



New York State of Health

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

For the period January 1, 2023–December 31, 2023

May 31, 2024



KPMG LLP
515 Broadway
Albany, NY 12207-2974

May 31, 2024

Danielle L Holahan
Executive Director
New York State of Health
Corning Tower
Albany, New York 12237

Dear Ms. Holahan:

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 CFR §155) requirements. Our work was performed during the period of December 13, 2023 through May 30, 2024 and our results are as of the 12-month audit period ended December 31, 2023.

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 recommendations based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and recommendations 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 CFR §155 regulations for the 12-month audit period ended December 31, 2023.

KPMG LLP 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.

Very truly yours,

KPMG LLP

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Background

Project Background

The Patient Protection and Affordable Care Act of 2010 (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 Centers for Medicare and Medicaid Services (CMS) Final Rule 9957, published July 19, 2013 and incorporated into 45 Code of Federal Regulations (CFR) §155. In accordance with general program integrity and oversight requirements, 45 CFR §155.1200 requires entities operating as state-based marketplaces (SBMs) 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 identify 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.

New York State of Health (NYSOH), the official health plan marketplace of New York State (the State), authorized by the ACA, was established in April 2012 by Governor Cuomo's Executive Order 42, and codified in Article 2, Title VII of the New York Public Health Law in 2019.

NYSOH is responsible for facilitating enrollment in health coverage and the purchase and sale of Qualified Health Plans (QHPs) in the State's individual market 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 Plans (QDPs) 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 information technology (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.

Public Health Emergency Background

In February 2023, the State was notified to prepare for the unwind of the COVID-19 Public Health Emergency (PHE) declared on January 31, 2020¹. This cessation of the continuous coverage provision had a significant impact on the QHPs' management practices instituted as result of the PHE across the State. The PHE's continuous coverage requirement, absent redeterminations or loss of coverage, resulted in a marked increase in member enrollment over this three-year span.

¹ U.S. Department of Health & Human Services. Guidance for PREP Act Coverage for Qualified Pharmacy Technicians and State-Authorized Pharmacy Interns for Childhood Vaccines, COVID-19 Vaccines, and COVID-19 Testing.

The Consolidated Appropriations Act of 2023, however, required states to begin redetermining enrollee eligibility in these QHPs.² The Act also required NYSOH to begin issuing renewal notices to enrollees in these programs based on their enrollment end dates (between June 30, 2023 and May 31, 2024³). NYSOH will continue this process until it completes a redetermination for every Exchange enrollee.

² New York State of Health. "New York Among Leading States Keeping Families and Children Enrolled in Medicaid During Public Health Emergency Unwind," December 20, 2023.

³ Ibid.

Objective,
scope,
methodology,
and procedures

Objective

KPMG LLP (KPMG) was engaged to perform a performance audit in accordance with both 45 CFR §155.1200(c) and Government Auditing Standards (GAS) to assess NYSOH’s compliance with 45 CFR §155 regulations for the 12 months ended December 31, 2023.

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 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 CFR §155 regulations for the 12 months ended December 31, 2023, and our procedures were limited to the following:

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

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

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 compliance requirements and identified gaps based on process objectives and associated risks. KPMG conducted compliance tests to consider whether NYSOH’s processes and associated controls were capable of effectively preventing or detecting and correcting noncompliance.⁴ We tested processes and identified certain controls and oversight activities within the audit scope and identified three findings.

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

⁴ For the IT privacy and security area, we performed limited tests of design to consider whether the control was implemented and operates in a manner appropriate to accomplish the control objective.

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 calendar year 2023 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 CFR §155. This involved the following activities:
 - Reviewing and testing select procedures to assess compliance processes around high-risk IT privacy and security control areas following the Minimum Acceptable Risk Standards for Exchanges control catalog
 - Reviewing and testing procedures over 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.
- **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 in the Findings section.

Procedures

We reviewed the requirements of 45 CFR §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 CFR §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 related to compliance requirements, 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.

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 identified processes and certain key oversight activities within the audit scope and noted findings indicating deficiencies in compliance. These deficiencies could increase NYSOH's risks of ineffective oversight and program integrity practices.

Finding #2023-01 – 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 CFR 155.1200(b) require that a state exchange must collect and report to the U.S. Department of Health and Human Services performance monitoring data and, per 45 CFR § 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 audits puts NYSOH at risk of noncompliance with federal health benefit exchange regulations.

Recommendation: Consider revising the existing technology platform to allow capability to reperform data aggregation and report compilation.

Management's
response and
corrective
action plan

Finding #2023-01 – CMS reporting (Repeat)

Recommendation: Consider revising the existing technology platform to allow capability to reperform 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 that 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 re-create 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 snapshot functionality in a limited capacity in 2024 that will enable some manual recreation of the CMS metrics submissions.

Plans to monitor and validate: NYSOH Policy & Evaluation staff will continue to work closely with NY State systems staff to monitor the development of snapshot functionality that will allow limited retrospective creation of some of the CMS metrics submissions. Please note CMS has never indicated our current solution is not in compliance with this requirement and that this finding may be a result of the requirement being interpreted differently by the auditor.

Responsible person/entity: NYSOH Director of Policy & Evaluation

Appendix A – List of interviewed personnel

Title
Accountant
Analyst, Senior: Program Security & Compliance, General Dynamics Information Technology (GDIT)
Administrative Officer
Assistant Director, Plan Management
Bureau Director, Child Health Plus Policy and Exchange Customer Assistance
Chief Information Security Officer, NYSOH
Cybersecurity Senior Manager, GDIT
Deputy Director, NYSOH
Director, Bureau of Quality Management and Change Control
Director, Bureau of Quality Management and Evaluation
Director of Communications, Marketing and Outreach
Director of Plan Management
Director of Policy and Evaluation
Division of Eligibility and Marketplace Integration
Eligibility Program Manager
Eligibility Program Manager 1
Executive Director
Health Education Media Specialist 3
IT Specialist 3 – Info Security
IT Analyst, GDIT
Medical Assistance Specialist, Bureau of Child Health Plus and Marketplace Consumer Assistance
Medical Assistance Specialist IIs
Principal Hearing Officer
Project Coordinator – Small Business Marketplace
Regional Director of Small Business Marketplace
Security Privacy Compliance Manager, GDIT
Senior Systems Analyst Technical Architect, GDIT
Special Assistant, Customer Service Operations
Software Analyst, GDIT
Team Lead: Database/Data Architecture, GDIT
Principal Consultant, Bureau of Privacy and Security

Title
Project Coordinator
Assistant Public Information Officer
Medical Assistance Specialist 3, Bureau of Child Health Plus and Marketplace Consumer Assistance
Project Coordinator, NYSOH, Office of Health Insurance Programs
Health Program Administrator 1
Medical Assistance Specialist 2
Health Program Director 2
Medical Assistance Specialist, Division of Eligibility and Marketplace Integration

Appendix B - Glossary of terms

ACA	Patient Protection and Affordable Care Act of 2010
AICPA	American Institute of Certified Public Accountants
CFR	Code of Federal Regulations
CMS	Centers for Medicare and Medicaid Services
GAGAS	Generally Accepted Government Accounting Standards
GAS	Government Auditing Standards
GDIT	General Dynamics Information Technology
IT	Information Technology
NYSOH	New York State of Health
PHE	Public Health Emergency
QDP	Qualified Dental Plan
QHP	Qualified Health Plan
SBM	State-Based Marketplace
SHOP	Small Business Health Options Program

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