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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

December 27, 2017

Carl A. Mattson
Vice President, Empire Plan
UnitedHealthcare
13 Cornell Road
Latham, NY 12110

Re: UnitedHealthcare: Improper Payments
for Medical Services Designated By
Modifier Code 59
Report 2017-F-23

Dear Mr. Mattson:

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, we have followed up on the actions taken by officials of UnitedHealthcare (United) to implement the recommendations contained in our audit report, *UnitedHealthcare: Improper Payments for Medical Services Designated By Modifier Code 59* (Report 2013-S-82).

Background, Scope, and Objective

The New York State Health Insurance Program (NYSHIP) provides health insurance coverage to approximately 1.2 million active and retired State, participating local government, and school district employees, and their dependents. The Empire Plan is the primary health benefits plan for NYSHIP, serving about 1.1 million of these members. The Empire Plan covers a comprehensive range of services including, but not limited to, inpatient and outpatient hospital services, home care services, medical equipment and supplies, mental health and substance abuse services, and prescription drugs.

The Department of Civil Service (Department) administers NYSHIP. In carrying out its responsibilities, the Department contracts with United to process and pay medical and surgical claims for services provided to Empire Plan members. United's payments to medical providers are based, in part, on procedure codes billed on claims that indicate the medical services performed. United will not pay for certain procedure codes billed in combination with other procedure codes unless the provider includes a modifier code on the claim to further describe the services performed. Modifier 59 is used to indicate that a provider performed a procedure that was distinct or independent from another procedure that was performed on the same day for the

same patient. Modifier 59 is used to identify procedures or services that are not normally billed together, but are appropriate under the circumstances. For example, a procedure billed with modifier 59 may involve a different anatomical site or separate injury. From September 1, 2012 to August 31, 2013, United paid over \$82.3 million for about 1.3 million services with modifier 59.

We issued our initial audit report on January 8, 2015. Our objective was to determine whether United improperly paid for medical services designated with modifier code 59 that were not distinct and independent from other services provided on the same day. The audit covered the period from September 1, 2012 to August 31, 2013. In our initial audit, we reviewed a random sample of 245 claims with modifier 59. We identified 13 claims that were overpaid by \$39,345 because a distinct or independent service was not provided despite the claims' designation of modifier 59. To develop an estimate of the total overpayments resulting from the improper use of modifier 59, we used statistical sampling techniques to project the 13 overpayments to the population of modifier 59 claims. Based on this projection, we estimated (with a 90 percent confidence level) that United overpaid between \$1.6 million and \$5.2 million for services that included modifier 59 during the one-year period ending August 31, 2013.

We recommended that United: recover the \$39,345 in overpayments and credit the Department; formally remind providers on the proper use of modifier 59; and perform a formal risk assessment to identify providers with unusual modifier 59 billing patterns and take appropriate actions, including recovery of overpayments.

The objective of this follow-up was to determine the implementation status, as of December 21, 2017, of the three recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

United officials made significant progress in addressing the issues we identified in the initial audit. Of the initial report's three audit recommendations, two were implemented and one was partially implemented. United recovered \$29,856 of the \$39,345 in identified overpayments. In addition, United published guidance on the proper usage of modifiers. Further, as a result of our initial audit and direction from the Department, United implemented a new fraud and abuse detection program to identify aberrant billing patterns, including inappropriate uses of modifier 59.

Follow-Up Observations

Recommendation 1

Formally remind providers on the proper use of modifier 59 for claims preparation and submission.

Status – Implemented

Agency Action – United issued guidance on the appropriate use of modifier codes, including modifier 59, in its February 2015 provider newsletter. In addition, as a result of our

initial audit and direction from the Department, United implemented a new fraud and abuse detection program. Using this program, United has targeted certain providers for education and guidance on the proper use of modifier 59.

Recommendation 2

Review and recover the \$39,345 in overpayments on the 13 improper claims.

Status – Partially Implemented

Agency Action – At the time of our follow-up, United had recovered \$29,856 of the \$39,345 in overpayments. The remaining \$9,489 had not yet been recovered.

Recommendation 3

Perform a formal risk assessment of providers' use of modifier 59 and identify providers exhibiting unusual modifier 59 billing patterns. As priorities and resources permit, review the claims of higher risk providers and take appropriate actions, including (but not limited to) recovery of any overpayments identified and targeted provider education.

Status – Implemented

Agency Action – As a result of our initial audit and direction from the Department, United implemented a new fraud and abuse detection program. This pre-adjudication program uses data and statistical analysis to identify providers with aberrant billing patterns for a wide range of issues, including suspect uses of modifier 59. United has targeted identified providers for education and guidance on the proper use of modifier 59, and has achieved savings from providers found to have inappropriately used modifier 59.

Major contributors to this report were Laura Brown, Arnold Blanck, Rachele Goodine, and Constance Walker.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We thank the management and staff of United and the Department for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

David J. Fleming
Audit Manager

cc: Mr. James Dewan, Department of Civil Service
Mr. Ronald Kuiken, Department of Civil Service
Mr. Jeffrey Stein, Department of Civil Service
Mr. Daniel Yanulavich, Department of Civil Service
Mr. Richard Maloney, UnitedHealthcare
Mr. Mark Newman, UnitedHealthcare