



New York State of Health

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

For the period January 1, 2019–December 31, 2019

July 31, 2020

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KPMG LLP
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July 31, 2020

Donna Frescatore
Executive Director
New York State of Health
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Albany, New York 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 February 1, 2020 through July 29, 2020, and our results are as of the 12-month audit period ended December 31, 2019.

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 C.F.R. §155 regulations for the 12-month audit period ended December 31, 2019.

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.

Very truly yours,

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 Centers for Medicare and Medicaid Services (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 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 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.

New York State of Health (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 Plans (QHPs) 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 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.

Objective,
scope,
methodology,
and procedures

Objective

KPMG LLP (KPMG) was engaged to perform a performance audit in accordance with both 45 C.F.R. §155.1200(c) and Government Auditing Standards (GAS) to assess NYSOH’s compliance with 45 C.F.R. §155 regulations for the 12 months ended December 31, 2019.

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 C.F.R. §155 regulations for the 12 months ended December 31, 2019 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 (MAGI) 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 Qualified Health Plan (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, 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.¹ We tested processes and identified certain controls and oversight activities within the audit scope and identified three 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.

¹ For the IT Privacy and Security area, we performed 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 Year 6 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 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 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 Findings 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 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 #2019-01 – 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 U.S. Health and Human Services 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 #2019-02 Member Self-Attestation Verification

Condition: NYSOH did not effectively monitor the members' submission of responses following the commencement of coverage for the necessary supporting documentation as required. In three instances, member insurance coverage was not modified from "APTC+CSR" to "APTC only" when the member, after self-attestation, failed to provide satisfactory American Indian or Alaskan Native (AI/AN) documentation support within 90 days.

Criteria: Per the guidance in 155.310(k), if an application filer submits an application that does not include sufficient information for the exchange to conduct an eligibility determination for enrollment in a QHP through the exchange or for insurance affordability programs, then the exchange must provide the applicant with a period of no less than 10 days and no more than 90 days to provide the information needed to complete the application to the exchange.

Cause: This appears to be caused by a lack of proper oversight and monitoring for self-attestation of AI/AN members in the servicing eligibility IT application.

Effect: NYSOH provided unsupported cost sharing reduction assistance to three NYSOH members during calendar year 2020 based on this 2019 eligibility determination action.

Recommendation: In the near term, NYSOH should implement a manual review of the verification clock's due date so that timely and appropriate action is taken for consumers who do not provide proof of their AI/AN status at the end of the 90-day reasonable opportunity period. In addition, NYSOH should explore the cost/benefit, and necessity, of adding/updating automated system controls to address this issue.

Management's
response and
corrective
action plan

Finding #2019-01 – 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 2020 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 #2019-02 – Member Self-Attestation Verification

Recommendation: In the near term, NY State of Health should implement a manual review of the verification clock's due date so that timely and appropriate action is taken for consumers who do not provide proof of their American Indian or Alaskan Native status at the end of the 90-day reasonable opportunity period. In addition, NYSOH should explore the cost benefit, and necessity, of adding/updating automated system controls to address this issue.

Description of the remediation: NY State of Health will monitor the due date of the verification clocks and upon expiration will perform manual eligibility overrides for consumers who have not provided satisfactory proof of their attested American Indian or Alaskan Native status. Consumers whose status remains unverified will no longer be eligible for enhanced Cost Sharing Reductions but remain eligible for Advance Premium Tax Credits.

NY State of Health has evaluated the cost benefit and necessity of updating the automated system controls versus implementing a manual process. The number of American Indian or Alaskan Native consumers who are eligible for enhanced Cost Sharing Reductions averages 150 per year. A manual review process will obviate the need to implement costly changes to system functionality when considering the very small percentage of overall NY State of Health consumers who may require manual verification of their American Indian or Alaskan Native status.

Milestone, target to complete, actual completion date: Manual reviews of the verification clocks will begin in August 2020 and will be performed on an ongoing basis

Plans to monitor and validate: Bureau of Exchange and Application Support supervisory staff will monitor the manual review process to ensure timely and appropriate action is taken upon expiration of the verification clock.

Responsible person/entity: Director, Bureau of Exchange and Application Support

Appendix A –
List of
interviewed
personnel

Title
Administrative Officer
Assistant Director, Policy and Planning
Associate Counsel
Bureau Director, CHPlus Policy and Exchange Customer Assistance
Chief Information Security Officer
Director, Bureau of Quality Management and Change Control
Director, Bureau of External Audit
Director, Division of Quality Measurement
Director of Communications, Marketing and Outreach
Director of Plan Management
Executive Director, NYSOH
Health Program Administrator II
Network Engineer Advisor
Operations Team Lead
PeopleSoft Financial Support Specialist
Principal Hearing Officer
Program Administrator
Regional Director for Small Business Marketplace
Security Privacy Compliance, GDIT
Senior Systems Analyst Technical Architect, GDIT
Special Assistant, Customer Service Operations

Appendix B – Glossary of terms

(PP)ACA	Patient Protection and Affordable Care Act
AI/AN	American Indian or Alaskan Native
AICPA	American Institute of Certified Public Accountants
CFR	Code of Federal Regulations
CHPlus	Child Health Plus
CMS	Centers for Medicare and Medicaid Services
CSR	Customer Service Representative
GAGAS	Generally Accepted Government Accounting Standards
GAS	Government Auditing Standards
GDIT	General Dynamics Information Technology
HHS	Health and Human Services
IT	Information Technology
MAGI	Modified Adjusted Gross Income
NYSOH	New York State of Health
QDP	Qualified Dental Plan
QHP	Qualified Health Plan
QRS	Quality Reporting Standards
SBM	State-Based Marketplace
SHOP	Small Business Health Options Program

Contact us

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