



## Department of Health

**KATHY HOCHUL**  
Governor

**JAMES V. McDONALD, M.D., M.P.H.**  
Commissioner

**JOHANNE E. MORNE, M.S.**  
Executive Deputy Commissioner

June 20, 2024

Andrea Inman  
Audit Director  
Office of the State Comptroller  
Division of State Government Accountability  
110 State Street – 11<sup>th</sup> Floor  
Albany, New York 12236-0001

Dear Andrea Inman:

Enclosed are the Department of Health's comments on the Office of the State Comptroller's Follow-Up Audit Report, 2023-F-39 entitled, "Excessive Premium Payments for Dual-Eligible Recipients in Mainstream Managed Care and Health and Recovery Plans" (2021-S-37).

Thank you for the opportunity to comment.

Sincerely,

Johanne E. Morne, M.S.  
Executive Deputy Commissioner

Enclosure

cc: Frank Walsh  
Amir Bassiri  
Jacqueline McGovern  
Amber Rohan  
Brian Kiernan  
Timothy Brown  
James Dematteo  
James Cataldo  
Michael Atwood  
Melissa Fiore  
OHIP Audit  
DOH Audit

**Department of Health  
Comments on the  
Office of the State Comptroller's  
Follow-Up Audit Report 2023-F-39 entitled,  
"Excessive Premium Payments for Dual-Eligible Recipients in  
Mainstream Managed Care and Health and Recovery Plans"  
(Report 2021-S-37)**

---

The following are the Department of Health's (Department) comments in response to the Office of the State Comptroller's (OSC) Follow-Up Audit Report 2023-F-39 entitled, "Excessive Premium Payments for Dual-Eligible Recipients in Mainstream Managed Care and Health and Recovery Plans" (Report 2021-S-37). Included in the Department's response are the Office of the Medicaid Inspector General's (OMIG) replies to applicable recommendations. OMIG conducts and coordinates the investigation, detection, audit, and review of Medicaid providers and recipients to ensure they are complying with the laws and regulations.

**Recommendation #1:**

*Disenroll dual-eligible recipients from their MMC or HARP plan who are ineligible for IB-Dual and provide them with FFS coverage, as appropriate.*

Status – Partially Implemented

Agency Action – In December 2023, DOH disenrolled over 13,000 dual-eligible recipients from their MMC or HARP plan. However, 68,054 dual-eligibles were still enrolled in MMC or HARP who were not eligible for IB-Dual enrollment. According to DOH officials, they will continue to disenrolling dual-eligible recipients from MMC and HARP as part of the COVID-19 Public Health Emergency unwind process. We encourage DOH to continue disenrollment efforts until all dual-eligibles who are ineligible for IB-Dual are removed from their MMC and HARP plan.

**Response #1:**

The Department was initially prohibited from disenrolling Medicaid enrollees per the Families First Coronavirus Response Act guidance issued in March 2020. In December 2020, the Centers for Medicare & Medicaid Services (CMS) issued updated guidance allowing the Department to resume disenrollments during the COVID-19 Public Health Emergency (PHE) under certain circumstances. The Department chose not to restart disenrollment for those in the dual-eligible (Medicare and Medicaid enrollees) category in an effort to maintain continuity of care and services for this vulnerable population. During this time, the Department also implemented the IB-Dual program allowing MMC enrollees becoming newly Medicare eligible to remain enrolled in MMC with an affiliated D-SNP. The CMS enrollment policy allowing for *default enrollment* of MMC enrollees becoming Medicare eligible enabled the decision to implement the program. The IB-Dual program is part of a broader Department strategy to encourage enrollment of dual-eligible individuals into integrated care options.

Moreover, on November 10, 2020, the Department applied for an 1115 Medicaid Waiver Amendment that would make the dual-eligible population exempt rather than excluded from MMC. This further factored into the Department's decision not to restart disenrollments for dual-eligible individuals. CMS approved this amendment on March 23, 2022.

**Recommendation #2:**

*Review the \$190.6 million in excessive premium payments and make recoveries, as appropriate.*

Status – Implemented

Agency Action – Our initial audit identified over \$190.6 million in excessive MMC and HARP premium payments on behalf of 87,022 dual-eligible recipients who were ineligible for IB-Dual. Our follow-up determined DOH made adjustments to reduce fiscal year 2021-22 and fiscal year 2022-23 MMC and HARP premiums through the managed care rate-setting process to account for the presence of such dual-eligibles in MMC and HARP plans.

**Response #2:**

The Department agrees with this recommendation status.

**Recommendation #3:**

*Review the \$3.5 million in excessive premium payments and make recoveries, as appropriate.*

Status – Implemented

Agency Action – Our initial audit found DOH would have saved over \$3.5 million had Medicaid paid the monthly IB-Dual premium rate (instead of the standard higher monthly MMC and HARP premiums) for 1,948 dual-eligible recipients who appeared eligible for IB-Dual but who were not enrolled. As stated in the Agency Action section of Recommendation 2, DOH made adjustments to reduce fiscal year 2021-22 and fiscal year 2022-23 MMC and HARP premiums through the managed care rate-setting process to account for the presence of dual eligibles in MMC and HARP plans.

**Response #3:**

The Department agrees with this recommendation status.

**Recommendation #4:**

*Ensure that all dual-eligible recipients who meet IB-Dual enrollment requirements and who do not opt out are enrolled timely. For those recipients who opt out, disenroll them from their MMC or HARP plan and provide them with FFS coverage, as appropriate.*

Status – Partially Implemented

Agency Action – Our initial audit determined that the majority (93%) of the \$3.5 million in excessive premium payments were on behalf of recipients who did not go through the default enrollment process because they became a dual-eligible prior to the IB-Dual rollout in April 2021. Since that time, we found 88% of these recipients (1,131 of 1,288) were enrolled in an IB-Dual plan. Although some members may opt out of IB-Dual, as stated in the Agency Action section of Recommendation 1, DOH plans to disenroll dual-eligible recipients from MMC and HARP as part of the COVID-19 Public Health Emergency unwind process.

**Response #4:**

The IB-Dual program was created to allow MMC enrollees becoming dually eligible to remain in their Medicaid Managed Care Plan (MMCP) when they enroll in the affiliated D-SNP of the same organization. Enrollment into the IB-Dual premium rate cell occurs through a default enrollment process into the Medicare D-SNP. The dually eligible individual is enrolled into the Medicare D-SNP affiliated with the MMCP. MMCPs must receive approval for IB-Dual through the Department and approval for default enrollment from CMS. Enrollees are provided advanced notice of default enrollment by the Medicare D-SNP.

The Department works closely with its enrollment broker and the health plans to identify dually eligible individuals for default enrollment to ensure they are enrolled timely. For enrollees that choose to opt out of the Medicare D-SNP, the individual will remain in their MMC or HARP during the PHE. Upon the end of the PHE, the Department will disenroll dually eligible individuals not in the IB-Dual rate cell in accordance with CMS unwind guidance procedures.