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**OFFICE OF THE  
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE  
GOVERNMENT ACCOUNTABILITY**

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**UNITED HEALTH CARE**

**NEW YORK STATE  
HEALTH INSURANCE  
PROGRAM -  
OVERPAYMENTS FOR  
SERVICES AT THE  
MID-MANHATTAN  
SURGI-CENTER**

**Report 2008-S-40**

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## AUDIT OBJECTIVE

Our objectives were to determine whether the Mid-Manhattan Surgi-Center (Mid-Manhattan) routinely waived Empire Plan members' required 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 Mid-Manhattan routinely waived Empire Plan members' required out-of-pocket costs. We calculated that, as a result of this practice, United overpaid claims submitted over our audit period at a cost of \$77,946 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 Mid-Manhattan, 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 have referred 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 Mid-Manhattan and to pursue actions to prevent Mid-Manhattan from waiving patients' out-of-pocket costs in the future.

This report dated September 30, 2008, is available on our website at: <http://www.osc.state.ny.us>. Add or update your mailing list address by contacting us at (518) 474-3271 or Office of the State Comptroller  
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## 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 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 for 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 Mid-Manhattan Surgi-Center, an eye surgery center located on West 23<sup>rd</sup> Street in New York City. Mid-Manhattan does not participate as a provider in the Empire Plan. United's reimbursement for services provided at Mid-Manhattan includes a facility fee for use of Mid-Manhattan's facility, personnel and equipment. During the period January 1, 2001 through November 30, 2007, United paid \$370,782 for claims submitted by Mid-Manhattan.

#### **AUDIT FINDINGS AND RECOMMENDATIONS**

When United processes Mid-Manhattan 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 Mid-Manhattan 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 Mid-Manhattan's intention was to waive members' out-of-pocket costs, the amount claimed by Mid-Manhattan 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 Mid-Manhattan during our audit period of \$77,946.

To determine the overpayment, we selected for audit all medical claims submitted by Mid-Manhattan where United was the primary payer and members' out-of-pocket costs were included on the claim. For the period January 1, 2001 through November 30, 2007, we identified 202 billings totaling \$306,791 meeting these criteria. To determine whether Mid-Manhattan waived members' out-of-pocket costs, we reviewed the 202 billings and Mid-Manhattan's financial records. We found that the members' out-of-pocket costs were waived for 185 of the 202 billings.

Sixteen of the billings were paid in full by the either the member or secondary insurance and one was adjusted in accordance with Medicare regulations. We calculated that, as a result of the inflated claims, United overpaid claims submitted by Mid-Manhattan during our audit period at a cost of \$77,946 to the State.

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 Mid-Manhattan the \$77,946 overpaid for services provided to Empire Plan members.
2. Work with the Department of Civil Service to pursue an appropriate course of action designed to prevent Mid-Manhattan 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 focused on identifying overpayments made for claims submitted by Mid-Manhattan Surgi-Center during the period January 1, 2001 through November 30, 2007.

To accomplish our objectives, we reviewed the 202 billings submitted by Mid-Manhattan where United was the primary payer and the claim indicated that the member would incur out-of-pocket costs. We conducted a site visit to interview Mid-Manhattan's administrative

officials and review financial medical records that supported the billings.

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 comments. United officials agree with our audit findings and conclusions.

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.

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## **CONTRIBUTORS TO THE REPORT**

Major contributors to this report were Kenneth Shulman, David Fleming, Laura Brown, Cynthia Herubin, and Kelly Evers Engel.