

# COUNTY OF ULSTER

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## OPINION 2010-001

### PRE-PAYMENT EMPIRE BLUE CROSS-BLUE SHIELD ADMINISTRATIVE SERVICE FEES AND ADVANCE PAYMENTS IN ANTICIPATION OF MEDICAL CLAIMS AND SERVICES

**This opinion represents the views of the Office of the Ulster County Comptroller at the time they were rendered, based upon facts and records as presented to this office by the persons or departments making the inquiry or contacted in order to render this opinion. This opinion may no longer represent those views if, among other things, facts provided are determined to be inaccurate, or there have been subsequent court cases or statutory amendments that bear on the issues discussed in this opinion.**

We are asked whether the County could prepay EMPIRE BLUE CROSS-BLUE SHIELD dba Empire Healthchoice Assurances, Inc. administrative service fees and advance payments in anticipation of medical claims and services. We are advised that Empire Healthchoice Assurances, Inc will act as a third party administrator providing payments of medical benefits for designated County employees.

We are provided documentation outlining the fee schedule and detailed the services to be rendered during the course of the contract period, 1/1/2011-12/31/2011. Such schedule includes fees for services, enrollment numbers and medical management services.

It is indicated that two (2) advance payments for \$1,645,644.00 and \$1,577,534.00 on January 1, 2011 and February 1, 2011 respectively need to be tendered as deposits. These deposits will be in lieu of anticipated services and claims throughout the contract period.

The Office of the Comptroller of New York State has often expressed the view that payment by a municipality in advance of receipt of goods or services should be avoided wherever possible. A municipality should not be put into the position of advancing public moneys whenever there exists the possibility that, in the event of a default by the vendor or contractor, the municipality would find it difficult or impossible to obtain a refund. In addition, County Law, § 369(2) requires claims to be certified to the effect that goods were actually delivered or services actually

rendered. These statutes clearly envision the making of payments subsequent to the rendition of services or delivery of goods.

Notwithstanding this general rule, this Office has recognized that certain types of contracts involve special circumstances where custom and usage, or fundamental concepts of policy, make payment in advance of receipt of goods or services an exception to the normal course of doing business.

In this instance, we rely upon the Financial Management Guide of the Office of the New York State Comptroller under the Claims Section, Subsection "Questions and Answers" Issued in 1973 as Subsection 8.1030 and later revised on 10/1988 that permits exceptions to the question "may claims be audited and paid before services have been performed by the vendor?" Although the answer is "NO," the Office of the New York State Comptroller provides ten (10) exceptions, one of which is Insurance Contracts as referred to in their Opinion 72-485.

Accordingly, we find the special circumstances of this advance payment(s) and the provisions made to protect the public's interest in this special circumstance to be acceptable and allowable.

Elliott Auerbach, Comptroller

December 6, 2010