New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

United HealthCare: Overpayments for Services Provided by Dr. John Gomes

New York State Health Insurance Program

Report 2014-S-70 May 2016

Executive Summary

Purpose

To determine whether Dr. John Gomes waived Empire Plan members' out-of-pocket costs, and if so, to quantify the overpayments made by United HealthCare resulting from this practice. The audit covered the period January 1, 2011 through September 30, 2014.

Background

The New York State Health Insurance Program (NYSHIP) provides health insurance coverage to active and retired State, participating local government, and school district employees, as well as their dependents. The Empire Plan is the primary health benefits plan for NYSHIP, covering a range of services from inpatient hospital care to outpatient surgical procedures and physician office visits. The New York State Department of Civil Service contracts with United HealthCare (United) to process and pay medical claims from health care providers for services provided to Empire Plan members.

United contracts with in-network participating providers who agree to accept payments, at rates established by United, to furnish medical services to Empire Plan members. Members pay a nominal co-payment to the participating provider for the services rendered. Members may also choose to receive services from out-of-network non-participating providers. United reimburses claims from non-participating providers at amounts that are generally higher (and often significantly higher) than the rates participating providers agree to accept for the same services. Consequently, to encourage members to use less costly participating providers, the Empire Plan requires members to pay higher out-of-pocket costs (deductibles and co-insurance) when they use non-participating providers.

In accordance with the Empire Plan's requirements, when United processes a non-participating provider's claims, it is with the understanding that Empire Plan members are liable for a portion of the claimed amount, representing members' out-of-pocket cost-sharing obligations. However, if a non-participating provider does not collect (i.e., waives) a member's out-of-pocket costs, it will result in United making an excessive payment on the claim.

Our audit focused on claims submitted to United by Women's Healthcare - Garden City, an obstetrics and gynecology practice operated by Dr. John Gomes, located on Franklin Avenue in Garden City, New York. With respect to the Empire Plan, Dr. Gomes' practice is a non-participating provider. During the period January 1, 2011 through September 30, 2014, United paid claims totaling over $5 million for services provided by Dr. Gomes to Empire Plan members.

Key Findings

- Dr. Gomes' practice (hereafter referred to as Dr. Gomes) routinely failed to actively pursue collection of out-of-pocket cost-sharing obligations from Empire Plan members and, as such, we concluded Dr. Gomes waived these out-of-pocket costs. Consequently, United made overpayments on claims submitted by Dr. Gomes. Further, by not collecting members' out-of-pocket costs, Dr. Gomes negated the incentive for certain members to use participating

providers. This likely increased costs to the Empire Plan and, consequently, to taxpayers.

- From a random sample, we identified overpayments totaling $138,905 that resulted from claims that were excessive due to the routine waiving of members' cost-sharing obligations. Based on a statistical projection of the sample overpayments to the population of Dr. Gomes' claims, we determined United overpaid $1,258,855 for the period January 1, 2011 through September 30, 2014.
- For example, Dr. Gomes billed $8,450 and United allowed $6,373 for certain services provided on January 6, 2011. United paid $5,228 on the related claim, and the member's out-of-pocket portion of this claim should have been $1,144. However, Dr. Gomes accepted the $5,228 as payment-in-full and did not collect the $1,144 due from the member. Because Dr. Gomes' actual charge was only $5,228, United should have paid only $4,084 on the claim. This resulted in an overpayment by United of $1,144 ($5,228 - $4,084). In this case, nearly four years passed without any meaningful effort by Dr. Gomes to collect the amount otherwise due from the member. Therefore, we concluded that Dr. Gomes waived the member's out-of-pocket cost obligation.

Key Recommendations

- Recover the $1,258,855 in overpayments from Dr. Gomes and refund the State accordingly.
- Work with the Department of Civil Service to pursue an appropriate course of action designed to prevent Dr. Gomes from waiving Empire Plan members' out-of-pocket costs. This may include taking steps to bring Dr. Gomes into the Empire Plan's participating provider network.

Other Related Audits/Reports of Interest

United Health Care: New York State Health Insurance Program – Overpayments for Services at the Capital Region Ambulatory Surgery Center (2007-S-72)

United Health Care: New York State Health Insurance Program – Overpayments for Services at the Day Op Center of North Nassau (2007-S-120)

State of New York
Office of the State Comptroller

Division of State Government Accountability

May 5, 2016

Mr. Carl A. Mattson
Vice President, Empire Plan
United HealthCare National Accounts
13 Cornell Road
Latham, NY 12110

Dear Mr. Mattson:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the New York State Health Insurance Program entitled *United HealthCare: Overpayments for Services Provided by Dr. John Gomes.* The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Office of the State Comptroller
Division of State Government Accountability

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Background

The New York State Health Insurance Program (NYSHIP) provides health insurance coverage to active and retired State, participating local government, and school district employees, as well as their dependents. The Empire Plan is the primary health benefits plan for NYSHIP. The Empire Plan covers a comprehensive range of services including, but not limited to, physician office visits, inpatient and outpatient hospital services, surgical procedures, home care services, medical equipment and supplies, mental health and substance abuse services, and prescription drugs. The New York State Department of Civil Service contracts with United HealthCare (United) to process and pay medical claims for services provided to Empire Plan members. The State reimburses United for the payments it makes under the Empire Plan, and it pays United an administrative fee.

United contracts with in-network health care providers who agree to accept payments, at rates established by United, to furnish medical services to Empire Plan members. United remits payments directly to these participating providers based on claims they submit for the services provided. Members pay a nominal co-payment to the participating provider for the services rendered.

Members may also choose to receive services from out-of-network non-participating providers. To limit its costs (and those of the State), United pays non-participating provider claims based on the "reasonable and customary" rate for the service, which is defined as the lowest of: the actual charge for the service; the usual charge by the provider for the same or similar service; or the usual charge of other providers in the same or similar geographic area for the same or similar service. However, reasonable and customary rates are generally higher (and often significantly higher) than the rates United pays to participating providers for the same services.

To encourage members to use less costly participating providers, the Empire Plan requires members to pay higher out-of-pocket costs (including deductibles and co-insurance) when they use non-participating providers. After the member meets an annual deductible, United pays the member 80 percent of the allowed reasonable and customary cost of the service, and the member is responsible for the remaining 20 percent of the cost (i.e., the co-insurance). (Note: if a member reaches their out-of-pocket limit, United will pay more than 80 percent of the allowed amount.) When United pays a claim submitted by a non-participating provider, the payment is generally made to the Empire Plan member and the member is then responsible for paying the provider. The member is also responsible for settling any other unpaid balance with the non-participating provider, including any out-of-pocket amounts owed.

Our audit focused on claims submitted to United by Women's Healthcare - Garden City, an obstetrics and gynecology practice operated by Dr. John Gomes, located on Franklin Avenue in Garden City, New York. With respect to the Empire Plan, Dr. Gomes' practice (hereafter referred to as Dr. Gomes) is a non-participating provider. During the period January 1, 2011 through September 30, 2014, United paid over $5 million in claims submitted by Dr. Gomes for services rendered to Empire Plan members.

Audit Findings and Recommendations

Waiving of Members' Out-of-Pocket Costs

In accordance with the Empire Plan's requirements, when United processes a provider's claims for services provided to Empire Plan members, it is with the understanding that members are liable for a portion of the claimed amount, representing members' out-of-pocket cost obligations. However, our audit found that Dr. Gomes routinely failed to pursue collection of (i.e., waived) Empire Plan members' required out-of-pocket cost obligations. Consequently, Dr. Gomes' billed amounts to United were inflated by the amount of the waived member out-of-pocket costs, which caused United to make excessive payments for these claims. Using statistically valid methods, we determined United made $1,258,855 in overpayments on Dr. Gomes' claims during the period January 1, 2011 through September 30, 2014. Also, by not collecting members' out-of-pocket costs, Dr. Gomes negated the incentive for members to use participating providers. This likely increased costs to the Empire Plan and, consequently, to taxpayers.

Because Dr. Gomes did not pursue collection of members' out-of-pocket cost obligations, he should have reduced his claims to United by the amounts of those out-of-pocket costs. Thus, United should have paid 80 percent of the reduced amount Dr. Gomes intended to accept as payment-in-full. By not collecting the members' out-of-pocket costs, Dr. Gomes effectively waived Empire Plan members' portion of the claim as evidenced by the material dollar amounts of members' unpaid balances. This caused United to pay 100 percent of Dr. Gomes' actual charges (i.e., the amount Dr. Gomes intended to accept as payment-in-full) for the services.

To determine the amount of the overpayments for the audit period, we selected medical claims submitted by Dr. Gomes in which United was the primary payer and members' out-of-pocket cost obligations were included on the claims. From January 1, 2011 through September 30, 2014, we identified 2,788 payments totaling about $5 million meeting these criteria. To determine whether Dr. Gomes waived members' out-of-pocket costs, we selected a random sample of 261 of the 2,788 payments. We reviewed Dr. Gomes' related financial records for the sample and determined that members' out-of-pocket costs were not collected for 243 (93.1 percent) of the 261 selected payments. Generally, Dr. Gomes failed to actively pursue the collection of out-of-pocket costs from Empire Plan members in these cases. In the remaining 18 instances, we concluded that out-of-pocket costs were not waived. Nevertheless, based on our overall audit testing, we concluded that Dr. Gomes routinely waived members' out-of-pocket costs.

For example, Dr. Gomes billed $6,301 and United allowed $5,060 for certain services provided on January 18, 2011. United paid $3,848 on the related claim, and normally, the member's out-of-pocket obligation for it would have been $1,212. However, Dr. Gomes accepted the $3,848 as payment-in-full and ostensibly waived the $1,212 due from the member. Because Dr. Gomes' actual charge was only $3,848, United should have paid only $2,768 on this claim. This resulted in an overpayment by United of $1,080 ($3,848 - $2,768).

In another case, Dr. Gomes billed $8,450 and United allowed $6,373 for certain services provided

on January 6, 2011. United paid $5,228 on the related claim, and the member's out-of-pocket portion of this claim should have been $1,144. However, Dr. Gomes accepted the $5,228 as payment-in-full and ostensibly waived the $1,144 due from the member. Because Dr. Gomes' actual charge was only $5,228, United should have paid only $4,084 on the claim. This resulted in an overpayment by United of $1,144 ($5,228 - $4,084). Moreover, in this and the aforementioned example, nearly four years passed without any meaningful effort by Dr. Gomes to collect the amounts otherwise due from the members. As such, we concluded that Dr. Gomes ostensibly waived the members' out-of-pocket cost obligations.

Based on our random sample, we identified overpayments totaling $138,905 that resulted from claims that were excessive. In submitting claims, Dr. Gomes routinely reported the full base charges for his services, and did not reduce the claims by the amounts of members' out-of-pocket cost obligations that would not be collected (or were ostensibly waived). A projection of these overpayments to the entire population of claim payments, using statistically valid sampling methods (including a 95 percent single-sided confidence level), resulted in an audit overpayment of $1,258,855.

We note that the submission of an insurance claim with false information, such as excessive service charges, may constitute insurance fraud pursuant to State Law. The New York State Insurance Department (now known as the New York State Department of Financial Services) concluded that it may be a fraudulent billing practice and violation of the State Insurance Law when a provider routinely waives out-of-pocket cost obligations and accepts amounts from the insurer as payment-in-full. Officials at the New York State Department of Civil Service and the New York State Department of Financial Services are concerned about the impact of fraudulent and/or abusive billing practices in the Empire Plan. Officials have been concerned that providers who routinely waive Empire Plan members' out-of-pocket costs do so intentionally to benefit from the higher reimbursement rates for non-participating providers.

Prior to this audit, the Office of the State Comptroller had issued a series of audit reports about non-participating providers who routinely waived members' out-of-pocket cost obligations. (For examples of those reports, please see the Other Related Audits/Reports of Interest referenced in this report's Executive Summary.) As a result of those prior audits, United, with the assistance of State oversight authorities, recovered overpayments and brought several of the providers in question into its network of participating providers. By doing so, this helped to reduce the incidence of waiving of members' out-of-pocket costs and saved material amounts of taxpayer dollars.

Recommendations

1. Recover the $1,258,855 in overpayments from Dr. Gomes and refund the State accordingly.

2. Work with the Department of Civil Service to pursue an appropriate course of action designed to prevent Dr. Gomes from waiving Empire Plan members' out-of-pocket costs. This may include taking steps to bring Dr. Gomes into the Empire Plan's participating provider network.

Audit Scope and Methodology

The objective of our audit was to determine whether Dr. Gomes waived Empire Plan members' out-of-pocket costs, and if so, to quantify the overpayments made by United resulting from this practice. The audit covered the period January 1, 2011 through September 30, 2014.

To accomplish our audit objective, and assess internal controls related to our audit objective, we interviewed United officials and reviewed a random sample of 261 claims submitted by Dr. Gomes. We reviewed the doctor's financial records to determine if he routinely failed to collect the out-of-pocket costs for Empire Plan members, and consequently submitted improper claims to United. Based on the overpayments identified in the sample, we used a statistically valid projection to determine the total overpayments made during the audit period.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards 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 our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

Reporting Requirements

We provided preliminary copies of the matters contained in this report to United officials for their review and comment. Their comments were considered in preparing this final report.

Within 90 days after final release of this report, we request that United officials report to the State Comptroller advising what steps were taken to implement the recommendations included in this report.

Contributors to This Report

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