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July 23, 2012

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

RE: OSC Audit 2010-S-51

Dear Mr. Fleming:

This letter is in response to your final audit report entitled *Empire BlueCross BlueShield: Payments to John T. Mather Memorial Hospital*. This audit reviewed claim payments processed between January 1, 2007 and June 30, 2010 under the New York State Health Insurance Program. We appreciate the opportunity to document our position related to the report, and consistent with our response to the preliminary report, offer the information below in response to the concerns raised in your report. 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 FINDING: Empire did not have appropriate controls to protect the State from excessive billings.**

OSC indicated two objectives for this audit. The first objective was to determine if Empire's payments to Mather were made in accordance with our agreement. Our interpretation of this aspect of your report reinforces our position that payments are being made in accordance with the terms of the agreement. The second objective of this audit was to determine if Empire's payments for special items were "reasonable". Before we address this objective specifically, we wanted to express some concerns with the underlying assumptions and methodology utilized throughout the course of the audit. The ambiguity associated with the "reasonable" terminology does present a challenge when formulating a response, as the report did not specifically define what would constitute an acceptable variance. Additionally, the determination of an "excessive" payment was made by comparing the billed amount to cost / invoice data from a source not definitively utilized by John T. Mather Memorial Hospital ("Mather"). Finally, as we have noted in prior responses, the audit report was based on a sample of claims that represents less than 1% of the claim population for this facility.

Regardless, we do recognize that during the time period of this audit, Empire's contract with Long Island Health Network (LIHN), of which Mather is a member, did not equate reimbursement for special items to invoice or acquisition cost. We are happy to report that since the time of your initial audit, Empire and LIHN have reached an agreement which includes language that ties the LIHN Hospitals' reimbursement for special items to a percentage of invoice cost. While the inclusion of this additional control is a significant achievement, it is important to note that the final audit report should not imply that Empire had no control in place at this time to protect against excessive reimbursement. Each Agreement signed with LIHN since 2006 has contained additional and stronger language incorporating cost containment features in other areas of the contract.

For example, the 2/1/09 LIHN Agreement incorporated specific parameters around annual mark ups of charges billed at a percent of charge (POC) and designated an outside vendor to perform an audit on an annual basis. This process, known as a chargemaster cap audit, utilizes a methodology that compares charges in the aggregate, adjusted for utilization, and provides controls over more than just the "special items" reviewed during the OSC audit process. The result of this third party audit revealed that Mather was in compliance with the Agreement. The increase in "special items" identified in your report was offset in the aggregate by either minimal increases or decreases in other categories.

We recognize that the intent of the audit was to highlight areas of claim reimbursement which exposed Empire (and therefore, the State) to the risk of overpayment, or excessive payment. The examples cited in the audit report underscored the fact that lack of contract language limiting reimbursement of special items allows for a profit margin, which is contractually legitimate. In the LIHN response to the preliminary audit report, a senior LIHN official pointed out that this margin is offset by significant discounts given to Empire on other services. This was not an indiscriminate oversight in the hospital agreement. In a hospital negotiation, concessions made in one area may be made up elsewhere in the agreement.

Empire agrees with the need to incorporate language that clearly defines parameters for reimbursement of special items in our hospital agreements, and this has been a top priority for all of our agreements upon renewal.

#### **AUDIT RECOMMENDATIONS:**

1. Ensure the agreement with Mather includes language which prescribes the basis of payment for special items. Such language should preclude the submission of excessive claims and require Mather to provide appropriate support documentation (including invoices for special items) upon request.
2. Develop and implement internal controls to ensure that payments for special items are consistent with contract provisions and are supported by appropriate documentation.
3. Ensure future contracts do not include provisions (such as defined look back periods) which could limit the State's audit capability.

As indicated previously, Empire and LIHN have reached an agreement which includes language that ties the LIHN Hospitals' reimbursement for special items to a percentage of invoice cost. This agreement took effect on July 1, 2012 and applies to the 10 hospitals in the Long Island Health Network. This language change provides the contractual basis required to audit Mather's billing and reimbursement of special items. In addition, this agreement also includes the expanded audit lookback period for NYSHIP claims.

As we have reported to your office in the past, Empire began Invoice and Hospital Billing Audits (utilizing a process very similar to OSC's) in the first quarter of 2011. We continue to modify this process and are currently developing definitions and measurements that will support audits of special items for all hospitals which have restrictive reimbursement language.

We hope that you will find the actions taken by Empire since the beginning of this audit reflect the seriousness with which we take your audit recommendations. As always, we would like to thank you for your courtesy throughout the audit process. We place an extremely high value on our partnership with The State of New York and welcome any additional comments or feedback on this response.

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  
B. Mason, NYS Office of the State Comptroller  
C. Herubin, NYS Office of the State Comptroller  
A. Dagastine, NYS Office of the State Comptroller  
M. Wagar, Empire BlueCross BlueShield  
E. Graber, Empire BlueCross BlueShield  
J. Caby, Empire BlueCross BlueShield  
A. Blessing, Empire BlueCross BlueShield  
B. Sargent, Empire BlueCross BlueShield  
C. Jackson, Empire BlueCross BlueShield