



# New York State of Health

Performance Audit of Centers for Medicare and Medicaid  
Services (CMS) Rule 9957 Requirements

## **FINAL REPORT**

For the period January 1, 2018–December 31, 2018

March 29, 2019

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March 29, 2019

Donna Frescatore  
Executive Director  
New York State of Health  
Corning Tower  
Albany, NY 12237

Dear Ms. Frescatore:

This report presents the results of our work conducted to address the performance audit objectives relative to New York State of Health's (NYSOH) compliance with the Centers for Medicare and Medicaid Services (CMS) Rule 9957 (45 C.F.R. §155) requirements. Our work was performed during the period of September 21, 2018 through March 22, 2019, and our results are as of the 12-month audit period ended December 31, 2018.

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (GAGAS). 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to GAGAS, we conducted this performance audit in accordance with Consulting Services Standards established by the American Institute of Certified Public Accountants (AICPA). This performance audit did not constitute an audit of financial statements or an attestation level report as defined under GAGAS and the AICPA standards for attestation engagements.

The audit objective of our work was to assess NYSOH's compliance with 45 C.F.R. §155 regulations for the 12-month audit period ended December 31, 2018.

KPMG cautions that projecting the results of our evaluation to future periods is subject to the risks that controls may become inadequate because of changes in conditions or because compliance with controls may deteriorate.

This report is intended solely for the use of NYSOH and CMS, and is not intended to be and should not be relied upon by anyone other than these specified parties.

Sincerely,

**KPMG LLP**

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# Background

The Affordable Care Act (ACA) was enacted by the U.S. Congress on October 23, 2010 and established the framework for the operation of health insurance exchanges. Specific regulations were further detailed in the CMS Final Rule 9957, published July 19, 2013 and incorporated into 45 C.F.R. §155. In accordance with general program integrity and oversight requirements, 45 C.F.R. §155.1200 requires entities operating as State-based Marketplace (SBM)s to engage an independent qualifying auditing entity, which follows generally accepted government auditing standards to perform an annual independent external performance audit. The SBM must ensure that the audit addresses compliance with Rule 9957 generally and specifically with program integrity and oversight requirements, processes and procedures designed to prevent improper eligibility determinations and enrollment transactions, and identification of errors that have resulted in incorrect eligibility determinations. The SBM is required to provide the results of the audit to CMS and publish a public summary of the results.

NYSOH was created on April 12, 2012 pursuant to Executive Order #42. The State of New York declared its intent to CMS to establish a state-based health benefit exchange on July 9, 2012; submitted an Exchange Blueprint application to CMS on October 26, 2012; and submitted an updated declaration letter on November 14, 2012. NYSOH was granted conditional approval to operate by CMS on December 14, 2012, beginning with the 2014 plan coverage year.

NYSOH is responsible for facilitating enrollment in health coverage and the purchase and sale of Qualified Health Plan (QHP)s in the individual market in this state, and enrolling individuals in health coverage for which they are eligible in accordance with federal law. NYSOH is responsible for enabling eligible individuals to receive premium tax credits and cost-sharing reductions and to enable eligible small businesses to receive tax credits, in compliance with all applicable federal and state laws and regulations. NYSOH administers ACA programs for QHPs and Qualified Dental Plan (QDP)s for eligible individuals, performs eligibility determinations for federal and state subsidies, administers a (Small Business Health Options Program) SHOP for small businesses, and administers a Navigator program.

NYSOH personnel perform various business administration, program oversight, and support functions, such as finance, legal, communications, public policy and outreach, plan management, operations and IT, and member appeals. NYSOH contracts a significant amount of its operations to private vendors (e.g., customer service and call center operations, select financial processing activities, and some IT development and maintenance) and relies on other public agencies and their private vendors to provide other key services relating to core IT systems.

On January, 1 2018, several of the 45 C.F.R. §155, Subpart H requirements pertaining to SHOP were updated by CMS. NYSOH began implementing these updates to its SHOP marketplace on May 1, 2018. These changes will limit NYSOH's future SHOP exchange functions as the participating insurance carriers, starting on May 1, 2018, now undertake the SHOP's underwriting tasks in the new Direct Enrollment Process. The participating insurance carriers also now deliver the financial management activities for which NYSOH was previously responsible. As existing pre-May 2018 enrollees exit the NYSOH legacy system, participating insurance carriers will take on the financial management functions for new enrollees. By mid-2019, the transition should be complete and NYSOH SHOP will no longer provide any SHOP financial management support.

# Objective, scope, and methodology

## Objective

KPMG was engaged to perform a performance audit in accordance with both 45 C.F.R. §155.1200(c) and GAS to assess NYSOH’s compliance with 45 C.F.R. §155 regulations for the 12 months ended December 31, 2018.

KPMG was responsible for preparing a written report communicating the results of the audit, including relevant findings and recommendations. These results should include deficiencies in internal controls that are significant within the context of the objectives of the audit, any identified instances of fraud or potential illegal acts (unless they are inconsequential within the context of the audit objectives), and significant abuse that was identified as a result of this engagement.

In accordance with Government Auditing Standards (GAS), KPMG was also required in certain circumstances to report fraud, illegal acts, and violations of provisions of contracts or grant agreements, or abuse that we may detect as a result of this engagement, directly to parties outside the auditee.

## Scope

KPMG was engaged to assess NYSOH’s compliance with 45 C.F.R. §155 regulations for the 12 months ended December 31, 2018 and our procedures were limited to the following:

Audit area	Representative tasks	Sample documentation
IT Privacy and Security	<ul style="list-style-type: none"> <li>— Interview IT privacy and security process owners and review process control documentation.</li> <li>— Conduct process walk-throughs to identify and classify certain key controls for testing, including:               <ul style="list-style-type: none"> <li>• Personally Identifiable Information and the confidentiality, disclosure, maintenance, and use of information</li> <li>• Incident management/reporting procedures</li> <li>• Data loss and security breach incidents.</li> </ul> </li> <li>— Select samples to test design of certain key controls and document any findings and recommendations.</li> </ul>	<ul style="list-style-type: none"> <li>— Documentation such as relevant IT security policies, application business rules, and physical security provisions</li> <li>— Reports - incident reporting, user access, etc.</li> </ul>
Eligibility (including appeals)	<ul style="list-style-type: none"> <li>— Interview process owners and review process control documentation.</li> <li>— Conduct process walk-throughs to identify and classify certain key controls for testing including verification of basic applicant data, Modified Adjusted Gross Income (MAGI) eligibility, account update procedures, appeals, and reporting to federal and state agencies.</li> <li>— Select samples to test design and effectiveness of certain key controls and document any findings and recommendations.</li> </ul>	<ul style="list-style-type: none"> <li>— Documentation such as policies and procedures for eligibility determinations, account updates and terminations, etc.</li> <li>— Management reports - applications and eligibility determinations activity</li> <li>— Member applications - paper, electronic</li> </ul>

Audit area	Representative tasks	Sample documentation
Enrollment	<ul style="list-style-type: none"> <li>— Interview process owners and review process control documentation.</li> <li>— Conduct process walk-throughs to identify safeguards over enrollment actions, such as: <ul style="list-style-type: none"> <li>• Enrolling individuals in QHP offerings</li> <li>• Generating and correctly populating Forms 834</li> <li>• Reporting.</li> </ul> </li> <li>— Select samples to test design and effectiveness of certain key controls and document any findings and recommendations.</li> </ul>	<ul style="list-style-type: none"> <li>— Documentation such as policies and procedures for new members, terminations, status changes, etc.</li> <li>— Enrollment activity reports</li> </ul>
General Exchange Functions	<ul style="list-style-type: none"> <li>— Interview process owners of key roles in the target general exchange functions, e.g., call center, compliance management, data/records maintenance, small business exchange.</li> <li>— Review process control documentation for these functions.</li> <li>— Conduct process walk-throughs to identify and classify key controls for testing.</li> <li>— Select samples to test design and effectiveness of certain key controls and document any findings and recommendations.</li> </ul>	<ul style="list-style-type: none"> <li>— Documentation - policies and procedures on general exchange functions</li> <li>— Customer Service Representative reports</li> <li>— Navigator / Assistor contract and payment information</li> <li>— Issuer QHP application documents</li> </ul>

KPMG reviewed documents, performed inquiries, observed processes, conducted walk-throughs, and held interviews with NYSOH management and key process owners who perform select program functions.

KPMG identified controls through our walk-throughs with NYSOH process owners and reviewed applicable third-party reports relating to applicable program requirements and identified gaps based on process objectives and associated risks. KPMG conducted Tests of Design to consider whether the control, individually or in combination with other controls, is capable of effectively preventing or detecting and correcting noncompliance as well as with the exception of IT Privacy and Security area, and Tests of Operating Effectiveness to consider whether the control was implemented and operates in a manner appropriate to accomplish the control objective. We tested processes and identified certain controls and oversight activities within the audit scope and identified two findings.

Specific to 45 C.F.R. § 155.1200(c), our scope of work was designed to assess overall compliance with 45 C.F.R. § 155, NYSOH’s processes and procedures designed to prevent improper eligibility determinations and enrollment transactions, and identification of errors that may have resulted in incorrect eligibility determinations.



## Methodology

The audit was conducted in the following phases: Audit Planning, Information Gathering and Analysis, Audit Execution, and Validation and Reporting. Each phase is described below.

- **Audit Planning:** The first phase of this project involved embedding performance audit project management protocols to effectively conduct the audit, manage stakeholder expectations, and execute communications protocols from the outset. A formal Project Kickoff Meeting was held to introduce key NYSOH stakeholders to the KPMG engagement team and confirm our mutual understanding of the audit scope and objectives for the Year 5 audit. In addition, individual kickoff meetings were held to discuss the audit timeline, scope, preliminary risks, and document request lists for each work stream. During the course of the audit, regular status meetings were conducted with the NYSOH Administrative Officer serving as the principal NYSOH liaison.
- **Information Gathering and Analysis:** Following Audit Planning, this phase involved further developing our understanding of NYSOH's activities, processes, and controls for the audit period and developing our audit approach. Specifically, we performed the following tasks:
  - Reviewed existing documentation: We obtained background documentation from NYSOH process owners, including, where applicable, policies and procedures, process flows, sample management reports, and other background documentation. We reviewed this documentation to augment and refine our team's understanding of NYSOH's compliance with 45 CFR 155.1200(c).
  - Conducted interviews, walk-throughs, and high-level process reviews: We met with relevant NYSOH process owners, line management, and staff to expand our understanding of the specific and general exchange functions identified in our audit scope. We sought to develop our understanding of the interactions, respective duties, and responsibilities of key roles in targeted general function areas and corresponding key procedures.
- **Audit Execution:** This phase consisted of finalizing our audit program and executing tests of NYSOH's compliance with regulatory requirements within 45 C.F.R. §155. This involved the following activities:
  - Reviewing and testing select procedures to assess the processes around high-risk IT Privacy and Security control areas following the Minimum Acceptable Risk Standards for Exchanges control catalog
  - Reviewing and testing procedures member eligibility determinations, and appeals
  - Reviewing and testing procedures over enrollment actions, such as enrolling individuals in QHP offerings and generating enrollment reporting forms
  - Reviewing and testing specific procedures relating to oversight and financial integrity responsibilities of general exchange functions, including call center operations and vendor management, governance activities, navigator and assister programs, QHP/QDP certification, and the SHOP program.
- **Validation and Reporting:** This phase consisted of validating the draft findings with NYSOH process owners, developing findings and recommendations for improvement, and obtaining NYSOH's plans for corrective action. Our detailed findings are documented further below in the Results section.

## Procedures

We reviewed the requirements of 45 C.F.R. §155 to identify audit objectives relevant to NYSOH's exchange functions. We performed this engagement in accordance with GAS and developed audit programs and testing procedures in accordance with GAS and KPMG audit methodologies.

- **Document review, interview, and walk-through procedures:** We reviewed CMS Final Rule 9957 and associated regulations under 45 C.F.R. §155 to identify compliance requirements subject to this audit.

KPMG worked with NYSOH management to identify process owners for key activities and performed interviews and walk-throughs to document processes and control activities existing during the audit period. Based on this information, KPMG requested supporting documentation to help confirm our understanding of the process activities and controls identified and developed audit procedures to test the design and operating effectiveness of identified controls.

- **Sample testing approach:** In addition to testing select controls, our audit effort included reviews of representative transactions and other operational activities. We reviewed system generated transactional outputs and summary reports from key supporting applications to substantiate oversight activity on the part of NYSOH stakeholders
- **Consideration of fraud, illegal acts, misconduct, and abuse:** In planning the audit, we had a responsibility to gather and review information to identify and assess the risk of fraud occurring that is significant within the context of audit objectives. When fraud risk factors were identified that the engagement team believed were significant within the context of the audit objectives, we had the responsibility to design procedures to provide reasonable assurance of detecting if such fraud occurred or is likely to have occurred. Assessing the risk of fraud is an ongoing process throughout the audit and relates not only to planning the audit but also to evaluating evidence obtained during the audit. We considered the risks of potential fraud, misconduct, and abuse within each testing area and adjusted testing procedures and sample sizes accordingly based on potential risks. Examples of approach modifications we applied for higher-risk testing areas included increasing sample size, adjusting timing of testing procedures to focus on higher-risk periods, applying judgmental selection of samples, applying analytic procedures, and applying more precise tests. We also conducted specific discussions with the Executive Director regarding potential exposures for fraud risk.

# Findings

## Introduction

In accordance with GAS, KPMG prepared this report communicating the results of the completed audit, including relevant findings and recommendations. The findings presented as part of this engagement are restricted to the use stipulated in our contract. We disclaim any intention or obligation to update or revise the findings whether as a result of new information, future events, or otherwise. Should additional documentation or other information become available that impacts the findings reached in our deliverable, we reserve the right to amend our findings and summary documents accordingly.

## Deficiencies in internal control

Our detailed findings are noted below. Please note that each finding is split into five areas:

**Condition:** Explains the issue found as part of the audit

**Criteria:** Explains the requirements related to the issue and a determination of how criteria and processes should be executed

**Cause:** Assessment of the source of the risk area

**Effect:** Potential result if the condition continues

**Recommendation:** A short discussion on what should be done to improve the identified condition.

As a result of our audit procedures, we identified findings relating to specific controls and processes that were subject to review. These findings are detailed further below and on the following page.

CMS Rule 9957 generally requires state exchanges to perform oversight and financial integrity activities over exchange operations, keep an accurate accounting of receipts and expenditures, and perform monitoring and reporting activities on exchange-related activities. GAS further defines internal controls to include the processes and procedures for planning, organizing, directing, and controlling program operations and management's system for measuring, reporting, and monitoring program performance. KPMG identified controls through our walk-throughs with NYSOH process owners and identified gaps based on process objectives and associated risks. We tested identified processes and certain key controls, and oversight activities within the audit scope and identified several findings indicating deficiencies in compliance. These deficiencies could increase NYSOH's risks of ineffective oversight and program integrity practices.

### Finding #2018-01 – CMS reporting (repeat)

**Condition:** NYSOH did not maintain documentation supporting the accuracy and completeness of supporting data used to compile weekly, monthly, and ad hoc reports submitted to CMS.

**Criteria:** CMS reporting requirements as defined in 45 C.F.R. 155.1200(b) require that a State Exchange must collect and report to HHS performance monitoring data and, per 45 C.F.R. § 155.1210, the Exchange must maintain documents, records, and other evidence, which is sufficient to accommodate periodic auditing of the Exchange.

**Cause:** Limitations with the current technology supporting the reporting function prevent the ability to test the completeness and accuracy of audit data when compiling CMS reports.

**Effect:** Inability to provide evidence and supporting data sufficient for audit puts NYSOH at risk of noncompliance with federal health benefit exchange regulations.

**Recommendation:** Consider revising the existing technology platform to allow capability to re-perform data aggregation and report compilation.

## Finding #2018-02 – Appeals processing (repeat)

**Condition:** NYSOH is not resolving all appeal requests within 90 days. Based on the samples selected and tested:

- Two appeals were resolved in over 90 days, but in less than 99 days following receipt of the appeals request.
- There was one instance where an appeal was resolved in over 100 days, but in less than 149 days following receipt of the appeals request.

**Criteria:** Under §155.520(b)–(c), the Exchange must issue written notice of appeals decisions to appellants within 90 days of the date of an appeal request, as administratively feasible.

**Cause:** In the 3 cases noted in the condition, there is no identified reason or explanation for the appeal requiring longer than 90 days to close.

**Effect:** An appellant may not be aware of his/her appeal decision and may not have an opportunity to timely challenge the eligibility determination potentially impacting his/her ability to obtain health insurance coverage.

**Recommendation:** Consider acquiring and implementing a case management tool to better enable unit management to perform this oversight effectively and efficiently.

# Management's response and corrective action plan

## Finding #2018-01 – CMS reporting (repeat)

**Recommendation:** Consider revising the existing technology platform to allow capability to re-perform data aggregation and report compilation.

**Description of remediation:** NYSOH continues to produce weekly, monthly and ad-hoc reports using CMS required templates while remaining compliant with federal reporting requirements related to Data aggregation and report compilation. Reporting and data maintenance is subject to thorough accuracy, and completeness checks by both NYSOH Policy & Evaluation staff, and NYSOH's IT vendor. Additionally, NYSOH's eligibility and enrollment data is stored in compliance with Federal Maintenance of Records requirements.

Data used to generate the reports is contained in a relational database which is updated frequently to maintain the most current, accurate information for reporting and NYSOH uses Cognos to retrieve these reports. The auditors sought to independently recreate past reports and were not able to because there is currently no platform for them to access and manipulate the data. Ongoing IT enhancements planned in the coming years will permit auditors to create past reports.

**Milestone, target to complete, actual completion date:** NYSOH will continue to explore functionality in 2019 that will enable manual recreation of the CMS metrics submission

**Plans to monitor and validate:** NYSOH policy and Evaluation staff will continue to work closely with NY State systems staff to monitor the development of functionality that will allow retrospective creation of CMS metrics submissions.

**Responsible person/entity:** NYSOH Director of Policy & Evaluation

## Finding #2018-02 – Appeals processing (repeat)

**Recommendation:** Consider acquiring and implementing a case management tool to better enable unit management to perform this oversight effectively and efficiently.

**Description of the remediation:** During the course of the audit year, the Appeals Unit hired additional hearing officers and support staff. Unit leaders also worked with their Call Center vendor to monitor the Appeals Scheduling Outreach Process, which is oriented toward confirming appellant appointments and reducing late cancellations and no-shows. In addition, the Appeals Unit has implemented a new Appeals Lifecycle Timeliness reporting system to help identify and monitor aging cases.

**Milestone, target to complete, actual completion date:** Additional hearing officers and support staff were hired throughout the year to meet consumer demand for appeal hearings. The Appeals Scheduling Outreach Process has been fully implemented and continues on an ongoing basis.

**Plans to monitor and validate:** The Appeals Unit will continue to assess hearing volume and staffing levels and will hire additional staff as needed. Unit leaders will continue to monitor the Appeals Scheduling Outreach Process with the Call Center vendor, and will monitor the Appeals Lifecycle Timeliness reporting system.

**Responsible person/entity:** Director, NY State of Health Appeals Unit

# Appendix A – List of interviewed personnel



<b>Title</b>
Acting Director, Office of Quality and Patient Safety
Administrative Officer
Assistant Director, Policy and Planning
Associate Counsel
Associate Internal Auditor/Project Coordinator
Bureau Director, CHPlus Policy and Exchange Customer Assistance
Contract Management Specialist
Deputy Director, NYSOH
Deputy Director, NYSOH Systems
Director of Quality Management and Change Control
Director, SHOP
Division Director, Eligibility and Marketplace Integration
Executive Director, NYSOH
Health Program Administrator II
Human Resources Manager
PeopleSoft Specialist – HBITS Contractor
Principal Hearing Officer
Project Coordinator
Project Coordinator
Project Coordinator/Assistant Health Care Management Systems Analyst
Project Coordinator/Assistant Public Information Officer
Project Coordinator/Medical Assistance Specialist 2
Regional Representative
Special Assistant

# Appendix B – Glossary of terms

<b>(PP)ACA</b>	Patient Protection and Affordable Care Act
<b>AICPA</b>	American Institute of Certified Public Accountants
<b>C.F.R.</b>	Code of Federal Regulations
<b>CHP</b>	Child Health Plus
<b>CMS</b>	Centers for Medicare and Medicaid Services
<b>CSR</b>	Customer Service Representative
<b>GAGAS</b>	Generally Accepted Government Accounting Standards
<b>GAS</b>	Government Auditing Standards
<b>HHS</b>	Health and Human Services
<b>IT</b>	Information Technology
<b>MAGI</b>	Modified Adjusted Gross Income
<b>NYSOH</b>	New York State of Health
<b>QDP</b>	Qualified Dental Plan
<b>QHP</b>	Qualified Health Plan
<b>QRS</b>	Quality Reporting Standards
<b>SBM</b>	State-Based Marketplace
<b>SHOP</b>	Small Business Health Options Program

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