



New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Empire BlueCross BlueShield Selected Payments for Special Items for the Period July 1, 2011 Through December 31, 2011

**New York State Health Insurance Program
Department of Civil Service**



Executive Summary

Purpose

To determine whether Empire BlueCross BlueShield (Empire) paid claims for special items according to the provisions of the agreements between Empire and its member hospitals. We also sought to determine if charges for certain cardiac devices from hospitals with contractually defined reimbursement limits differed significantly from hospitals with no such limits. The audit covered the period from July through December 2011.

Background

The New York State Health Insurance Program (NYSHIP) provides health coverage to active and retired State, participating local government and school district employees and their dependents. The Department of Civil Service contracts with Empire to administer the hospitalization portion of the Empire Plan (Plan), which includes coverage for inpatient and outpatient hospital services.

Empire processes Plan claims for hospital services in accordance with agreements they negotiate with member hospitals. Payments for hospital services are generally based on standard fee schedules. However, hospitals may be entitled to additional payments for special items that are not covered by the standard schedules. Many of Empire's agreements with member hospitals limit charges for special items, while agreements with other hospitals do not have such limitations. From July 1, 2011 to December 31, 2011, Empire paid over \$63 million for 37,508 claims for special items.

Key Findings

- Empire did not have adequate controls to ensure special items were paid according to contract limitations. As a result, Empire made net overpayments of \$486,212 on 52 claims. From one hospital, Empire overpaid four claims by \$77,342.
- Hospitals without contractual reimbursement limits for special items marked up charges for certain cardiac devices significantly more than hospitals with such limits. On average, the hospitals without reimbursement limits marked up their charges (over cost) by about 74 percent (or \$13,140); whereas hospitals with limits marked up charges by only 17 percent. On one particular claim, we estimate that a hospital made a profit of about \$59,000.

Key Recommendations

- Recover the net overpayment of \$486,212 for the improper claims we identified.
- Ensure that all agreements with hospitals contain language which limits the basis of reimbursement for special items.
- Develop and implement a system of internal controls to ensure that payments for special items are made according to agreements and are supported by appropriate documentation.

Other Related Audits/Reports of Interest

[NYSHIP: Empire BlueCross BlueShield Selected Payments for Special Items for the Period January 1, 2011 Through March 31, 2011 \(2011-S-17\)](#)

[Empire BlueCross BlueShield: NYSHIP - Payments Made to Hudson Valley Hospital Center \(2009-S-99\)](#)

**State of New York
Office of the State Comptroller**

Division of State Government Accountability

May 9, 2013

Mr. Jason O'Malley
Director, New York State Empire Plan
Empire BlueCross BlueShield
11 Corporate Woods Boulevard
Albany, NY 12211

Dear Mr. O'Malley:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the New York State Health Insurance Program entitled *Empire BlueCross BlueShield Selected Payments for Special Items for the Period July 1, 2011 Through December 31, 2011*. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller
Division of State Government Accountability*

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This report is also available on our website at: www.osc.state.ny.us

Background

The New York State Health Insurance Program (NYSHIP) provides health coverage to active and retired State, participating local government and school district employees, and their dependents. The Empire Plan (Plan) is the primary health benefits plan for NYSHIP. The Plan covers inpatient and outpatient hospital coverage, medical/surgical coverage, Centers of Excellence (for transplants, infertility and cancer treatments), home care services, equipment and supplies, mental health and substance abuse services, and prescription drugs.

The Department of Civil Service (Department) contracts with Empire BlueCross BlueShield (Empire) to administer the hospitalization portion of the Plan, which includes coverage for inpatient and outpatient services provided by a hospital, skilled nursing facility, and hospice. Empire processes Plan claims for hospital services according to agreements they negotiate with member hospitals. These member hospitals are located in 28 eastern and southeastern New York State counties and 10 bordering counties in New Jersey and Connecticut. Empire also processes Plan claims for services provided by hospitals outside Empire's service area. These claims are submitted by hospitals to their local plans for payment. The local plans are then reimbursed by Empire.

Payments for hospital services are generally based on standard fee schedules that are negotiated between Empire and its member providers. Hospitals may be entitled to additional payments for special items (e.g., implants, drugs and blood) that are not covered by standard fee schedules. Contracts with many of Empire's member hospitals often limit payments for special items. However, contracts with other hospitals do not have similar limitations. For the period July 1, 2011 through December 31, 2011, Empire paid 499,588 claims totaling nearly \$1.1 billion for services provided to Plan members. This included payments totaling over \$63 million for 37,508 claims for special items.

Audit Findings and Recommendations

Empire made net overpayments totaling \$486,212 for the claims for special items we reviewed. The overpayments included 52 claims from hospitals with Empire contracts which limited the amounts they could charge for special items. We also found that Empire likely made excessive payments for certain cardiac devices to hospitals whose contracts did not have provisions to limit payments for special items. Several hospitals realized excessive profits on these devices by marking up claim charges significantly beyond the actual costs to acquire them. Given the incidence and amounts of the improper and questionable payments, we conclude that Empire needs to significantly improve processing controls over claims for special items.

Overpayments to Hospitals With Contracts That Limit Charges

We tested 65 payments that Empire made to 20 hospitals whose contracts limited the amounts that could be claimed for special items. There were errors on 52 (80 percent) of the 65 payments, and the errors resulted in a net overpayment of \$486,212. Of the incorrect payments, 41 were overpaid by a total of \$523,227, and 13 were underpaid by \$37,015. (Two claims had both overcharges and undercharges.) The following table summarizes the results of the 65 claim payments we reviewed.

| Nature of Claim Payment Determination | Number of Sample Payments | Amount Paid for Special Item | Amount Over (Under) Paid |
|--|---------------------------|------------------------------|--------------------------|
| Payments Exceeded Contract Allowances (Overpayments) | 37 | \$1,230,384 | \$364,903 |
| Items Not Provided to Patient | 3 | 94,842 | 94,842 |
| Incomplete Supporting Documentation Provided | 2 | 63,482 | 63,482 |
| Adjustment for Item in Two Prior Categories | (1) | 0 | 0 |
| Subtotal for Overpaid Claims | 41 | 1,388,708 | 523,227 |
| Payments Below Contract Allowances (Underpayments) | 13 | 472,038 | (37,015) |
| Adjustment for Items in Multiple Categories | (2) | 0 | 0 |
| Subtotal for Exceptions | 52 | 1,860,746 | 486,212 |
| Paid Correctly | 13 | 301,468 | 0 |
| Totals | 65 | \$2,162,214 | \$486,212 |

Of the 41 overpayments, 37 were overpaid by \$364,903 because Empire paid more than the amounts allowed per its contracts with the hospitals. In general, Empire's contracts limited hospitals' claims for special items to the amounts the hospitals actually paid to acquire them.

Nevertheless, the hospitals' charges exceeded (often significantly) the acquisition costs of special items, and Empire paid the excessive claims. For one hospital, for example, Empire paid \$109,557 for four claims which included special items. However, documents provided by the hospital supported payments totaling only \$32,215. Therefore, Empire overpaid the hospital \$77,342 (\$109,557 - \$32,215) for the four claims. The following table provides examples of excessive claim payments to five other hospitals.

| Hospital | Amount Empire Paid | Amount Empire Should Have Paid per Contract | Amount Empire Overpaid | Percent Overpaid by Empire |
|----------|--------------------|---|------------------------|----------------------------|
| A | \$602,158 | \$539,858 | \$62,300 | 11.5% |
| B | \$333,646 | \$277,178 | \$56,468 | 20.4% |
| C | \$73,228 | \$20,700 | \$52,528 | 253.8% |
| D | \$43,782 | \$25,018 | \$18,764 | 75.0% |
| E | \$41,865 | \$27,576 | \$14,289 | 51.8% |

As the table indicates, many of the overpayments we identified were material and resulted in significant profits for the hospitals. Further, we disallowed \$94,842 for portions of three claim payments because the hospitals billed for items that were not provided to the patients. We also disallowed \$63,482 for portions of two claim payments because the supporting documentation provided by the hospitals was incomplete.

The overpayments we identified resulted because Empire did not have adequate controls in place to ensure special items were paid according to the terms of their contracts with the hospitals. Empire did not request or therefore review supporting documentation for special items prior to payment. Further, vague language in some of Empire's hospital contracts increased the risk of payments for excessive acquisition costs.

In response to our audit's preliminary findings, Empire officials told us provisions limiting reimbursement for special items are intended to "operate in the aggregate," and deviations from the terms can exist for individual items. As our report details, however, the amounts of overpayments significantly exceeded the amounts of underpayments for special items. Moreover, for the 65 claims we reviewed, the net overpayment (\$486,212) amounted to 29 percent of the amount Empire should have paid for the items in question. This amount is material, and consequently, there is significant risk that Empire's payments for all special items were, in the aggregate, excessive. Empire could have prevented the excessive payments, if it had stronger controls to ensure that payments for special items were correct.

Charges for Cardiac Devices

Our core sample of 65 claims included 11 claims for certain implantable cardiac devices, which are among the more common special items claimed by providers. In addition to these claims, we identified and tested 12 other claims for common cardiac devices from five hospitals without contractual reimbursement limits for special items. Using available data, we estimated the costs of the devices purchased by these hospitals. Based on our review, we concluded that hospitals without contract limits marked up charges for special items significantly more than hospitals with such limits. Consequently, some of the hospitals not governed by limits realized excessive profits on claims for special items.

As illustrated in the following chart, Empire's average payment to hospitals with reimbursement limits exceeded the hospitals' estimated costs for cardiac devices by \$2,818. However, for the hospitals without reimbursement limits, Empire's average payment exceeded the estimated costs for the devices by \$13,140 - over four times the amount realized by hospitals with limits.

| Source of Claims | Average Hospital Cost | Average Empire Payment | Average Profit | Average Profit % |
|---|-----------------------|------------------------|----------------|------------------|
| Hospitals with Reimbursement Limits - 11 Claims | \$16,315 | \$19,133 | \$2,818 | 17.3% |
| Hospitals without Reimbursement Limits - 12 Claims (See Note) | \$17,741 | \$30,881 | \$13,140 | 74.1% |

(Note: We estimated the costs of the devices based on invoice data for similar items that we obtained for claims from hospitals with contracts including reimbursement limits.)

Although the estimated profits to hospitals without contractual limits averaged \$13,140, the estimated profit on one particular claim was \$59,485. Thus, the risk of excessive profits on these types of claims is high. Moreover, based on our analysis, we concluded that contract provisions which limit charges for special items are crucial to controlling the State's costs for these items.

Empire officials advised us they are committed to adding standard language to hospital agreements to help prevent excessive payments for special items. Officials further advised us that they recently amended their agreements with a hospital network and a large independent hospital to limit the amounts claimed and paid for special items.

Recommendations

1. Recover the net overpayment of \$486,212 for the improperly paid claims.
2. Ensure that the future contracts with hospitals contain language which: specifies the basis of reimbursement for the purchase and acquisition of special items; and requires hospitals

to provide appropriate support documentation (including invoices for special items) upon request.

3. Develop and implement internal controls to ensure that payments for special items are made in accordance with hospital agreements and are supported by appropriate documentation.

Audit Scope and Methodology

Our principal audit objective was to determine if Empire paid claims for special items according to the provisions of the contracts between Empire and its member hospitals. We also sought to determine if charges for certain cardiac devices, from hospitals without contractually defined reimbursement limits, were reasonable (when compared to the hospitals' estimated acquisition costs). Our audit covered the period from July 1, 2011 through December 31, 2011.

To accomplish our objectives, we judgmentally selected 77 claims from 25 hospitals for review. The selected claims included comparatively high charges for various special items, including certain cardiac devices. The 77 claims totaled about \$6 million, of which \$2.6 million pertained to special items. Empire's contracts with 20 (of the 25) hospitals contained provisions that based reimbursement for special items on invoice costs, and the contracts for the remaining five hospitals did not have such provisions.

For each claim we requested that Empire obtain medical records and invoices. We reviewed the medical records to determine whether the services and special items billed were in fact provided. We compared the invoice cost of special items to the amounts Empire paid providers. We considered payments for charges that exceeded the terms prescribed by hospital contracts to be overpayments.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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 (some of whom have minority voting rights) to certain boards, commissions and public authorities. 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.

Reporting Requirements

We provided preliminary copies of the matters contained in this report to Empire officials for their review and comments. Their comments have been taken into consideration in preparing this report.

Within 90 days of the final release of this report, we request Empire officials to report to the State Comptroller advising what steps were taken to implement the recommendations included in this report.

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