



**Office of
Internal Audit**

FLORIDA INTERNATIONAL UNIVERSITY

**Audit of Athletics Health Services
Billing and Collections Process
and Contract Performance**

**Report No. 20/21-04
November 10, 2020**



Office of Internal Audit

Date: November 10, 2020

To: Pete Garcia, Executive Director of Sports and Entertainment

From: Trevor L. Williams, Chief Audit Executive

Subject: Audit of Athletics Health Services Billing and Collections Process and Contract Performance – Report No. 20/21-04

We have completed an audit of Athletics Health Services Billing and Collections Process and Contract Performance for the period of July 1, 2018, through December 31, 2019. The primary objective of our audit was to determine if: a) internal medical services provided to student-athletes are accurately and timely billed, collected, and recorded and b) services provided by the contracted claims billing company are effective and compliant with the contractual agreement. We also evaluated related Information Technology controls over the software system that connects to electronic medical records and verified they were adequate and effective.

The University hired Vivature, Inc., a third-party entity, to provide full-service management of its athletic health services claims billing and collection function. Based on the Service Agreement, the company would receive a flat fee of \$10,000 plus 25% of collections, annually. Since October 2016, total claims of 16,694 approximating \$8.3 million in billed charges were submitted, of which Athletics received approximately \$210,100 in revenue. Since June 2014, when the contract became effective, approximately \$112,500 of fees have accrued.

Overall, our audit found that controls over the claims billing and collections process for injuries to student-athletes need improvement. There are control gaps in the process of monitoring the contract revenue that is generated by this activity. Compliance with the terms of the Service Agreement also deserve focused attention. The audit resulted in 14 recommendations, of which management has agreed to implement six. Management's proposed corrective action for addressing the remaining eight recommendations includes terminating the contractual relationship between FIU Athletics and Vivature.

We want to take this opportunity to express our appreciation to you and your staff for the cooperation and courtesies extended to us during the audit.

Attachment

C: FIU Board of Trustees

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GLOSSARY OF ABBREVIATIONS

AT:	Athletic Trainer
BCP:	Business Continuity Plan
BKM:	BKM Sowan Horan Consultant
CPT:	Common Procedural Technology Codes
DOS:	Date of Service
DRP:	Disaster Recovery Plan
EFT:	Electronic Funds Transfer
EMR:	Electronic Medical Record
EOB:	Explanation of Benefits
FIU:	Florida International University
GL:	General Ledger
HCN:	HealthCare Network
HIPAA:	Health Insurance Portability and Accountability Act
HITECH:	Health Information Technology for Clinical and Economic Health Act
IT:	Information Technology
NIST:	National Institute of Standards and Technology
OIA:	Office of Internal Audit
SOC:	Service Organization Controls

OBJECTIVES, SCOPE, AND METHODOLOGY

Pursuant to the Office of Internal Audit's (OIA) approved annual audit plan for the 2019-2020 fiscal year, we have completed an audit of the Florida International University (FIU or "University") Athletics Health Services Billing and Collections Process and Contract Performance.

The primary objective of our audit was to determine if established controls and procedures were adequate to ensure that: a) internal medical services provided to student-athletes are accurately and timely billed, collected, and recorded; and b) services provided by Vivature, Inc.¹ (Vivature) are effective and comply with the Services Agreement (the "Agreement") entered into by Vivature and the University. We also evaluated related Information Technology (IT) controls over the software system that connects to electronic medical records and verified they were adequate and effective.

The audit was conducted in conformance with the *International Standards for the Professional Practice of Internal Auditing* promulgated by The Institute of Internal Auditors and applicable Special Publications issued by the National Institute of Standards and Technology (NIST). The audit included an assessment of internal controls within the context of the audit objectives and tests of the accounting records and such other auditing procedures, as we considered necessary under the circumstances.

In addition, our audit included an examination of claims billed, total billed charges, revenues, and expenses as of the Agreement's effective date of June 20, 2014, with transactional testing specifically for the audit period of July 1, 2018, through December 31, 2019. Audit fieldwork was conducted from February 2020 to August 2020.

During the audit, we observed current practices and processing techniques, interviewed responsible personnel, and tested transactions for adherence to applicable University policies and procedures, Federal and State laws and regulations, and the terms of the Agreement. Sample sizes and transactions selected for testing were determined on a judgmental basis applying a non-statistical sampling methodology.

As part of our audit, we reviewed internal and external audit reports and found that no reports had been issued during the last three years with any applicable recommendations related to the scope and objectives of this audit, which otherwise would have required follow-up.

¹ Vivature, Inc. is the contracted third-party entity that provides billing solutions for student-athletes and student health centers at FIU.

BACKGROUND

According to University literature, the mission of the Florida International University Sports Medicine Department (“Athletics” or “the department”) is to:

“provide all student-athletes at Florida International University the highest quality medical care and safest environment in which to compete. To fulfill this mission the sports medicine team will focus on education, prevention, assessment, treatment, and rehabilitation of athletic injuries and illnesses because we care to make a difference. In addition, we are dedicated to providing a high-quality educational environment for the graduate students in the Florida International University Graduate Athletic Training Program to create a valuable clinical experience.”

The Sports Medicine team comprises 13 Certified Athletic Trainers (6 Staff and 7 Graduate Assistants), who are Board of Certification (BOC) certified, hold State of Florida License, and CPR/AED Professional Rescuer certifications. The Athletic Trainers (AT) work under the supervision of the department’s Orthopedic Specialists, General Medical Physicians, Sports Psychologists, and Registered Dieticians to provide a total team approach to each athlete's care.

The department uses state of the art preventative and rehabilitative techniques to minimize injury risk and enhance recovery time. Through consistent management of athletic injuries and professional personal interactions with each student-athlete, they provide unique and quality health care services for 18 Division I competitive sports.

On June 20, 2014, the University entered into an agreement with Vivature to provide athletic services for Athletics. The Contract and Proposal for FIU, included an Exhibit A - Services document and the First Amendment, effective on February 15, 2016, (collectively “the Agreement”).

Vivature is owned by Orchestrate HR, Inc., a full-service Human Resource vendor headquartered in Dallas, Texas. The company operates primarily as an employee benefits broker, third party administrator, managing general underwriter, human resources outsourcer, athletic department solutions, athletic insurance billing solutions



and payroll processing provider that enables companies of all sizes to focus on their core competencies.

Vivature offers a variety of service packages to its customers. Athletics selected the Company's *Platinum-Ath* service level package, which includes:

- NExTT Injury Management System Software ("Blue Ocean" or "the system")
- Annual on-boarding of all paperwork and additions of new athletes
- Monthly Verification of insurance
- Two NExTT Kiosk Hardware Units
- Healthcare Reform Enrollment Services
- Billing Services
- One iPad

The NExTT Electronic Medical Record (EMR) Athletic software is a web-based application. The EMR software platform enables the Athletic Trainers to document all the injuries and treatments performed on the student-athletes. Once the information is in the software, it documents, tracks, and reports solutions for billing, claims discounting, verification of insurance, and utilization of injury tracking.

Part of the billing services to be provided by Vivature, per the Agreement, includes claims adjudication for physical therapy services provided to the student-athletes. The Agreement states that "Vivature will recover potential third party billing revenue for the University using tested, proven software, experienced billing personnel, effective quality assurance procedures, assertive collections techniques, and careful tracking of individual claims through the billing system." FIU's "Go Live Date" for billing services, which is the first day whereby Vivature submitted an encounter form to a health benefit plan, was October 1, 2016.

The annual fee for these services is \$10,000, in addition to a monthly fee of 25 percent of collections received for the insurance billing and related services performed as described above.

Overview of the Billing and Collections Process

When a student-athlete is injured and seen internally, the Athletic Trainer determines the appropriate diagnosis code and treatment plan based on the injury. This information, along with student demographics, insurance data, and other notes related to the injury are processed in Blue Ocean. All diagnoses and treatment plans are reviewed and electronically signed off by the Athletics Team Orthopedic Physician, who is also listed as the provider for all claims submitted by Athletics.

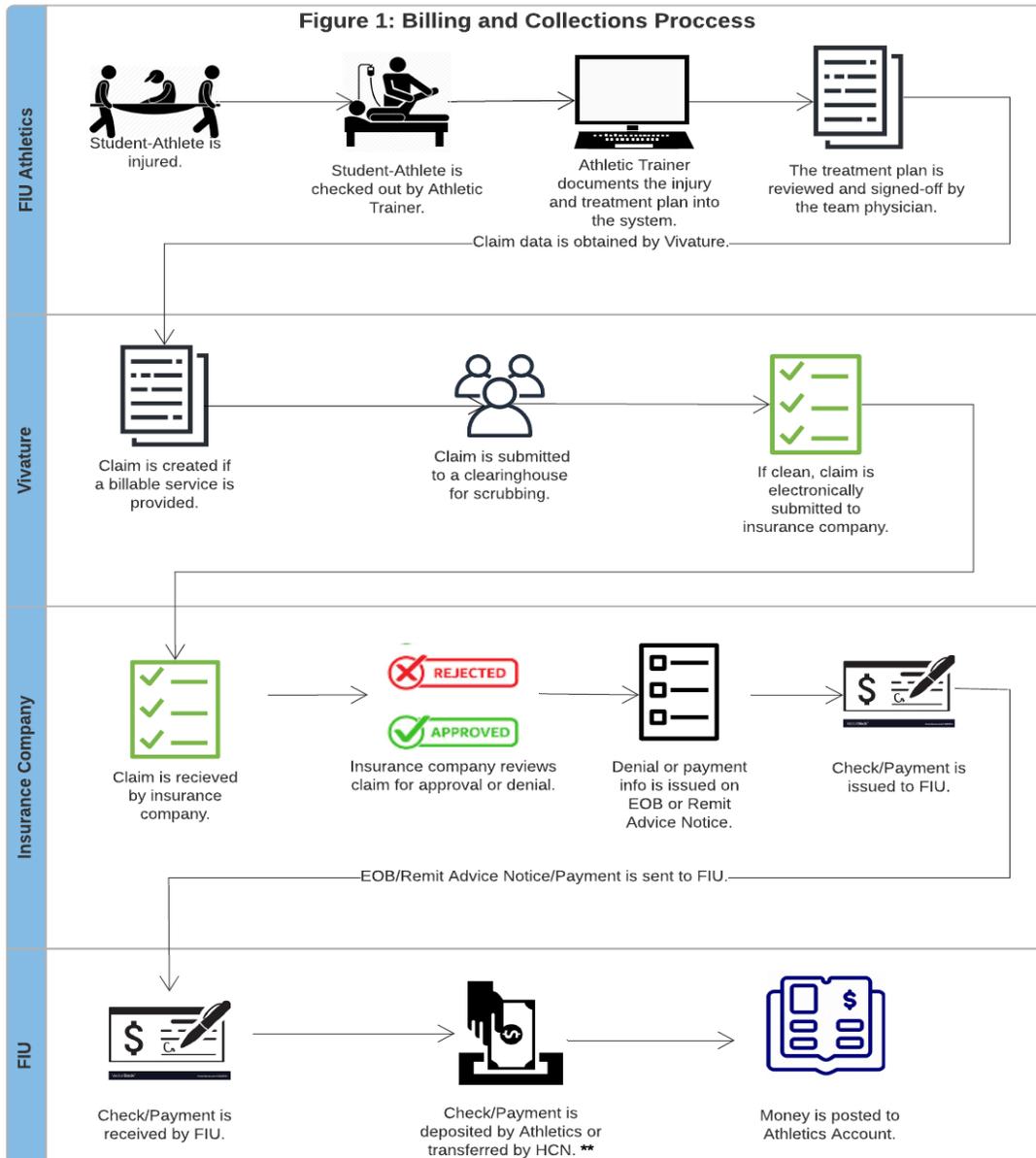
Vivature then captures this information from the system, performs "built-in" analysis to determine if a billable service was provided, and electronically submits the claim to a clearinghouse for "scrubbing." The clearinghouse sends an acknowledgment (a claim response) and if the claim is "clean," it is electronically submitted to the respective

insurance company for billing. If not “clean,” then the acknowledgment is reviewed to determine and correct the triggering issue and the claim is resubmitted, if applicable.

All related claim correspondence (i.e., acknowledgments, Explanation of Benefits (EOB), remit advices, etc.) is usually sent to the address on file with the insurance company, which is typically established when managed care contracts and rates are negotiated. Athletics utilizes the managed care contracts and rates that were negotiated by the FIU HealthCare Network (HCN). Because health care services and billing are also performed by HCN, as well as other departments at the University, claim correspondence and related payments by the insurance company can be sent to several different addresses on campus. Thus, Athletics instituted a process in which they pick up all Athletics-related claim correspondence from HCN and log all checks received. These correspondences are usually identified based on the provider’s name and/or procedures performed (i.e., diagnosis codes specifically related to physical therapy treatment, which is not performed at HCN). Athletics deposits all checks received and sends all other correspondence to Vivature for further review and processing. HCN can also receive electronic funds transfer (EFT) payments for Athletics-related claims, which they identify and transfer to Athletics.

Once Vivature receives the correspondence, they are responsible for utilizing best efforts to ensure claims are timely reworked and resubmitted, as applicable.

The flowchart below (Figure 1) provides a high-level overview of the billing and collections process.



** Payments may be sent to the FIU Healthcare Network (HCN) and then transferred to Athletics. Electronic/Wire payments received are automatically posted to Athletics account.

Financial Data

Since 2016, a total of 16,694 claims, totaling approximately \$8.3 million in billed charges were submitted, according to information obtained from Vivature. During the same period, Athletics has received approximately \$210,100 in revenues on the total claims billed, according to entries in the General Ledger and Athletics Check Log.

The following table provides a summary of the total claims billed by year, including total billed charges, expected revenues, revenues received, and percent of revenues earned.

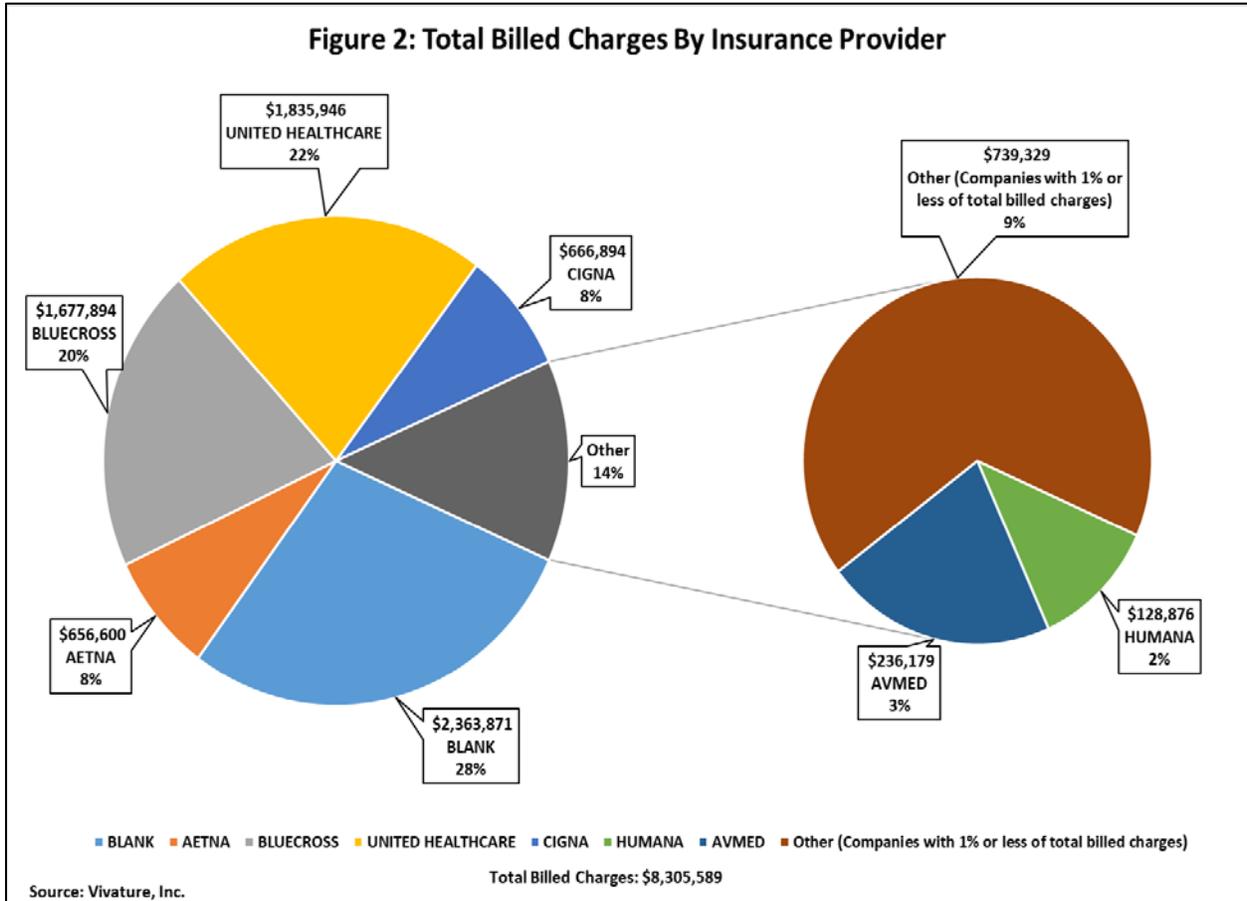
Table 1: Billed Claims and Revenue By Year					
Year	Total Claims Billed	Total Billed Charges	Expected Revenues*	Revenues Received	% of Revenues Received to Total Billed Charges
2016	2,597	\$1,281,331	\$ 141,074	\$ -	0%
2017	4,709	2,418,470	266,274	100,914	4%
2018	4,438	2,362,223	260,081	56,328	2%
2019	4,950	2,243,565	247,016	52,853	2%
Total	16,694	\$8,305,589	\$ 914,445	\$ 210,095	3%

* Estimated by Vivature at 11.01% of total billed charges.

Based on the Agreement, approximately \$112,500 associated fees have accrued (see Table 2). Contract fee comprises an annual amount of \$10,000 for hardware and software for the injury management system and other services provided by Vivature, in addition to 25% of collections for billing services. The annual fee began accruing as of June 2014, when the contract became effective, whereas the fee on collections began accruing as of October 2016, when billing services commenced.

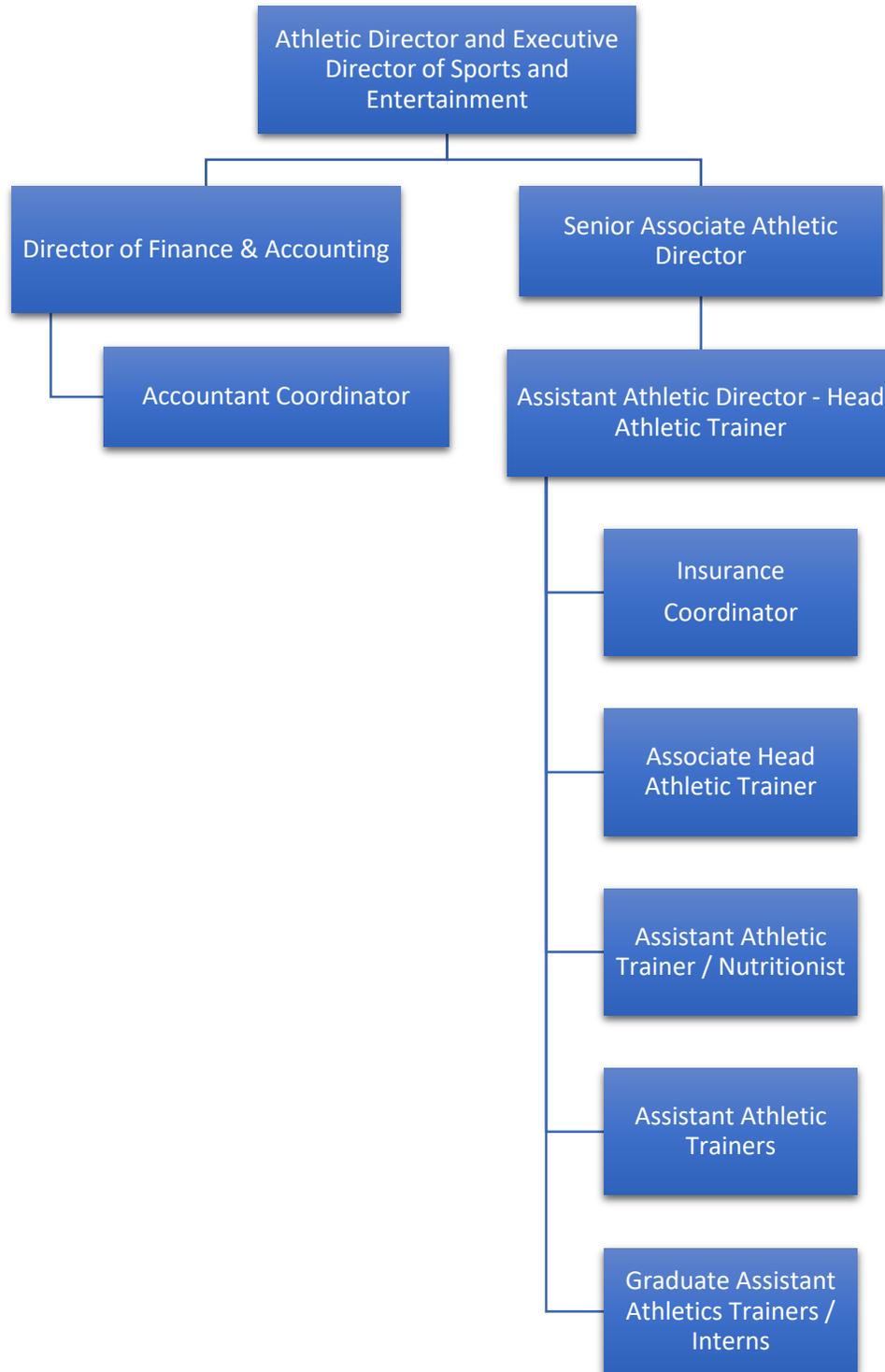
Table 2: Associated Fees by year			
Year	Annual Fee	25% of Collections	Total
2014	\$ 10,000	\$ -	\$ 10,000
2015	10,000	-	10,000
2016	10,000	-	10,000
2017	10,000	25,229	35,229
2018	10,000	14,082	24,082
2019	10,000	13,213	23,213
Total	\$ 60,000	\$ 52,524	\$ 112,524

The graphs below (Figure 2) depict total billed charges by insurance provider. As depicted, the total billed charges for claims submitted to United HealthCare, BlueCross, CIGNA and Aetna health plans were approximately \$4.2 million, representing about 51 percent of the total billed charges.



Personnel

Below is the organizational structure for the Sports Medicine Department, including other personnel that are involved in the injury, treatment, or billing processes for student-athletes.



OBSERVATIONS AND RECOMMENDATIONS

Our overall assessment of internal control is presented in the table below. In summary we noted that, controls over the claims billing and collections process for injuries to student-athlete needs improvement related to the process for monitoring the revenue production cycle and contract compliance, among others. The areas tested during the audit and our observations and recommendations are detailed on the following pages.

CRITERIA	SATISFACTORY	OPPORTUNITIES TO IMPROVE	INADEQUATE
Process Controls			X
Policy & Procedures Compliance		X	
Effect		X	
Information Risk		X	
External Risk	X		
INTERNAL CONTROLS LEGEND			
CRITERIA	SATISFACTORY	OPPORTUNITIES TO IMPROVE	INADEQUATE
Process Controls (Activities established mainly through policies and procedures to ensure that risks are mitigated, and objectives are achieved.)	Effective	Opportunities exist to improve effectiveness	Do not exist or are not reliable
Policy & Procedures Compliance (The degree of compliance with process controls – policies and procedures.)	Non-compliance issues are minor	Non-compliance issues may be systematic	Non-compliance issues are pervasive, significant, or have severe consequences
Effect (The potential negative impact to the operations-financial, reputational, social, etc.)	Not likely to impact operations or program outcomes	Impact on outcomes contained	Negative impact on outcomes
Information Risk (The risk that information upon which a business decision is made is inaccurate.)	Information systems are reliable	Data systems are mostly accurate but need to be improved	Systems produce incomplete or inaccurate data which may cause inappropriate financial and operational decisions
External Risk (Risks arising from events outside of the organization's control; e.g., political, legal, social, cybersecurity, economic, environment.)	None or low	Potential for damage	Severe risk of damage

Areas Within the Scope of the Audit Tested Without Exception:

Selected IT Controls

As previously mentioned, Athletics medical billing function is executed through Vivature's NExTT EMR application. To determine whether key IT controls were in place, we requested that Athletics provide us with a copy of any Service Organization Controls Type 2 (SOC 1) report covering the said application. Athletics' management was not in possession of the requested report. (Please refer to Observation No. 3, Information Technology Controls - Management Security Governance Oversight, on page 27 of this report.)

Consequently, we requested and received from Vivature a copy of the SOC 1 report for its parent company, Orchestrate HR, Inc., produced by BKM Sowan Horan Consultant ("BKM") for the period of September 1, 2018, through August 31, 2019. We reviewed the report and noted the Consultant's conclusions in the following in-scope areas of this audit:

Audit Logs and Monitoring Information Disclosure

The OIA obtained an understanding of how Vivature maintains active audit logs to monitor unauthorized exfiltration or disclosure of sensitive fields, such as insurance eligibility, payroll data (hire and termination dates), and employee's demographic information. We inquired if data is accessed, distributed, used, modified, or disclosed without proper authorization required by HIPAA regulations.

BKM indicated that Orchestrate HR's system has configured audit logging trails to track changes to sensitive key data in the areas of HR / Payroll on everyday activities, and that there was no unusual activity noted during our audit period of July 1, 2018, to December 31, 2019. Vivature utilizes Cisco Data Loss Prevention technology to monitor data—in motion, at rest, and in use—keeping data safe from exposure.

Backup Controls

BKM indicated that system backups are performed nightly for key systems in real time for the databases using the Oracle Data Guard software to ensure high availability, data protection, and disaster recovery for the enterprise data. Backups are transmitted both disk-to-disk and disk-to-tape between the Company's two datacenters. The tape backups are stored daily in a fireproof safe located in one of the Company's datacenters.

Change Management

BKM noted that Orchestrate HR maintains documentation of system changes to software and components and documents the changes as they occur in the HEAT problem management / change management system. Management requires that key system changes follow the review and subject matter expert approval process prior to the implementation to the production environment. BKM tested the change management process and found no deviation.

Segregation of Duties

Based on BKM's SOC review, Orchestrate HR has a sound control framework to detect deficiencies in segregation of duties in the NExTT application, ensuring that functional users have the appropriate levels of access to the application. In addition, Orchestrate HR employs the principle of least privilege, allowing only authorized access for users to accomplish assigned tasks. BKM indicated that there were no deficiencies found.

Areas Within the Scope of the Audit Tested With Exception:

1. Billing and Collections

During our audit period, a total of 643 student-athlete injuries were listed across all sports. These injuries are associated with an evaluation and may include lacerations, sprains, pain, infections, concussions, fractures, etcetera. We reviewed student-athlete consent forms and judgmentally selected and tested transactions, as described on the following pages, to evaluate internal controls and determine the effectiveness of the billing and collections process.

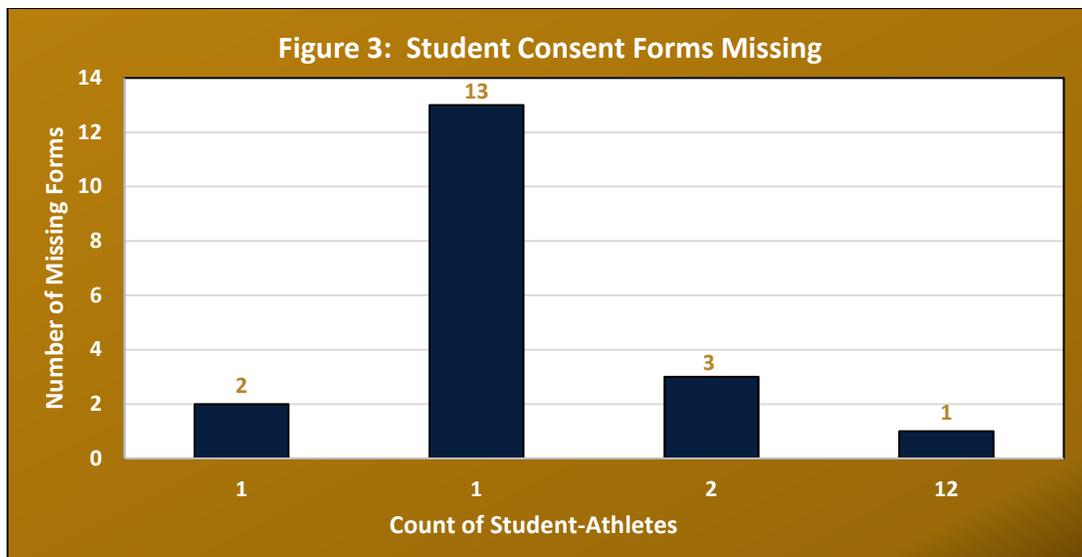
Student-Athlete Consent Forms

Student-athletes are required to complete a participation packet on an annual basis. Included in this packet are 14 forms pertaining to general demographic and medical history information, insurance verification, and concussion policy and procedures. Also included is information on the collection, use, or release of the student-athlete's Social Security Number, for the purpose of insurance billing and collection activities for health services provided.

Other forms completed provide consent to:

- ✓ allow FIU Sports Medicine Staff to evaluate, treat, and care for any injury or illness;
- ✓ disclose health information to outside health care providers, insurance companies, scouts, etc.;
- ✓ use Protected Health Information for treatment and payment;
- ✓ effect the release of claims and assumption of risk; and
- ✓ authorize FIU to bill the student's insurance provider and assign directly to FIU Sports Medicine all medical benefit or insurance reimbursement for services, treatments, therapies, and supplies rendered or provided by FIU Sports Medicine.

We obtained and reviewed the participation packet and consent forms for 29 student-athletes selected for testing. We noted that all consent forms were provided and properly completed for 13 of 29 student-athletes (45%) tested. However, the remaining 16 student-athletes (55%) were missing one of more forms as depicted in following chart (Figure 3).



Ensuring that these forms are properly completed and maintained prior to providing services and billing on behalf of the student-athlete is vital; specifically, those forms that acknowledge the student-athletes' agreement with the Department's use and disclosure of their protected health information.

Check Log and Deposits

We obtained the check log that Athletics maintains of payments that were collected from HCN since the log's creation in March 2019 to December 2019.

We reviewed all 51 receipts contained on the check log, which comprises 47 checks totaling \$2,487 and four credit card payments totaling \$5,092, for a grand total of \$7,579. We traced each payment from the log to ensure it was accurately reflected in Athletics' ledger account and noted the following:

- ❖ All 47 checks recorded on the log were deposited and reflected as revenue in the department's account.
- ❖ Athletics did not timely process any of the four credit card payments and allowed them to expire. As such, these receipts were not reflected in the general ledger. We also discovered one additional credit card receipt for \$245 that was not recorded on the log; resulting in a total credit card revenue of \$5,337 that was received, but not deposited.

In addition, we selected five checks to test the timeliness of the deposit and reviewed the deposit slip and supporting documentation to evaluate the payment information. We noted that Athletics does not record the date the checks were collected from HCN in their check log. Therefore, we were unable to determine if the checks were deposited within 48 hours of their receipt from HCN, as required by University Policy 1110.010, *Cash Control Policy Statement*. Based on our review of the check date and

general ledger posting date, they were deposited between 17 and 51 days after the check date.

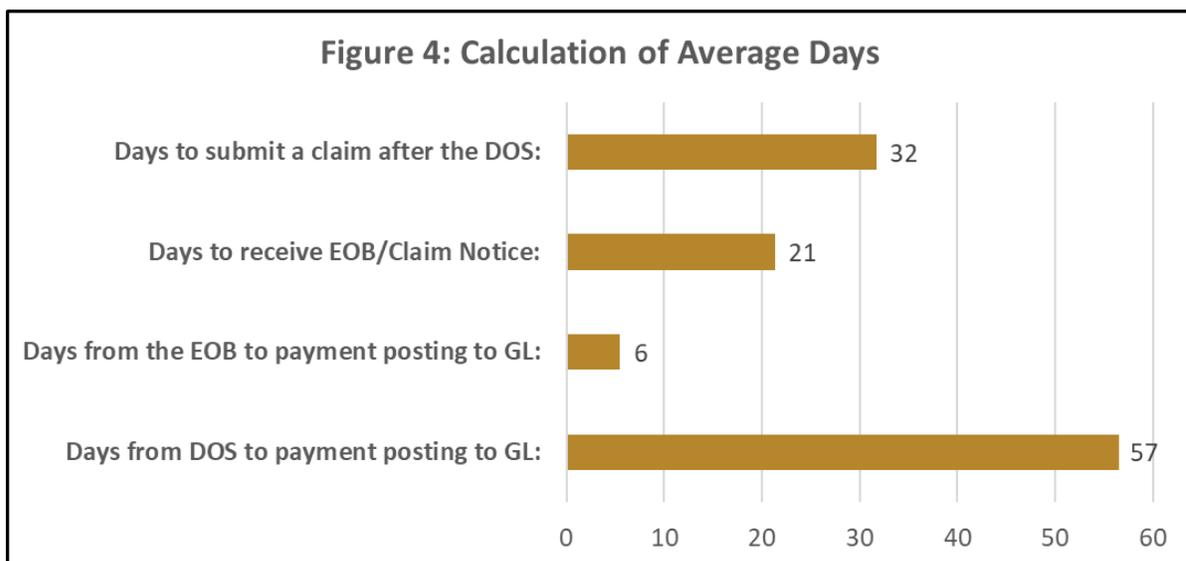
Moreover, we found that one check for \$42 was received and deposited for an OB/GYN service which is not performed by Athletics and two checks, totaling \$348, did not have the appropriate supporting documentation (i.e., the EOB or Remit Notice Advice) to verify the services performed and to tie the payment amount and student-athlete back to the check log.

Claims Testing

We tested 30 student-athlete claims with billed charges totaling \$8,759. We reviewed the related claim data, including the respective EOB, Claim Remittance Advice, Claim History Detail, and other supporting documentation provided. Our test results concluded the following:

- ❖ 15 of 30 claims (50%) were not billed. This included five student-athletes that were accurately not billed because they either had Medicaid policies or no insurance. The other 10 were simply listed as claim not billed, with no other explanation.
- ❖ Of the 15 claims billed, we noted that the EOB or other supporting documentation was not provided for one claim to determine if it had been paid; five claims were denied due to the reasons provided by the insurer; and nine claims were paid by the insurer. Payments received totaled \$1,051 (approximately 12% of the total billed charges).

In addition, we calculated the following averages, as shown in Figure 4 below for the nine paid claims.



The following are other observations noted during our testing:

- ❖ Athletics was unable to verify if they received payment (i.e., if the amount remitted by the insurance companies was transferred to their account by HCN or if a check was received and deposited directly by Athletics) for seven of the nine paid claims (78%). Five of those seven claims were part of a bulk payment, in which we received a claim status detail report rather than the actual EOB. We were unable to trace the receipts and claim detail to the GL without additional documentation. Thus, the metrics calculated above for the average “days from the EOB or DOS to the payment posting to the GL” only includes two of the nine claims paid. We also noted that Vivature Health was listed as *the provider* on claim status detail, for three claims that were paid as part of a bulk payment.
- ❖ Four of the nine claims paid (44%) did not have a remittance address listed on the claim status detail; the other five (56%) all had an FIU remittance address on the EOB or Remit Notice.
- ❖ For two claims that were denied (and thus, not paid), we noted that the DOS billed was prior to the injury date for one claim and was eight months after the respective injury date, for the other claim. Athletics reviewed the respective EOB and noted that the service billed was not related to the injury.

Overall, we noted that Athletics does not maintain adequate documentation and does not perform a reconciliation to ensure claims billed are paid, and the associated revenue is received and posted to their GL account. This is a product of the systemic breakdown in the process flow of information between Vivature and Athletics. This is discussed further in Observation 2, Compliance with the Contractual Agreement – Contract Compliance on page 19 of this report.

In addition, we noted that appropriate benchmarks have not been established to effectively monitor and manage the revenue cycle process. For example, based on our discussion with Vivature, claims are electronically submitted after seven days to allow Athletics to adjust, as needed. However, for the claims we tested, it took an average of 32 days for claims to be submitted after the respective DOS.

Based on industry standards, key metrics in revenue cycle management includes:

- Tracking claims (days in accounts receivable);
- Making sure payment is received (adjusted collection rate); and
- Following up on denied claims (denial rate) to maximize revenue generation.

Tracking these metrics would help management monitor Vivature’s performance and determine if the revenue cycle operating efficiently and effectively.

Recommendations

Athletics should:	
1.1	Ensure consent forms are properly completed and maintained for each student-athlete.
1.2	Request replacement credit cards or other forms of payment from the respective insurance companies to recoup the revenues earned and not settled and ensure that future credit card payments received are timely processed.
1.3	Ensure the appropriate documentation is maintained to enable the correlation of payments and deposits for treatment provided to student-athletes to the check log and the reconciliation of claims billed and services provided.
1.4	Ensure that check and credit card payments are properly reviewed and recorded in the check log, including the date of receipt from the insurance company or HCN.
1.5	Develop appropriate metrics and benchmarks to monitor contract performance pertaining to claims processing, billing, and collection. In addition, the billing and collections process should be effectively monitored to identify and timely follow-up on known deficiencies.

Management Response/Action Plan

1.1 Management agrees and Athletics will ensure that completed documents are received for all student athletes.

Implementation date: November 10, 2020

Complexity rating: 1

1.2 Management will request replacement checks.

Implementation date: December 1, 2020

Complexity rating: 2

1.3 Management has attempted to do this many times and has no confidence that we will be able to obtain the necessary claims billed report. This report has not been accessible from Vivature in the past. At this time, we will attempt to seek out alternate options.

Vivature has stated since the initiation of this billing for rehab services that in order for the information and action requests to be received directly to them by the insurance companies they would have to be named as a read only on the University's bank account. In that case the EOB 's and request for additional

documentation on the injuries, or denials notification would be sent directly to Vivature. Vivature asserts they could respond timely to those items and collections would be realized at a much greater extent. In the current system they only receive what we manually receive at the FIU Health Care Network, physically pick up and then fed ex to them. By that time, the action required time limits elapse and there is no payment or adjudication on claims. We believe this system has hindered our ability to receive payment on the rehab services to a great extent. It is clear even if FIU policies and procedures were to allow Vivature read only bank account access, the claims payment details and report availability and transparency would still be an issue. Effective immediately we will no longer be using Vivature for rehab billing services.

Implementation date: November 10, 2020

Complexity rating: 4

- 1.4 Management will ensure a column is added to the current logs to include date of receipt of payment.

Implementation date: December 1, 2020

Complexity rating: 1

- 1.5 Effective immediately we will no longer be using Vivature for rehab billing services.

Implementation date: November 10, 2020

Complexity rating: 4

Auditor's Note: The management response received for this recommendation, as presented above, indicates that management will take alternate corrective action that includes terminating the contractual relationship between FIU Athletics and Vivature.

2. Compliance with the Contractual Agreement

Based on our review of the executed Agreement between the University and Vivature, we noted that the document did not contain either an effective date or a signature date. According to management from both Athletics and Vivature, the Agreement was both signed and became effective on June 20, 2014.

Below is a summary of our observations related to compliance with the specific terms and conditions of the Agreement.

Contract Compliance

➤ **Section 2.3 – Insurance Billing and Related Services**

The Agreement states:

“Within 30 days of the date of receipt by the University, a monthly accounting statement shall be delivered by the University to Vivature, pursuant to section 2.4. The University shall remit to Vivature an amount equal to 25% of all collections. In addition, the University shall pay Vivature the first \$10,000.00 of collections...”

Section 2.4 – Amounts Retained by the University

“The University shall retain for its own account an amount equal to 75% of all collections.”

The University has not submitted either monthly accounting statements and invoices or payments to Vivature. Records show that only two payments, totaling \$22,303, were remitted to Vivature in 2017 for 25% of collections received. In addition, there is no evidence of the University paying the annual \$10,000 Platinum-Ath service fee during the life of the Agreement. This is discussed further in the Collections and Payments section on page 23.

➤ **Section 2.5 – Monthly Accounting Statement**

The Agreement states:

“On or before the 25th day of each month, both parties shall provide an accounting statement to the other party, in reasonable detail, setting forth the amount of Billings and Collections for the immediately-preceding calendar month, including the amounts earned by the University and the amount due to the Vivature. In the event of a dispute as to the propriety of any items on the accounting statement, then each party should notify the other party within fifteen (15) business days from receipt of the disputed accounting statement of the disputed amount and the reasons for each such dispute. Each

party shall provide the other party with records relating to the disputed amount so as to enable the parties to resolve the dispute.”

According to Athletics, Vivature has not provided monthly statements or reports *with reasonable detail* on the amount of billings and collections to enable the reconciliation of payments. Athletics further stated that several attempts to obtain that information was met with extreme difficulty and lack of success. In response to our inquiry, Vivature stated that their system is capable of generating a report of claim submissions, but other reports (such as accounts receivable or monthly statements) would not be accurate, due to issues with the flow of information between the University and Vivature.

During the audit, we requested from Vivature reports on the total number of claims billed, total claims paid, and other related claims data. The reports provided did not contain all the requested information and, in some instances, contained conflicting information on claims paid. Consequently, we found the information provided to be unreliable.

➤ **Section 2.9 – Third Party Billing Agent**

The Agreement states:

“On behalf of and for the account of the University, Vivature shall establish and maintain credit and billing/collection policies and procedures, and shall use Vivature’s reasonable best efforts to timely bill and collect all fees for all Athletic Clinic Charges, which shall mean agreed upon billed charges (for time loss or agreed upon injuries) for CPT Codes, but which shall explicitly exclude any such billings to Medicare, Medicaid, or any other governmental payor, which shall not be made by Vivature under any circumstances (“Athletic Clinic Charges”). In connection with the billing/collection services provided hereunder, the University hereby grants Vivature a power of attorney and appoints Vivature as the University’s true and lawful agent, and Vivature hereby accepts such appointment:

- 1. to bill, in the Group’s name and on the Group’s behalf, all claims for reimbursement or indemnification for all covered non-governmental billable Athletic Clinic Charges, but only following supervising physician review and electronic sign-off;*
- 2. to contact insurance companies, patients, referring physicians, hospitals, financial institutions, and any other party deemed necessary to obtain information necessary to perform its duties under this Agreement;*
- 3. to collect any accounts and monies owed to the University, to enforce the rights of the University as creditors under any*

contract or in connection with the rendering of any service and to contest adjustments and denials from third party payers (or its fiscal intermediaries).

In so doing, Vivature will process all Athletic Clinic Charges and bill such patients for patient balances due for medical services rendered by University during the term of this Agreement.”

Our audit found that there are gaps in compliance related to collection efforts by Vivature as delineated above. It appears that clarification is needed from both parties around the “best efforts” that are utilized for collections.

From Athletics’ perspective, Vivature was contracted with the expectation that they would provide both the billing and collection services stated in the Agreement. Vivature asserts that they submit claims for billing but have very limited control over and knowledge of collections after the claims are submitted, due to how FIU’s contract was set up and the flow of information, as explained below.

Currently, payments and other claim correspondence are sent to FIU. Payments received are deposited by Athletics (or transferred from HCN). All other correspondence (such as EOBs) is *mailed* (via FedEx) to Vivature. Athletics does not maintain copies of the correspondence. Vivature relies on the receipt of these documents to inform them about what was collected by FIU and to determine if additional follow-up is needed for the claim. Vivature stated that they try to re-work claims that are sent by FIU, if applicable, but have found that the deadline to adjudicate and resubmit those claims had already passed by the time they receive the documents. Additionally, Vivature expressed how the current process and flow of information between them, Athletics, and the insurance carriers does not provide them the data needed or access to the information they need to perform their job in a timely fashion and to get claims paid.

Nevertheless, upon our request of claim related documentation for testing during the audit, Vivature provided a “Confirmed Paid to School” report. This report listed the claims that had been confirmed as paid to FIU. According to Vivature, the report was compiled using information obtained from a variety of online tools that are available through insurance carriers or through clearinghouses they use. The existence of this report indicates that Vivature is capable of gathering collections information for claims paid, separate from what was being mailed by FIU.

Overall, we noted that the current process is inefficient, ineffective, and dissatisfying to both parties and the flow of information needs to be improved.

➤ **Section 3.1(d) – Representations of Vivature**

The Agreement states:

“Vivature has developed a program to ensure Compliance with all applicable state and federal laws related to billing third parties for clinical services, including oversight of such program by a Compliance Program Director, such program being more fully described in the Billing Compliance Plan, attached hereto as Exhibit A (“Compliance Plan”). Vivature shall ensure that it shall not bill any governmental payor, including, but not limited to Medicare or Medicaid, that all activity performed hereunder by Vivature shall be in strict accordance with its Compliance plan, and that it shall only bill in accordance with the Compliance Plan, and any applicable law, regulation or payor policies. Vivature shall maintain the Compliance Plan in all material respects during the term of this Agreement and any renewals, and shall notify University within 10 days of any material change in the Compliance Plan. Vivature shall also notify University immediately, if it becomes aware of any investigations by a state, federal, or Third party entity related to the Compliance Plan, or any matter covered thereby.”

We noted that the said Compliance Plan was not attached to or included in the Agreement. Moreover, our request for a copy of the Compliance Plan from Vivature was not satisfied.

➤ **Section 6.1 – HIPAA and HITECH**

The Agreement states:

“Both the University and Vivature acknowledge that certain data necessary to perform the Services may be subject to the provisions of the Health Insurance Portability and Accountability Act (“HIPAA”) and the Health Information Technology for Clinical and Economic Health Act (“HITECH”), and each party assumes the responsibility for its organization's compliance with HIPAA, HITECH and all regulations and rulings there under. Vivature shall assist in the University's compliance efforts, including executing a business associate's agreement with the University.”

An executed Business Associate Agreement between the University and Vivature was not completed.

The *Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164 (the “HIPAA Rules”)* generally requires that covered entities and business associates enter into contracts to ensure that the business associates will appropriately safeguard protected health information. Per the HIPAA Rules,

“the business associate contract also serves to clarify and limit, as appropriate, the permissible uses and disclosures of protected health information by the business associate, based on the relationship between the parties and the activities or services being performed by the business associate... A business associate is directly liable under the HIPAA Rules and subject to civil and, in some cases, criminal penalties for making uses and disclosures of protected health information that are not authorized by its contract or required by law. A business associate also is directly liable and subject to civil penalties for failing to safeguard electronic protected health information in accordance with the HIPAA Security Rule.”

In addition, consistent with the HITECH Act, the U.S. Department of Health and Human Services Office for Civil Rights issued a final rule in 2013 to modify the HIPAA Rules. Among other things, the final rule, identifies provisions of the HIPAA Rules that apply directly to business associates and for which business associates are directly liable.

Although Athletics was not determined to be a HIPAA provider covered entity under the FIU-Hybrid Entity Healthcare Component designation,² and thus, is not required to comply with the HIPAA rules, it would still be a best practice to execute a business associate agreement with Vivature, as stated in the Agreement, to document permissible uses and disclosures of protected health information and to establish direct liability.

Collections and Payments

We reviewed revenues received by Athletics and payments made to Vivature to ensure they were in accordance with the Agreement. In addition, we reviewed a spreadsheet Vivature’s Account Manager provided to Athletics of invoices and payments that Vivature received by or on behalf of FIU, as detailed below.

As reflected on Tables 1 and 2 on page 7, revenues received by Athletics since billing started in October 2016, totaled \$210,095, whereas expenses accruing for the period of June 2014 to December 2019, totaled \$112,524. In reviewing the University’s records, we found only two payments to Vivature in 2017, totaling \$22,303.

Our review of Vivature’s spreadsheet noted obvious differences when compared to the University’s records. The spreadsheet was mostly based on the documentation and EOB’s that FIU received and sent to Vivature and showed revenues received totaled \$170,425. This total included \$281 that Vivature received directly on behalf of and due to FIU (i.e., the amount was not determined from documentation that was mailed to them). We requested additional support for the receipts from Vivature to determine if this amount is inclusive of all revenues Vivature has received on behalf of FIU but have not received the requested information. In the absence of supporting documentation, we were unable to confirm the accuracy of this amount. Additionally, Vivature recorded only one payment of \$30,828 received from FIU in 2018; however,

² According to the Hybrid Entity Status Assessment conducted by Cynergistek in May 2018.

there was no record of that payment in the University’s financial system, and Athletics did not have evidence of the payment. Further, the \$22,303 payments the University made in 2017 was not recorded in Vivature’s spreadsheet. We were also informed by Athletics that Vivature’s spreadsheet was created at the request of Athletics, but it is not an ongoing report that is shared with them.

Our analysis of the information provided disclosed several unresolved discrepancies that prevented us from determining the completeness or accuracy of the specific information, and concomitantly, its reliability.

Recommendations

Athletics should:	
2.1	Ensure contracts are properly completed, including noting effective and signature dates, when executed.
2.2	Discuss the non-compliance issues with Vivature and establish a process to monitor and ensure Vivature’s compliance. Athletics’ compliance with the terms and conditions of the Agreement should also be monitored.
2.3	<p>Monitor the claims revenue cycle, to include:</p> <ul style="list-style-type: none"> a) A review of claims billed and revenues received from all sources (transfers from HCN, EFT payments, checks, and virtual card payments) on a monthly basis. b) Obtaining from HCN a summary of transfers made into their account and logging all relevant information to be able to tie the payments received to the respective student-athlete and claim billed. c) Providing a monthly statement and invoice to Vivature, based on claims revenue received. d) Developing an acceptable percentage of claims to be paid and/or expected revenue (i.e., based on historical information, percent of uninsured, etc.). e) Perform monthly reconciliations of expected and actual revenues received and further investigate when significant deviations are identified.
2.4	Double their efforts in requesting from Vivature comprehensive monthly reports with accurate claims billing and collections activity.

2.5	Work with Vivature to obtain the relevant information needed to reconcile the differences in revenues collected, expenses accrued, and fees paid between Athletics and Vivature's records to determine a complete and accurate accounting.
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Management Response/Action Plan

2.1 Due to the TCM electronic contract management, this will not be an issue going forward.

Implementation date: November 10, 2020

Complexity rating: 1

2.2 Effective immediately we will no longer be using Vivature for rehab billing services.

Implementation date: November 10, 2020

Complexity rating: 4

Auditor's Note: The management response received for this recommendation, as presented above, indicates that management will take alternate corrective action that includes terminating the contractual relationship between FIU Athletics and Vivature.

2.3 Effective immediately we will no longer be using Vivature for rehab billing services.

Implementation date: November 10, 2020

Complexity rating: 4

Auditor's Note: The management response received for this recommendation, as presented above, indicates that management will take alternate corrective action that includes terminating the contractual relationship between FIU Athletics and Vivature.

2.4 Effective immediately we will no longer be using Vivature for rehab billing services.

Implementation date: November 10, 2020

Complexity rating: 4

Auditor's Note: The management response received for this recommendation, as presented above, indicates that management will take alternate corrective action that includes terminating the contractual relationship between FIU Athletics and Vivature.

2.5 Management believes Vivature has received revenues through the collections process. It has been difficult to obtain consistent and reliable reports from Vivature. We have made many attempts to reconcile the differences and Vivature has not cooperated to our satisfaction. These differences are irreconcilable. Effective immediately we will no longer be using Vivature for rehab billing services.

Implementation date: November 10, 2020

Complexity rating: 4

Auditor's Note: The management response received for this recommendation, as presented above, indicates that management will take alternate corrective action that includes terminating the contractual relationship between FIU Athletics and Vivature.

3. Information Technology Controls

User Access

Athletics determines who needs access to Blue Ocean and notifies Vivature when a user needs to be added or removed (onboarded/offboarded). However, we noted that there were no written policies or procedure in place for documenting and monitoring this process and for approving respective user roles.

We evaluated all 23 active users with access to the system and noted the following:

- Five users were employees of Baptist Health South Florida, Inc. ("Baptist") that were not listed as a University approved medical group physician in the Hospital Services Agreement between the University and Baptist. We inquired with the Assistant Athletic Director – Head Director Trainer, who confirmed there was a business need for their access. No exceptions were noted.
- One user was terminated on February 14, 2020, and was timely deactivated from the system on February 12, 2020, by the FIU Associate Head Athletic Trainer. No exceptions were noted.
- We also noted that each user is appropriately given a unique username and password to access the system.
- Three users were active on the system but never logged into it. Upon our inquiry, it was determined that one of the users had recently left their position as the Admin Assistant of the Team Head Physician and no longer needed access. Vivature was contacted by the Assistant Athletic Director – Head Director Trainer and the employee's access was promptly deactivated. The remaining two users were determined to still need access, despite never logging in.
- One user with business office and budget related job functions has access as an Associate Athletic Director role, although a Business Office role is available and more appropriate. The Business Office role provides access to other areas including revenue share details, repricing inventory details, allocation summary and a savings report.

Training and Awareness

We tested 17 of the 23 users (74%) to determine if they completed the FERPA and FIU Cybersecurity Awareness Training, as required by the University. We noted that only one employee had completed the FERPA training and six employees had completed the FIU Cybersecurity Awareness Training at the time of testing. Completion of these trainings are imperative for employees to understand their responsibilities in protecting sensitive or confidential data.

Management Security Governance Oversight

When Athletics engaged Vivature to perform key functions, such as billing or processing claims on FIU's behalf, the University subjected itself to additional risks related to Vivature's system. To ensure the adequacy of the vendor's internal controls, we requested a SOC 1 report for the vendor be provided. We learned that Athletics' management did not obtain or review a copy of the SOC 1 report as part of its regular internal control monitoring. Athletics' management is responsible for assessing and addressing risks faced related to financial reporting, technology controls, compliance with laws and regulations, and the efficiency and effectiveness of operations. A SOC report is an acceptable tool that is used for this stated purpose relative to the information systems used in performing outsourced functions.

Business Continuity Plan (BCP)

During our audit, we observed that Vivature has sound internal controls to protect FIU's data, including BCP resiliency testing. However, Athletics does not have a designed control to enforce compliance with NIST SP 800-34, *Contingency Planning Guide for Federal Information Systems*. This Special Publication incorporates guidance related to a BCP and a Disaster Recovery Plan (DRP). The purpose of a BCP is to establish and maintain a plan to respond to incidents and disruptions to continue operations of critical business processes at an acceptable level in accordance with NIST sp800-53A Rev. 4, CP-1, *Contingency Planning Policy and Procedures*. On the other hand, the goal of a DRP, which may support a BCP, is to have a plan in place that allows for the restoration of critical data and applications that enable the institution to operate normally.

To effectively prepare for, respond to, and recover from disasters, business units of the University are expected to execute a BCP and maintain procedures that are intended to accomplish the following:

- Where possible, prevent disasters through hazard mitigation planning.
- When disasters cannot be prevented, mitigate the impact to the University community resulting from such occurrences.
- Prepare staff to respond to disasters through training, outreach, and education.
- Restore essential University functions as quickly as possible to bring the Athletics back to operational status.

Athletics does not have backup strategy and disaster recovery procedures. Among several risks Athletics could face for not having a business continuity management program are:

- Decreased productivity and disruption caused by losing one or more mission-critical applications containing key data for an extended length of time;
- Incremental cost due to data breaches, server downtime, and other events; and
- Reputational damage arising from the lack of clear incident response.

Periodic testing and review of internal and external disaster recovery plans for information systems that are critical to the daily operations are essential to ensure the confidentiality, integrity, and availability of application data.

Recommendations

Athletics should:	
3.1	Develop formal procedures for onboarding and offboarding users and periodically review users who have access to the system to ensure their level of access and roles are appropriate. This should include reviewing if the Associate Athletic Director role is appropriate for the employee with business office job functions.
3.2	Develop a process to monitor and ensure that all employees complete required training.
3.3	Request SOC Reports from the service organization (Vivature) on a regular basis and become familiar with the controls in place to protect the privacy, confidentiality, and integrity of data processed in Vivature's systems.
3.4	Design and formally document a BCP/DRP to ensure that FIU Athletics can respond to incidents and disruptions to continue operations of critical business processes.

Management Response/Action Plan

3.1 Effective immediately we will no longer be using Vivature for rehab billing services.

Implementation date: November 10, 2020

Complexity rating: 4

Auditor's Note: The management response received for this recommendation, as presented above, indicates that management will take alternate corrective action that includes terminating the contractual relationship between FIU Athletics and Vivature.

3.2 HR Manager will work with University Compliance to ensure we are meeting requirements.

Implementation date: March 1, 2021

Complexity rating: 2

3.3 Effective immediately we will no longer be using Vivature for rehab billing services.

Implementation date: November 10, 2020

Complexity rating: 4

Auditor's Note: The management response received for this recommendation, as presented above, indicates that management will take alternate corrective action that includes terminating the contractual relationship between FIU Athletics and Vivature.

3.4 Management agrees and will work with University IT to document a BCP/DRP. Due to the number of furloughs, layoffs, and budget constraints within athletics as a result of the pandemic this may prove difficult to be done sooner. We do not have a dedicated IT employee within our department. However, we will make best efforts to accomplish this earlier than the implementation date.

Implementation date: January 1, 2022

Complexity rating: 4

Appendix I – Complexity Ratings Legend

Legend: Complexity of Corrective Action	
1	Routine: Corrective action is believed to be uncomplicated, requiring modest adjustment to a process or practice.
2	Moderate: Corrective action is believed to be more than routine. Actions involved are more than normal and might involve the development of policies and procedures.
3	Complex: Corrective action is believed to be intricate. The solution might require an involved, complicated, and interconnected process stretching across multiple units and/or functions; may necessitate building new infrastructures or materially modifying existing ones.
4	Exceptional: Corrective action is believed to be complex, as well as having extraordinary budgetary and operational challenges.

Appendix II – OIA Contact and Staff Acknowledgment:

OIA contact:

Joan Liew 305-348-2107 or jliew@fiu.edu

Contributors to the reports:

In addition to the contact named above, the following staff contributed to this audit in the designated roles:

Tranae S. Rey (auditor in-charge)
Maria Rosa Lopez (IT auditor in-charge)
Julian Gutierrez (assistant – student intern)
Odalys Villanueva (assistant – student intern)
Vivian Gonzalez (supervisor and reviewer)

Definition of Internal Auditing

Internal auditing is an independent, objective assurance and consulting activity designed to add value and improve an organization's operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes.