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UNITED HEALTHCARE

**NEW YORK STATE
HEALTH INSURANCE
PROGRAM -
OVERPAYMENTS FOR
SERVICES RENDERED BY
DR. CONSTANTINIDES**

Report 2008-S-10

AUDIT OBJECTIVE

Our objectives were to determine the amount United HealthCare (United) overpaid because they did not apply Reasonable and Customary Charges to Dr. Constantinides facility fee claims; and to determine whether Dr. Constantinides 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, 2002 through December 31, 2006.

AUDIT RESULTS - SUMMARY

We determined United HealthCare overpaid \$80,082 by not applying Reasonable and Customary Charges to Dr. Constantinides facility fees claims.

We also determined that Dr. Constantinides routinely waived Empire Plan members' out-of-pocket costs. We calculated that, as a result of this practice, United overpaid claims by \$10,869 for services rendered by Dr. Constantinides.

Our report contains three recommendations: to reimburse the State for excessive charges totaling \$80,082; to recover the \$10,869 overpaid to Dr. Constantinides because of his practice of routinely waiving Empire Plan members' out-of-pocket costs; and to pursue actions to prevent Dr. Constantinides from continuing to routinely waive patients' out-of-pocket costs.

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

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BACKGROUND

The New York State Health Insurance 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 New York State Health Insurance Program. The Department of Civil Service (Department) contracts with United HealthCare (United) to process medical claims for the Empire Plan.

United contracts with providers to furnish medical services to Empire Plan members who agree to accept reimbursement 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 by non-participating providers for any given service usually reflect rates that are higher than the rates participating providers agree to accept for the same service. United is contractually obligated to pay non-participating claims based on Reasonable and Customary Charge. The Reasonable and Customary Charge means the lowest of: the actual charge; the usual charge by the provider for the same or similar service; or the usual charge of other providers of similar training and experience in the same or similar geographic area for the same or similar service.

As a disincentive, the Empire Plan requires members to pay higher out-of-pocket costs (including a deductible and a 20 percent co-insurance rate) when they use non-participating providers. The member is responsible for settling with the provider, including any out-of-pocket costs owed.

Our audit focused on claims for services provided by Dr. Minas Constantinides, a plastic surgeon located in New York City. Dr. Constantinides does not participate as a provider in the Empire Plan. United pays for Dr. Constantinides professional services provided to Empire Plan members. In addition, United pays a facility fee for outpatient surgeries provided by Dr. Constantinides. Facility fees are payments made for the use of an operating room, its personnel and equipment. Facility fees are separate from physicians' professional fees. Facility fees for services occurring in hospitals are paid by Empire Blue Cross Blue Shield. Facility fees for services occurring in non-hospital locations are paid by United.

During our audit period January 1, 2002 through December 31, 2006, United paid \$226,464 for services provided by Dr. Constantinides. This amount includes \$104,410 for professional fees, and \$122,054 for facility fees.

AUDIT FINDINGS AND RECOMMENDATIONS

Excessive Facility Fees

In our audit of United's Reasonable and Customary Charges (Report 2007-S-110), we determined United is contractually obligated to pay non-participating claims based on Reasonable and Customary Charges. We also found that United did not apply Reasonable and Customary Charges for facility fee claims until August 1, 2007. Prior to August 2007, United paid facility fee claims based on the amount billed.

United paid three facility fee claims totaling \$122,074 for outpatient surgeries provided by Dr. Constantinides. We determined United overpaid \$80,082 because they based their payments on the actual billed charges

submitted by Dr. Constantinides, rather than the Reasonable and Customary Charges for the services rendered.

We question the reasonableness of Dr. Constantinides charges. For example, Dr. Constantinides billed a \$48,000 facility fee for outpatient surgery to repair a deviated septum. Dr. Constantinides performed this procedure at Murray Hill Care Center, his office-based outpatient surgery facility which he rents from NYU Hospital. Therefore, United was liable under the medical portion of the Empire Plan. After applying the member's out-of-pocket costs, United paid \$46,557 based on Dr. Constantinides' billed charge. If Dr. Constantinides had performed the procedure at NYU Hospital, Empire Blue Cross would have been liable under the hospitalization portion of the Empire Plan. Empire Blue Cross would have paid \$2,066 based on their contract with NYU Hospital. Because Dr. Constantinides billed \$48,000 and United did not use Reasonable and Customary Charges, United paid over 22 times more than if the procedure was performed in an outpatient hospital setting.

Waiving Out-Of-Pocket Costs

When United processes Dr. Constantinides 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 Dr. Constantinides routinely waived Empire Plan members' out-of-pocket obligations. This negates the intended disincentive from using more costly non-participating providers and thus drives up the cost of the Empire Plan to taxpayers.

As Dr. Constantinides intention was to waive members' out-of-pocket costs, the amount claimed by Dr. Constantinides should reflect

this deduction, and United's reimbursement 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 Dr. Constantinides during our audit period by \$10,869.

To determine the overpayment, we conducted a site visit to interview Dr. Constantinides and his office staff, and review patient account records. We found that members' out-of-pocket costs were waived.

The New York State Insurance Department concluded that insurance fraud may result when a provider routinely waives out-of-pocket costs and accepts the amount an insurer pays the member as payment in full. The New York State Penal Law states that a person who submits a claim for payment that contains false information, in this case an inflated charge for the service, is committing insurance fraud. In addition, the State Supreme Court ruled that the practice of waiving these expenses causes the provider to benefit from, "unjust enrichment," because United's payment should be 80 percent of the amount the member is actually liable for.

Recommendations

1. Reimburse the State for the \$80,082 paid in excess of the Reasonable and Customary Charge.
2. Recover the \$10,869 overpaid because Dr. Constantinides waived Empire Plan members' out-of-pocket costs.
3. Work with Department to pursue an appropriate course of action designed to prevent Dr. Constantinides from continuing to waive out-of-pocket costs.

AUDIT SCOPE AND METHODOLOGY

We conducted our performance audit in accordance with generally accepted government auditing standards. Our financial-related audit primarily focused on identifying overpayments made to Dr. Constantinides during the period January 1, 2002 through December 31, 2006.

We conducted a site visit to interview Dr. Constantinides' office staff, and review patient account records. We reviewed: claims data from United, surgical cost proposals, invoices, Explanation of Benefits, claim denial letters and copies of checks. We contacted Empire Blue Cross and Blue Shield to obtain hospital reimbursement amounts for certain outpatient procedures. In addition, United obtained the Reasonable and Customary Charge for Dr. Constantinides' facility fee claim from a commercially available database.

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, several of which are performed by the Division of State Government Accountability. 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; we audited certain payments made by the New York State Health Insurance Program's Empire Plan for services rendered by Dr. Constantinides for the period January 1, 2002 through December 31, 2006.

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 audit findings and conclusions related to Dr. Constantinides' practice of routinely waiving Empire Plan members' out-of-pocket costs.

United does not agree that they are contractually obligated to apply reasonable and customary charges to facility fee claims. We do not agree with United's position. The contract and related documents clearly require reasonable and customary charges to be applied to all non-participating provider claims. United contends the Department's Request For Proposal and United's proposal are not incorporated into the contract. However, we found the RFP states "the contract will incorporate the RFP" and that the contractor will be bound by all sections of the "Legal Requirements for Contract." In addition, in the litigation *Freundlich vs. Metlife*, United argued both the RFP and the

United's proposal are incorporated into the contract. Therefore, United is clearly bound by the terms and conditions of both the RFP and United's proposal.

United officials also stated they did not have a mechanism to route Empire Plan claims to their reasonable and customary vendor. However, we note that United was able to design a routing method once they notified the Department of the availability of the reasonable and customary database.

We discussed our findings with the Department. Department officials agree with all of our findings and conclusions. The Department noted that basing reimbursement on the actual charge, rather than the Reasonable and Customary Charge, would undermine the cost control structure of non-participating provider portion of the Plan. In addition, the Department noted the contract record contains clear and unambiguous language that "flatly contradicts United's assertion that it retains unilateral "discretion" to ignore the Certificate formula." The Department also noted that it is "extremely troubling" that United did not disclose the existence of a commercially available reasonable and customary database in May 2002, when the Department first learned that United was paying based on actual charges. Given United's contractual obligation and the long-term availability of a reasonable and customary database that meets Empire Plan requirements, the Department's position is United should remit the amounts paid in excess of reasonable and customary charges to the State.

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 therefor.

CONTRIBUTORS TO THE REPORT

Major contributors to this report were Kenneth Shulman, David Fleming, Wendy Matson, Jacqueline Keays-Holston, and Judith McEleney.