



An Anthem Company

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August 6, 2020

Mr. Paul Alois  
Audit Manager  
Office of the New York State Comptroller  
110 State Street  
Albany, NY 12236

Re: OSC Audit 2017-S-43

Dear Mr. Alois:

We reviewed the final report for Audit 2017-S-43 and appreciate the opportunity to respond to your recommendations. For the remainder of this response, we will refer to Empire BlueCross as "Empire" and the Office of the New York State Comptroller as "OSC".

On March 20, 2020, the Department of Financial Services issued Circular Letter No. 8 (2020) encouraging plans to suspend all non-essential audit activities and overpayment recoveries for a period of 90-days. This ensured facilities had adequate resources during the declared COVID-19 pandemic to provide care to the communities they serve. Empire has since resumed audit activities, which do not require medical records; however, have not resumed audit related recoveries due to the negative financial impact COVID-19 had on New York Hospitals.

**Recommendation #1:**

*Recover the remaining \$3,335,221 out of \$3,597,688 for special item claim overpayments from LIHN.*

OSC's findings were shared with the applicable facilities as requested. Additional recovery requests have been initiated for approximately \$1.3 million dollars for claims where both Empire and the facility were in agreement with OSC's findings. To date, Empire has recovered \$565,826.99 for claims within the audit sample. This total represents recoveries initiated prior to and during the audit. When recoveries resume, we will keep OSC apprised of the status of these ongoing recoveries. As mentioned in our response to OSC's preliminary report, some of the findings included within the scope of this audit have been previously addressed by Empire and the facilities formerly part of LIHN. As a result, Empire previously credited the State of New York a net amount of \$2,393,398.48 prior to the start of this audit, and provided the details to OSC separately.

Any audit conditional upon the submission of detailed documentation, often times several years' old is labor intensive for facilities and often obstructed by delays in securing documentation the OSC deems adequate. The audit period for 2017-S-43 spanned back in excess of seven (7) years from the

date of this letter, which made it problematic for some facilities to locate all requested documentation. Therefore, Empire continues to disagree with the methodology of categorizing the reimbursement of specific items when the facility is incapable of providing documentation, or documentation deemed incomplete or insufficient by OSC as an audit finding.

**Recommendation #2:**

*Ensure LIHN hospital officials are instructed on Empire's Provider Manual definition of an implant.*

Our Provider Manual is available to providers on our website and within the provider portal. The manual is routinely reviewed and updated (as needed) to ensure our providers have access to the most up-to-date information.

The Provider Manual is incorporated by reference in our provider agreements and defines an implant as, "...including but not limited to implants, devices, prosthetics, orthotics, radioactive seed implants, pacemakers, and stents". Each agreement between Empire and a facility is unique, and in the absence of contract language specific to implants the Provider Manual's definition would apply.

For facilities whose agreements contain language defining what constitutes an implant, Empire will continue to work towards a mutual agreement of which items are eligible for reimbursement under the agreement during the contract renewal process.

**Recommendation #3:**

*Develop a corrective action plan with LIHN hospitals to prevent the types of errors identified by the audit from occurring in the future.*

When a facility disagrees with Empire's findings, they have the opportunity to provide supporting documentation to support their position through a dispute resolution process.

LIHN ceased operations as of March 31, 2019. The facilities formerly part of LIHN were given the opportunity to review and respond to OSC's findings and disagreed they were billing incorrectly as a whole. Where the facility and Empire agreed, recovery requests were initiated as appropriate.

The renewal process with each hospital is unique and has its own set of circumstances. Empire is in the process of negotiating new agreements with the facilities formerly part of LIHN and the negotiation will include discussion on language to address reimbursement of rate exception items. We will continue to discuss the existing implant reimbursement language to align with the Provider Manual's definition of an implant.

**Recommendation #4:**

*Continue to monitor special item claims and consider implementing a risk-based approach that incorporates reviews of more hospitals and claims, and targets hospitals with patterns of billing errors.*

Empire has a wide variety of controls in place to verify providers are billing appropriately and reimbursed according to their agreement with Empire. These controls include datamining, quality coding reviews, internal and external audits, and pre and post payment claim edits. Our internal audit team works collaboratively with our facility contracting team to identify trends or recurring results

from our audit activities. This information as well as other factors is used as the basis for future audit activity (risk-based approach).

All claims, which meet the criteria of the audit activities above, are subject to review per the terms of the facilities agreement with Empire, as well as a key determinate of proactive discussion with the providers around contract changes and amendments, which we will attempt to address during the next contract renewal cycle.

Datamining systematically identifies claims where providers have billed an implant code for supplies not eligible for separate reimbursement. All claims that meet these criteria are subject to review.

Quality Coding reviews consist of reviewing medical charts for correct coding to ensure claims were appropriately reimbursed and include special items such as implants and high-cost drugs. These reviews are conducted on facilities whose agreements support this type of review and appropriate billing and reimbursement is confirmed per the terms of their agreement.

There are currently over 2,000 pre and post-payment claim edits in place that, and are triggered based on a variety of variables. Claim examiners investigate and resolve certain edits, while others may require a higher level of review by our clinical team. All claims are subject to this type of review. Implant and High-Cost drugs are audited per the limitations outlined within each of our facility agreements. When an overpayment is identified, the recovery process is initiated and upon receipt, credited back to the State. By the end of 2019, Empire recovered and refunded approximately \$3.4 million dollars on behalf of the Empire Plan as a result of the audit activities currently in place.

In addition to the activities mentioned above Empire has made significant investments and improvements to how we identify areas prone to overpayment including the development of new tools, software updates, and increased audit activities to identify areas prone to overpayment.

Our internal audits include all lines of business and are not limited to Empire Plan claims; therefore, we maintain sample sizes and findings are not an appropriate measure of the effectiveness of the controls in place.

Since OSC began auditing the reimbursement of special items, we have continued to work conscientiously to identify opportunities to improve audit controls, which will mitigate the risk of overpayments in the future.

In the final report to follow-up audit 2019-F-39, OSC acknowledged that Empire implemented two of their previous recommendations, which included enhancing our internal audit controls and making updates to the language in facility agreements regarding special item reimbursement.

In summary, the combination of controls and actions outlined in this letter address every hospital eligible for separate reimbursement of special items. Empire has worked diligently and in good faith to enhance audit controls, and will continue to identify opportunities for improvement in areas prone to overpayments. We hope our efforts documented in this response emphasize Empire's ongoing commitment to the State of New York.

We appreciate the partnership we have with your office and look forward to it continuing in the future.

Thank you for the courtesy extended throughout the audit process.

Sincerely,

A handwritten signature in black ink, reading "Jason O'Malley", is centered within a light gray rectangular box.

Jason O'Malley  
Regional Vice President, Sales  
Empire BlueCross

Cc: Ms. Angela Blessing, Empire BlueCross  
Ms. Janna Liberty, Empire BlueCross