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

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Division of State Government Accountability

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# **Empire Blue Cross and Blue Shield: Payments for Selected Items to Selected Hospitals**

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

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Report 2010-S-74

April 2012

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## Executive Summary

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### Purpose

To determine if Empire Blue Cross and Blue Shield's (Empire's) payments to selected hospitals for special items were made according to the provisions of the agreements between Empire and the hospitals. The audit covers the period January 2006 through June 2010.

### 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 (Plan) is the primary health benefits plan for NYSHIP. The Department of Civil Service contracts with Empire to provide hospitalization coverage under the Plan. Empire's hospital agreements provide for additional payments, above standard rate schedule amounts, for certain special items (e.g. implants, drugs, and blood). From January 1, 2006 through June 30, 2010, Empire paid 179 hospitals about \$357 million for special items. Agreements with many of Empire's member hospitals often limit charges for special items.

### Key Findings

- There were errors in 111 (57 percent) of the 194 claims in our review sample. The errors resulted in a net overpayment of \$387,772 for the sample. A projection of the net overpayment to the entire population, using valid statistical sampling methods, resulted in a total overpayment of \$3.2 million.
- Most of the overpayments occurred because Empire did not apply contractually-prescribed reimbursement limits to claims for special items.

### Key Recommendations

- Remit to New York State the projected overpayment of \$3.2 million or remit the \$387,772 of overpayments identified by this audit plus amounts determined from re-adjudication of all other claims pertaining to the audit period.
- Develop and implement a system of internal controls to ensure that reimbursement for special items is reasonable.

### Other Related Audits/Reports of Interest

[New York State Health Insurance Program: Payments Made to Hudson Valley Hospital Center \(2009-S-99\)](#)

[New York State Health Insurance Program: Payments Made to Stony Brook University Medical Center \(2009-S-27\)](#)

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

**Division of State Government Accountability**

April 6, 2012

Mr. Jason O'Malley  
Director, New York State Empire Plan  
Empire BlueCross BlueShield  
11 Corporate Woods Boulevard  
Albany, New York 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 - Payments for Special Items to Selected Hospitals*. 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](http://www.osc.state.ny.us)

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## Background

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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 (Plan) is the primary health benefits plan for NYSHIP. Plan benefits include 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 contracts with 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 in accordance with agreements between Empire and 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. However, hospitals may be entitled to additional payments for certain special items (such as implants, drugs, and blood) that are not covered by the standard fee schedules. Agreements with many of Empire's member hospitals often limit charges for special items. Agreements with other hospitals may not have similar limitations. From January 1, 2006 through June 30, 2010, Empire paid 179 hospitals about \$357 million for special items.

## Audit Findings and Recommendations

### Excessive Claim Payments

Of the 194 claim payments for special items (e.g., implants, drugs, and blood) in our sample, there were errors in 111 claims (57 percent of the sample), resulting in a net overpayment of \$387,772. Of the incorrect payments, 94 were overpaid by a total of \$393,045, and 17 were underpaid by a total of \$5,273. The following table summarizes the results of the 194 claim payments in our review.

Nature of Claim Payment Determination	Number of Sample Payments	Amount Paid	Amount Over (Under) Paid
Payment Exceeded Contract Allowances	85	\$1,098,245	\$375,970
Duplicate Payment	1	\$30,226	\$15,005
No Supporting Documentation	1	\$1,086	\$1,086
Items Were Not Special Items	6	\$18,161	\$646
Item Not Provided to Patient	1	\$338	\$338
<b>Subtotals For Overpaid Claims</b>	<b>94</b>	<b>\$1,148,056</b>	<b>\$393,045</b>
Payments Below Contract Allowances (Underpayments)	17	\$109,664	(\$5,273)
<b>Subtotal Exceptions</b>	<b>111</b>	<b>\$1,257,720</b>	<b>\$387,772</b>
Paid Correctly	6	\$21,479	-0-
Claims Not Subject to Allowance Limit	75	\$472,456	-0-
Hospital Was Closed	1	\$14,494	-0-
Payment Was Secondary to Medicare	1	\$483	-0-
<b>Totals</b>	<b>194</b>	<b>\$1,766,632</b>	<b>\$387,772</b>

Of the 94 overpayments, 85 were overpaid by \$375,970 because the hospitals billed more than the applicable invoice amount(s) per the terms of Empire's agreements with the hospitals. In general, the agreements limited the amounts the hospitals could charge Empire for special items. Nevertheless, the hospitals billed Empire excessive amounts for certain special items, and Empire paid these claims. On one claim, for example, Empire paid \$54,036 for multiple special items. However, documents provided by the hospital supported a payment of only \$30,374. Therefore, Empire overpaid the hospital \$23,662 (\$54,036 - \$30,374). The following table aggregates details of several other claims for special items that Empire overpaid.

Nature of Special Items	Amount Empire Paid	Amount Empire Should Have Paid Per Contracts	Amount Empire Overpaid	Percent Overpaid
Implants	\$101,341	\$23,936	\$77,405	323
Drugs	\$29,674	\$9,082	\$20,592	227

As the table illustrates, the amounts of the overpayments could be large - with Empire paying two or more times the amounts it should have paid for the claims. Generally, the hospitals' administrative and other support service costs to acquire special items are limited. Consequently, several of Empire's overpayments were windfalls for the hospitals paid at taxpayers' expense.

In addition to the 85 overpayments attributable to non-compliance with special item provisions, we disallowed \$17,075 for all or portions of nine other claims as indicated in the table. When offset by the 17 underpayments (totaling \$5,373), the net overpayment resulting from the 111 problematic claims was \$387,772. Moreover, a projection of the net overpayment to the entire population using valid statistical sampling methods, including a 95 percent single-sided confidence level, results in an overpayment of \$3,210,478.

Of the 119 payments subject to invoice cost, we found 102 payments (86 percent of the 119) were paid in error. Empire shared our preliminary findings with the 17 hospitals. Nine hospitals agreed with our findings, and two others partially agreed. The remaining six hospitals disagreed or did not respond. At the time our field work was completed, Empire and the hospitals agreed that \$256,307 in overpayments were made on the claims we reviewed. At that time, Empire had recovered \$74,248 (of the \$256,307) and will credit that amount to the State. Further, Empire officials indicated that they will actively pursue the remaining overpayments.

The overpayments we identified resulted because Empire did not have adequate controls to ensure special items were paid according to the terms of Empire's hospital agreements. In response to our preliminary findings, Empire officials told us that audits of all network providers will be completed in 2012. Officials added that they will use data from OSC's audits to focus Empire's audits on higher risk providers.

Citing "look-back" periods in their agreements with Empire, five hospitals initially refused to provide supporting documentation for 69 of the special item payments we selected. Generally, the look-back periods limit the period after a claim was paid for Empire to audit the payment. There is, however, no look-back limitation in Empire's agreement with New York State. Although we eventually obtained supporting documentation for our sampled claims, the look-back provisions delayed some of our audit work. Moreover, such provisions could limit OSC's ability to audit questionable claim payments in the future.

Empire officials are amenable to expanding their right to audit hospital claims on behalf of Empire Plan members. They are committed to negotiating language in the hospital agreements to expand the audit look-back period for Empire Plan claims, and remove any limitations on the types of documentation to be provided.

Empire does not accept OSC's statistical projection (of nearly \$3.2 million) of the total overpayments from the population sampled. We, however, disagree with Empire. Without the use of statistical sampling and projection, Empire would have to review nearly 8,000 claim payments (on a claim by claim basis) to ascertain the full extent of overpayments for special items. Such a review is neither cost beneficial, nor practical. Thus, Empire's reviews would likely be limited to certain claims and understate the total overpayments made for special items. If Empire chooses not to comply with the recommendation to remit the overpayment of \$3,210,478 to the State, Empire should re-adjudicate all claims paid to the 31 hospitals in our audit population for the period audited and recover the overpayments.

We note that the use of statistical sampling is appropriate and acceptable for the conduct of audits, including our audit of Empire's claim payments to Selected Hospitals. As noted previously, we conduct our audits in accordance with Generally Accepted Government Auditing Standards. These standards are issued by the U.S. General Accountability Office under the direction of the Comptroller General of the United States. These standards formally authorize auditors to use statistical sampling, which allows audit work to be completed efficiently and reliably, to draw conclusions for a defined population based on a review of a random sample of units from that population.

The Office of the State Comptroller has successfully applied statistical sampling techniques on various types of audits over the years to identify and recover material amounts of improper payments of State funds. Moreover, the statistical sampling projections resulting from such audits, when challenged, have routinely been affirmed through judicial proceedings.

## Recommendations

1. Remit to New York State the projected overpayment of \$3,210,478, or remit the \$387,772 of net overpayments identified by this audit plus amounts determined from re-adjudication of all other claims pertaining to the audit period.
2. Continue to develop and implement a system of internal controls to ensure that payments for special items are made in accordance with the agreements and are supported by appropriate documentation.

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## Audit Scope and Methodology

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Our audit objective was to determine if Empire's payments to selected hospitals for special items were made according to the provisions of the agreements between Empire and the hospitals. Our audit covered the period from January 1, 2006 through June 30, 2010.

To accomplish our objective, we identified 78 hospitals with agreements that limit reimbursement for special items to invoice cost. During our audit period, Empire paid these hospitals about \$49.4 million for special items. We then selected the 31 hospitals whose average reimbursement for special items exceeded \$1,500. Excluding payments under \$100, Empire paid the 31 selected hospitals \$24.4 million for 7,967 special items during our audit period.

To determine if payments for special items complied with the agreements, we selected a random sample of 194 claims (totaling about \$1.8 million) that were submitted by 17 (of the 31) hospitals. For each of these hospitals, we reviewed the provisions of their agreements with Empire pertaining to special items. We also reviewed claim detail provided by Empire and medical, billing, and payment records provided by the hospitals to determine if the payments were made according to the agreements. (Note: 75 of our selected claim payments occurred during time periods when Empire's agreements did not contain provisions limiting reimbursements for special items. Consequently, there were no limits to apply to the payments of these claims.)

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.

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## Authority

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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.

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## Reporting Requirements

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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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## Contributors to this Report

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**Brian Mason**, Audit Director  
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### 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.