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**OFFICE OF THE  
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE  
GOVERNMENT ACCOUNTABILITY**

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**UNITED HEALTHCARE**

**NEW YORK STATE  
HEALTH INSURANCE  
PROGRAM -  
OVERPAYMENTS FOR  
SERVICES AT THE FIFTH  
AVENUE SURGERY  
CENTER**

**Report 2008-S-34**

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## AUDIT OBJECTIVE

Our objective was to determine whether the Fifth Avenue Surgery Center (Fifth Avenue) routinely waived Empire Plan members' out-of-pocket costs, and if so, to quantify the overpayments made by United HealthCare (United) resulting from this practice. Our audit covered the period January 1, 2001 through November 30, 2007.

## AUDIT RESULTS - SUMMARY

We found that Fifth Avenue routinely waived Empire Plan members' required out-of-pocket costs for services provided. We calculated that, as a result of this practice, United overpaid claims submitted by Fifth Avenue during our audit period at a cost of \$178,633 to the State. This practice further drives up costs for the Empire Plan, since it increases the likelihood that members will use non-participating providers, such as Fifth Avenue, which generally receive higher reimbursement rates than participating providers. Furthermore, routinely waiving such costs is a billing practice that may violate the State Insurance Law.

We are referring this matter to the New York State Department of Civil Service for appropriate action. In addition, our report contains two recommendations for United to recover overpayments from Fifth Avenue, and to prevent Fifth Avenue from waiving patients' out-of-pocket costs.

## BACKGROUND

The New York State Health Insurance Program (Program) provides health insurance coverage to active and retired State, participating local government and school district employees and their dependents. The Empire Plan is the primary health benefits plan for the Program. The New York State

Department of Civil Service (Department) contracts with 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 pays United an administrative fee.

United contracts with providers to furnish medical services to Empire Plan members and who agree to accept reimbursement at rates established by United. United pays these participating providers directly based on claims they submit for services rendered to members. Members pay a nominal co-payment to the participating provider.

Members may choose to receive services from non-participating providers. The claims submitted to United by non-participating providers for any given service usually reflect rates that are higher than the rates that participating providers agree to accept for the same service. To limit its liability, United will only pay non-participating provider claims based on the lesser of reasonable and customary costs for services or the amount claimed.

As a disincentive, the Empire Plan requires members to pay higher out-of-pocket costs (including a deductible and a co-insurance rate) when they use non-participating providers. After the member meets the annual deductible, United will reimburse the member 80 percent of the reasonable and customary cost. The member is responsible for settling with the non-participating provider, including any out-of-pocket costs owed.

Participating providers agree to accept reimbursement rates that are generally lower than the rates for non-participating providers because there are several advantages. For example, Empire Plan members are

encouraged to use participating providers to avoid paying the higher out-of-pocket costs. In addition, United directly reimburses participating providers, thereby eliminating any problems resulting from collecting payments from various patients.

Our audit focused on claims submitted by the Fifth Avenue Surgery Center (Fifth Avenue), a surgical facility located at 1049 Fifth Avenue in New York, NY. Fifth Avenue does not participate as a provider in the Empire Plan. United's reimbursement for services provided at Fifth Avenue, consists of the facility fee for the use of Fifth Avenue's facility, its personnel and equipment. During the period January 1, 2001 through November 30, 2007, United paid Fifth Avenue claims totaling \$1.42 million for Empire Plan members.

This report, dated September 30, 2008, is available on our website at: <http://www.osc.state.ny.us>.

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## **AUDIT FINDINGS AND RECOMMENDATIONS**

When United processes Fifth Avenue claims for services to Empire Plan members, it is with the understanding and belief that members are liable for a portion of the claimed amount representing their out-of-pocket obligation. Our audit found that Fifth Avenue is routinely waiving Empire Plan members' out-of-pocket obligations. This negates the intended disincentive from using the more costly non-participating providers and thus drives up the cost of the Empire Plan to taxpayers.

As Fifth Avenue's intention was to waive members' out-of-pocket costs, the amount claimed by Fifth Avenue should reflect this reduction, and the reimbursement by United should have been calculated on the lower amount. United was presented with and made reimbursement calculations based on inflated claims. We calculated that, as a result, United overpaid claims submitted by Fifth Avenue during our audit period at a cost of \$178,633 to the State.

To determine the overpayment, we selected medical claims submitted by Fifth Avenue where United was the primary payer and where members' out-of-pocket costs were included on the claim. For the period January 1, 2001 through November 31, 2007, we identified 281 billings totaling \$1.09 million meeting these criteria. To determine whether Fifth Avenue waived members' out-of-pocket costs, we reviewed a sample of 100 randomly-selected billings from the 281 billings, and evaluated the results using statistical methods. We then reviewed Fifth Avenue's financial records and found that the members' out-of-pocket costs were waived for 96 of the 100 sampled bills. For the remaining four bills where the out-of-pocket costs were not waived, the member paid the entire charge.

From our random sample, we calculated an overpayment of \$69,675, due to the fact that the bills were inflated; Fifth Avenue reported the entire billed amount, without reducing the claim for the amount of the waived members' out-of-pocket costs. A projection of these audit overpayments to the entire population, using statistical sampling methods and a 95 percent single-sided confidence level, results in an audit overpayment of \$178,633.

Additionally, under the New York Penal Law, submitting an insurance claim with false

information, such as an inflated charge for service, may constitute insurance fraud. In addition, waiving of out-of-pocket costs unjustly enriches the provider because the payment should be based on the provider's actual charge, which is the amount the provider intends to accept as payment. Finally, the New York State Insurance Department concluded that it may be a violation of the State Insurance Law, and a fraudulent billing practice, when a provider routinely waives out-of-pocket costs and accepts the amount the insurer reimburses as payment in full.

Officials at the Department of Civil Service and the State Insurance Department are concerned about fraud in the Empire Plan. Officials are concerned that providers who waive Empire Plan members' out-of-pocket costs are doing so intentionally, in order to benefit from the higher reimbursement rates for non-participating providers.

#### **Recommendations**

1. Recover from Fifth Avenue the \$178,633 overpaid for services provided at Fifth Avenue.
2. Work with Department of Civil Service to pursue an appropriate course of action designed to prevent Fifth Avenue from waiving out-of-pocket costs.

#### **AUDIT SCOPE AND METHODOLOGY**

We conducted our performance audit in accordance with generally accepted government auditing standards. Our audit primarily focused on identifying overpayments made to Fifth Avenue Surgery Center during the period January 1, 2001 through November 30, 2007 where there was a risk of Fifth Avenue waiving members' out-of-pocket costs.

To accomplish our objective, we reviewed a random sample of 100 billings submitted by Fifth Avenue. We reviewed Fifth Avenue's financial records to determine if Fifth Avenue was waiving the Empire Plan members' out-of-pocket costs.

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 systems; 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 management 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. United officials agree with our findings and conclusions.

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

### **CONTRIBUTORS TO THE REPORT**

Major contributors to this report were Kenneth Shulman, David Fleming, Laura Brown, Brian Krawiecki, and Arnold Blanck.