Thomas P. DiNapoli
COMPTROLLER

OFFICE OF THE
NEW YORK STATE COMPTROLLER

DIVISION OF STATE
GOVERNMENT ACCOUNTABILITY

UNITED HEALTHCARE

NEW YORK STATE HEALTH INSURANCE PROGRAM

INAPPROPRIATE REIMBURSEMENT OF CLAIMS FROM ISLAND MEDICAL ASSOCIATES

Report 2007-S-54

AUDIT OBJECTIVE

Our objective was to determine whether United HealthCare made inappropriate payments to Island Medical Associates for certain medical services that were provided through the New York State Health Insurance Program. Our audit covered the period January 1, 2001 through December 31, 2006.

AUDIT RESULTS - SUMMARY

Island Medical Associates operates a urological medical facility. Some of the physicians who use the facility participate in the Empire Plan (the primary health benefits plan in the New York State Health Insurance Program). Accordingly, when these physicians provide services to Empire Plan members, their services should be reimbursed at certain agreed upon rates.

However, we found such services are inappropriately being reimbursed at non-participating rates, which are five times higher than the participating rates. This is happening because the physicians are not the ones submitting claims to United HealthCare for the services; rather, Island Medical Associates is submitting the claims as a non-participating provider and sharing a portion of the proceeds with the physicians.

We question whether it is appropriate for Island Medical Associates to submit claims for these services. In doing so, Island Medical Associates appears to be inserting itself as an unnecessary intermediary between United HealthCare and the physicians providing the services in order to charge the higher non-participating rates.

During the six years that we examined, Island Medical Associates was paid $3.9 million for claims submitted to United HealthCare for Empire Plan members. We recommend United HealthCare recover these payments, suspend all further payments for claims submitted by Island Medical Associates until questions about its legitimacy as a medical service provider can be resolved, and strengthen its claims processing controls.

This report, dated September 20, 2007, is available on our website at: http://www.osc.state.ny.us.
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Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

BACKGROUND

The New York State Health Insurance Program provides health insurance coverage to active and retired State, local government, and school district employees and their dependents. This coverage is provided through various health benefit plans, which are administered by different contractors. The primary health benefits plan is the Empire Plan, which provides services costing about $4 billion a year.

Different portions of the Empire Plan are administered by different contractors. The medical/surgical and major medical portion of the Plan is administered by United HealthCare. United HealthCare is responsible for negotiating rates with participating providers, ensuring compliance with Plan terms, and reimbursing medical service providers for covered services.

United HealthCare enters into contracts with certain medical service providers (participating providers). In these contracts, the providers agree to provide their services to Empire Plan members at reimbursement rates established by United HealthCare (network

rates) plus a nominal patient co-payment. These network rates are lower than the rates normally charged by the medical service providers for uninsured patients.

Empire Plan members may also choose to go to non-participating providers. However, these providers' claims are not reimbursed at network rates. Rather, their claims are reimbursed at out-of-network rates, which are higher than network rates.

The out-of-network reimbursement for a particular medical service is 80 percent of the non-participating provider's actual charge, or 80 percent of an amount deemed reasonable and customary for that particular service, whichever is lower. The Empire Plan member is then generally responsible for paying the remainder of the actual charge.

The out-of-network reimbursement rate for a particular service can be significantly higher than the network reimbursement rate. Empire Plan members have a financial incentive to avoid non-participating providers (and their out-of-network rates), because members generally have to pay more in out-of-pocket costs when they go to non-participating providers (a member's annual deductible and share of the charges for non-participating providers will usually be much greater than the co-payments for participating providers). Despite this financial incentive, Empire Plan members sometimes go to non-participating providers.

The State reimburses United HealthCare for the payments it makes under the Empire Plan (both network payments and out-of-network payments), and pays United HealthCare an administrative fee. The New York State Department of Civil Service is responsible for monitoring United HealthCare's performance under its contract with the State.

AUDIT FINDINGS AND RECOMMENDATIONS

Island Medical Associates

Island Medical Associates, P.C. operates a medical facility for Extracorporeal Shock Wave Lithotripsy (ESWL) and related urological services. ESWL uses sound waves (also called shock waves) to break a kidney stone into small pieces that can more easily travel through the urinary tract and pass from the body.

Several physicians, generally urologists, treat patients at this facility. These physicians pay Island Medical Associates a nominal one-time fee under a subscription agreement for unlimited lifetime use of the corporation's space and equipment. The physicians become minority owners and share in the corporation's profits. The physicians may also practice medicine at other locations.

Most of these physicians are participating providers in the medical/surgical and major medical portion of Empire Plan. As participating providers, they agreed to be reimbursed at network rates when they provided services to Empire Plan members.

However, we found that, at the Island Medical Associates facility, the services provided by these physicians to Empire Plan members are not being reimbursed at network rates. Instead, the services are being reimbursed at out-of-network rates, which are five times higher than the network rates. This is happening because the payment claims for the services are not being submitted by the physicians. Instead, they are being submitted as if they worked at Island Medical Associates, and Island Medical Associates is a non-participating provider.

During the six years that we examined, United HealthCare paid $3.9 million for claims submitted by Island Medical Associates, all at out-of-network reimbursement rates. If the claims had been submitted by the physicians who provided the services, the services would, in most instances, have been reimbursed at the network rates, and thus, have totaled about $800,000 – about $3.1 million less.

We question whether it is appropriate for Island Medical Associates to submit claims for these services. In doing so, Island Medical Associates appears to be inserting itself as an unnecessary intermediary between United HealthCare and the physicians who provide the services in order to charge the higher out-of-network-rates. We question why the claims could not be submitted by the physicians instead.

According to officials of Island Medical Associates, it bills for the services, and not the physicians, because the physicians are employees of Island Medical Associates when they work at its facility. The officials said the physicians are paid from the corporation's payroll account for their work at the facility, and all appropriate payroll taxes are withheld (we note that, in the instances identified by our audit, Island Medical Associates paid the participating physicians the smaller network allowance for the services, and retained the balance for itself).

The physicians who work at the Island Medical Associates facility must sign a standard subscription agreement, which sets forth the terms and conditions of the physicians' relationship with Island Medical Associates. We reviewed a copy of this agreement to determine whether the physicians are, in fact, employees of Island Medical Associates.

We found nothing in the agreement to suggest that an employer-employee relationship exists between Island Medical Associates and the physicians. The agreement gives Island Medical Associates no authority to control or supervise the physicians' treatment of their patients. Additionally, the physicians are required to maintain their own liability insurance and obtain training at their own expense on performing ESWL. Rather, the agreement allows the physicians to use the corporation's facility, become minority owners, and share in the corporation's profits.

We therefore conclude that the physicians are not employees of Island Medical Associates, but are individual practitioners who are working at a facility that is owned by Island Medical Associates. This being the case, it is the individual physicians who should be the claimants for the services they provide, not Island Medical Associates.

Thus, United Healthcare's payments at out-of-network rates for claims submitted by Island Medical Associates were not appropriate. In these instances, United HealthCare should have made payments, at network rates, to the participating physicians.

During the six years that we examined, United HealthCare paid a total of $3.9 million for ESWL procedures and related urological services on behalf of enrollees treated at Island Medical Associates. We recommend United HealthCare recover this amount from Island Medical Associates. If the physicians who actually provided these services submit claims for the services, United HealthCare can consider those claims separately.

We also recommend United HealthCare suspend all pending payments for claims submitted by Island Medical Associates until its status as a medical service provider has been clarified. In wrongly classifying

participating physicians as employees, it may have been attempting to circumvent the reimbursement limits on the Empire Plan's participating providers. Such an attempt could be indicative of fraud.

We note that Island Medical Associates is also engaging in other questionable billing practices. For example, the claims it submitted to United HealthCare contained a place of service code which indicated that it was a hospital outpatient facility. Such facilities may be reimbursed at higher rates. However, Island Medical Associates is not a certified hospital outpatient facility (it is a physicians' office).

Officials at Island Medical Associates told us they thought they were using a place of service code that indicated outpatient services, not an outpatient hospital. They also noted that various payers denied their claims when the place of service code indicated they were an office-based facility. They therefore changed the code.

United HealthCare officials told us their legal staff has reviewed the relationship between Island Medical Associates and the physicians who work at its facility. The officials now believe that Island Medical Associates' claims were abusive and potentially fraudulent.

They noted that, if it is determined that Island Medical Associates has engaged in illegal or fraudulent activities, they will seek the recovery of Empire Plan payments for claims submitted by the corporation.

United HealthCare has an automated claims processing system. This system has various automated controls for ensuring that claims are appropriate. We recommend United HealthCare strengthen these controls to provide better assurance participating providers are not being inappropriately reimbursed at out-of-network rates, as was the case with the physicians at Island Medical Associates.

For example, when United HealthCare received the claims from Island Medical Associates, it did not know that the services had been provided by physicians who were participating in the Empire Plan because the claims did not use the taxpayer identification number of the physicians who provided the services.

We note that fraud in the Empire Plan is a source of concern to officials at the Department of Civil Service and the State Attorney General's Office. Similarly, the officials are concerned that Empire Plan members may be misled by some of the deceptive business practices that are associated with such fraud, as members seeking treatment from participating providers may be referred to alternative locations, where the providers are non-participating. In such instances, the members may unexpectedly be exposed to the substantial out-of-pocket expenses that can result from the use of non-participating providers. It is therefore important that United HealthCare establish controls that can detect and prevent potentially fraudulent practices.

Recommendations

1. Effective immediately, suspend all payments for claims submitted by Island Medical Associates until its status as a medical service provider has been clarified.

2. Recover from Island Medical Associates the $3.9 million that was paid for physicians' professional services.

3. Implement controls to provide better assurance participating providers are not being inappropriately reimbursed at out-of-network rates.

AUDIT SCOPE AND METHODOLOGY

We conducted our performance audit in accordance with generally accepted government auditing standards. We audited the payments made by United HealthCare under the New York State Health Insurance Program to Island Medical Associates for urological services provided through the Empire Plan. Our audit covered the period January 1, 2001 through December 31, 2006.

To accomplish our objective, we interviewed officials at the Department of Civil Service, United HealthCare, and Island Medical Associates. In addition, we conducted site visits to Island Medical Associates to review records supporting the claims it submitted to United HealthCare. We also used data analysis techniques to review payments made by United HealthCare and identify certain payments for further review (such as the claims submitted by Island Medical Associates).

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 system; 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 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 a preliminary copy of this report to United HealthCare officials for their review and comments. We considered their comments in preparing this report.

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 contained herein, and where recommendations were not implemented, the reasons why.

CONTRIBUTORS TO THE REPORT

Major contributors to this report were Kenneth I. Shulman, Robert Wolf, David Fleming, Jacqueline Keeys-Holston, and Kathleen Garceau.