New York State Health Insurance Program

Empire BlueCross: Overpayments for Physician-Administered Drugs

Report 2021-S-33 | September 2023

OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller
Division of State Government Accountability

Audit Highlights

Objective

To determine whether Empire BlueCross appropriately reimbursed physician-administered drugs. The audit covered the period from January 2017 through December 2021.

About the Program

The New York State Health Insurance Program (NYSHIP), administered by the Department of Civil Service (Civil Service), provides health insurance coverage to over 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, covering nearly 1.1 million of these members.

Civil Service contracts with Empire BlueCross (Empire) to administer the Hospital Program of the Empire Plan. Empire processes and pays claims for hospital services, which includes coverage for inpatient and outpatient services provided by a hospital, skilled nursing facility, or hospice. These benefits cover a range of services, including physician-administered drugs. A physician-administered drug is a drug, other than a vaccine, that is typically administered by a health care professional in a hospital or facility setting. From January 1, 2017 through December 31, 2021, Empire paid approximately $855 million for physician-administered drugs under the Hospital Program. In certain circumstances, physician-administered drugs provided in a hospital, skilled nursing facility, or hospice are paid under the Empire Plan's separate Prescription Drug Program. However, both programs should not pay for the same physician-administered drug for the same patient on the same date of service.

Key Findings

We identified $2,776,510 in actual and potential overpayments for the cost of physician-administered drugs during the audit period, as follows:

- $1,690,853 was paid for physician-administered drugs under both the Hospital Program and the Prescription Drug Program, and another $45,546 in related physician-administered drug payments were incorrectly processed by Empire whereby Empire paid the full price even though the facility billed $0.01 (no-cost); and
- $1,040,111 was paid for physician-administered drugs that were not in compliance with guidelines.

As of June 21, 2023, Empire had started recoveries for $116,287 of the improper payments.

Key Recommendations

- Work with Civil Service to review the remainder of the $2,776,510 in overpayments and make recoveries, as warranted.
- Work with Civil Service to identify physician-administered drugs improperly paid by both the Hospital and the Prescription Drug Programs and develop a process to prevent future overpayments.

Office of the New York State Comptroller
Division of State Government Accountability

September 27, 2023

Jason O'Malley
Regional Vice President, Sales
Empire BlueCross
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Dear Mr. O'Malley:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively. By so doing, it provides accountability for the 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 *Empire BlueCross: Overpayments for Physician-Administered Drugs*. This 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,

Division of State Government Accountability

Contents

Glossary of Terms

Term	Description	Identifier
Empire	Empire BlueCross	*Auditee*
Civil Service	Department of Civil Service	*Agency*
CMS	Centers for Medicare & Medicaid Services	*Agency*
Empire Plan	Primary health insurance plan for NYSHIP	*Key Term*
FDA	U.S. Food and Drug Administration	*Agency*
Hospital Program	Empire Plan hospital coverage administered by Empire BlueCross	*Key Term*
NDC	National Drug Code	*Key Term*
NYSHIP	New York State Health Insurance Program	*Program*
Physician-administered drug	A drug, other than a vaccine, that is typically administered by a health care professional in a hospital or facility setting	*Key Term*
Prescription Drug Program	Empire Plan pharmacy benefit coverage administered by CVS Caremark	*Key Term*
Service code	Current Procedural Terminology (CPT) or Healthcare Common Procedure Coding System (HCPCS) code	*Key Term*

Background

The New York State Health Insurance Program (NYSHIP), administered by the Department of Civil Service (Civil Service), is one of the nation's largest public sector health insurance programs. NYSHIP covers over 1.2 million active and retired State, participating local government, and school district employees, and their dependents. The Empire Plan is the primary health insurance plan for NYSHIP, serving about 1.1 million members. The Empire Plan provides its members with four types of health insurance coverage: hospital, prescription drug, mental health and substance use, and medical/surgical coverage.

Civil Service contracts with Empire BlueCross (Empire) to administer the Hospital Program of the Empire Plan. Empire processes and pays claims for hospital services, which includes coverage for inpatient and outpatient services provided by a hospital, skilled nursing facility, or hospice. Hospital benefits cover a range of services, including physician-administered drugs. A physician-administered drug is a drug, other than a vaccine, that is typically administered by a health care professional in a hospital or facility setting. Empire reimburses facilities for physician-administered drugs using service codes that identify the specific drug administered to Empire Plan members, as well as the procedure for administering the drug.

Claims for the cost of physician-administered drugs, such as chemotherapy drugs, can be processed through either the Hospital Program or the Prescription Drug Program of the Empire Plan. Reimbursement of these claims is intended to cover the cost of purchasing the drug, which can be obtained through a direct or an indirect approach. Under the direct approach, the facility purchases and administers the drug and then submits a claim to Empire for reimbursement of the cost of the drug as well as any associated medical services, such as the injection or infusion service. With the indirect approach, an outside pharmacy provides the drug to the facility. In this case, the pharmacy bills the Empire Plan's Prescription Drug Program for the cost of the drug, and the facility bills Empire under the Hospital Program for services associated with administering the drug to the patient. Empire officials stated that they have not created specific guidelines outlining the appropriate way for facilities to bill Empire for no-cost drugs under the indirect approach. According to the Centers for Medicare & Medicaid Services (CMS) guidance, providers are required to report a charge amount of $0.01 for drugs obtained through the indirect approach.

During the audit period, January 2017 through December 2021, Empire paid over $15.6 billion in claims for services provided to Empire Plan members. Of this, approximately $855 million was for the cost of physician-administered drugs.

Audit Findings and Recommendations

We identified $2,776,510 in actual and potential overpayments for the cost of physician-administered drugs, as follows:

- $1,690,853 was paid for physician-administered drugs under both the Hospital Program and the Prescription Drug Program of the Empire Plan, and another $45,546 in related physician-administered drug payments were incorrectly processed by Empire whereby Empire paid the full price even though the facility billed $0.01 (no-cost); and
- $1,040,111 was paid for physician-administered drugs that were not in accordance with guidelines.

As of June 21, 2023, Empire had started recoveries for $116,287 of the improper payments.

Payments Under the Hospital and Prescription Drug Programs

The Empire Plan's Hospital and Prescription Drug Programs are administered separately by different companies and have separate claims processing systems. Since these systems do not typically share information, the potential exists for both companies to pay for the same physician-administered drug for the same patient, resulting in overpayments. We found that Empire made actual and potential overpayments of $1,690,853 for the cost of physician-administered drugs that were also paid by the Prescription Drug Program. We also determined Empire improperly paid $45,546 in physician-administered drug payments because it incorrectly processed the drug payments at full price even though the facility billed $0.01 (no-cost).

To determine whether Empire made overpayments for physician-administered drugs that were also paid under the Prescription Drug Program, we analyzed claims for physician-administered drugs where payments were made for the same member and drug through Empire and through the Prescription Drug Program. Specifically, we concentrated our analysis on claims with the likelihood of overpayment by Empire for the cost of the drug because the drug had already been paid by the Prescription Drug Program. We identified 3,222 claims that Empire paid, totaling $1,580,240, where the Empire service occurred up to 30 days after the Prescription Drug Program service (to allow time for delivery and administration of drugs paid for under both programs [high-risk population]).

To evaluate whether the Empire payments were appropriate, we chose eight of the highest-paid facilities from our high-risk population of Empire claims and reviewed patient medical records, as well as pharmacy documentation for the associated claims paid through the Prescription Drug Program. From these facilities, we selected a judgmental sample of 57 physician-administered drug claims, totaling $547,019, and determined that 54 (95%), totaling $531,150 (see table on p. 7), were inappropriately paid by Empire. The remaining three claims were correctly paid.

During our review of the sampled claims, we identified eight additional overpaid claims, totaling $110,613 (see table below), that were paid by both the Hospital Program and the Prescription Drug Program. These eight additional physician-administered drug claims related to refills for members in our sample that were outside of the 30-day period that we used for selecting claims.

Of the 62 (54 + 8) incorrectly paid physician-administered drug claims, 45, totaling $512,521, included the cost of the drug despite evidence that the facility did not purchase the drug. The remaining 17 claims were correctly billed as a no-cost drug by reporting a minimal amount of $0.01 to indicate that the drug was indirectly obtained. However, Empire's processing system improperly paid the facilities $129,242 for the claims. We expanded our analysis and found an additional $45,546 in physician-administered drugs that were billed in accordance with no-cost guidelines yet appear to be improperly paid at the full reimbursement rate. We questioned how Empire could have incorrectly paid $174,788 ($129,242 + $45,546) in claims when the facilities complied with existing guidelines. In response to the audit findings, Empire officials were taking steps to determine why the claims were incorrectly paid.

In total, we identified $687,309 in inappropriate payments, as follows:

Overpayments for Physician-Administered Drugs

Facility	Total Sampled Drug Payments	Amount Inappropriately Paid – Sample	Additional Amount Inappropriately Paid (Outside 30-Day Period)	Additional Amount Inappropriately Paid (No-Cost Drugs)	Total Inappropriate Payments*
A	$113,525	$113,525	$49,047	–	$162,572
B	116,717	116,717	36,077	–	152,794
C	143,774	143,774	–	$22,806	166,580
D	99,794	99,794	25,489	–	125,283
E	38,020	26,821	–	–	26,821
F	21,129	21,129	–	–	21,129
G	10,162	5,492	–	–	5,492
H	3,898	3,898	–	–	3,898
Other	–	–	–	22,740	22,740
Totals	**$547,019**	**$531,150**	**$110,613**	**$45,546**	**$687,309**

*Includes payments from sample and additional items identified.

As of June 21, 2023, Empire had started recoveries for $103,468 of the $687,309 in improper payments we identified in our review of physician-administered drugs.

Recommendations

1. Work with Civil Service to review the remainder of the $1,736,399 ($1,580,240 + $110,613 + $45,546) in physician-administered drugs identified by the audit and make recoveries, as warranted.

2. Work with Civil Service to identify physician-administered drugs paid for by both the Hospital and the Prescription Drug Programs and develop a process to prevent future overpayments.
3. Remind facility officials on how to properly bill for no-cost drugs (indirect approach).
4. Fix claims processing-related controls to ensure claims for no-cost drugs billed in accordance with guidelines are correctly paid.

Payments for Physician-Administered Drugs Not in Accordance With Guidelines

Empire has guidelines covering physician-administered drugs, including, but not limited to, requirements for documentation and proper billing. These guidelines help ensure claims are accurately submitted and properly paid.

We identified physician-administered drug claims at risk of overpayment based on criteria such as drug units that exceeded allowed limits. To evaluate whether Empire's payments were appropriate, we selected a judgmental sample of 177 high-risk claims from nine of the highest-paid facilities identified in our high-risk population and reviewed the related medical records against Empire's guidelines.

We reviewed the 177 physician-administered drug claims, which totaled $3,723,528, and determined $1,040,111 was not billed in accordance with Empire's guidelines, as follows:

- $795,099 in claims lacked adequate documentation to support the services billed, and
- $245,012 in claims reported units of drugs that were in excess of allowed limits.

Inadequate Documentation to Support Services Billed

Empire's provider manual outlines the standards that medical records must meet to support the medical necessity of billed service codes (Current Procedural Terminology [CPT] codes and Healthcare Common Procedure Coding System [HCPCS] codes). According to Empire's provider manual, when billing physician-administered drugs, facilities are required to document information in the medical record that details the specific services provided to the patient. The medical record should include:

- Applicable service code(s),
- National Drug Code (NDC) for each drug item billed,
- Unit of measure qualifier (i.e., drug strength), and
- NDC units dispensed to the patient.

Additionally, New York Codes, Rules and Regulations, Title 10, Section 405.10, states hospitals are responsible for maintaining a record for each patient that accurately reflects the evaluation and treatment of the patient and keeping such

patient records for at least 6 years. Per Section 405.10, the medical record must contain information to justify admission and continued hospitalization, support the diagnosis, and describe the patient's progress and response to medications and services.

We identified two facilities that were unable to provide adequate documentation to support 41 services totaling $795,099. Facility medical records typically include infusion notes, the NDC of the drug(s) administered, unit of measure qualifier, dosage calculations, and patient tolerance of the treatment. We reviewed medical records and found that two facilities' documentation was missing key information to support 41 services billed; therefore, we question the appropriateness of the payments.

Units in Excess of Allowed Limits

According to Empire's provider manual, when billing physician-administered drugs, facilities are required to include the number of units administered to the patient. The units billed for injections must be consistent with the description of the service code. For example, when a facility administers 100 mg of a drug that comes in 20-mg vials, the appropriate number of units to bill would be 5. Per Empire officials, submitted claims are reviewed against CMS and U.S. Food and Drug Administration (FDA) guidelines, as well as Empire's medical policy.

We found Empire incorrectly paid $245,012 for nine claims that reported units in excess of Empire's allowed limits as well as units billed that were higher than the units administered according to the medical records. For example, one facility billed for 1,200 units of a physician-administered drug, but the medical documentation indicated that only 600 units were administered. When we contacted facility officials about this discrepancy, they acknowledged the additional units were billed in error and agreed to process an adjustment to correctly bill for only 600 units.

As of June 21, 2023, Empire had started recoveries for $12,819 of the $1,040,111 in improper payments we identified from our review of physician-administered drug payments not in compliance with guidelines.

Recommendations

5. Review the remainder of the $1,040,111 ($795,099 + $245,012) in improperly paid physician-administered drugs identified and make recoveries, as warranted.
6. Review claims billed for physician-administered drugs in excess of allowed limits to recover overpayments and make necessary changes to the claims processing system to prevent future improper payments.
7. Remind facility officials of proper billing and documentation requirements regarding physician-administered drugs.

Audit Scope, Objective, and Methodology

The objective of our audit was to determine whether Empire appropriately reimbursed physician-administered drugs. The audit covered the period from January 2017 through December 2021.

To accomplish our audit objective and assess internal controls related to our objective, we interviewed Empire officials and reviewed Empire guidelines, as well as FDA maximum dosing and dosing frequency guidelines. We analyzed both Hospital Program and Prescription Drug Program claim data to identify physician-administered drugs paid for by both programs for the same patient using the criterion that the Hospital Program date of service occurred up to 30 days after the Prescription Drug Program date of service. The 30-day period allowed time for delivery and administration of a drug by a facility. From a population of 3,222 services totaling $1,580,240, we selected eight facilities from our high-risk population. From these eight facilities with 562 claims totaling $914,387, we selected a judgmental sample of 57 physician-administered drug services, totaling $547,019. We selected these 57 services based on paid amount, drug administered, and pharmacy that filled the prescription.

We also analyzed all Empire-paid physician-administered drug claims with service dates from 2017 through 2021 to determine if they exceeded Empire's guidelines on maximum units or exceeded recommended FDA dosage limits. Additionally, we identified physician-administered drugs that had either a higher payment or higher units compared to similar physician-administered drug claims. From a population of 14,807 services totaling $74,413,511, we selected nine of the highest-paid facilities from our high-risk population. From these nine facilities with 3,331 services totaling $33,850,135, we selected a judgmental sample of 177 physician-administered drug services, totaling $3,723,528. We selected these 177 services based on number of units billed, paid amount, and type of drug administered.

In total, we judgmentally selected a sample of 234 physician-administered drug claims from 12 facilities from our high-risk populations. For these claims, we reviewed patient medical records and associated pharmacy documentation, where applicable. We determined the data used to be sufficiently reliable for the purposes of our audit. Because we selected judgmental samples, our results cannot be projected to the population as a whole.

Statutory Requirements

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.

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. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our professional judgment, these duties do not affect our ability to conduct this independent performance audit of physician-administered drugs reimbursed by Empire.

Reporting Requirements

We provided a preliminary report of our audit observations to Empire officials for their review and comment. Their comments were considered in preparing this report.

Within 180 days after the final release of this report, we request that Empire officials report to the State Comptroller, advising what steps were taken to implement the recommendations contained in this report, and where recommendations were not implemented, the reasons why.

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