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STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

September 26, 2022

Timothy R. Hogues  
Commissioner  
Department of Civil Service  
Empire State Plaza, Core Building 1  
Albany, NY 12239

Re: New York State Health Insurance  
Program: Empire Plan Members With  
Dual Family Coverage  
Report 2022-F-13

Dear Commissioner Hogues:

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 have followed up on the actions taken by officials of the Department of Civil Service to implement the recommendations contained in our audit report, *New York State Health Insurance Program: Empire Plan Members With Dual Family Coverage* (Report [2019-S-23](#)).

**Background, Scope, and Objective**

The New York State Health Insurance Program (NYSHIP) was established under 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 employees and retirees of local government entities and public authorities (participating organizations).

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

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. During the audit period, the annual cost for Empire Plan Family coverage ranged from \$20,570 to \$28,953, while Individual coverage ranged from \$9,258 to \$12,514. 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 permit two Family coverages for its employees; if a member and their spouse/domestic partner 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.

We issued our initial audit report on January 7, 2021. The audit objective was to determine whether participating organizations and members were paying excessively for dual Empire Plan Family coverage. The audit covered the period January 1, 2014 through September 30, 2019. The initial audit identified 696 employees and retirees of participating organizations who had dual Family coverage. The total cost of premiums to the members and participating organizations for the second Family coverage was \$39,777,772. The audit found that 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. The audit found 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.

The objective of our follow-up was to assess the extent of implementation, as of June 30, 2022, of the two recommendations included in our initial audit report.

### **Summary Conclusions and Status of Audit Recommendations**

While Civil Service officials addressed the issues identified in the initial audit, including evaluating the feasibility of more effective information sharing with participating organizations regarding dual Family coverage, they cited Health Insurance Portability and Accountability Act (HIPAA) as a limitation. In the initial audit, however, we communicated HIPAA exceptions that allow for certain information sharing, and we encourage officials to reconsider those exceptions. Of the report's two recommendations, both were implemented.

### **Follow-Up Observations**

#### **Recommendation 1**

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

Status – Implemented

Agency Action – Civil Service officials analyzed federal HIPAA laws to evaluate the feasibility of sharing protected health information (PHI) with participating organizations. Civil Service officials' conclusion was that sharing PHI violates federal HIPAA laws.

While Civil Service conducted an evaluation, we encourage officials to reconsider the HIPAA exceptions discussed during the course of the initial 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 PHI 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). Further, in any event, it does not prohibit otherwise permitted disclosures, but instead requires covered entities to make reasonable efforts to limit disclosures of PHI to the minimum necessary to accomplish the intended purpose of the disclosure. 45 C.F.R. § 164.502(b).

## **Recommendation 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.*

Status – Implemented

Agency Action – Civil Service provides training and other resources to Health Benefit Administrators (HBAs) to help ensure they are aware of their responsibilities, including educating members on the cost of coverage options. In December 2020, Civil Service began presenting a series of annual training sessions for HBAs, which include reminders to discuss the cost of dual Family coverage and less costly options available, such as the opt-out and buyout programs. The training also reminds HBAs that New York State prohibits dual Family coverage for its employees and that participating organizations may similarly prohibit dual Family coverage for their employees. Attendance records provided by Civil Service showed 491 HBAs attended at least one training session.

Our original audit identified 696 employees and retirees of participating organizations with dual Family coverage during the period January 1, 2014 through September 30, 2019. The total cost of premiums to the members and participating organizations for the second Family coverage was \$39,777,772. As a part of our follow-up, we reviewed the 696 employees and retirees to determine whether their dual Family coverage was still in effect. We found that 386 of the 696 employees and retirees still had dual Family coverage with a total premium cost to the members and participating organizations of \$21,161,068 for the period of October 1, 2019 through June 30, 2022. We encourage Civil Service to continue its efforts working with participating organizations to help eliminate unnecessary dual Family coverage.

Major contributors to this report were Paul Alois, Laurie Burns, Gary Czosnykowski, Kristen Garabedian, and Steven Cody.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We thank the management and staff of Civil Service for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Andrea Inman  
Audit Director

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