in significant credits to the NYS account.

AUDIT RECOMMENDATIONS:

- *“Ensure that the future agreements with hospitals contain language which: specifies the basis of reimbursement for the purchase and acquisition (including transportation, handling and other processing costs) of special items; and precludes the submission of excessive claims by requiring hospitals to provide appropriate support documentation (including invoices for special items) upon request.”*
- *“Develop and implement internal controls, including pre-and post-payment verifications to supporting documentation, to ensure that payments for special items are made in accordance with hospital agreements.”*

Empire has been diligently and in good faith acting upon the findings and recommendations from OSC since these types of audits began in 2009.

We agree that the most effective way to limit the reimbursement of special items is to incorporate specific language into the hospital agreements, followed by audits to ensure that the requirement of the limiting language for special items is met. Of the fifteen (15) hospitals in this audit that did not have contract language limiting the reimbursement of special items, eight (8) of the fifteen (15) hospitals now have that language, including the two (2) hospitals cited in your report as realizing excessive profits on special items.

As we have reported previously, Empire is working to transition all our hospital agreements to our standard Enterprise Facility Agreement upon renewal, which does contain clear and specific definitions of special items and the terms for reimbursement. Currently, ninety two percent (92%) of our hospitals have cost containment language that permits Empire to audit payments. Sixty three percent (63%) of our hospitals have limiting language specific to special items. As hospital negotiations are finalized throughout the year, our progress with the inclusion of this limiting language into new contracts will continue to be reported monthly to the Department of Civil Service.

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. Empire and the OSC met in 2011 and discussed the actions on Empire's part that would be mutually agreeable to both parties and address OSC's concerns. Following this meeting, Empire secured internal resources to perform multiple types of hospital audits, including audits targeting the reimbursement of special items. This type of audit can only be done on hospitals that have the contractual language clearly defining limits around reimbursement for special items; usually tying reimbursement to the hospital's purchase price. This language provides the basis for auditing the reimbursement of special items.

Empire's internal audits have been ongoing and we continue to work with our hospital partners to ensure their billing practices are consistent with our agreements. As a result, our post payment reviews have evolved into a more efficient and collaborative process, with a scope that continues to expand as an increasing number of contracts now include language supporting post payment review.

Since November 2011, Empire has credited the State of New York \$1.3 million in recoveries from our internal audits of hospitals with and without limiting language. This is in addition to the \$911,520 that has been credited specifically as a result of the OSC audits which began in 2008. We consider these results to be a testament to our commitment as well as validation that the internal controls we have established thus far are working as designed.

FINAL REPORTS TO INDIVIDUAL HOSPITALS

Your office issued final audit reports for the eleven (11) hospitals in this audit with the following recommendations:

- Recover the dollar amount from the hospital for the overpayment identified in this audit.
- Develop and implement the controls necessary to ensure that payments for special items comply with the terms of Empire's contract with the hospital.

The audit findings and reports have all been shared with the eleven (11) hospitals identified in the audit. The findings, recoveries, and the hospital's response to their final report are summarized on the attached spreadsheet. All recoverable dollars associated with this audit have been credited back to the NYS account. We would like to thank these hospitals for their cooperation with this audit.

University Hospital at Stony Brook continues to disagree with the OSC audit findings. Empire is currently in contract negotiations with Stony Brook and we will not seek recovery of the audit overpayments until there is agreement between both parties on how these will be handled.

Englewood Hospital has limiting language around the reimbursement of special items. They agreed to only partial findings because their interpretation of the contract language differed from OSC's. As a result, Empire has not been able to secure recovery of the disputed overpayments.

St Mary's Passaic Hospital and Mount Sinai Medical Center did not respond to the audit report and findings, however, they did not dispute Empire's request for refund of the audit overpayments.

Much progress has been made toward the implementation of OSC's recommendations, both in terms of stronger hospital agreement language and hospital audit capabilities. We will continue to pursue enhancements and opportunities that will support audits of our network hospitals, including the utilization of OSC audit findings as a contributing factor when prioritizing hospitals for our internal

corporate audit schedule. We will also continue to aggressively seek the inclusion of limiting language around special items in every hospital renewal negotiation.

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,

A handwritten signature in black ink that reads "Jason O'Malley". The signature is written in a cursive, flowing style.

Jason O'Malley
Director, NYS Account
Empire BlueCross BlueShield

Cc: R. Dubois, Department of Civil Service
E. Durocher, Office of the State Comptroller
L. Brown, Office of the State Comptroller
E. Graber, Empire BlueCross BlueShield
J. Caby, Empire BlueCross BlueShield
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B. Sargent, Empire BlueCross BlueShield
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