

## ALERT

**STOP THOSE AUDITS!  
COURT CONCLUDES NYS COMPTROLLER LACKS AUTHORITY  
TO AUDIT OUT-OF-NETWORK MEDICAL PROVIDERS**

In our December 2009 Alert, we wrote about the New York Comptroller's State-wide practice of auditing financial records of out-of-network providers that treat individuals insured by the State's Empire Plan as the basis for recovering millions of dollars from these providers.

RMF was recently retained by an orthopedic practice to challenge the results of such an audit, which concluded that the practice "routinely waived" patients' out-of-pocket costs and therefore overcharged the Empire Plan for its services. The audit further recommended that United Healthcare undertake efforts to recoup the overcharges. RMF's Health Law and Litigation Departments argued that the State Constitution does not empower the Comptroller to audit private, out-of-network providers.

In a major victory for providers, New York's Supreme Court agreed with RMF and held that the Comptroller's audit powers do not extend to such providers because they are "not a political subdivision of the State and do not directly receive State money."

In reaching this conclusion, the Court rejected the Comptroller's argument that the money received by the out-of-network practice constituted State funds. The Court reasoned that "the monies paid to United lost the imprimatur of 'State funds' before that money reached" the practice. Therefore, contrary to the Comptroller's urging, the practice never received "State money."

The Court also rejected the Comptroller's effort to characterize its audit as a review of United, not the practice itself. The Court dismissed this argument as incredible and unsupported by the evidence.

The decision from the Supreme Court, while likely to be appealed, is a significant initial victory for providers in what is likely to be an ongoing battle with the Comptroller and United. Providers that receive audit request letters from the Comptroller now have compelling authority to deny the State's auditors access to their records. In addition, the decision opens the door for providers that have already been audited to challenge the audit and seek recoupment of any monies paid to the State. The Supreme Court specifically held that allowing the audit to take place did not serve as a waiver of the practice's ability to challenge the audit. However, providers that have already been audited or paid money to the State must act quickly to preserve their rights.

It remains to be seen whether United will take over the investigatory burden and pursue its own investigations in an effort to determine whether overpayments have been made as a result of the purported "routine waiver" of patients' out-of-pocket costs.

RMF's multi-disciplinary team is uniquely equipped and experienced to assist providers targeted by the Comptroller or providers that fall into United's crosshairs. While others recommended that their clients capitulate to the State's demands, RMF spearheaded the successful and groundbreaking attack on the Comptroller's power to audit out-of-network practices.

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