OFFICE OF THE NEW YORK STATE COMPTROLLER

DIVISION OF STATE GOVERNMENT ACCOUNTABILITY

United HealthCare

New York State Health Insurance Program - Overpayments for Services Provided by Long Island Digestive Disease Consultants

Report 2009-S-24

Thomas P. DiNapoli

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State of New York
Office of the State Comptroller

Division of State Government Accountability

November 19, 2009

Mr. Carl A. Mattson
Vice President, Empire Plan
United Healthcare National Accounts
900 Watervliet-Shaker Road - Suite 105
Albany, New York 12205

Dear Mr. Mattson:

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 - Overpayments for Services Provided by Long Island Digestive Disease Consultants. The 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

EXECUTIVE SUMMARY

Audit Objectives

Our objectives were to determine whether the Long Island Digestive Disease Consultants (LIDDC) routinely waived Empire Plan members' out-of-pocket costs, and if so, to quantify the overpayments made by United HealthCare resulting from this practice. Our audit covered the period from January 1, 2004 through December 31, 2008.

Audit Results - Summary

The New York State Health Insurance Program (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 Program. The New York State Department of Civil Service contracts with United Healthcare (United) to process and pay medical claims for services provided to Empire Plan members.

United contracts with certain providers who agree to accept payments, at rates established by United, to furnish medical services to Empire Plan members. United pays these "participating providers" directly based on claims they submit for the services rendered. Members pay nominal co-payments to the participating providers for services. Members may also choose to receive services from "non-participating providers." The claims from non-participating providers usually include service fee rates that are higher than the fee rates that participating providers agree to accept for the same services. Often, the rates for non-participating providers are much higher than the rates for participating providers. Consequently, to encourage members to use participating providers, the Empire Plan requires members to pay higher out-of-pocket costs (including deductibles and co-insurance) when they use non-participating providers.

We found that the LIDDC, a non-participating provider until March 9, 2006, routinely waived Empire Plan members' required out-of-pocket costs for services provided. As a result, United overpaid claims submitted by LIDDC by $542,317 during our audit period. When it was a non-participating provider, LIDDDC received higher fee rates than participating providers. Moreover, the routine waiver of members' out-of-pocket costs tends to drive up costs for the Empire Plan, because it increases the likelihood that members will use non-participating providers.

Our report recommends that United recover the $542,317 in excessive payments made to LIDDC.

This report dated November 19, 2009, 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

Introduction

Background

The New York State Health Insurance Program (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 Program. The New York State Department of Civil Service contracts with United HealthCare (United) to process and pay medical claims for services provided to Empire Plan members. The State reimburses United for the payments it makes under the Empire Plan, and it pays United an administrative fee.

United contracts with certain providers who agree to accept payments, at rates established by United, to furnish medical services to Empire Plan members. United pays these "participating providers" directly based on claims they submit for the services rendered. Members pay a nominal co-payment to the participating provider for the services rendered.

Members may also choose to receive services from "non-participating providers." The claims submitted to United by non-participating providers usually include service fee rates that are higher than the fee rates that participating providers agree to accept for the same services. To limit its costs (and those of the State), United pays non-participating provider claims the lesser of "reasonable and customary" rates for the services provided or the actual amount claimed by the provider. In most instances, payments to non-participating providers are based on reasonable and customary rates. However, reasonable and customary rates are generally more than the rates paid to participating providers for similar services. Often, the difference is significant. Generally, when United pays a claim from a non-participating provider, the payment is made to the member. The member is then expected to use the funds to compensate the non-participating provider.

To encourage members to use participating providers, the Empire Plan requires members to pay higher out-of-pocket costs (including deductibles and co-insurance) when they use non-participating providers. After the member meets an annual deductible, United pays the member 80 percent of the reasonable and customary cost of the service. The member is responsible for the remaining 20 percent of the charge (or co-insurance) for the service. The member is responsible for settling any unpaid balance with the non-participating provider, including any out-of-pocket amounts owed.

Participating providers agree to accept service fee rates that are generally lower than the fee rates for non-participating providers because service payments are made directly to the provider (instead of the member, as is the

case for the payment of claims from non-participating providers). Therefore, participating providers avoid the problems related to the collection of large unpaid balances from patients.

Our audit focused on claims submitted by Long Island Digestive Disease Consultants (LIDDC) which is located in East Setauket, New York. During the period from January 1, 2004 through December 31, 2008, United paid LIDDC claims totaling $7.6 million for Empire Plan members.

Audit Scope and Methodology

Our audit primarily focused on determining whether LIDDC routinely waived Empire Plan members' out-of-pocket costs, and if so, to quantify the overpayments made to LIDDC during the period from January 1, 2004 through December 31, 2008. To accomplish our objectives, we reviewed a random sample of 174 claims submitted by LIDDC. We reviewed LIDDC's financial records to determine if LIDDC routinely waived the out-of-pocket costs for Plan members, and consequently, submitted improper claims to United.

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 objectives. 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 systems; 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 the report to United officials for their review and comments. United officials agreed with our audit findings and conclusions. In addition, we request United officials to provide us with a response to the recommendations made in this

report within 90 days, indicating any actions planned or taken to implement them.

Contributors to the Report

Major contributors to this report were David Fleming, Laura Brown, Brian Krawiecki, Arnold Blanck and Frank Commisso.

Audit Findings and Recommendations

Waivers of Members' Out-of-Pocket Costs

When United processes LIDDC's 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 members' out-of-pocket obligations. However, our audit found that LIDDC routinely waived Empire Plan members' out-of-pocket obligations. Consequently, LIDDC's claims for services to Plan members were excessive, and United made excessive payments for these claims. By waiving member's out-of-pocket obligations, LIDDC improperly removed the incentive for members to use participating providers. This likely resulted in increased costs to the Plan and consequently to taxpayers.

As a non-participating provider until March 9, 2006, LIDDC received higher fee rates than participating providers. Although LIDDC became a participating provider effective March 9, 2006, it retained the services of a non-participating physician for the period subsequent to that date and, in certain instances, waived members' out-of-pocket costs for claims for services provided by the non-participating physician.

Because LIDDC intended to waive members' out-of-pocket costs, LIDDC should have reduced its claims to United by the amounts of those out-of-pocket costs. Consequently, the corresponding payments by United should have been based on the amount of the base service charge minus the amounts of the out-of-pocket costs that were waived. However, we found that LIDDC's claims did not indicate that members' out-of-pocket costs were waived. Accordingly, United was presented with and made payments to LIDDC based on excessive claims. We determined that United overpaid claims submitted by LIDDC, during our audit period, at a cost of $542,317 to the State.

To determine the amount of the overpayments, we selected medical claims submitted by LIDDC in which United was the primary payer and the amounts of members' out-of-pocket costs were included on the claims. For the period January 1, 2004 through December 31, 2008, we identified 3,826 claims totaling $2.3 million meeting these criteria. To determine whether LIDDC waived members' out-of-pocket costs, we reviewed a sample of 174 randomly-selected claims from the 3,826 total claims, and evaluated the results using valid statistical methods. We then reviewed LIDDC's financial records and found that the members' out-of-pocket costs were waived intentionally for 161 of the 174 sampled claims. In the remaining 13 instances, we determined that the coinsurance was not waived. For ten of these claims, members paid the full amounts of the service charges, and

LIDDC appropriately wrote-off balances owed by three other members who were charged, but did not pay the amounts in question.

From our random sample, we identified overpayments amounting to $23,213, resulting from claims that were excessive. In submitting claims, LIDDC routinely reported the full base amounts for services, but did not reduce them by the amounts of members' out-of-pocket costs that were waived. For example, if LIDDC charged $125 for services provided to an Empire member, United would pay $100 (80 percent of $125). LIDDC accepted that amount as payment in full, and then waived the remaining $25 (co-insurance owed by the member) of their fee. However, LIDDC's actual charge to United should have been only $100 (the amount it actually intended to collect for the service), and United should have paid only $80 (80 percent of $100) on the claim. Because United paid $100, LIDDC was overpaid by $20. A projection of the overpayments to the entire population of claim payments, using statistically valid sampling methods (including a 95 percent single-sided confidence level), indicated that the total overpayment to LIDDC amounted to $542,317.

The waiver of members' out-of-pocket costs improperly benefits non-participating providers because payments are not based on the amounts that such providers actually intend to accept as full payment for services provided. Further, such waivers tend to drive up costs for the Empire Plan, because it increases the likelihood that members will use non-participating providers.

We also note that officials at the Department of Civil Service and the State Insurance Department are concerned about fraud and abuse in the Empire Plan. Specifically, officials are concerned that providers who routinely waive members' out-of-pocket costs are doing so intentionally to benefit from the higher reimbursement rates for non-participating providers. Moreover, the State Insurance Department has indicated that it may be a fraudulent billing practice and violation of the State Insurance Law when a provider routinely waives out-of-pocket costs and accepts amounts from an insurer as payment in full.

Recommendations

1. Recover from LIDDC the $542,317 overpaid for services provided.
2. Review claims submitted for LIDDC's out-of-network physician for the waiving of out-of-pocket costs and adjust such claims, as appropriate.
3. Work with LIDDC to make the out-of-network physician a participating provider.