



Summary of New York Health Care Reform Act

NYHCRA Background

The 1996 New York Health Care Reform Act (NYHCRA) provided for two levies:

1. A surcharge on defined claims for indigent care and health care initiatives;
2. An assessment fee for Graduate Medical Education (GME), based on New York state residency.

The indigent care surcharge is a levy based on a state-determined percentage rate of payments for defined claims to New York state providers. The percentage rate is periodically re-evaluated and revised.

The GME assessment is based on New York state residency and is applicable to all health insurance plans, insured and self-funded. The state law is not preempted by Employee Retirement Income Security Act of 1974 (ERISA).

Under the NYHCRA, entities that pay on behalf of their plan participants for health services delivered by certain designated providers in New York have a choice whether to file an election application to make public goods surcharge payments at reduced rate levels directly to the Office of Pool Administration (OPA) or pay surcharges directly to designated providers at substantially higher rates. Entities that file this election are required to file New York Public Goods Pool (NYPGP) reports electronically with the state of New York, regardless of whether any payments are due.

How It Works – Claims that fall within ITS

The Interplan Telecommunications System (ITS or BlueCard®) is a unique way that Empire Blue Cross Blue Shield (Empire) and all other Blue Cross and Blue Shield plans communicate, share information, and handle fees/payments for the NYHCRA and the NYPGP.

The NYHCRA filing requirements for Blue Cross and Blue Shield of Nebraska (BCBSNE), and its self-funded groups, is affected by a special agreement between the New York Department of Health (DOH) and Empire. Empire acts as a conduit for payment of claims in New York through ITS, for BCBSNE and its self-funded groups. Empire is considered payor of claim and, as payor, is obligated to remit NYPGP reports, surcharge payments and covered lives, if applicable, to the OPA in New York. Empire files the NYPGP reports and submits the surcharge under their election, and then bills BCBSNE.

As a third-party administrator (TPA), BCBSNE pays the surcharge and covered lives assessment to Empire on behalf of its self-funded groups. BCBSNE then bills these amounts back to the group.

The covered lives assessment, based on New York state residency, is billed to the group on the group's monthly invoice. The indigent care surcharge is automatically included on any applicable claim that is billed to the group through BlueCard. For BlueFlex groups, these charges are built into premium rates, rather than billed back to the group.

Empire's election into the NYPGP protects BCBSNE, and its self-funded groups, from paying a higher surcharge for claims incurred in New York.

How it Works – Claims that fall outside ITS

For claims that fall outside of ITS/BlueCard, the payor of the claim (e.g., the self-funded group) must have their own election on file to be able to pay the lower surcharge rate.

If the group has an election on file with the state of New York, BCBSNE will submit reporting to the state of New York, consistent with that election. The election would protect the group from paying a higher indigent surcharge in the event that the group incurred a claim outside of BlueCard (most claims are submitted through BlueCard, but some member-submitted claims may be submitted outside of BlueCard).

BCBSNE's reporting services are included within the group's standard administrative fee.

Self-Funded Group Responsibilities

- Self-funded groups are responsible for notifying the OPA regarding changes or updates to their TPA designation or funding status. A list of applicable forms is provided below.
- BCBSNE cannot complete the forms on the group's behalf. The group should complete their form and either submit it themselves, or send it to their account executive for BCBSNE to submit on their behalf.

Forms

The applicable forms are available on the NYHRCRA website www.health.ny.gov/regulations/hcra/einfo/index.htm.

To be an electing payor, the self-funded group must complete **DOH-4399** ([Payer Election Application](#)) and **DOH-4264** ([Electronic User ID Application](#)).

If the group has already filed an election, but has changed TPAs, the group must complete **DOH-4403** ([Third Party Administrator or Administrative Services Only Status Change](#)).

DOH 4402 ([Payor Status Change](#)) is submitted by electing payors that have become fully insured, closed, gone out-of-business or have filed for bankruptcy.

DOH-4406 ([merger acquisition](#)) is submitted by electing payors who have been acquired, acquired and/or merged with another payor.

Penalties from the NYHCRA may result in failure to notify the OPA of changes.

New Electors

Groups that are new electors to the pool are required to file reports and make payments to the pool on a monthly basis, during the first 12 months. After a group has been in the pool for at least 12 months, the state of New York will make an annual determination on whether the group will remain a monthly filer or become an annual filer based on the amount of tax paid to the pool in the prior year. Groups that the state designates as annual filers will receive a notice from the pool in November indicating that the group has been designated an annual filer for the next year and providing an opportunity for the group to elect to remain a monthly filer. A group that does not want to be an annual filer must complete the form provided by the state and return it to the pool, as indicated in the annual filer notice letter.

Commonly Asked Questions

Q: What is the New York Health Care Reform Act?

A: The 1996 NYHCRA provided for two levies:

(1) A surcharge on defined claims for indigent care and health care initiatives;

(2) An assessment fee for GME, based on New York state residency.

The indigent care surcharge is a levy based on a state-determined percentage rate of payments for defined claims to New York state providers. The percentage rate is periodically re-evaluated and revised.

The GME assessment is based on New York state residency and is applicable to all health insurance plans, insured and self-funded.

The NYHCRA is not preempted by ERISA. Under the NYHCRA, entities that pay on behalf of their plan participants for health services delivered by certain designated providers in New York have a choice whether to file an election application to make public goods surcharge payments at reduced rate levels directly to the OPA or pay surcharges directly to designated providers at substantially higher rates. Entities that file this election are required to file NYPGP reports electronically with the state of New York, regardless of whether any payments are due.

Q: How are the assessments paid? Is the indigent care surcharge assessment automatically included on any applicable claim that goes through Bluecard?

A: Yes. The Interplan Telecommunications System (ITS or Bluecard) is a unique way that Empire and all other Blue Cross and Blue Shield plans communicate, share information, and handle fees/payments for the NYHCRA and the NYPGP.

The NYHCRA filing requirements for BCBSNE, and its self-funded groups, is affected by a special agreement between the DOH and Empire. Empire acts as a conduit for payment of claims in New York through the ITS, for BCBSNE and its self-funded groups. Empire is considered payor of claim and, as payor, is obligated to remit NYPGP reports, surcharge payments and covered lives, if applicable, to the OPA in New York. Empire files the NYPGP reports and submits the surcharge under their election, and then bills BCBSNE.

As a TPA, BCBSNE pays the surcharge and covered lives assessment to Empire on behalf of its self-funded groups. BCBSNE then bills these amounts back to the group.

The covered lives assessment is billed as a line item on the group's monthly invoice. The indigent care surcharge is automatically included on any applicable claim that is billed to the group through BlueCard. For BlueFlex groups, these charges are built into premium rates, rather than billed back to the group.

Empire's election into the NYPGP protects BCBSNE, and its self-funded groups, from paying a higher surcharge for claims incurred in New York.

Q: Does the self-funded group have to opt in for the assessment to be paid through BlueCard?

A: Surcharges for claims that process through BlueCard and covered lives assessments are paid regardless if the group has opted in. **It is not necessary to opt in for this process to take place.**

For claims that fall outside of ITS/BlueCard, the payor of the claim (e.g., the self-funded group) must have their own election on file to be able to pay the lower surcharge rate.

If the group has an election on file with the state of New York, BCBSNE will submit reporting to the state of New York, consistent with that election. The election would protect the group from paying a higher indigent surcharge in the event that the group incurred a claim outside of BlueCard (most claims are submitted through BlueCard, but some member-submitted claims may be submitted outside of BlueCard).

BCBSNE's reporting services are included within the group's standard administrative fee.

Commonly Asked Questions

Q: What should a group do if they are cancelling coverage with BCBSNE and moving to another carrier?

A: The group is responsible to ensure all forms are filed. Self-funded groups are responsible for notifying OPA regarding changes or updates to their TPA designation or funding status (DOH-4403). BCBSNE would continue to file for the group until we see that they have been removed from the master client list provided by OPA, or our legal department is made aware of the group's termination. If the group does not change their TPA from BCBSNE to their new carrier, the group could be assessed penalties if they are incurring claims and not paying appropriate surcharges and assessments.

Q: How will a new BCBSNE group or group new to self-funding know to update any forms and filings?

A: BCBSNE does not proactively send out any communication of filing requirements and forms needing to be completed.

Self-funded groups are responsible for notifying the OPA regarding changes or updates to their TPA designation or funding status.

BCBSNE is not notified by the NYPGP when changes are made to a group's filing status. BCBSNE uses a monthly client list to look for applicable changes or updates; however, it is recommended that groups either complete the form themselves or reach out to their account executive for assistance. BCBSNE cannot complete the forms on the group's behalf. The group should complete their form and either submit it themselves, or send it to their account executive for BCBSNE to submit on their behalf.

Groups that are new electors to the pool are required to file reports and make payments to the pool on a monthly basis, during the first 12 months. After a group has been in the pool for at least 12 months, the state of New York will make an annual determination on whether the group will remain a monthly filer or

become an annual filer based on the amount of tax paid to the pool in the prior year. Groups that the state designates as annual filers will receive a notice from the pool in November indicating that the group has been designated an annual filer for the next year and providing an opportunity for the group to elect to remain a monthly filer. A group that does not want to be an annual filer must complete the form provided by the state and return it to the pool, as indicated in the annual filer notice letter.

Q: Who is the TPA contact person if the group chooses to fill out the forms and file themselves?

A: The BCBSNE TPA contact person: Bobbie Brooks, 402-982-8283.

Q: What should a group do if they do not want to participate?

A: The group does nothing if they do not want to opt-in, no forms need to be filed.

Q: If/when a group makes a change and completes form DOH-4402 (Payor Status Change), how do we know how to answer the questions regarding if all claims have been adjudicated?

A: Form 4402 is only used in the case a group is no longer self-funded or no longer in business. If a BlueFlex group terminates, claims will be paid for 24 months after the group's termination date. All patient surcharge fees will be paid through BlueCard and a covered lives assessment fee will not apply.

Q: Is there a penalty if the group does not terminate or update the information with the NYPGP at the time of a change?

A: Penalties from the NYHCRA may result for failure to notify the OPA of changes.

➤ **For more information visit**
www.health.ny.gov/regulations/hcra/