



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

Division of State Government Accountability

United HealthCare: Certain Claim Payments for Evaluation and Management Services

New York State Health Insurance Program

Department of Civil Service



Report 2010-S-67

April 2012

Executive Summary

Purpose

To determine if United HealthCare (United) made excessive claim payments due to providers' improper use of Modifier 25 (for evaluation and management services related to other medical procedures).

Background

The New York State Health Insurance Program (NYSHIP) 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 NYSHIP. The Department of Civil Service contracts with United to provide medical/surgical coverage under the Plan. United's payments for medical procedures include increments for certain evaluation and management (E/M) services that are necessary before and/or after the performance of a procedure. Normally, United does not allow additional payments for E/M services, unless such services are significant and separately identifiable (i.e., above and beyond the usual preoperative and postoperative care associated with the main procedure). In 2009, United paid over \$59 million for about 1.5 million services submitted with a modifier 25.

Key Findings

- For 27 (12.6 percent) of the 214 claims we tested, a significant and separately identifiable E/M service was not provided. On one claim, for example, United paid a provider \$561 for a lesion removal and another \$204 for a purported E/M service. However, there was no indication in the medical records that a significant and separately identifiable E/M service was, in fact, provided. Thus, the provider should not have billed (and United should not have paid) the additional \$204 for the E/M service.
- We estimate, with a 90 percent confidence level, that United overpaid between \$3.2 million and \$7.8 million during our audit period because providers improperly applied Modifier 25 to their claims.
- Because of the large volume of claims, United officials relied extensively on the integrity of providers to submit their claims properly. Consequently, United had not formally assessed the risk of Modifier 25 abuse and taken steps to identify providers with aberrant E/M billing patterns.

Key Recommendations

- Improve controls to ensure that payments related to Modifier 25 are appropriate. Steps should include analysis of claims with Modifier 25 to identify providers with aberrant billing patterns, educating providers about the correct use of Modifier 25, and recovering overpayments for the improper use of Modifier 25, as appropriate.

Other Related Audits/Reports of Interest

[New York State Health Insurance Program: Inappropriate Billing for Outpatient Consultation Services \(2007-S-20\)](#)

[New York State Health Insurance Program: Upcoding of Selected Evaluation and Management Services \(2006-S-11\)](#)

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

Division of State Government Accountability

April 6, 2012

Mr. Carl 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 providing accountability for tax dollars spent to support government operations. This fiscal oversight is accomplished, in part, through our audits, which determine whether entities contracting with the State are fulfilling contract responsibilities. Audits can also identify strategies for reducing costs, improving operations 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 *United HealthCare, Certain Claim Payments for Evaluation and Management Services*. This audit was done according to the provisions of the contract between the Department of Civil Service and United HealthCare and 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*

Table of Contents

Background	4
Audit Findings and Recommendations	5
Improper Payments for Modifier 25 Services	5
Recommendations	6
Audit Scope and Methodology	7
Authority	8
Reporting Requirements	8
Contributors to the Report	9

State Government Accountability Contact Information:**Audit Director:** Brian Mason**Phone:** (518) 474-3271**Email:** StateGovernmentAccountability@osc.state.ny.us**Address:**

Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

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

Background

The New York State Department of Civil Service (Civil Service) is responsible for administering the New York State Health Insurance Program (NYSHIP). NYSHIP provides health insurance coverage to more than 1.2 million active and retired State, participating local government and school district employees and their dependents. NYSHIP includes several health plan options, of which the Empire Plan is by far the largest. Nearly 1.1 million of the more than 1.2 million individuals covered by NYSHIP are members of the Empire Plan. Civil Service contracts with United HealthCare (United) to process and pay medical and surgical claims for services provided to Empire Plan members. United processes over 21 million claims a year for the Empire Plan and made claim payments totaling about \$1.9 billion in 2009.

United has contracts with a broad network of medical service providers. These providers agree to accept a prescribed rate plus a nominal co-payment from the Plan member as payment in full for their services. United also pays for services of out-of-network providers, generally at higher rates than services provided by in-network providers. Plan members utilizing out-of-network providers generally incur higher out-of-pocket costs than members utilizing in-network providers.

United's payments for medical procedures include certain evaluation and management (E/M) services that are necessary prior to the performance of the procedure. However, if a provider performs an E/M service on the same day as another medical procedure, and the E/M service is significant and separately identifiable (i.e., above and beyond the usual care associated with the main procedure), United will allow a separate and additional payment for the E/M service. To obtain this payment, the medical provider must prepare a claim using "modifier code 25." In 2009, United paid over \$59 million for about 1.1 million E/M services claimed with modifier code 25.

In 2005, the federal Department of Health and Human Services (DHHS) issued a report on the use of modifier 25 in the Medicare program during 2002. According to the DHHS report, 35 percent of claims that included modifier 25 did not meet Medicare's prescribed requirements for using it. Moreover, DHHS estimated that \$538 million of improper payments resulted from misuse of modifier 25.

Audit Findings and Recommendations

Improper Payments for Modifier 25 Services

In 2009, there were 2,055 providers who applied modifier 25 to 50 percent or more of their claims. This includes 448 providers who applied modifier 25 to 90 percent or more of their claims. The following table summarizes the numbers of providers who used modifier 25 on 50 percent or more of their claims in 2009 and the corresponding E/M payments United made to those providers.

Percentage of Claims Using Modifier 25	50 - 89%		90 - 100%		Totals	
	# of Providers	\$ Amounts Paid for Modifier 25 (in 000's)	# of Providers	\$ Amounts Paid for Modifier 25 (in 000's)	# of Providers	\$ Amounts Paid for Modifier 25 (in 000's)
0-49 E/M Services	666	969	188	382	854	1,351
50-99 E/M Services	302	862	100	435	402	1,297
100-499 E/M Services	454	3,278	130	1,442	584	4,720
500-999 E/M Services	95	2,219	20	719	115	2,938
= or > 1,000 E/M Services	90	8,351	10	1,669	100	10,020
Totals	1,607	\$15,679	448	\$4,647	2,055	\$20,326

As the table indicates, United paid about \$20.3 million to providers who included modifier 25 on 50 percent or more of their E/M claims. Of this, \$4.6 million was paid to providers who used modifier 25 on 90 percent or more of their claims. As noted previously, providers in general applied modifier 25 only about 23 percent of the time. Because many providers applied modifier 25 to 50 percent or more of their claims (and some of those providers applied modifier 25 to more than 90 percent of their claims), we concluded there was considerable risk that certain providers made improper claims for modifier 25 E/M services.

From our random sample of 214 payments for E/M services, we found 27 claims (12.6 percent of the sample) in which the services did not meet the established criteria of being significant and separately identifiable from the basic medical procedures that were performed. On one claim, for example, a provider billed United for a lesion removal and an E/M service during a single appointment. United paid the provider \$561 for the lesion removal and another \$204 for the E/M service. However, the medical records indicated the lesion removal was the sole purpose of the appointment. Moreover, reimbursement for the provider's normal evaluation of the patient and determination of treatment was included in the standard payment (\$561) for the procedure. The medical records had no indication of any significant and separately identifiable service. Consequently, the provider should not have billed (and United should not have paid) the \$204 for the E/M service.

For the 27 improper claims for E/M services we identified, United paid \$3,284. Although the amount of a single improper E/M service payment was not large, the aggregate amount of improper payments for many thousands of such claims would be significant. Thus, using statistical sampling techniques, we projected the 27 overpayments to the 861,016 payments for modifier 25 E/M services (totaling \$52 million) in our audit population. Based on this projection, we estimate (with a 90 percent confidence level) that United overpaid between \$3.2 million and \$7.8 million for claims for E/M services including modifier 25 in 2009.

United reviewed the 27 claim payments we found improper and agreed with us in 25 (92.6 percent) of the cases. As noted previously, however, United processes over 21 million claims annually for the Empire Plan. Because of the large volume of claims, United officials rely extensively on the integrity of providers to submit correct claims. Officials stated that the providers are responsible to properly identify and claim the procedures they perform. Consequently, United has not formally assessed the risk of abuse of modifier 25 and taken steps to identify providers with aberrant E/M billing patterns.

United has performed some outreach and education on the proper use of modifier 25. Specifically, United's website includes policies on when the use of modifier 25 is appropriate and the documentation required to support modifier 25 E/M claims. Nonetheless, the probable overpayments of millions of dollars, due to the improper use of modifier 25, warrants increased oversight and monitoring by United. Consequently, we encourage United to develop and implement cost effective controls to help reduce improper modifier 25 claims and the corresponding overpayments. Modifier 25 clarifications, targeted to providers who claim E/M services the most often, could help reduce the amount of such claims. In addition, as priorities and resources permit, United should review the claims of higher risk providers and recover any overpayments identified.

Recommendations

1. Develop and distribute formal guidance which clarifies the proper use of modifier 25 for claims preparation and submission.
2. Perform a formal risk assessment of providers' use of modifier 25 and follow-up with providers exhibiting unusual modifier 25 billing patterns.
3. As priorities and resources permit, review the claims of higher risk providers and recover any overpayments identified.

Audit Scope and Methodology

We conducted our performance audit in accordance with generally accepted government auditing standards. Our audit focused on payments for claims using modifier 25 for E/M procedures that were not significant and separately identifiable from other procedures performed on the same day during the year ending December 31, 2009.

To accomplish our objective, we interviewed United officials and reviewed pertinent procedures to assess United's controls for ensuring that modifier 25 claims were billed and paid properly. In 2009, United paid for nearly 5 million E/M services totaling about \$324 million. Of these payments, 1,145,420 claims (23 percent of all E/M services) totaling about \$59 million included modifier 25. From the 1,145,420 modifier 25 services, we eliminated 227,411 services totaling \$4 million that United paid secondary to Medicare. We also eliminated 56,993 services totaling \$3.1 million because E/M service was not coupled with another service on the date in question. From the remaining 861,016 payments for modifier 25 services (totaling about \$52 million), we randomly selected 214 payments (totaling \$37,736) for testing.

We asked United to obtain the medical records from the practitioners for each sampled claim. We used the State Comptroller's clinical staff, certified in medical coding, to review the medical records and determine if the E/M services met the requirements for a modifier 25 service. Clinical staff employed by United also reviewed the same medical records.

We conducted our performance audit according to 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 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. The audit was also done pursuant to provisions in the contract between Civil Service and United.

Reporting Requirements

We provided preliminary copies of the matters contained in this report to United officials for their review and formal comments. United officials generally agreed with our findings and recommendations. Their comments were considered in preparing this report.

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

Contributors to the Report

Brian Mason - Audit Director
Dave Fleming - Audit Manager
Laura Brown - Examiner in Charge
Judith McEleney - Examiner in Charge
Frank Commisso - Staff Examiner
Suzanne Loudis - Staff Examiner
Christian Butler - Staff Examiner

Division of State Government Accountability

Andrew A. SanFilippo, Executive Deputy Comptroller
518-474-4593, asanfilippo@osc.state.ny.us

Elliot Pagliaccio, Deputy Comptroller
518-473-3596, epagliaccio@osc.state.ny.us

Jerry Barber, Assistant Comptroller
518-473-0334, jbarber@osc.state.ny.us

Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.