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STATE COMPTROLLER



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STATE OF NEW YORK
**OFFICE OF THE STATE
COMPTROLLER**

July 1, 1998

Michael A. Stocker, M.D.
President and Chief Executive Officer
Empire Blue Cross Blue Shield
622 Third Avenue
New York, New York 10017-6758

Re: Report 98-F-15

Dear Dr. Stocker:

According to the State Comptroller's authority as set forth in Section 1, Article V of the State Constitution and Section 8, Article 2 of the State Finance Law, we reviewed the actions taken by officials of Empire Blue Cross Blue Shield (Empire Blue Cross), as of May 29, 1998, to implement the recommendations included in our prior audit report number 95-S-87, which was titled New York State Health Insurance Program Hospital Inpatient Claims (DRG Upcoding). This report, which was issued on February 26, 1997, focused on the New York State Health Insurance Program's Empire Plan (Plan) payment of hospital Diagnostic Related Group claims.

Background

The New York State Health Insurance Program (Program) provides coverage for hospitalization, surgical services and other medical expenses for over 757,000 active and retired State employees and dependents. The Program also covers over 281,000 active and retired employees and dependents of local governmental units and school districts that elect to participate. The Department of Civil Service (Department) contracts with insurance carriers to provide all aspects of health insurance coverage, and is responsible for managing and administering the Program. The Empire Plan (Plan) is the Program's primary health benefit plan, providing services at a total annual cost of almost \$1.6 billion.

The Department of Health (DOH) has historically regulated inpatient hospitals, including development of professional standards and setting of hospital reimbursement rates and fees. Effective January 1, 1988, DOH implemented a new payment method for hospitals providing inpatient care called Diagnosis Related Groups (DRGs). The DRG payment method bases reimbursement on the type of patient care provided as well as the costs incurred by the hospital. More specifically, a DRG is assigned based on the International Classification of Diseases (ICD-9-CM) diagnosis and procedure codes and other patient information submitted by the hospital on an inpatient claim. The assigned

DRG results in a specific hospital reimbursement amount. To ensure that DRGs are correctly assigned and hospitals are properly paid, the ICD-9-CM codes and other patient information submitted by the hospitals must be accurate. Inaccurate coding of patient information could result in the assignment of a higher paying DRG (DRG upcoding).

The "New York Health Care Reform Act of 1996" was enacted to amend the Public Health Law as it relates to New York hospital reimbursement methodologies. The prior New York Prospective Hospital Reimbursement Methodology (NYPHRM) was found by the legislature to no longer meet the goals of New York State's health care system. As a result, in January 1997, NYPHRM, which includes the DRG reimbursement methodology, was replaced by a system of negotiated hospital rates.

Summary Conclusion

In our prior audit report, we found that Empire Blue Cross officials needed to improve their procedures for identifying DRG upcoding. For the two-year period ended December 31, 1994, we identified almost \$706,000 in claims paid by Empire Blue Cross for hospital DRG claims that were not properly supported by medical records. We recommended that Empire Blue Cross remit this overpaid amount to the State.

In our follow-up review, we found Empire Blue Cross officials did not refund the overpayments we identified. Empire Blue Cross officials cited certain NYPHRM provisions they believe preclude them from recovering the overpayments from providers. As we stated in our prior audit, the cited provisions do not apply to our audits. Additionally, Empire Blue Cross should have detected the overpayments through its own DRG validation process. As such, Empire Blue Cross officials should refund the overpayments to the State, regardless of their ability to recover the amounts from providers.

Summary of Status of Prior Audit Recommendation

Empire Blue Cross officials have not implemented our prior audit recommendation.

Follow-up Observations

Recommendation

Remit to the Plan the \$705,895 paid for hospital DRG claims that are not properly supported by medical records.

Status - Not Implemented

Agency Action - Empire Blue Cross officials indicated that they do not intend to remit projected overpayments and will not pursue recoveries. Empire Blue Cross officials stated their belief

that the statutory dispute resolution process authorized under the New York Prospective Hospital Reimbursement Methodology and implemented under DOH regulations does not support the recovery of overpayments that are not identified within the time frames established by these regulations.

Auditors' Comments - We obtained an opinion from DOH officials which states that the time frames established for the dispute resolution process pertain only to parties that elect to participate in this process by bringing disputes before the dispute resolution agent. As such, these time frames do not pertain to the recovery of overpaid claims identified during our audit. In addition, during the prior audit, Empire Blue Cross officials obtained an opinion from their legal counsel that supports the DOH position regarding the dispute resolution time frames. Although Empire Blue Cross's counsel stated his belief that pursuing any recoveries beyond the established time frames would be "contrary to the spirit and intent of the dispute resolution process", the opinion also indicates there is no legal barrier to recoveries. Also, since overpayments resulted from weaknesses in its DRG validation process, Empire Blue Cross should refund the overpayments to the State, whether or not the dispute resolution process is applicable. Empire Blue Cross is responsible for identifying overpayments, regardless of its ability or willingness to recover these overpayments from providers.

Major contributors to this report were Frank Russo, Ron Pisani and Dennis Buckley.

We would appreciate receiving your response to this report within 30 days, indicating any action planned or taken to address any unresolved matters discussed in this report. We wish to express our appreciation to the management and staff of Empire Blue Cross for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Kevin M. McClune
Audit Director

cc: Robert L. King, Division of the Budget
George Sinnott, Department of Civil Service
Jeannette Conte, Empire Blue Cross Blue Shield