

February 12, 2013

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

RE: OSC Audit 2011-S-31

Dear Mr. Fleming:

We have reviewed the audit report entitled *Empire BlueCross BlueShield – Coordination of Benefits with Medicare Part A Payments* dated November 14, 2012 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”.

*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 FINDINGS: *Empire Incorrectly Paid as the Primary Payer On 13 Claims Totaling \$254,141***

The sample size for this audit was 3,216 claims. Of those claims, your office cited findings on 13 claims. Empire does not accept 10 of the claims as valid findings for reasons documented in this letter. Regardless, the limited number of findings from this audit is a resounding validation that our internal systems and controls are working as designed to effectively to identify Medicare enrollment and coordinate payments accurately.

The basis for the findings in the audit report is the fact that Empire paid as primary over Medicare for members over the age of 65, whom your office determined was receiving a pension and therefore, not actively employed. The reason Empire paid as primary over Medicare on 9 of the 13 claims was the fact that the member was accurately on record, here and at Civil Service, as being actively employed. Under the Tax Equity and Fiscal Responsibility Act (TEFRA), the group health plan for groups of 20 or more employees must offer primary coverage over Medicare for working employees and their dependents. Consequently, these claims were paid correctly.

The 10<sup>th</sup> claim was a case where the enrollee retired in the middle of the month, and incurred an inpatient admission after the retirement date, but before the end of the month of retirement. Empire's payment as the primary payor for this admission was correct, as it was in keeping with Civil Service's longstanding policy, documented on their enrollment system, to extend TEFRA status to the end of the month and begin Medicare premium reimbursement, and therefore Medicare primacy, on the first of the month following retirement.

We agree with the statement in the audit report that insurance carriers have a role in coordinating claims with Medicare, which includes maintaining system edits and obtaining Medicare eligibility data and

sharing it with Civil Service. Medicare information was on file for every claim in this audit, including those claims cited as findings.

We disagree with a statement in the report that "Civil Service is primarily responsible for maintaining the Plan's enrollment system...." Civil Service, as the central personnel agency for State and local governments, is *solely* responsible for maintaining the Plan's enrollment system, particularly in the area of reporting an enrollee's employment status. New York State enrollments and enrollment changes are processed on the New York Benefits Eligibility and Accounting System ("NYBEAS") and transmitted from Civil Service to Empire on a daily electronic file. It is then loaded into Empire's processing system where the NYSHIP enrollment mirrors what is on NYBEAS. NYBEAS is the source of truth for Empire Plan enrollment, to the extent that if Empire were to make a change which was not reflected on NYBEAS, the enrollment would revert back to the NYBEAS record with the next electronic transaction for that member.

In today's environment, it is not unusual to find enrollees in their late 60's (or 70's) still actively employed. In all 10 of your findings, the employment status information on NYBEAS for the claim service date is the same today as it was on the date the claim processed. We took the extra step of confirming directly with the Health Benefits Administrators that those members, including an 81 year old, were indeed actively employed on the date the service was rendered. Medicare did not make payment on the 10 claims and Empire's primary payment was accurate based on the information provided to us by Civil Service.

Empire agrees that 3 of the 13 claim findings were paid incorrectly as primary over Medicare. The audit report cited an example of Empire's paying primary over Medicare on a claim for an 86 year old member. The Medicare enrollment information and retired employment status were on file for this member. The claim was paid in error due to the claim examiner's misinterpretation of the Medicare remittance.

It was determined that accurate Medicare and retired employment status information were on file for the other two claims that we accept as valid findings. In one case, the claim should have been paid under another, non-NYSHIP, TEFRA coverage. In the second case, there was conflicting Medicare information on file which should have been more thoroughly investigated before issuing primary payment.

These three findings were the result of processing errors and in no case was there any evidence of system problems or inadequate processing tools. Recoveries in the amount of \$22,871.17 have been credited back to the state.

**Recommendation:**

*"Develop and implement controls to help ensure Empire pays correctly (as the secondary payer) when Medicare should be the primary payer. Such controls could include: verifications of employment status for employees at or beyond a certain age; and/or flagging high dollar claims for "active" members who are also Medicare eligible."*

There are many considerations to this recommendation, including what age threshold, who is responsible for the investigation, how quickly employment status could be confirmed and, if need be, corrected. This would be a serious challenge in our prompt payment environment, which requires payment of claims within 30 calendar days unless Empire's obligation to pay is "not reasonably clear" due to a good faith dispute or there is a potential for the claim to be fraudulent. Empire cannot delay the processing of claims when all enrollment information necessary to pay the claim is on file and validated by the State. Furthermore, we consider the results of this audit as confirmation that Empire is coordinating accurately with Medicare.

Empire's processing system has always had an edit for high dollar claims, and in 2010, a second level of high dollar review was added for claims reimbursed over a specified dollar threshold. This review is conducted by highly experienced claim adjusters and it involves in depth investigation into a number of areas, including eligibility. We are confident that our high dollar review process provides the scrutiny of Medicare involvement and the member's eligibility as an active employee that your office is recommending.

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*“Periodically confirm with Civil Service the employment status of members who appear to be Medicare-eligible and have active employment status.”*

After reviewing 3,216 claims in which Empire paid as the primary over Medicare, your office determined that 11 enrollees (representing the 13 claim findings) were receiving a pension, and were therefore, no longer considered actively employed. Through discussions with Civil Service, we have learned that there are a myriad of rules and regulations governing instances where an employee is receiving a pension and subsequently returns to active employment. In summary, it is possible for New York State members to be actively employed while receiving a pension. We are confident that the enrollment records passed to us from Civil Service have gone through stringent internal processes and quality controls that have been years in the making. Our role as the administrator of the Empire Plan Hospital Program is to ensure our enrollment records mirror the information present on NYBEAS so we can coordinate with Medicare accurately. We are not in the position to question the employment status we receive from Civil Service.

Your audit report and our response have been shared with Civil Service. It will serve as the basis for further discussion regarding checks and enhancements to the Empire Plan eligibility validation process for employees at or beyond a certain age. We have an ongoing and collaborative partnership with Civil Service, and they have our full support in any improvements they feel necessary that will result in savings the State of New York.

I hope the information above clearly explains our position on the report findings and recommendations. Thank you for the courtesy extended throughout the audit process and completion of an audit that validates the highly successful manner in which we are performing the complex task of coordinating payments with Medicare. 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  
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