



11 Corporate Woods Boulevard
Albany, NY 12211
www.empireblue.com

July 3, 2012

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

RE: OSC Audit 2010-S-74

Dear Mr. Fleming:

This letter is in response to your final audit report entitled *Empire BlueCross BlueShield-Payments for Special Items to Selected Hospitals*. This audit reviewed payments for special items for claims processed between January 1, 2006 and June 30, 2010 under the New York State Health Insurance Program. We offer the following responses to the findings and recommendations and appreciate the opportunity to clarify and document our position related to the 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: \$387,772 was identified as a net overpayment for special items on 111 of the 194 claims in this audit.

These findings were determined after a review of hospital records and invoices to determine; 1) if the item was a "special item", 2) if it was in fact given to the patient, and 3) if it was billed in accordance with the contract. Of this dollar amount, all but \$1,086 can be attributed to hospital billing errors. Of the hospital billing errors, \$375,970 was categorized as "Payment Exceeded Contract Allowances". The findings in this category are based on the language in the Hospital Agreements that limits Empire's reimbursement for special items to the hospital's invoice cost for that item.

A finding of \$1,086 was cited as an overpayment due to the hospital's failure to provide supporting documentation. We do not agree that this is an adequate basis for a finding. The claim associated with this finding is for a 2007 service date, which under the hospital's contract is outside of the audit look-back period. Empire does not recognize this dollar amount as a finding.

From the remaining overpayments, \$15,005 was cited as a duplicate payment, \$646 was cited as payment for a special item that did not qualify for this type of reimbursement and \$338 was cited as a special item not provided to the patient. We view these as unintentional billing oversights and all have been acknowledged and payment recovered from the hospitals involved. These types of errors represent 4% of the total overpayments. This result indicates that overall, our hospitals are categorizing special items eligible for reimbursement accurately.

The findings were shared with all sixteen hospitals in this audit (excluding the one hospital that was closed after the claims were incurred). Thirteen hospitals agreed with all findings (one hospital was underpaid). One hospital agreed with partial findings. Two hospitals did not agree to findings.

In our response to the preliminary audit report, we agreed that the results from this audit highlight the need for internal controls to monitor the billing of special items to ensure that they are paid in accordance with the hospital agreement, and we have been aggressively working on that initiative since the start of this audit. We do, however, continue to have concerns about making generalizations about hospital billing practices based on the minimal sample sizes included in your audit. Specifically, for this audit, the average number of claims audited per hospital was eleven. We do not interpret the audit findings to be indicative of systemic billing discrepancies and overpayments since we do not believe that this is a representative sample.

The report accurately documents audit challenges due to language in our hospital agreements that limited the period for which the claim can be subject to audit. There was resistance from several hospitals to supplying documentation on the basis of this contract language. Ultimately, all hospitals complied with the audit documentation requests as a courtesy to Empire. In March 2011, Empire received notice from the OSC that all documentation related to Empire Plan payments for the current plan year and the six preceding plan years must be made available for audit, regardless of the "look-back" periods in our hospital contracts. Since that time, Empire's Provider Engagement and Contracting Department has been aggressively working to incorporate separate audit language regarding the expanded audit look-back period for the Empire Plan in all of our hospital agreements as they come up for renewal.

RECOMMENDATION: *"Remit to New York State the projected overpayment of \$3,210,478, or remit \$387,772 of net overpayments identified by this audit plus amounts determined from re-adjudication of all other claims pertaining to the audit period."*

Empire communicated to OSC in 2009 that we do not recognize or utilize extrapolation in audit findings. In accordance with our long standing audit policy and in compliance with our facility contracts, we are required to address any recovery activities on a claim by claim basis. We have significant concerns over being asked to remit to the State any payment based on a statistical projection that includes alleged overpayments on claims that were not reviewed.

We have, however, actively sought and recovered overpayments from the hospitals that agreed to their findings. Your overpayments in the final report totaled \$387,772. We note this as a change from the \$385,644 reported to us after the issuance of the preliminary report, due to a subsequent change in the findings for one hospital. Of this amount \$275,855 has already been recovered and credited back to the Empire Plan. This represents 100% of the recoverable dollars for this audit sample. The remainder represents findings on claims outside the audit look-back period contained in the contract for those hospitals who did not agree to the audit findings. Recovery of those findings is not supported by the hospital contract and there will be no further recoveries for this audit.

RECOMMENDATION: *"Continue to develop and implement a system of internal controls to ensure that payments for special items are made in accordance with the agreements and are supported by appropriate documentation."*

Our Provider Audit Area performs various types of hospital audits, including the invoice audits currently being performed by your office. Invoice audits are performed on hospitals with contract language that supports such audits. The effectiveness of these audits is impacted by differences in contract language interpretation, a hospital's ability to accommodate multiple requests for documentation and a hospital's appeal of the finding. There are also ancillary impacts on contract negotiations as facilities come up for renewal.

As we have reported to you in previous audit responses, many hospital contracts incorporate the words "approximate invoice cost" and "acquisition cost" into their contract language regarding the payment of special items. This creates ambiguity into the way they are allowed to price these items in order to account for undefined, yet additional costs of procuring, processing and storing the special item provided

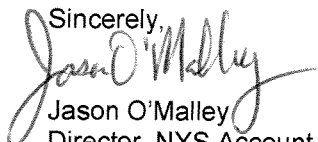
to the patient. These are real costs and the hospital is entitled to compensation, however until specific parameters around this language are defined it does present a challenge to the audit process. That issue is currently being addressed. In spite of this, invoice audits and the associated recoveries are actively in progress. As always, we will continue to make recommendations of hospitals to be prioritized in the corporate audit schedule based on the findings identified in your audits.

Our commitment to enhancing controls is demonstrated by the nearly \$1.1 million in credits New York State has received since December 2011 as a result of our internal audits. These regular and ongoing audits are separate from the invoice audits referenced above and are not hampered by language ambiguities. Although these audit findings do not utilize the same methodology used by OSC, it does provide clear evidence that Empire utilizes effective "internal controls" in monitoring our hospital payments.

It is important to note that there are no findings that are the direct result of processing errors. This is consistent with our internal reviews of claim accuracy which reflect a financial accuracy rate of over 99% for claim payments made on behalf of the New York State Empire Plan.

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. Please feel free to contact me with any questions or if you would like to discuss this response further.

Sincerely,



Jason O'Malley
Director, NYS Account
Empire BlueCross BlueShield

Cc: R. Dubois, Department of Civil Service
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