

Department of Civil Service

New York State Health Insurance Program: Empire Plan Members With Dual Family Coverage

Report 2019-S-23 | January 2021

OFFICE OF THE NEW YORK STATE COMPTROLLER

Thomas P. DiNapoli, State Comptroller

Division of State Government Accountability



Audit Highlights

Objective

To determine whether participating organizations and members are paying excessively for dual Empire Plan Family coverage. The audit covered the period January 1, 2014 through September 30, 2019.

About the Program

The New York State Health Insurance Program (NYSHIP) was established under Article XI of the New York State Civil Service Law (Law) for the purpose of providing health insurance benefits to State government employees, retirees, and their dependents. The Law also allows for the inclusion of other public employees in New York, including those of local government entities (such as counties, cities, and school districts) and public authorities (herein collectively referred to as participating organizations).

NYSHIP covers over 1.2 million active and retired State and participating organizations' employees and their dependents (collectively referred to as members). The Empire Plan is the primary health benefits plan for NYSHIP, covering nearly 1.1 million members. The Department of Civil Service (Civil Service) is responsible for administering NYSHIP and determines NYSHIP's administrative policies and procedures.

The annual cost for Empire Plan Family coverage ranged from \$20,570 to \$28,953 during the audit period. State and participating organization employers and members pay their respective share of those premiums. However, while participating organizations are required to pay a minimum employer share of the cost, some may pay a higher rate of contribution up to the full cost of coverage. The State does not allow two Family coverages for its employees; if a member and their spouse are both eligible to enroll in NYSHIP, only one may elect Family coverage (the other may either elect lower cost Individual coverage or waive coverage). Participating organizations, however, may allow for dual Family coverage, whereby each employee has Family coverage.

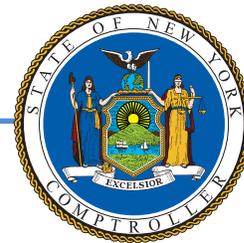
Key Findings

- We identified 696 employees and retirees of participating organizations with dual Family coverage during the audit period. The total cost of premiums to the members and participating organizations for the second Family coverage was \$39,777,772.
- Participating organizations may be unaware that an employee has dual Family coverage because they do not have information to determine if a member is a dependent on another NYSHIP policy with the State or a different participating organization.
- As part of its administration of NYSHIP, Civil Service has not shared sufficient information with participating organizations to minimize waste and ensure efficiency for members and participating organizations of the Empire Plan. Participating organizations would benefit from additional information from Civil Service to help members make informed, financially sound health care decisions that would benefit both the member and the participating organization.

Key Recommendations

- Evaluate the feasibility of more effective information sharing with participating organizations regarding dual Family coverage, consistent with applicable laws and regulations.

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- Work with participating organizations to educate members on the cost of dual Family coverage, including less costly alternatives such as buyback and opt-out programs.



Office of the New York State Comptroller Division of State Government Accountability

January 7, 2021

Lola W. Brabham
Commissioner
Department of Civil Service
Empire State Plaza, Building 1, 20th Floor
Albany, NY 12239

Dear Commissioner Brabham:

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 Plan Members With Dual Family Coverage*. 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.

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,

Division of State Government Accountability

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Glossary of Terms

Term	Description	Identifier
Civil Service	Department of Civil Service	<i>Auditee</i>
Law	Article XI of the New York State Civil Service Law	<i>Law</i>
NYBEAS	New York Benefits Eligibility and Accounting System	<i>System</i>
NYSHIP	New York State Health Insurance Program	<i>Program</i>
Participating Organizations	Participating Agencies and Participating Employers that elect to participate in NYSHIP	<i>Key Term</i>
Secondary Claim Payments	Claim payments made through a member's non-primary Empire Plan insurance	<i>Key Term</i>

Background

The New York State Health Insurance Program (NYSHIP) was established under Article XI of the New York State Civil Service Law (Law) for the purpose of providing health insurance benefits to State employees, retirees, and their eligible dependents. The Law also allows for inclusion of the employees and retirees (and their eligible dependents) of public authorities, public benefit corporations, school districts, special districts, district corporations, and municipal corporations. Local government entities such as counties, cities, towns, villages, and school districts that elect to participate in NYSHIP are known as “Participating Agencies,” while “Participating Employers” are typically public authorities, such as the Thruway Authority and the Metropolitan Transportation Authority, that elect to participate in NYSHIP. For the purposes of this report, we will refer to Participating Agencies and Participating Employers collectively as participating organizations.

NYSHIP is one of the nation’s largest public sector health insurance programs, covering over 1.2 million active and retired State and participating organizations’ employees and their dependents (collectively known as members). The Empire Plan is the primary health benefits plan for NYSHIP, providing health insurance coverage to nearly 1.1 million members. The Department of Civil Service (Civil Service) is responsible for administering NYSHIP and determines NYSHIP’s administrative policies, practices, and procedures. NYSHIP rules, requirements, and benefits are established in accordance with applicable federal and State laws.

NYSHIP offers several coverage options. Individual coverage provides health benefits for an employee or retiree only, while Family coverage provides benefits for an employee or retiree and any eligible dependents.

According to Civil Service officials, the annual cost for Empire Plan Family coverage ranged from \$20,570 to \$28,953 during the audit period (Individual coverage ranged from \$9,258 to \$12,514). Participating organizations are required under State law to pay a minimum employer share of the cost of coverage on behalf of enrolled employees and retirees. However, a participating organization may elect or negotiate to pay a higher rate of contribution up to the full cost of coverage.

The State does not permit two NYSHIP Family coverages for its employees. If a member and their spouse are both eligible to enroll in NYSHIP as an employee or retiree of the State, only one may elect Family coverage. The other may either elect Individual coverage or waive NYSHIP coverage (opt out). However, participating organizations may allow for dual Family coverage, whereby each employee is enrolled in NYSHIP with Family coverage.

According to Civil Service’s General Information Books for Participating Agencies and Participating Employers, if a member and their spouse are both eligible for coverage under NYSHIP, they may elect one of the following:

- One Family coverage
- Two Individual coverages
- One Family coverage and one Individual coverage

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- Two Family coverages, if both employers permit two Family coverages

Civil Service developed the New York Benefits Eligibility and Accounting System (NYBEAS) to administer NYSHIP. NYBEAS provides online processing for NYSHIP benefits and accounting transactions and maintains enrollment information for State agencies and participating organizations. Civil Service is responsible for the maintenance and enhancement of the system and data.

NYBEAS will not allow a member to be enrolled twice as the policy holder; however, NYBEAS will allow a member to be enrolled as a policy holder as well as a dependent on another Empire Plan policy with Family coverage. NYBEAS allows participating organizations to review certain member coverage information, but participating organizations cannot use NYBEAS to identify if a member is a dependent on another NYSHIP policy with the State or a different participating organization.

Audit Findings and Recommendations

Dual Family Coverage

We analyzed NYBEAS information for Empire Plan members from January 1, 2014 through September 30, 2019 and identified 696 employees and retirees of participating organizations with dual Family coverage. The total cost of coverage to the members and participating organizations for both Family coverages was \$79,555,544 in premiums. Dropping one of the dual Family coverages could save participating organizations and members up to \$39,777,772. Generally, one of the advantages of dual coverage (such as dual Family coverage or one Family and one Individual coverage) is one coverage pays first, as a primary payer, and the other pays next, as a secondary payer. For purposes of this audit, secondary claim payments are those made through a member's non-primary Empire Plan insurance to cover costs that would not otherwise be covered through their primary Empire Plan insurance, such as copays and deductibles. Using the Empire Plan's claims data, we determined \$7,088,307 was paid on secondary claims for the 696 members with dual Family coverage. Because the cost of the premiums for the second Family coverage (\$39,777,772) exceed the benefit of secondary claim payments (\$7,088,307) by more than \$32 million, we question the cost effectiveness of dual Family coverage to participating organizations and their Empire Plan members (versus, for example, members/spouses having one Family coverage and one Individual coverage, or one Family coverage only).

During the audit, we identified participating organizations with members who were enrolled with dual Family coverage. The table below lists the top participating organizations impacted by premium cost.

Top Participating Organizations With Dual Family Coverage

Participating Organization* (Code)	Total Cost of Premiums	Enrollees With Dual Family Coverage
Long Island Railroad (95094, 95095)	\$8,729,354	66
County of Nassau (03067)	8,621,082	72
Metro North Commuter (55565)	6,829,799	54
Hempstead, Town of (03891)	3,446,260	27
Yonkers CSD ¹ (03293)	3,291,040	24
Rockland County (03267)	2,546,633	19
Ramapo, Town of (03993)	2,366,224	19
Suffolk County Water Authority (03011)	1,653,177	14
MTA Triborough Bridges (95300)	1,553,327	11
Suffern Central School District (03288)	1,429,509	11
Eastern Suffolk Boces [‡] (03019)	1,350,367	14
Metropolitan Transportation Authority (21240)	1,340,832	11
Nassau Health Care Corporation (03258)	1,200,995	11
City of Yonkers (03296)	1,126,264	8
Brentwood UFSD [§] (03266)	1,010,196	8
Remaining Participating Organizations	33,060,485	327
Totals	\$79,555,544	696

* Name per Civil Service listings of agency codes; some agency codes may be part of a larger entity

¹ Yonkers City School District

[‡] Eastern Suffolk Board of Cooperative Educational Services

[§] Brentwood Union Free School District

Of the 696 members we identified with dual Family coverage, 72 were employed by the County of Nassau (Nassau), a participating organization in NYSHIP. The total cost of dual Family coverage to the 72 members and Nassau during our audit period was \$8,621,082, with only \$758,418 paid in secondary claims. The State Comptroller's Fiscal Stress Monitoring System evaluates fiscal stress from a budgetary solvency perspective and provides a score to reflect the ability of a local government or school district to generate enough revenues to meet expenditures. According to the 2018 Fiscal Stress Report, Nassau's fiscal stress designation was the sixth highest overall and second highest among counties in New York.

The City of Yonkers also appeared on the 2018 Fiscal Stress Report, scoring sixteenth overall and sixth among cities in New York. According to NYBEAS, 32 employees of the City of Yonkers and Yonkers City School District had dual Family coverage over the scope of our audit, at a total cost of \$4,417,304 to the members and participating organizations. Only \$144,828 was paid in secondary claims. Again, we question the cost effectiveness of dual Family coverage relative to the cost of coverage for both the members and the participating organizations.

Several participating organizations have established less costly alternatives such as buyback or opt-out programs to encourage eligible employees to waive health insurance coverage. Nassau offers its employees a Health Insurance Buyback Program, whereby eligible employees who elect to participate receive \$2,000 annually for waiving Family coverage through Nassau. Similarly, Yonkers City School District and the City of Yonkers both have programs that offer payments ranging from \$1,000 to \$5,000.

While participating organizations have taken steps to encourage eligible employees to waive health insurance coverage, they may be unaware that an employee has dual Family coverage within NYSHIP because Civil Service does not share this information with them. Therefore, participating organizations may be unable to identify which of their members have dual Family coverage.

As part of its administration of NYSHIP, Civil Service has not shared sufficient information with participating organizations in order to minimize waste and ensure efficiency for members and participating organizations of the Empire Plan. Participating organizations would benefit from additional information from Civil Service to help members make informed, financially sound health care decisions that would benefit both the member and the participating organization.

Recommendations

1. Evaluate the feasibility of more effective information sharing with participating organizations regarding dual Family coverage, consistent with applicable laws and regulations.
2. Work with participating organizations to educate members on the cost of dual Family coverage, including less costly alternatives such as buyback and opt-out programs.

Audit Scope, Objective, and Methodology

The objective of the audit was to determine whether participating organizations and members are paying excessively for dual Empire Plan Family coverage. The audit covered the period January 1, 2014 through September 30, 2019.

To accomplish our objective and assess internal controls related to our objective, we interviewed Civil Service and participating organization officials. We reviewed applicable laws and internal policies. Using information generated from NYBEAS, we identified all individuals who had dual Family coverage during the scope of the audit and calculated the total cost of premiums based on annual premium costs. To determine the total potential cost savings, we calculated the cost of premiums during the scope period using the assumption that one member in each pair with dual Family coverage canceled the second Family coverage. We used claims data from all NYSHIP insurance carriers to determine the cost of secondary claims for members with dual Family coverage.

Statutory Requirements

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.

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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

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 system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. 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.

Reporting Requirements

We provided a draft copy of this report to Civil Service officials for their review and formal comment. We considered Civil Service's comments in preparing this final report and have included them in their entirety at the end of the report. In Civil Service's response, officials questioned the audit recommendation pertaining to their ability to share certain information with participating organizations. Our rejoinders to Civil Service's comments are included in the report's State Comptroller's Comments.

Within 180 days after the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of Civil Service shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and, where recommendations were not implemented, the reasons why.

Agency Comments



**Department of
Civil Service**

ANDREW M. CUOMO
Governor
LOLA W. BRABHAM
Acting Commissioner

November 25, 2020

Andrea Inman
Audit Director
Office of the State Comptroller
Division of State Government Accountability
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Dear Ms. Inman:

This document responds to the Office of the State Comptroller's (OSC) draft report on dual family coverage in the New York State Health Insurance Program (NYSHIP), 2019-S-23. The Department of Civil Service (Department) appreciates the opportunity to provide feedback on this draft report.

The report notes that New York State prohibits dual family coverage in NYSHIP for State employees, however the report focus is on the fact that non-State employers that participate in NYSHIP, known as Participating Employers (PEs), have no such prohibitions. Dual family coverage is an option that can be affirmatively elected by PEs. Concerns about such election are best addressed directly with the PE community. The Department wishes to note that this audit identified 696 such enrollees out of 1.2 million NYSHIP members over a period of 5 years and 9 months.

Review of Recommendations

The draft report includes the recommendations listed below. The Department's response to each recommendation is included in the response.

1. Evaluate the feasibility of more effective information sharing with participating organizations regarding dual Family coverage, consistent with applicable laws and regulations.

Department Response:

The Department and OSC had extensive discussions and exchanges regarding the legal authority of the Department to provide such information to PEs. Enrollment in NYSHIP is considered protected health information (PHI) under the

[Comment 1](#)

federal Health Insurance Portability and Accountability Act (HIPAA). As PHI, the Department is bound by Federal law regarding sharing such data.

Under Federal law, the Department may only share PHI with entities necessary for the administration of NYSHIP, a federal rule known as the “minimum necessary” threshold. In conversations with OSC, the Department has stated that sharing instances of dual family coverage with PEs does not meet the threshold necessary for disclosure. Alerting a PE that an enrollee is a dependent on the family coverage of another NYSHIP PE is not necessary for the administration of NYSHIP and thus fails the “minimum necessary” threshold.

When providing health insurance benefits to PEs, the Department is acting in a similar capacity to a private health insurance company. It would be no more appropriate for the Department to share the PHI of one PE’s employee with a different PE than it would be for private health insurance company to share the PHI of one customer’s employees with another customer.

The Department shared specific legal citations and analysis with OSC and remains willing to review any legal authority identified by OSC for such a release of PHI.

As a result of the extensive legal analysis conducted by the Department during this audit, we consider this recommendation both accepted and completed.

2. Work with participating organizations to educate members on the cost of dual Family coverage, including less costly alternatives such as buyback and optout programs.

Department Response:

The Department provides extensive training to PEs for their administrative roles in NYSHIP. In response to this audit, as a part of the PE training program, the Department will include new information to ensure the PEs are aware of health insurance buyback or opt-out options that may be offered to their employees.

The Department also encourages OSC to work the Department directly with the PEs in its role as the State’s fiscal watchdog and discuss with each PE the reasons for and against maintaining the option of dual family coverage for their employees.

[Comment 2](#)

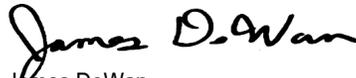
As the draft report focuses on a PE’s decision to permit dual family coverage, the best place to have a discussion about that decision is with the PE. The Department will work with PEs to make them aware of this issue.

The Department needs to note the draft report misstates the options available to State employees and retirees. Specifically, Page 6 of the report states “The State does not permit two NYSHIP Family coverages for its employees. If a member and their spouse are both eligible to enroll in NYSHIP as an employee or retiree of the State, only one may elect Family coverage. The other may either elect Individual coverage or waive NYSHIP coverage (opt out).” Please note that the Opt-out program is not available to New York State employees who are covered as a dependent of another New York State employee. New York State retirees are also ineligible to participate in the Opt-out program.

[Comment 3](#)

Thank you again for the opportunity to provide feedback on this audit.

Sincerely,



James DeWan
Director, Employee Benefits Division

State Comptroller's Comments

1. Civil Service's response fails to address the HIPAA exceptions discussed during the course of the audit. First, a group health plan may disclose protected health information to a plan sponsor pursuant to an authorization from the individual. 45 C.F.R. § 164.508. Moreover, as the U.S. Department of Health and Human Services has acknowledged, enrollment in a health plan may be conditioned on the provision of a pre-enrollment authorization from the individual if the authorization is sought for purposes of making an eligibility or enrollment determination. 45 C.F.R. § 164.508(b)(4)(ii). Second, HIPAA permits a group health plan to disclose protected health information to a plan sponsor without the individual's prior written authorization under various circumstances. 45 C.F.R. §§ 164.504(f)(1)(iii), 164.504(f)(3)(i). With respect to the minimum necessary standard, it specifically does not apply to disclosures made pursuant to an individual's authorization. 45 C.F.R. § 164.502(b)(2)(iii). And, in any event, it does not prohibit otherwise permitted disclosures, but instead requires covered entities to make reasonable efforts to limit disclosures of protected health information to the minimum necessary to accomplish the intended purpose of the disclosure. 45 C.F.R. § 164.502(b). If Civil Service has additional questions about the above-referenced provisions, it should seek guidance from the U.S. Department of Health and Human Services Office for Civil Rights. Accordingly, we encourage Civil Service officials to re-evaluate the audit recommendation.
2. In its response, Civil Service suggested that the Office of the State Comptroller work directly with participating organizations to carry out the audit recommendation. This is properly the role of Civil Service. Under generally accepted government auditing standards, if our office were to work directly with the participating organizations, we would be taking on management responsibilities. This would impair our independence to conduct future audits of this area, which is our role as the State's fiscal watchdog. As they are planning to revise their participating organization training program in response to this audit, Civil Service officials clearly acknowledge both the need for improvements in this area and their responsibility for taking appropriate corrective actions.
3. Civil Service's conclusion is incorrect. The sentence is not referring to an official Opt-Out Program, but rather refers to waiving or "opting out" of health insurance coverage.

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