No. APL-2015-00125

Supreme Court, New York County, Index No. 159160/2012

State of New York
Court of Appeals

EILEEN BRANSTEN, Justice of the Supreme Court
of the State of New York, et al.,

Plaintiffs-Respondents,

-against-

THE STATE OF NEW YORK,

Defendant-Appellant.

RECORD ON APPEAL – VOLUME I (R1-R244)

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SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : FIRST DEPARTMENT

EILEEN BRANSTEN, *et al.*,	Index No. 159160/2012
	Supreme Court
Plaintiffs-Respondents,	New York County
-against-	**STATEMENT PURSUANT TO**
STATE OF NEW YORK,	**C.P.L.R. 5531**
Defendant-Appellant.	

1. The index number of the case below is 159160/2012.

2. The full names of the original parties are the STATE OF NEW YORK, defendant, and the following plaintiffs:

   - EILEEN BRANSTEN, Justice of the Supreme Court of the State of New York
   - PHYLLIS ORLIKOFF FLUG, Justice of the Supreme Court of the State of New York
   - MARTIN J. SCHULMAN, Justice of the Supreme Court of the State of New York
   - F. DANA WINSLOW, Justice of the Supreme Court of the State of New York
   - BETTY OWEN STINSON, Justice of the Supreme Court of the State of New York
   - MICHAEL J. BRENNAN, Justice of the Supreme Court of the State of New York
   - ARTHUR M. SCHACK, Justice of the Supreme Court of the State of New York
   - BARRY SALMAN, Justice of the Supreme Court of the State of New York

- JOHN BARONE, Justice of the Supreme Court of the State of New York
- ARTHUR G. PITTS, Justice of the Supreme Court of the State of New York
- THOMAS D. RAFFAELE, Justice of the Supreme Court of the State of New York
- PAUL A. VICTOR, retired Justice of the Supreme Court of the State of New York
- JOSEPH GIAMBOI, retired Justice of the Supreme Court of the State of New York
- THE ASSOCIATION OF JUSTICES OF THE SUPREME COURT OF THE STATE OF NEW YORK
- THE SUPREME COURT JUSTICES ASSOCIATION OF THE CITY OF NEW YORK, INC.
- JOHN AND MARY DOES 1–2000, current and retired Judges and Justices of the Unified Court System of the State of New York

3. This action was commenced in New York Supreme Court, New York County.

4. This action was commenced by service of summons and complaint on defendant on or about December 26, 2012. Defendant served notice of motion to dismiss and memorandum of law on or about February 22, 2013. Plaintiffs served opposition papers on or about April 12, 2013. Defendant served a reply on or about April 29, 2013.

5. Plaintiffs allege that the State violated the New York Compensation Clause, N.Y. Const., art. VI, § 25(a), when it reduced, pursuant to authority granted by Civil Service Law § 167(8), the percentage contribution that the State pays toward health insurance premiums for state employees, including judges and justices.

6. This is an appeal from the decision and order of New York Supreme Court, New York County (Edmead, J.), entered on May 21, 2013, denying defendant's motion to dismiss the complaint pursuant to C.P.L.R. 3211(a)(1) and 3211(a)(7).

7. The method of appeal being used is the full record method.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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EILEEN BRANSTEN, Justice of the Supreme Court of the State of New York, PHYLLIS ORLIKOFF FLUG, Justice of the Supreme Court of the State of New York, MARTIN J. SCHULMAN, Justice of the Supreme Court of the State of New York, F. DANA WINSLOW, Justice of the Supreme Court of the State of New York, BETTY OWEN STINSON, Justice of the Supreme Court of the State of New York, MICHAEL J. BRENNAN, Justice of the Supreme Court of the State of New York, ARTHUR M. SCHACK, Justice of the Supreme Court of the State of New York, BARRY SALMAN, Justice of the Supreme Court of the State of New York, JOHN BARONE, Justice of the Supreme Court of the State of New York, ARTHUR G. PITTS, Justice of the Supreme Court of the State of New York, THOMAS D. RAFFAELE, Justice of the Supreme Court of the State of New York, PAUL A. VICTOR, retired Justice of the Supreme Court of the State of New York, JOSEPH GIAMBOI, retired Justice of the Supreme Court of the State of New York, THE ASSOCIATION OF JUSTICES OF THE SUPREME COURT OF THE STATE OF NEW YORK, THE SUPREME COURT JUSTICES ASSOCIATION OF THE CITY OF NEW YORK, INC. AND JOHN AND MARY DOES 1-2000, current and retired Judges and Justices Of the Unified Court System of the State Of New York,

Plaintiffs,

-against-

THE STATE OF NEW YORK,

Defendant.

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Index No.
159160/2012

NOTICE OF APPEAL

PLEASE TAKE NOTICE that defendant the State of New York, hereby appeals to the Appellate Division, First Department, from the Decision and Order of the Supreme Court, County of New York (Edmead, J.S.C.), dated May 21, 2013 and entered May 22,

2013, a copy of which is annexed hereto, to the extent that said Decision and Order denied the State of New York's motion to dismiss this matter in the entirety.

PLEASE TAKE FURTHER NOTICE, that pursuant to CPLR 5519(a)(1) service of this notice of appeal automatically "stays all proceedings to enforce the judgment or order appealed from pending the appeal."

Dated: New York, New York
June 19, 2013

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State of New York
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FILED: NEW YORK COUNTY CLERK 05/21/2013 INDEX NO. 159160/2012
NYSCEF DOC. NO. 27 RECEIVED NYSCEF: 05/21/2013

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. CAROL EDMEAD Justice PART 35

Index Number : 159160/2012
BRANSTEN, EILEEN
vs.
STATE OF NEW YORK
SEQUENCE NUMBER : 001
DISMISS

INDEX NO. _____
MOTION DATE 5.1.2013
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____
Answering Affidavits — Exhibits _____ | No(s). _____
Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

Motion sequence 001 is decided in accordance with the annexed Memorandum Decision. It is hereby

ORDERED that defendant's motion to dismiss the plaintiffs' Complaint on the ground that the Complaint fails to state a cause of action (CPLR § 3211(a)(7), or in the alternative, that its defense is founded upon documentary evidence (CPLR § 3211(a)(1)) is denied, except that the John and Mary Does 1-2,000, current and retired Judges and Justices of the Unified Court System of the State of New York are dismissed from this action, without prejudice; and it is further

ORDERED that defendant shall serve a copy of this order with notice of entry upon all plaintiffs within 20 days of entry.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 5.21.2013

HON. CAROL EDMEAD J.S.C.

1. CHECK ONE: ..... ☐ CASE DISPOSED ☑ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .....MOTION IS: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

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EILEEN BRANSTEN, Justice of the Supreme Court of the State of New York, PHYLLIS ORLIKOFF FLUG, Justice of the Supreme Court of the State of New York, MARTIN J. SCHULMAN, Justice of the Supreme Court of the State of New York, F. DANA WINSLOW, Justice of the Supreme Court of the State of New York, BETTY OWEN STINSON, Justice of the Supreme Court of the State of New York, MICHAEL J. BRENNAN, Justice of the Supreme Court of the State of New York, ARTHUR M. SCHACK, Justice of the Supreme Court of the State of New York, BARRY SALMAN, Justice of the Supreme Court of the State of New York, JOHN BARONE, Justice of the Supreme Court of the State of New York, ARTHUR G. PITTS, Justice of the Supreme Court of the State of New York, THOMAS D. RAFFAELE, Justice of the Supreme Court of the State of New York, PAUL A. VICTOR, retired Justice of the Supreme Court of the State of New York, JOSEPH GIAMBOI, retired Justice of the Supreme Court of the State of New York, THE ASSOCIATION OF JUSTICES OF THE SUPREME COURT OF THE STATE OF NEW YORK, THE SUPREME COURT JUSTICES ASSOCIATION OF THE CITY OF NEW YORK, INC. and JOHN AND MARY DOES 1–2000, current and retired Judges and Justices of the Unified Court System of the State of New York,

Plaintiffs,

-against-

THE STATE OF NEW YORK,

Defendant.

----------x

Index No. 159160/2012
Motion Seq. #001

DECISION/ORDER

HON. CAROL ROBINSON EDMEAD, J.S.C.

MEMORANDUM DECISION

This declaratory judgment action brought by the Association of the Justices of the Supreme Court of the State of New York and current and retired members of the New York State Judiciary, challenges the constitutionality of the decision by the State of New York ("defendant")

to reduce the State's contribution to the Justices' health insurance benefits.

Defendant now moves to dismiss the plaintiffs' Complaint on the ground that the Complaint fails to state a cause of action (CPLR 3211[a][7]), or in the alternative, that its defense is founded upon documentary evidence (CPLR 3211[a][1]).

Factual Background

In early of 2010, the Court of Appeals issued a decision in *Matter of Maron v Silver* (14 NY3d 230, 899 NYS2d 97 [2010]), which addressed the issue of whether the Legislature's failure to make upward adjustments to the Justices' and Judges' compensation for more than 10 years violated the New York State Constitution's Compensation Clause (Article VI, Section 25) (the "Compensation Clause") and Separation of Powers Doctrine.[1] After discussion of the goals of each, the Court of Appeals held that the Legislature's failure to consider judicial compensation on the merits violated the Separation of Powers Doctrine, and urged the Legislature to take "appropriate and expeditious" action to adjust the Judiciary's compensation.

Consequently, in 2010, the Legislature enacted the Act of Dec. 10, 2010, ch. 56 (the "Salary Commission Law"), which created the Commission of Judicial Compensation ("Commission") to examine, every four years, the "adequacy of pay levels and non-salary benefits" of Justices and Judges. In the summer of 2011, the Commission held several meetings and a public hearing, and issued a Final Report on August 29, 2011 recommending judicial pay increases in three phases: (1) an increase to $160,000 on April 1, 2012, (2) an increase to

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[1] "The doctrine of separation of powers is implied by the separate grants of power to each of the coordinate branches of government. Article III, § 1 of our Constitution provides: 'The legislative power of this state shall be vested in the senate and assembly', and article IV, § 1 provides in pertinent part that '[t]he executive power shall be vested in the governor'" (*Clark v Cuomo*, 66 NY2d 185, 486 NE2d 794 [1985]). Article VI provides for a "unified court system for the state."

$167,000 on April 1, 2013, and an increase to $174,000 on April 1, 2014.[2]

During the pendency of the Commission's study, and in an effort to address the budget crisis facing the State of New York, the Legislature negotiated agreements with certain public-sector unions impacting the State's employees' salaries and benefits. It was posited that instead of laying off thousands of State employees, in June 2011, the Legislature agreed to, *inter alia*, a reduction in the percentage of the State's contribution toward employees' health insurance premiums.[3]

And, instead of negotiating with thousands of *unrepresented* employees, in August 2011, the Legislature amended Civil Service Law § 167.8 ("Section 167.8") to allow the president of the Civil Service Department (with the approval of the State Budget Director) to extend the terms of the union agreement to *unrepresented* State employees and retirees.

On September 27, 2011, the Civil Service Department proposed to implement changes for those excluded from collective bargaining within the meaning of the Taylor Law, Civil Service Law Article 14 (*i.e.*, the plaintiffs).

On September 30, 2011, plaintiffs, for the first time, were notified, of the reduction in the State's contribution to their health insurance premiums, which would require them to pay more per year for their health insurance premiums. The State's contribution rate change took effect on October 1, 2011, resulting in a 6% increase in plaintiffs' contribution to the cost of their health insurance (such as co-payments, deductibles, and prescription drug costs). The premium

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[2] Under the Salary Law Commission Law, the Commission's recommendation are effective automatically unless the Legislature and Governor enact a statute by April 1 of the following year to modify or reject the recommendations.

[3] The State's contributions were reduced from 90% to 80% for active employees, and from 90% to 88% for retired employees, thus requiring the employees to pay the difference with their salaries.

contribution rate for retired Justices increased by 2%, and the rate for those Justices retiring on or after January 1, 2012 increased by 6% percent.[4]

Since the Commission's recommendations were not modified or abrogated by the Legislature or Governor, the first of the three-phrase judicial pay raise increases went into effect on April 1, 2012.

On or about December 26, 2012, plaintiffs commenced this proceeding to enjoin defendant from imposing the higher premium contribution rates, co-payments, and deductibles for health insurance.[5] Plaintiffs assert that since "compensation" includes health benefits, the value of their compensation has been diminished by defendant's actions, in violation of the Compensation Clause, which guarantees that plaintiffs' compensation shall not be diminished during their term in office.[6]

In moving to dismiss the Complaint, defendant sets forth the following arguments: (1) according to federal Compensation Clause jurisprudence, which New York Court's follow, the Compensation Clause permits broadly applicable laws that indirectly reduce the take home pay of Judges in a non-discriminatory manner that does not single out Judges; Section 167.8 is akin to the "Medicare tax" upon federal employees which the Supreme Court held was permissible under

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[4] However, the co-payment for Judges, Justices, and unrepresented Unified Court System employees, and retirees was eliminated for certain preventative care services, and the co-payment for certain prescription drugs was reduced by 50%.

[5] Plaintiffs seek a judgment declaring that "L 2011, c. 491, § 2 and the amended Civil Service Law § 167.8 are unconstitutional as applied to the Judges and Justices of the Unified Court System because these statutes diminish the compensation of all such Judges and Justices and, by so doing, unconstitutionally and adversely impact the public and independence of the Judiciary . . . ."

[6] According to the Complaint, this provision includes retirement benefits afforded to retired Judges and Justices.

the federal Compensation Clause in *United States v Hatter* (532 US 557 [2001]); (2) the Commission considered "non-salary" benefits such as health insurance in its study, and the Judicial salary increase which occurred six months after the change in contributions cured any violation of the Compensation Clause; (3) the express language of the Compensation Clause renders it inapplicable to the *retired* Justices and Judges; and (4) the John and Mary Doe plaintiffs should be dismissed from this proceeding, as there is no procedure that allows the use of "John Doe" for plaintiffs who are unknown, except in a class action suit, which has not been sought herein.

Defendant contends that the adoption of plaintiffs' theory would lead to absurd, unworkable results if applied to other forms of benefits, such as reimbursement for travel expenses and other fringe benefits, and would prevent the defendant from, for example, switching health insurance plans that increased premiums costs, but lowered co-payments. Plaintiffs' theory also ignores the long history of reductions in the State's contribution rate toward health insurance costs. Further, the duly amended Section § 167.8 enjoys a strong presumption of constitutionality, and plaintiffs cannot establish its unconstitutionality "beyond a reasonable doubt."

In opposition, plaintiffs argue that courts have held that health benefits comprise part of judicial compensation. When defendant reduced its contribution to plaintiffs' health care insurance, it directly increased the cost of plaintiffs' health insurance, and such legislative action has been held by courts in other jurisdictions as a direct reduction in judicial compensation. Further, while case law holds that the Compensation Clause does not prevent lawmakers from enacting generally applicable, non-discriminatory *taxes* on judges' compensation, such case law

is distinguishable as Section 167.8 was imposed by the State as an employer (as opposed to the State as a sovereign), and Section 167.8 does not affect all residents of New York State or all State employees equally.

Further, defendant's reduction is discriminatory and singles out judges. The increased contributions are not borne by all New York State residents, but imposed upon solely New York State employees and retired employees. Nor does Section 167.8 affect all employees of the State of New York. Indeed, plaintiffs did not receive the same benefits that represented State employees received. Thus, Section 167.8 is akin to the "Social Security tax" imposed upon federal judges, previously held to be unconstitutional by the United States Supreme Court in *Hatter*, quoted above. Plaintiffs are unrepresented and ineligible for collective bargaining, and thus, have been discriminated against within their class of State employees.

Additionally, that the Legislature would not take such a measure to punish judges for unpopular decisions is inconsequential. The amendment imposes a new financial obligation on plaintiffs, while simultaneously, bearing no relation to the purpose of the amendment, which was to avoid the layoffs of State employees. The budgetary justification is improper, and unsound, in that Judges comprise less than 1% of the active state employees, and at the time of the negotiations, the Commission had taken into account the ability of the State to pay for the recommended increases. Reverting back to the contribution rate previously in effect is not "unworkable."

Nor does the increase in judicial salaries cure the Constitutional violation. The salary increase was never designed to remedy the reduction in the State's contribution rate. The Commission did not consider the reduction, and was not ever informed of any contemplated

reduction of health benefits applicable to the plaintiffs. It was not until September 27, 2011, after the Commission disbanded, that the Civil Service Department sought to apply the decrease in contributions to those employees excluded from collective bargaining. There is no evidence that the Legislature considered the health insurance increase in its abstaining to modify or reject the Commission's recommendations.

Further, the Compensation Clause mandates that retired judges' compensation cannot be diminished. The phrase "during the term of office for which he or she was elected" contained in the Compensation Clause must be interpreted as the period beginning on the date of a judge's retirement. Otherwise, the inclusion of "a retired judge or justice" would be superfluous.

And, plaintiffs argue, the Complaint sufficiently identified the John and Mary Doe plaintiffs as current and retired Judges and Justices of the Unified Court System, and a class action is unnecessary in a declaratory judgment action. Defendant knows the identity of each John and Mary Doe, and there is no prejudice to allowing the John and Mary Doe plaintiffs to remain in this action.

In reply, defendant argues that plaintiffs misinterpret applicable case law. Also, the State, in acting as the employer, does not provide health insurance to all New Yorkers, and thus, the appropriate class to assess whether the Judges were singled out, is all state employees. Further, Section 167.8 applies to all state employees not subject to a collective bargaining agreement. Even if 25% of the state employees are not subject to the reduced premium contribution rate, the judges are not singled out for disadvantageous treatment. And, the State's proffered justification is consistent with the Compensation Clause objectives.

Further, whether the Commission was unaware of the reduced premium contribution rate

when it made its recommendations is irrelevant; the Legislature was aware of the reduced premium contribution rate when it implemented the judicial salary increase. Thus, any violation was cured by the judicial salary increase.

And, there is no legal authority to support plaintiffs' claim that the "term of office" for a retired judge begins on the date of his or her retirement. Such an interpretation of the Compensation Clause goes beyond its purpose of promoting judicial independence because once a judge retires, he or she is no longer susceptible to influence by the threat of a reduction compensation. Nor is the phrase "term of office" superfluous, as it is intended to protect retired justices who have been appointed for continued service under Judiciary Law §115.

Discussion

The Court begins with the well established principle that in determining a motion to dismiss pursuant to CPLR § 3211(a)(7), the Court's role is ordinarily limited to determining whether the complaint states a cause of action (*Frank v DaimlerChrysler Corp.*, 292 AD2d 118, 741 NYS2d 9 [1st Dept 2002]). The standard on such a motion is not whether the party has artfully drafted the pleading, but whether deeming the pleading to allege whatever can be reasonably implied from its statements, a cause of action can be sustained (*see Stendig, Inc. v Thom Rock Realty Co.*, 163 AD2d 46, 558 NYS2d 917 [1st Dept 1990]; *Leviton Manufacturing Co., Inc. v Blumberg*, 242 AD2d 205, 660 NYS2d 726 [1st Dept 1997]). The pleadings must be liberally construed (*see*, CPLR § 3026), and the court must "accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit into any cognizable legal theory" (*Nonnon v City of New York*, 9 NY3d 825, 842 NYS2d 756 [2007]; *Leon v Martinez*, 84 NY2d 83, 87-88, 614

NYS2d 972 [1994]).

Pursuant to CPLR § 3211(a)(l), a party may move for judgment dismissing one or more causes of action asserted against him on the ground that "a defense is founded upon documentary evidence." A motion to dismiss on the basis of a defense founded upon documentary evidence may be granted "only where the documentary evidence utterly refutes [the complaint's] factual allegations, conclusively establishing a defense as a matter of law" (*DKR Soundshore Oasis Holding Fund Ltd. v Merrill Lynch Intern.*, 80 AD3d 448, 914 NYS2d 145 [1st Dept 2011] *citing Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326, 746 NYS2d 858 [2002]). The test on a CPLR § 3211(a)(1) motion is whether the documentary evidence submitted "conclusively establishes a defense to the asserted claims as a matter of law" *(Scott v Bell Atlantic Corp.*, 282 AD2d 180, 726 NYS2d 60 [1st Dept 2001] *citing Leon v Martinez*, 84 NY2d 83, 88, *supra*; *IMO Indus., Inc. v Anderson Kill & Olick, P.C.*, 267 AD2d 10, 11, 699 NYS2d 43 [1st Dept 1999]). To be considered "documentary," evidence must be unambiguous and of undisputed authenticity (*Fontanetta v Doe*, 73 AD3d 78, 898 NYS2d 569 [2d Dept 2010] *citing* Siegel, Practice Commentaries, McKinney's Cons. Laws of N.Y., Book 7B, CPLR C3211:10, at 21–22; *Philips South Beach, LLC v ZC Specialty Ins. Co.*, 55 AD3d 493, 867 NYS2d 386 [1st Dept 2008]).[7]

Plaintiffs' Complaint essentially challenges the constitutionality of Section § 167.8 as applied to plaintiffs. That it to say, the amendment of Section § 167.8 is better analyzed through

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[7] Defendant's reliance on *LaValle v Hayden* (98 NY2d 155 [2002]) for the proposition that plaintiffs must establish the statute's invalidity "beyond a reasonable doubt," is misplaced. In *LaValle*, the Court of Appeals was faced with addressing the propriety of an order which granted defendants summary judgment dismissing the complaint, where defendant moved for dismissal pursuant to CPLR 3211 and the plaintiff cross moved for summary judgment on its claim that certain provisions in the Education Law were unconstitutional. Here, a motion attacking the sufficiency of the complaint, or premised on a defense based on documentary evidence, does not trigger the much higher standard required of a motion for summary judgment.

a wider lens: the alleged "trumping" of the New York State Constitution.

Article VI, §25, the Compensation Clause, addresses the compensation of the plaintiffs and certain other judicial classifications, whose salaries are specified in Judiciary Law article 7-B (§ 220 *et seq.*).

Article VI, §25 [a] and [b] of the New York State Constitution provides:

> a. The compensation of a judge of the court of appeals, a justice of the supreme court, a judge of the court of claims, a judge of the county court, a judge of the surrogate's court, a judge of the family court, a judge of a court for the city of New York established pursuant to section fifteen of this article, a judge of the district court or of a retired judge or justice shall be established by law and shall not be diminished during the term of office for which he or she was elected or appointed. . . .
>
> b. Each judge of the court of appeals, justice of the supreme court, judge of the court of claims, judge of the county court, judge of the surrogate's court, judge of the family court, judge of a court for the city of New York established pursuant to section fifteen of this article and judge of the district court shall retire on the last day of December in the year in which he or she reaches the age of seventy. Each such former judge of the court of appeals and justice of the supreme court may thereafter perform the duties of a justice of the supreme court, with power to hear and determine actions and proceedings, provided, however, that it shall be certificated in the manner provided by law that the services of such judge or justice are necessary to expedite the business of the court and that he or she is mentally and physically able and competent to perform the full duties of such office. Any such certification shall be valid for a term of two years and may be extended as provided by law for additional terms of two years. A retired judge or justice shall serve no longer than until the last day of December in the year in which he or she reaches the age of seventy-six. A retired judge or justice shall be subject to assignment by the appellate division of the supreme court of the judicial department of his or her residence. Any retired justice of the supreme court who had been designated to and served as a justice of any appellate division immediately preceding his or her reaching the age of seventy shall be eligible for designation by the governor as a temporary or additional justice of the appellate division. A retired judge or justice shall not be counted in determining the number of justices in a judicial district for purposes of subdivision d of section six of this article.

The dual purpose of the Compensation Clause and its federal counterpart[8] is "to promote judicial independence and ensure that the pay of prospective judges, who choose to leave their practices or other legal positions for the bench, will not diminish " (*Matter of Maron v Silver*, 14 NY3d 230, *supra*). As explained by the Supreme Court of the United States, "the federal clause reflects the view that '[n]ext to permanency in office, nothing can contribute more to the independence of the judges than a fixed provision for their support'—a view informed by a long history of abuses by the English crown both in England and the American Colonies" (*Matter of Maron v Silver*, 58 AD3d 102, 109, 871 NYS2d 404 [3d Dept 2008] *citing United States v Hatter*, 532 US 557, 568, 121 SCt 1782, 149 LEd2d 820 [2001], *quoting* Hamilton, Federalist No. 79; and *United States v Will*, 449 US at 218–219, 101 SCt 471; *O'Malley v Woodrough*, 307 US 277, 282, 59 SCt 838, 83 LEd 1289 [1939]).

It is beyond cavil that "compensation" in the context of one's employment constitutes more than mere wages. Indeed, the general consensus among the Courts is that compensation includes wages *and benefits*, including health insurance benefits (*see, Roe v Bd. of Trustees of Village of Bellport*, 65 AD3d 1211, 886 NYS2d 707 [2d Dept 2009] (including as "compensation," "wages *and benefits*" in the context of the protection afforded by the New York State Constitution's separation of powers clause prohibiting a legislative body from reducing the compensation of a judge or justice serving in a constitutional court, and remitting the matter for a

[8] The "state provision is comparable to the Federal Compensation Clause (U.S. Const, art III, § 1) which also contains the same "shall not be diminished" language (*Matter Maron v Silver*, 14 NY3d at 252):

> . . . . The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office."

declaration that a Village resolution "terminating the plaintiff's paid health care benefits is null and void as to the plaintiff during his current term in [judicial] office"); *see also, Syracuse Teachers Ass'n v Board of Ed., Syracuse City School Dist., Syracuse*, 42 AD2d 73, 75, 345 NYS2d 239 [4th Dept 1973], *affd.* 35 NY2d 743, 361 NYS2d 912, 320 NE2d 646 [1974] ["compensation may take the form both of cash wages and 'fringe benefits'"]; *Aeneas McDonald Police Benev Ass'n, Inc. v City of Geneva*, 92 NY2d 326, 703 NE2d 745 [1998] (stating, in the context of mandatory arbitration, that "[h]ealth benefits for current employees can be a form of compensation . . . " and that "health benefits are a form of compensation and a term of employment"); *Walek v Walek*, 193 Misc2d 241, 749 NYS2d 383 [Supreme Court, Erie County 2002] (finding, in the context of determining assets subject to equitable distribution, that the health care benefits component of defendant's retirement plan "represent compensation for past employment services rendered by defendant"); *Kahmann v Reno*, 928 F Supp 1209 [NDNY 1996] (considering, in the context of gross backpay, "wages, bonuses, vacation pay, *and all other elements of reimbursement and fringe benefits such as pension and health insurance*," as "forms of compensation"); *District of Columbia v Greater Washington Bd. of Trade*, 506 US 125, 113 SCt 580 [Dist. Col. 1992] (noting, in the context of workers' compensation benefits, the corresponding reduction in one's weekly wage as a result of the health insurance benefits one receives)). Health benefits are as much compensation, when the benefits are more critical and carry as much weight as the salary itself.

In an analogous case in New Jersey, *DePascale v State of New Jersey* (211 NJ 40, 47 A3d 690 [2012]), the plaintiff, also a judge, challenged on constitutional grounds the State of New Jersey's enactment of the Pension and Health Care Benefits Act ("Chapter 78"), that

required all state employees, including judges, to contribute more towards their state-administered health benefits program. The constitutional provision at issue, similar to the one herein, provided, in Article VI, Section 6, Paragraph 6 of the New Jersey Constitution, that justices and judges "shall receive for their services such salaries as may be provided by law, which shall not be diminished during the term of their appointment" (the "No–Diminution Clause"). Notably, notwithstanding the phrase "salaries" found in New Jersey's No–Diminution Clause, the New Jersey Supreme Court held that Chapter 78 violated the New Jersey Constitution by diminishing the salaries of justices and judges during the terms of their appointments. After pointing out that "[n]o court of last resort—including the United States Supreme Court—has upheld the constitutionality of legislation of this kind," the Court explained that even though Chapter 78 did not discriminate between justices and judges and other public employees, "*the State Constitution did*" (*id.* at 43). "However artfully the State describes the effect of Chapter 78—as either a direct or indirect diminution in salary—it remains, regardless of the wordplay, an unconstitutional diminution." (*id.* at 44).

Likewise, while the amendment herein does not single out judges, the Compensation Clause singly protects judges from overly broad laws that have the direct effect of diminishing their compensation. Here, the diminishment has a unique impact upon the judiciary, not by virtue of any phraseology appearing on the face of the amendment, but by virtue of the fact that it diminishes the compensation the judiciary is guaranteed to receive. As pointed out by *DePascale*, contributions to health insurance benefits which are deducted from a judge's paycheck is directly related to the amount of salary paid to a judge.

It has been held that the Compensation Clause does not guarantee against the downward

effect of inflation on judicial compensation (*Matter of Maron v Silver,* 14 NY3d 230, *supra*), and the failure or neglect of the Legislature to remedy the downward effect of inflation upon judicial compensation does not violate the Compensation Clause. However, the indirect diminishing effect caused by inflation is a far cry from a legislative, affirmative act resulting in the diminishment of health benefits of those whose compensation is guaranteed by the Constitution.

This conclusion is not contradicted by the United States Supreme Court decision in *U.S. v Hatter* (532 US 577, *supra*). In *Hatter*, the Court addressed whether two federal legislative rules violated the federal Compensation Clause: the Medicare tax and special retroactivity-related Social Security rules (the "Social Security tax").

The Medicare tax, *initially* required American workers (whom Social Security covered), *except for federal employees*, to pay an additional tax as "hospital insurance." Congress, believing that federal workers should bear their equitable share of the costs of the benefits they also received, then amended the Medicare tax to extend to all currently employed federal employees and newly hired federal employees, and as such, required all federal judges to contribute a percentage of their salaries to Medicare. The Social Security law, on the other hand, was amended such that 96% of the then-currently employed federal employees were given the option to choose not to participate in Social Security, thereby avoiding any increased financial obligation. However, the remaining 4% were required to participate in Social Security while freeing them of any added financial obligation provided they previously participated in other contributory retirement programs. Thus, of those who could not previously participate in other contributory retirement programs, *i.e.*, federal judges, their financial obligations and payroll deductions were increased.

After holding that the federal Compensation Clause did not "forbid Congress to enact a law imposing a nondiscriminatory tax (including an increase in rates or a change in conditions) upon judges, whether those judges were appointed before or after the tax law in question was enacted or took effect," the Medicare tax was held to be constitutional" (*id.* at 571-572).

However, four aspects of the Social Security tax caused the Supreme Court to find that it discriminated against federal judges "in a manner that the Clause forbids" (*id.* at 572). Based on the class of federal employees to which the Social Security tax applied, the fact that it imposed a new financial obligation upon sitting judges but did not impose a new financial obligation upon any other group of federal employees, that the tax imposed a substantial cost on federal judges with little or no expectation of substantial benefit,[9] and the unsound nature of the government's justification, the Social Security law violated the Compensation Clause.

The State's withdrawal of its contributions which comprise compensation, which is essentially what Section 167.8 as applied to judges accomplishes, stands upon different footing than a nondiscriminatory, generally applied tax imposed *against* the compensation of *all citizens* by the government in its status as a sovereign *(see Robinson v Sullivan*, 905 F 2d 1199 [8th Cir 1990] ("the duty to pay taxes, shared by all citizens, does not diminish judges' compensation *within the meaning of the Compensation Clause.* Likewise, social security retirement insurance benefits are earned and paid as part of a general social welfare plan and not specifically as judicial compensation") (emphasis added).

Further, the increased contributions required by Section 167.8 does not apply to all New

[9] It was noted that participation in Social Security by judges would only benefit a minority of them who had not worked the 40 quarters necessary to be fully insured (*id.* at 573).

York State residents, as was the case with the Medicare tax in *Hatter*. More importantly, while the terms of the agreement giving rise to plaintiffs' increase in contributions were negotiated between the State and the union, *plaintiffs are unrepresented, and not eligible for collective bargaining*, and were, like the judges affected by the Social Security tax in *Hatter, left without a choice and required to contribute*. That the Legislature did not single out judges for special treatment in order to influence them is thus irrelevant (*see Hatter*, 532 US at 577).

Moreover, defendant negotiated its reduction in contributions in order to avoid the layoffs of thousands of State employees, *none of which include judges or justices,* because Judges and Justices are not subject to "layoffs." Thus, the increased cost of health insurance borne by plaintiffs bears no relation to the purpose of the State's reduction in its contributions.

Additionally, defendant points out that only 75% of active State employees are subject to the reduced contribution premium rate. Like the Social Security tax, Section 167.8 imposes an additional financial burden upon judges, who received different treatment than other State employees who were either represented during the collective bargaining negotiations or otherwise exempt from the reduced premium rate.[10]

Therefore, it cannot be said that the plaintiffs failed to state a claim, or that the documentary evidence establishes a defense to the claim, that Section 167.8 violates New York's Compensation Clause as applied to plaintiffs.

The defendant's argument that the violation was cured, lacks merit. It strains credulity to

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[10] While defendant cites caselaw to show that countless similar laws were passed by the Legislature, the caselaw cited did not address the impact of the Legislative decisions upon the judiciary branch and did not address the Compensation Clause in any manner (*see Matter of Retired Pub. Empl. Assoc., Inc. v Cuomo*, 2012 WL 6654067, 2012 NY Slip Op 32979 (U) [Trial Order] Supreme Court, Albany County]).

posit that a 12-year awaited increase should offset an increase to the Judge's contribution toward their health benefits no matter how "minor" the health care contributions. Defendant ignores that the judiciary had not received any wage increase for more than 10 years, which, according to plaintiffs, resulted in a loss of approximately $500 million in their purchasing power since 1999 (Memorandum of Law in Opposition, p. 13, fn. 4). And, the reduction in defendant's contribution rate is not *de minimus*, given the disparity in income judges have faced since 1999, in comparison with their federal counterparts. Nor is there any support in the law for "offset reasoning." As explained by the United States Supreme Court in *Hatter*, "how could we always decide whether a later salary increase terminates a constitutional violation without examining the purpose of that increase?" (*Hatter*, 532 US at 578). Here, the Commission considered several factors in making its final recommendations, including, but not limited to: the overall economic climate; rates of inflation; changes in public-sector spending; the levels of compensation and non-salary *benefits* received by professionals in government, academia and private and nonprofit enterprise; *and the State's ability to fund increases in compensation and non-salary benefits* (Final Report, Page 4). However, there is no indication that the Commission considered or anticipated any decrease in the State's contribution toward the judge's health care benefits in its study. Therefore, it cannot be said that the judicial salary increase "sought 'to make whole the losses sustained" by the State's application of Section 167.8 to the judges (*see, Hatter*, 532 US at 579).

As to dismissal of the action against the retired plaintiffs, it bears repeating that the Compensation Clause expressly protects the compensation of a "retired judge," providing that "the compensation of a judge . . . established pursuant to section fifteen of this article, a judge of

the district court *or of a retired judge or justice* shall be established by law *and shall not be diminished* during the term of office for which he or she was elected or appointed." (Emphasis added).

This Court is well aware that a statute or ordinance is to be construed as a whole, reading all of its parts together to determine the legislative intent and to avoid rendering any of its language superfluous *(Erin Estates, Inc. v McCracken*, 84 AD3d 1487, 921 NYS2d 730 [3d Dept 2011], *citing Friedman v Connecticut Gen. Life Ins. Co.*, 9 NY3d 105, 115, 846 NYS2d 64, 877 NE2d 281 [2007]). "It is an accepted rule that all parts of a statute are intended to be given effect and that a statutory construction which renders one part meaningless should be avoided" (*Rocovich v Consolidated Edison Co.*, 78 NY2d 509, 583 NE2d 932, 577 NYS2d 219 [1991] *citing Matter of Albano v Kirby*, 36 NY2d 526, 530, 330 NE2d 615, 369 NYS2d 655 [1975]).

Initially, defendant moved to dismiss the plaintiffs' Complaint as to the retired justices relying on two sections, Art. VI, §25 [a] and Art. VI, §6 [c], arguing that "[d]uring the term of office" does not apply to retired judges because a justice's term of office ends when he or she retires. Upon such retirement, he/she is no longer to be included in the protection of Compensation Clause's no-diminution guarantee as the justice no longer has a term of office.

Plaintiffs then responded that such an interpretation would render the inclusion of "a retired judge or justice" superfluous.

In reply, defendant then proffered an explanation why the terms "retired judges" and "during their term of office" are not incongruous. Defendant posits that "during the term of office" renders the no-diminution guarantee applicable to those judges who have obtained a two-

year appointment upon certification pursuant to Judiciary Law § 115(1), (2).

To begin, defendant's modified argument with respect to "retired judge" raised for the first time, in reply, is improper. Arguments raised for the first time in reply are not to be considered (*Wal-Mart Stores, Inc. v U.S. Fidelity and Guar. Co.*, 11 AD3d 300, 784 NYS2d 25 [1st Dept 2004]; *Alrobaia ex rel. Severs v Park Lane Mosholu Corp.*, 74 AD3d 403, 902 NYS2d 63 [1st Dept 2010] ("The argument on which the court relied, however, was raised for the first time in defendants' reply papers, and should not have been considered by the court in formulating its decision")). As the First Department explained in *Dannasch v Bifulco* (184 AD2d 415, 417 [1st Dept 1992]): "The function of reply papers is to address arguments made in opposition to the position taken by the movant and not to permit the movant to introduce new arguments in support of, or new grounds for the motion." And, plaintiffs were not given an opportunity to submit a sur-reply (*Apartment Recycle Co. of Manhattan Inc.*, 10 Misc 3d 1066(A), 814 NYS2d 559 (Table) [Supreme Court, New York County 2005] *citing, Fiore v Oakwood Plaza Shopping Center, Inc.*, 164 AD2d 737, 739 [1st Dept], *affd*, 78 NY2d 572 [1991], *cert denied*, 506 US 823 [1992] ("The First Department, however, has carved out a narrow exception to the maxim excluding arguments advanced in a movant's reply papers: where the opposing party 'availed themselves of an opportunity to oppose the claims in their surreply,' the movant's arguments may be considered on their merits")).

For the defendant in reply to now present a "new and improved" explanation of what is meant by "retired" and "during term of office" diminishes the sufficiency of their original position. Second, there is no support offered for this new interpretation. Third, on its face, the language says "retired," and defendant supplied no legislative history to support its interpretation.

Finally, had the Legislature intended to limit the Compensation Clause's guarantee against diminution to retired judges who have been recertified for continued service pursuant to Judiciary Law § 115(1), (2), "it could have chosen to do so through appropriately worded legislation" *(Eaton v New York City Conciliation and Appeals Bd.*, 56 NY2d 340, 437 NE2d 1115 [1982]; *see also* Article VI, §25 (b), *supra*).

Therefore, the basis for dismissal as against the retired judges is unsupported.

However, plaintiffs failed to assert a legally cognizable basis to permit the John and John Doe plaintiffs to remain in the action. CPLR § 1024, entitled "Unknown parties," allows a "party who is ignorant, in whole or in part, of the name or identity of a person who may properly be made a party, [to] proceed *against such person* as an unknown party by designating so much of his name and identity as is known." (Emphasis added). Thus, the use of the John Doe caption is permitted where a party is ignorant of the name or identity of its adversary, a circumstance not present herein. It is also noted that "CPLR 1024 does not govern the separate issue whether a John Doe pseudonym may be used to conceal the plaintiff's identity," which still does not assist the unidentified plaintiffs herein, since the "use of a pseudonym must be reserved for cases in which the matter alleged implicates 'a privacy right so substantial as to outweigh the customary and constitutionally embedded presumption of openness in judicial proceedings," a situation also not present herein (McKinney's CPLR § 1024, Practice Commentaries, by Vincent C. Alexander, *citing "J. Doe No. 1" v CBS Broadcasting Inc.*, 24 AD3d 215, 215, 806 NYS2d 38, 39 [1st Dept 2005]). Nor did plaintiffs request class action status.[11] And, that defendant aware of the names

[11] CPLR § 901 provides:

and addresses of each and every John and Jane Doe is of no moment. There is no basis to permit the caption to remain in its state without a showing of a substantial privacy right or class certification status. Therefore, plaintiffs "John and Mary Does 1-2,000, current and retired Judges and Justices of the Unified Court System of the State of New York" are dismissed from this action, without prejudice.

In conclusion, this Court does not live in an ivory tower, and is fully familiar with the financial crisis that New York, like most of the other states in the Country, is facing. As pointed out by defendant, the State faced a budget deficit of $10 billion for the 2011-2012 year, forcing the Legislature to make difficult choices between preserving jobs or reducing benefits. However, accepting as true the allegations of the Complaint, Section 167.8 constitutes an unconstitutional intrusion as applied to the judiciary, whose compensation is guarded by the Compensation Clause. Finally, it is hoped that this Court's ruling does not signal a green light to the Legislature to revisit pre-Commission levels of judicial compensation or "offset" the impending 2014 scheduled salary increase.

(Footnote 11 continued:)
Prerequisites to a class action
a. One or more members of a class may sue or be sued as representative parties on behalf of all if:
1. the class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable;
2. there are questions of law or fact common to the class which predominate over any questions affecting only individual members;
3. the claims or defenses of the representative parties are typical of the claims or defenses of the class;
4. the representative parties will fairly and adequately protect the interests of the class; and
5. a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

Conclusion

Based on the foregoing, it is hereby

ORDERED that defendant's motion to dismiss the plaintiffs' Complaint on the ground that the Complaint fails to state a cause of action (CPLR § 3211 [a][7], or in the alternative, that its defense is founded upon documentary evidence (CPLR § 3211[a][1]) is denied, except that the John and Mary Does 1-2,000, current and retired Judges and Justices of the Unified Court System of the State of New York are dismissed from this action, without prejudice; and it is further

ORDERED that defendant shall serve a copy of this order with notice of entry upon all plaintiffs within 20 days of entry.

This constitutes the decision and order of the Court.

Dated: May 21, 2013

Hon. Carol Robinson Edmead, J.S.C.

HON. CAROL EDMEAD

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

EILEEN BRANSTEN, Justice of the Supreme Court of the State of New York, PHYLLIS ORLIKOFF FLUG, Justice of the Supreme Court of the State of New York, MARTIN J. SCHULMAN, Justice of the Supreme Court of the State of New York, F. DANA WINSLOW, Justice of the Supreme Court of the State of New York, BETTY OWEN STINSON, Justice of the Supreme Court of the State of New York, MICHAEL J. BRENNAN, Justice of the Supreme Court of the State of New York, ARTHUR M. SCHACK, Justice of the Supreme Court of the State of New York, BARRY SALMAN, Justice of the Supreme Court of the State of New York, JOHN BARONE, Justice of the Supreme Court of the State of New York, ARTHUR G. PITTS, Justice of the Supreme Court of the State of New York, THOMAS D. RAFFAELE, Justice of the Supreme Court of the State of New York, PAUL A. VICTOR, retired Justice of the Supreme Court of the State of New York, JOSEPH GIAMBOI, retired Justice of the Supreme Court of the State of New York, THE ASSOCIATION OF JUSTICES OF THE SUPREME COURT OF THE STATE OF NEW YORK, THE SUPREME COURT JUSTICES ASSOCIATION OF THE CITY OF NEW YORK, INC. AND JOHN AND MARY DOES 1-2000, current and retired Judges and Justices Of the Unified Court System of the State Of New York,

Plaintiffs,

-against-

STATE OF NEW YORK.

Defendant.

Index No. _____

SUMMONS

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your answer, or, if the Complaint is not served with this Summons, to serve a Notice of appearance, on the Plaintiffs attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: New York, New York
December 26, 2012

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

EILEEN BRANSTEN, Justice of the Supreme Court of the State of New York, PHYLLIS ORLIKOFF FLUG, Justice of the Supreme Court of the State of New York, MARTIN J. SCHULMAN, Justice of the Supreme Court of the State of New York, F. DANA WINSLOW, Justice of the Supreme Court of the State of New York, BETTY OWEN STINSON, Justice of the Supreme Court of the State of New York, MICHAEL J. BRENNAN, Justice of the Supreme Court of the State of New York, ARTHUR M. SCHACK, Justice of the Supreme Court of the State of New York, BARRY SALMAN, Justice of the Supreme Court of the State of New York, JOHN BARONE, Justice of the Supreme Court of the State of New York, ARTHUR G. PITTS, Justice of the Supreme Court of the State of New York, THOMAS D. RAFFAELE, Justice of the Supreme Court of the State of New York, PAUL A. VICTOR, retired Justice of the Supreme Court of the State of New York, JOSEPH GIAMBOI, retired Justice of the Supreme Court of the State of New York, THE ASSOCIATION OF JUSTICES OF THE SUPREME COURT OF THE STATE OF NEW YORK, THE SUPREME COURT JUSTICES ASSOCIATION OF THE CITY OF NEW YORK, INC. AND JOHN AND MARY DOES 1-2,000, current and retired Judges and Justices Of the Unified Court System of the State Of New York, Plaintiffs, -against- STATE OF NEW YORK Defendant.	Index No._____ **COMPLAINT**

Plaintiffs Honorable Eileen Branstcn, Honorable Phyllis Orlikoff Flug, Honorable Martin J. Schulman, Honorable F. Dana Winslow, Honorable Betty Owen Stinson, Honorable Michael J. Brennan, Honorable Arthur M. Schack, Honorable Barry Salman, Honorable John Barone,

Honorable Arthur G. Pitts, Honorable Thomas D. Raffaele, Honorable Paul A. Victor and Honorable Joseph Giamboi, current and retired Justices of the Supreme Court of the State of New York, and JOHN AND MARY DOES 1-2,000, current and retired Justices of the Supreme Court of the State of New York (collectively, "Plaintiffs" or "Justices"), as for their complaint herein against Defendant the State of New York (the "Defendant"), respectfully allege as follows:

NATURE OF THE ACTION

1. Plaintiffs bring this action against the State of New York, for a judgment seeking an Order declaring that Defendant violated Article VI, Section 25 of the Constitution of the State of New York, by having adjusted and increased the costs of the health care benefits afforded to current and retired members of the Judiciary of the State of New York and to enjoin Defendant from continuing to take such actions to impose higher premium contribution rates, co-payments, benefits and deductibles for health insurance to any current and/or retired member of the Judiciary of the State of New York.

PARTIES

2. Plaintiff the Honorable Eileen Bransten is a Justice of the Supreme Court of the State of New York, New York County, who was actively employed as such on October 1, 2011.

3. Plaintiff the Honorable Phyllis Orlikoff Flug is a Justice of the Supreme Court of the State of New York, Queens County, who was actively employed as such on October 1, 2011.

4. Plaintiff the Honorable Martin J. Schulman is a Justice of the Supreme Court of the State of New York, Queens County, who was actively employed as such on October 1, 2011.

5. Plaintiff the Honorable F. Dana Winslow is a Justice of the Supreme Court of the State of New York, Nassau County, who was actively employed as such on October 1, 2011.

6. Plaintiff the Honorable Betty Owen Stinson is a Justice of the Supreme Court of the State of New York, Bronx County, who was actively employed as such on October 1, 2011.

7. Plaintiff the Honorable Michael J. Brennan is a Justice of the Supreme Court of the State of New York, Kings County, who was actively employed as such on October 1, 2011.

8. Plaintiff the Honorable Arthur M. Schack is a Justice of the Supreme Court of the State of New York, Kings County, who was actively employed as such on October 1, 2011.

9. Plaintiff the Honorable Barry Salman is a Justice of the Supreme Court of the State of New York, Bronx County, who was actively employed as such on October 1, 2011.

10. Plaintiff the Honorable John Barone is a Justice of the Supreme Court of the State of New York, Bronx County, who was actively employed as such on October 1, 2011.

11. Plaintiff the Honorable Arthur G. Pitts is a Justice of the Supreme Court of the State of New York, Suffolk County, who was actively employed as such on October 1, 2011.

12. Plaintiff the Honorable Thomas D. Raffaele is a Justice of the Supreme Court of the State of New York, Queens County, who was actively employed as such on October 1, 2011.

13. Plaintiff the Honorable Paul A. Victor is a Justice of the Supreme Court of the State of New York, Bronx County, who retired prior to October 1, 2011.

14. Plaintiff the Honorable Joseph Giamboi is a Justice of the Supreme Court of the State of New York, Bronx County, who retired prior to October 1, 2011.

15. Plaintiff The Association of Justices of the Supreme Court of the State of New York is an unincorporated association representing elected Supreme Court Justices of the State of New York.

16. Plaintiff The Supreme Court Justices Association of the City of New York, Inc. is a New York not-for-profit corporation representing elected Supreme Court Justices in the City of New York.

17. Plaintiffs JOHN and MARY DOES 1-2,000, as yet unknown, are current and retired Judges and Justices of the State of New York.

18. Defendant the State of New York is the governmental entity and a State of the United States of America that provides compensation to the Judges and Justices of the Unified Court System of the State of New York.

CLAIM FOR RELIEF

19. Article VI of the New York State Constitution establishes the Judiciary as an independent, co-equal branch of the State's government. The independence of its judges is key to a free and fair government.

20. Article VI, Section 25(a) prescribes a constitutional guarantee that Judicial compensation shall not be diminished. It is the constitutional linchpin for compensating Plaintiffs, whose compensation is specified in Judiciary Law, Article 7-B, Section 220, *et seq.*

21. Under Article VI, Section 25(a) of the New York State Constitution, the State has an absolute duty to establish, fund, and disburse Judicial compensation and not diminish Judicial

compensation, ensuring that Judicial compensation is protected so that the independence of the Judiciary is protected.

22. The Judiciary is an independent and co-equal branch of government which has the inherent power to order the political branches to provide reasonable and necessary resources to comply with the New York State Constitution.

23. The New York State Constitution sets forth provisions relating to compensation for each branch of government in particular Articles for each branch of the government.

24. In August 2011, the Legislature amended Civil Service Law § 167.8 to authorize the president of the Civil Service Commission, with the approval of the State Director of the Budget, to extend the terms of a union agreement modifying health insurance premiums to unrepresented State employees or retirees (Governor's Program Bill, L 2011, c. 491, § 2).

25. The Civil Service Commission sent out a memorandum and flyer notifying the employees of the State of New York designated as Management/Confidential; Legislature, New York State employees represented by Civil Service Employees Association (CSEA), and New York State retirees, vestees and dependent survivors regarding the New York State Health Insurance Program ("NYSHIP") premium rate changes.

26. NYSHIP, established in 1957 and one of the largest public employer health insurance programs in the nation, provides the Judiciary with health insurance.

27. NYSHIP is administered by the New York State Department of Civil Service, which is an agency of the Executive Branch.

28. The services offered by NYSHIP are provided by a network of providers that is managed by the Department of Civil Service.

29. NYSHIP is managed and controlled exclusively by the Executive Branch.

30. On October 1, 2011, the Civil Service Commission, pursuant to the amended Section 168.7, increased Plaintiffs' contributions and the cost of their health insurance premiums pursuant to NYSHIP rate changes.

31. As a result of the actions by Defendant, Plaintiffs have experienced an increase of six percent in their contribution to the cost of their health insurance and increases in other costs, such as co-payments, deductibles, and prescription drug costs.

32. The premium contribution rate for retired Justices increased by two percent. The premium contribution rate for those Justices retiring on or after January 1, 2012, has been increased by six percent.

33. The value of Plaintiffs' compensation has been diminished by Defendant's actions.

34. Pursuant to Article VI, Section 25(a) of the New York State Constitution, Judges and Justices are guaranteed that their compensation shall not be diminished during their term in office.

35. The term compensation encompasses health benefits.

36. Civil Service Law § 167.8 violates Article VI, Section 25(a) of the New York Constitution which provides: "The compensation of a judge ... established pursuant to section

fifteen of this article, a judge of the district court or of a retired judge or justice shall be established by law and shall not be diminished during the term of office for which he or she was elected or appointed." (Emphasis added). This provision includes retirement benefits afforded to retired Judges and Justices.

37. Defendant has increased the premium contribution rate and co-payments for Plaintiffs, thereby unconstitutionally diminishing the value of Plaintiffs' health benefits and thus, their compensation.

38. Defendant has violated its Constitutional obligation to not diminish Plaintiffs' compensation during their term in office. Defendant's actions affecting healthcare benefits have unconstitutionally diminished Plaintiffs' compensation.

39. Plaintiffs are entitled to a judgment declaring that Defendant's increase in healthcare costs as affecting Plaintiffs diminishes Judicial compensation and violates Article VI, Section 25(a) of the New York Constitution, and an order should be entered enjoining Defendant from continuing this unconstitutional conduct.

WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

a. Declaring that L 2011, c. 491, § 2 and the amended Civil Service Law § 167.8. are unconstitutional as applied to the Judges and Justices of the Unified Court System because these statutes diminish the compensation of all such Judges and Justices and, by so doing, unconstitutionally and adversely impact the public and the independence of the Judiciary as established in Article VI, Section 25(a) of the New York Constitution; and

b. For such other relief as may be deemed appropriate to address and redress the constitutional violation of Plaintiffs' rights under the Constitution of the State of New York.

Dated: New York, New York
December 26, 2012

STROOCK & STROOCK & LAVAN LLP

By: /s/ Joseph L. Forstadt

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

EILEEN BRANSTEN, Justice of the Supreme Court of the State of New York, PHYLLIS ORLIKOFF FLUG, Justice of the Supreme Court of the State of New York, MARTIN J. SCHULMAN, Justice of the Supreme Court of the State of New York, F. DANA WINSLOW, Justice of the Supreme Court of the State of New York, BETTY OWEN STINSON, Justice of the Supreme Court of the State of New York, MICHAEL J. BRENNAN, Justice of the Supreme Court of the State of New York, ARTHUR M. SCHACK, Justice of the Supreme Court of the State of New York, BARRY SALMAN, Justice of the Supreme Court of the State of New York, JOHN BARONE, Justice of the Supreme Court of the State of New York, ARTHUR G. PITTS, Justice of the Supreme Court of the State of New York, THOMAS D. RAFFAELE, Justice of the Supreme Court of the State of New York, PAUL A. VICTOR, retired Justice of the Supreme Court of the State of New York, JOSEPH GIAMBOI, retired Justice of the Supreme Court of the State of New York, THE ASSOCIATION OF JUSTICES OF THE SUPREME COURT OF THE STATE OF NEW YORK, THE SUPREME COURT JUSTICES ASSOCIATION OF THE CITY OF NEW YORK, INC. and JOHN AND MARY DOES 1–2000, current and retired Judges and Justices of the Unified Court System of the State of New York,

Plaintiffs,

- against -

STATE OF NEW YORK,

Defendant.

Index No. 159160/2012

NOTICE OF MOTION TO DISMISS

PLEASE TAKE NOTICE that upon the accompanying Affirmation of Garrett Coyle, dated February 22, 2013, the Memorandum of Law in Support of Defendant's Motion to Dismiss, and all other papers filed herein, defendant the State of New York will move to dismiss the complaint under CPLR 3211(a)(1) and (a)(7) before the Motion Support Office of the Supreme Court of the State of New York, in and for New York County, located at 60 Centre Street, Room 130, New York, New York 10013, on April 10, 2013 or such other or further date as may be established by the Court, on the grounds that the complaint fails to state a cause of action or in the alternative that a defense is founded upon documentary evidence.

PLEASE TAKE FURTHER NOTICE that pursuant to the parties' stipulation, answering papers, if any, shall be served by March 22, 2013, and reply papers, if any, shall be served by April 8, 2013.

Dated: New York, New York
February 22, 2013

ERIC T. SCHNEIDERMAN
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Attorney for the State of New York

By: _____
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Memorandum of Law in Support of Defendant's Motion to Dismiss, dated Feb. 22, 2013 (R41-R70)

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

----------X

EILEEN BRANSTEN, Justice of the Supreme Court of the State of New York, PHYLLIS ORLIKOFF FLUG, Justice of the Supreme Court of the State of New York, MARTIN J. SCHULMAN, Justice of the Supreme Court of the State of New York, F. DANA WINSLOW, Justice of the Supreme Court of the State of New York, BETTY OWEN STINSON, Justice of the Supreme Court of the State of New York, MICHAEL J. BRENNAN, Justice of the Supreme Court of the State of New York, ARTHUR M. SCHACK, Justice of the Supreme Court of the State of New York, BARRY SALMAN, Justice of the Supreme Court of the State of New York, JOHN BARONE, Justice of the Supreme Court of the State of New York, ARTHUR G. PITTS, Justice of the Supreme Court of the State of New York, THOMAS D. RAFFAELE, Justice of the Supreme Court of the State of New York, PAUL A. VICTOR, retired Justice of the Supreme Court of the State of New York, JOSEPH GIAMBOI, retired Justice of the Supreme Court of the State of New York, THE ASSOCIATION OF JUSTICES OF THE SUPREME COURT OF THE STATE OF NEW YORK, THE SUPREME COURT JUSTICES ASSOCIATION OF THE CITY OF NEW YORK, INC. and JOHN AND MARY DOES 1–2000, current and retired Judges and Justices of the Unified Court System of the State of New York,

Plaintiffs,

- against -

STATE OF NEW YORK,

Defendant.

----------X

Index No. 159160/2012

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS

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Press Release, Governor's Office, *Governor Cuomo's 2011–12 Executive Budget Provides Transformation Plan for a New New York* (Feb. 1, 2011) 2

Joseph Spector, *N.Y. Counties Share Budget Crisis*, Rochester Democrat and Chronicle, Dec. 30, 2010 3

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Defendant the State of New York respectfully submits this memorandum of law in support of its motion to dismiss the complaint under CPLR 3211(a)(1) and (a)(7).

PRELIMINARY STATEMENT

As part of an effort to address one of the largest budget crises in State history, the Legislature in 2011 negotiated agreements with the major public-sector unions that decreased the percentage the State contributes toward the cost of its employees' health insurance premiums — as relevant here, from 90% to 84% for active employees, and from 90% to 88% for retired employees — with the difference to be paid from their salaries. Simultaneously, under a provision of the Civil Service Law, the State extended those same terms to employees not represented by unions — including Judges, Justices, Legislators, and other public officials.

Now, a group of active and retired Supreme Court Justices brings this action seeking a declaratory judgment that the State's reduced premium contribution rate violates Article VI, Section 25(a) of the State Constitution, which says that the "compensation" of a state court Judge "shall not be diminished during the term of office for which he or she was elected or appointed." That provision, known as the Compensation Clause, protects judicial independence by preventing the Legislature from retaliating against Judges for politically unpopular decisions.

The complaint should be dismissed. It is well settled that the Compensation Clause allows laws that indirectly diminish Judges' take-home pay in a nondiscriminatory manner that does not single out Judges. This is because it is exceedingly implausible that such nondiscriminatory laws reflect the Legislature's attempt to punish Judges for unpopular decisions. Here, the State's reduced premium contribution rate applies on equal terms to the vast majority of state employees — including the Legislators themselves — and does not single out Judges. Therefore, the complaint fails to state a violation of the Compensation Clause.

Moreover, even if the State's reduced premium contribution rate somehow violated the Compensation Clause, that violation was cured when, six months after that reduction took effect, the Legislature enacted a significant pay raise for Judges and Justices. As a result of that pay raise, the plaintiffs' take-home pay is greater now than it was before the challenged reduction to their health insurance premiums took effect.

Additionally, even if the State's reduced premium contribution rate somehow violated the Compensation Clause, and even if the subsequent judicial pay raise did not cure that violation, the retired Justices do not have a cognizable claim under the Compensation Clause, which applies only "during the term of office for which [the Judge] was elected or appointed."

Finally, the claims brought on behalf of 2,000 John and Mary Doe plaintiffs, alleged to be "as yet unknown" Judges, should be dismissed as no recognized procedure permits claims to be brought on behalf of John Doe plaintiffs who are unknown.

FACTUAL BACKGROUND

1. The State Budget Crisis

In the wake of the 2008 worldwide financial crisis, New York, like other states, faced critical budget shortages. *See generally* Full Report of the State Budget Crisis Task Force, July 17, 2012, available at http://www.statebudgetcrisis.org/wpcms/wp-content/images/Report-of-the-State-Budget-Crisis-Task-Force-Full.pdf. Precipitous drops in employment, consumer spending, capital gains, and property values led to sharply lower tax revenues. *See id.* at 8. At the same time, the spike in unemployment and underemployment meant increased utilization of public entitlement programs and safety-net services. *See id.* As a result, as of early 2011, the State faced a projected budget deficit of $10 billion for fiscal year 2011–2012. *See* Press Release, Governor's Office, *Governor Cuomo's 2011–12 Executive Budget Provides Transformation*

Plan for a New New York (Feb. 1, 2011), available at http://www.governor.ny.gov/press/020111transformationplan.

The State sought to address the budget crisis through multiple means. For example, it closed multiple prisons across the State. *See* Thomas Kaplan, *Cuomo Administration Closing 7 Prisons, 2 in New York City*, N.Y. Times, June 30, 2007. It consolidated agencies and slashed their budgets. *See* Donna Kimura, *N.Y. Unveils New Housing Agency*, Affordable Housing Finance, Jan. 1, 2010; Joseph Spector, *N.Y. Counties Share Budget Crisis*, Rochester Democrat and Chronicle, Dec. 30, 2010. And it cut funding for the judiciary by $170 million, resulting in courtrooms closing 30 minutes earlier than usual. *See* John Eligon, *State's Judges Told To Shut Courtrooms Earlier To Cut Costs*, N.Y. Times, Apr. 6, 2011.

2. The Resolution

In addition to those cuts, the State determined that it needed to curb the growth of state spending on state employee salaries and benefits. To that end, in the summer of 2011, the State and the Civil Service Employees Association, the largest union of state employees,[1] reached an agreement: In exchange for avoiding layoffs of thousands of state employees, the union agreed to a three-year salary freeze, an unpaid furlough, and a reduction in the percentage contribution that the State pays towards their health insurance premiums.[2] *See* Nicholas Confessore, *Cuomo Reaches Deal With Union to Avert Layoffs*, N.Y. Times, June 22, 2011; Thomas Kaplan, *State Employees' Union Accepts Wage and Benefits Concessions*, N.Y. Times, Aug. 16, 2011.

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1 CSEA represents approximately one-third (about 62,000) of the State's approximately 186,000 employees. *See* Danny Hakim, *Cuomo Secures Big Givebacks in Union Deal*, N.Y. Times, June 22, 2011.

2 The full agreement is available on the Governor's Office of Employee Relations website. *See State-Union Contracts*, Governor's Office of Employee Relations, Mar. 7, 2012, available at http://www.goer.ny.gov/Labor_Relations/Contracts/index.cfm.

Specifically, the agreement provided that, effective October 1, 2011, the State would reduce its contribution to union employees' health insurance plans by a certain percentage depending on the employee's pay grade. *See* Coyle Aff. Ex. B. For employees with a pay grade of 9 or below (i.e., employees whose base annual salary is $32,653 or less[3]), the State would reduce its contribution from 90% of the premium cost to 88% of the premium cost, with the 2% balance to be paid from the employee's biweekly paycheck. *See id.* For employees with a pay grade of 10 or above, the State would reduce its contribution from 90% of the premium cost to 84% of the premium cost, with the 6% balance to be paid from the employee's biweekly paycheck. *See id.*

Shortly thereafter, the State reached substantially similar agreements with four other public employee unions: the Public Employees Federation AFL-CIO (the second largest union of state employees),[4] the Police Benevolent Association of New York State,[5] Council 82,[6] and the New York State Correction Officers and Benevolent Police Association.[7]

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3 *See Civil Service Employees Association Salary Schedules — 2007–2011*, Governor's Office of Employee Relations, Dec. 29, 2010, available at http://goer.ny.gov/Labor_Relations/CSEA_07-11.cfm.

4 *See* Coyle Aff. Ex. C. The NYS PEF represents approximately 56,000 employees. *See PEF Executive Board Approves Sending Tentative Contract Agreement To Membership*, New York State Public Employees Federation, Aug. 11, 2011, http://www.pef.org/home/2011/8/11/pef-executive-board-approves-sending-tentative-contract-agre.html.

5 *See* Coyle Aff. Ex. D. The PBANYS represents approximately 1,200 employees. *See About the PBA of NYS*, PBA of New York State, http://www.pbanys.org/pba/about-pba-nys/ (last visited Feb. 20, 2013).

6 *See* Coyle Aff. Ex. E. Council 82 represents more than 1,000 employees. *See* Rick Karlin, *Council 82 Members Shoot Down Contract Offer 3 to 1*, Capitol Confidential, May 10, 2011.

7 *See* Coyle Aff. Ex. F. The NYSCOBPA represents approximately 26,000 active and

Not all state employees, however, are represented by a union. Rather than bargaining individually with thousands of unrepresented employees, the State amended the Civil Service Law to allow "[t]he president [of the Civil Service Commission], with the approval of the director of the budget, [to] extend the modified state cost of premium or subscription charges for employees or retirees not subject to" a collective bargaining agreement. Civil Service Law § 167(8); *see also* Compl. ¶ 24. Accordingly, pursuant to Civil Service Law § 167(8), the State extended the terms of the health insurance premium contribution rate change that it had negotiated with the unions to unrepresented Management/Confidential employees and Legislators[8]; Judges, Justices, and employees of the Unified Court System not represented by the Civil Service Employees Association[9]; and retirees.[10] *See* Compl. ¶ 25. That extension took effect on October 1, 2011, the same date it took effect for union employees. *See* Compl. ¶ 30.

At the same time, the co-payment for Judges, Justices, and employees of the Unified

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retired state employees. *See Our Mission*, New York State Correctional Officers & Police Benevolent Association, Inc., http://www.nyscopba.org/mission (last visited Feb. 20, 2013).

8 *See* Coyle Aff. Ex. G. There are approximately 12,000 state employees designated "Management/Confidential." *See Management/Confidential*, Governor's Office of Employee Relations, July 2, 2012, https://www.goer.ny.gov/Labor_Relations/ManagementConfidential/index.cfm.

9 *See* Coyle Aff. Ex. H. The Unified Court System has more than 16,000 employees. *See* Joel Stashenko, *Lippman Is Pick for Chief Judge*, N.Y. Law Journal, Jan. 14, 2009. Fewer than 1,200 of those employees are Judges or Justices. *See Careers*, New York State Unified Court System, http://www.nycourts.gov/careers/ (last accessed Feb. 20, 2013). Judges and Justices are not assigned pay grades, but they are subject to the premium contribution rate of unionized employees with equivalent annual salaries.

10 *See* Coyle Aff. Ex. I. Because of the administrative difficulty of determining the pay grade equivalent of retirees, many of whose salaries changed over the course of their employment with the State, all retirees are subject to the lower 2% reduced contribution rate. *See also* Compl. ¶ 32.

Court System not represented by the Civil Service Employees Association and retirees was eliminated for a number of preventive care services, including recommended adult immunizations from participating providers; certain preventive care and screening for women, children, and adolescents; certain preventative care for men; and other items and services recommended by a federal task force. *See* Coyle Aff. Ex. H at 3; Coyle Aff. Ex. I at 3. And the co-payment for certain prescription drugs was reduced by 50%. *See* Coyle Aff. Ex. H at 6; Coyle Aff. Ex. I at 3.

3. The Judicial Pay Raise

Before the State's reduced premium contribution took effect, the Legislature passed a law creating a Special Commission on Judicial Compensation to study the "adequacy of pay levels and non-salary benefits" of Judges and Justices and to determine whether those "annual salaries . . . warrant adjustment." 2010 N.Y. Laws 567 § 1(a). The Commission's recommendations "have the force of law" unless the Legislature enacts a contrary statute before April 1 of the next year. *Id.* § 1(h).

After considering Judges' and their peers' "levels of compensation" and "non-salary benefits," the Commission's 2011 Final Report recommended an across-the-board judicial salary raise. *See* Coyle Aff. Ex. J. In particular, the Commission recommended that Supreme Court Justices' salaries be increased to match federal district court judges' salaries ($174,000), in three phases: an increase $160,000 on April 1, 2012; to $167,000 on April 1, 2013; and to $174,000 on April 1, 2014. *Id.* at 8–9.

The Commission's recommendations took effect on April 1, 2012. Accordingly, exactly six months after the State reduced its contribution to Judges' (and the vast majority of other state employees') health insurance premiums, it increased Supreme Court Justices' salaries from

$136,700 to $160,000 — an increase of more than seventeen percent. *Id.* at 8.

4. This Action

The plaintiffs — eleven current and two retired Justices of the Supreme Court, two associations, and 2,000 "as yet unknown . . . current and retired Judges and Justices," Compl. ¶¶ 2–17 — filed this action on December 26, 2012.[11]

Their complaint claims that the State's reduced contribution rate to their health insurance premiums, as well as increases in their co-payments, deductibles, and prescription drug costs, violate Article VI, Section 25(a) of the State Constitution. That provision, known as the Compensation Clause, says that the compensation of a Supreme Court Justice (and most other state court Judges) "shall not be diminished during the term of office for which he or she was elected or appointed." Compl. ¶¶ 31, 33, 35–38.

The complaint seeks declaratory relief only — no damages or injunctions — ordering that the State's reduced premium contribution rate under Civil Service Law § 167(8) is unconstitutional.

STANDARD OF REVIEW

A motion to dismiss under CPLR 3211(a)(7) for failure to state a cause of action will be granted if the Court cannot discern a cognizable cause of action from the complaint's factual allegations, taken as true, along with all reasonable inferences in the plaintiffs' favor. *Gertler v. Goodgold*, 107 A.D.2d 481, 485 (1st Dep't 1985), *aff'd*, 66 N.Y.2d 946, 948 (1985). The Court does not, however, consider "bare legal conclusions." *Id.*

As explained below, under that standard, the Court need not look beyond the complaint's factual allegations to conclude that the State's reduced health insurance premium contribution

[11] A copy of the complaint is attached as Exhibit A to the Affirmation of Garrett Coyle.

rate does not violate the Compensation Clause and thus that the complaint should be dismissed. However, to provide the Court with the full contextual background of that challenged reduction, the State is providing the Court with the official health insurance plan documents reflecting that reduction, attached as exhibits to the Affirmation of Garrett Coyle in Support of the State's Motion to Dismiss. *See* Coyle Aff. Exs. B–J. To the extent that the Court wishes to consider these documents, it may treat the State's motion to dismiss as a CPLR 3211(a)(1) motion to dismiss on the ground that a defense is founded upon documentary evidence. *See Jordan Panel Sys., Corp. v. Turner Constr. Co.*, 45 A.D.3d 165, 167 (1st Dep't 2007) (considering term sheet in affirming grant of CPLR 3211(a)(1) motion to dismiss); *Heaney v. Purdy*, 29 N.Y.2d 157, 159 (1971) (considering public records in affirming grant of CPLR 3211(a)(1) motion to dismiss); *see also Fontanetta v. John Doe 1*, 73 A.D.3d 78, 84–86 (2d Dep't 2010) ("[T]o be considered 'documentary,' evidence must be unambiguous and of undisputed authenticity.").

Finally, when (as here) plaintiffs bring a constitutional challenge to a duly enacted law, the law "enjoy[s] a strong presumption of constitutionality." *Levalle v. Hayden*, 98 N.Y.2d 155, 161 (2002). "While the presumption is not irrefutable," the plaintiffs "face the initial burden of demonstrating the statute's invalidity 'beyond a reasonable doubt.'" *Id.* (citations omitted).

ARGUMENT

POINT I

THE STATE'S ACROSS-THE-BOARD REDUCTION OF ITS PERCENTAGE CONTRIBUTION TO THE VAST MAJORITY OF STATE EMPLOYEES' HEALTH INSURANCE PREMIUMS DOES NOT VIOLATE THE COMPENSATION CLAUSE BECAUSE IT DOES NOT SINGLE OUT JUDGES

The plaintiffs claim that the State violated the Compensation Clause when it reduced the percentage it contributes toward their (and the vast majority of other state employees') health insurance premiums, thereby forcing the plaintiffs to pay the difference. But the law is settled

that the Compensation Clause allows laws like this one that indirectly diminish judges' take-home pay in a nondiscriminatory manner that does not single out judges.

A. New York Courts Follow Federal Compensation Clause Case Law

Article VI, § 25(a) of the New York Constitution provides that the compensation of a Judge or Justice "shall be established by law and shall not be diminished during the term of office for which he or she was elected or appointed."

New York's Compensation Clause is "comparable to the Federal Compensation Clause which also contains the same 'shall not be diminished' language," and thus New York courts follow federal Compensation Clause jurisprudence in interpreting New York's Compensation Clause. *Matter of Maron v. Silver*, 14 N.Y.3d 230, 252–54 (2010)[12]; *Black v. Graves*, 12 N.Y.S.2d 785, 786–88 (3d Dep't 1939) (Bliss, J., concurring), *aff'd without opinion*, 281 N.Y. 792 (1939).

B. The Compensation Clause Does Not Exempt Judges From Broadly Applicable, Nondiscriminatory Laws That Indirectly Reduce Their Take-Home Pay

The Compensation Clause protects the independence of the judiciary by preventing the Legislature — which controls the purse strings — from retaliating against judges for politically unpopular decisions. *See United States v. Hatter*, 532 U.S. 557, 568 (2001) (The Compensation Clause "help[s] to secure an independence of mind and spirit necessary if judges are 'to maintain that nice adjustment between individual rights and governmental powers which constitutes political liberty.'") (citation omitted); *id.* at 568 ("Hamilton knew that 'a power over a man's

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12 In *Maron*, the Court of Appeals held that the Legislature's failure to pass a law raising judicial salaries to compensate for inflation was unconstitutional. 14 N.Y.3d at 261. That holding, however, was based on the separation of powers doctrine, not the Compensation Clause, *see id.*, and thus it does not apply here, where the plaintiffs have not challenged the State's reduced contribution to health insurance premiums under the separation of powers doctrine.

subsistence amounts to a power over his will.'") (citation omitted); *Maron*, 14 N.Y.3d at 250 (purpose of New York's Compensation Clause is "to promote judicial independence").

But the Compensation Clause does not exempt judges from nondiscriminatory, broadly applicable laws that have the indirect effect of reducing their take-home pay. *See United States v. Will*, 449 U.S. 200, 227 (1980) ("[T]he Compensation Clause does not erect an absolute ban on all legislation that conceivably could have an adverse effect on compensation of judges."). As the U.S. Supreme Court has explained, "judges are not 'immune from sharing with their fellow citizens the material burden of the government.'" *Hatter*, 532 U.S. at 570–71 (citation omitted) (holding that "the Compensation Clause does not forbid Congress to enact a law imposing a nondiscriminatory tax (including an increase in rates or a change in conditions) upon judges"); *see also id.* at 570 ("'To require a man to pay the taxes that all other men have to pay cannot possibly be made an instrument to attack his independence as a judge.'") (citation omitted); *Maron*, 14 N.Y.3d at 254 ("The evolution of Supreme Court jurisprudence . . . establishes that a nondiscriminatory tax that treats judges the same as other citizens is permissible, but direct diminution of compensation or the discriminatory taxation of judges is not."); *Black*, 12 N.Y.S.2d at 785 (holding that law requiring judges to pay income tax that all other state residents were already subject to did not violate Compensation Clause); *Atkins v. United States*, 556 F.2d 1028, 1045 (Ct. Cl. 1977) ("Indirect, nondiscriminatory diminishments of judicial compensation, those which do not amount to an assault upon the independence of the third branch or any of its members, fall outside the protection of the Compensation Clause . . . .").

C. The State's Reduced Contribution Rate To Judges' and Most Other State Employees' Health Insurance Premiums Does Not Violate the Compensation Clause Because It Is an Indirect Reduction That Does Not Single Out Judges

Here, the State's reduced premium contribution rate is a nondiscriminatory, broadly applicable law that, although it may have the indirect effect of reducing their take-home pay, does not violate the Compensation Clause.

The U.S. Supreme Court employs a two-step inquiry to determine whether a particular law that has the effect of diminishing judges' compensation violates the Compensation Clause. *See Hatter*, 532 U.S. at 569–74.

1. *The State's Reduced Premium Contribution Rate Is an Indirect Reduction*

The first question is whether the challenged law reduces judicial compensation directly or indirectly. Direct reductions — that is, laws that reduce judges' salary directly, rather than by increasing judges' other costs and thereby indirectly reducing their take-home pay — are per se impermissible under the Compensation Clause. *See Hatter*, 532 U.S. at 571 ("We concede that this Court has held that the Legislature cannot *directly* reduce judicial salaries even as part of an equitable effort to reduce *all* Government salaries.") (citing *Will*, 449 U.S. at 226); *see also id.* at 569 (explaining that "ordering a lower salary" for judges would be "direct[]" diminishment prohibited by Compensation Clause).

Indirect reductions, by contrast, do not violate the Compensation Clause unless they "discriminate against judges" — that is, unless they "singl[e] out judges for disadvantageous treatment." *Hatter*, 532 U.S. at 572, 576; *cf. Roe v. Bd. of Trs. of Vill. of Bellport*, 65 A.D.3d 1211, 1211–12 (2d Dep't 2009) (holding that village resolution eliminating single village court justice's health care benefits violated Compensation Clause). Such nondiscriminatory indirect reductions are permissible because "th[e] prophylactic considerations that may justify an

absolute rule forbidding direct salary reductions are absent." *Hatter*, 532 U.S. at 571. As the *Hatter* Court explained, in the context of a nondiscriminatory tax: "In practice, the likelihood that a nondiscriminatory tax represents a disguised legislative effort to influence the judicial will is virtually nonexistent. Hence the potential threats to judicial independence that underlie the Constitution's compensation guarantee cannot justify a special judicial exemption from a commonly shared tax, not even as a preventive measure to counter those threats." 532 U.S. at 571.

Under this principle, adjustments to non-salary benefits are indirect, not direct, reductions in judicial compensation. *See, e.g., Robinson v. Sullivan*, 905 F.2d 1199, 1202 (8th Cir. 1990) (holding that law rescinding federal judge's social security retirement benefits was indirect, rather than direct, reduction in judicial compensation that did not violate Compensation Clause).

Here, the State's reduction of its contribution to Judges' (and Legislators' and most other state employees') health insurance premiums is an indirect reduction.[13] The State does not pay its premium contribution directly to the employee as part of his or her salary. Rather, the State transmits its contribution to NYSHIP, which collects the remaining balance from the employee's

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[13] In addition to the State's reduced contribution to health insurance premiums, the complaint also alleges that other features of the law violate the Compensation Clause: "Defendant has increased the premium contribution rate and co-payments for Plaintiffs, thereby unconstitutionally diminishing the value of Plaintiffs' health benefits and thus, their compensation." Compl. ¶ 35 (emphasis added); *see also* Compl. ¶ 31 (". . . Plaintiffs have experienced . . . increases in other costs, such as co-payments, deductibles, and prescription drug costs."). But those alleged increases in other costs are imposed by the health insurers themselves (i.e., private entities) — not the State. *Maron* held that the Compensation Clause prohibits only diminutions in judicial compensation caused by affirmative actions of the Legislature — not by outside factors. 14 N.Y.3d at 254 (concluding, in summarizing federal Compensation Clause cases, that "it is the diminishment of salary by Congress, be it direct or indirect, that is prohibited") (emphasis added). Thus, these alleged increases in the plaintiffs' other health insurance costs do not violate the Compensation Clause.

salary and then pays the full premium amount to the insurer chosen by the employee. *See* Civil Service Law § 167(1)(a), (3). Hence, when the State reduced its contribution here, it increased the remaining balance that NYSHIP then collected from Judges' (and most other state employees') salaries, only thereby affecting Judges' take-home pay indirectly. And as in *Hatter*, the likelihood that the State's reduced contribution to the vast majority of state employees' — including the Legislators' own — health insurance premiums represents a disguised legislative effort to influence Judges' decisions is "virtually nonexistent." *See* 532 U.S. at 571.

2. *The State's Reduced Premium Contribution Rate Does Not Single Out Judges*

Second, to determine whether an indirect reduction in compensation impermissibly singles out judges or is permissibly nondiscriminatory, the U.S. Supreme Court considers: (1) the number of judges subject to the challenged reduction relative to the number of non-judges subject to the reduction, *see Hatter*, 532 U.S. at 572–73; (2) whether the judges subject to the new financial obligation can expect to receive any benefits in return, *see id.* at 573; and (3) whether the Legislature's expressed justification for subjecting judges to the reduction is inconsistent with the Compensation Clause's objectives. *Hatter*, 532 U.S. at 574.

Hatter, which addressed two separate laws that indirectly reduced judges' take-home pay, illustrates the difference between indirect reductions that impermissibly single out judges and those that are permissibly nondiscriminatory. The Court held that a law extending the Social Security tax to a group of federal employees consisting almost solely of federal judges, most of whom were already eligible for Social Security benefits, impermissibly singled out judges and therefore violated the Compensation Clause. 532 U.S. at 562–64, 572–76. But the Court held that a law extending the Medicare tax on equal terms to all federal employees — including federal judges — was nondiscriminatory and thus did not violate the Compensation Clause. *Id.*

at 561–62, 572.

Here, the State's reduced contribution to all public employees' health insurance premiums does not single out Judges and thus does not violate the Compensation Clause.

First, the State's reduced health insurance premium rate contribution applies on equal terms to the vast majority of state employees — only a tiny fraction of whom are Judges. Of the State's approximately 186,000 active employees, well over 75% are subject to the reduced premium contribution rate challenged here. *See* nn. 1–2, 4–9, *supra*. Of those subject to the reduced contribution rate, less than one percent (approximately 1,200) are Judges or Justices. *See* n.9, *supra*. Thus, the State's reduced contribution rate is much more like the Medicare tax upheld in *Hatter*, which applied to all federal employees, only a small fraction of whom were judges, than the Social Security tax struck down in *Hatter*, which applied almost solely to judges. *See Hatter*, 532 U.S. at 561–64. And as with the Medicare tax in *Hatter*, it is exceedingly implausible that the Legislature here would have used such a blunt instrument — cutting its contribution to the health insurance premiums of well over 100,000 non-judge state employees, including the Legislators themselves — as a surreptitious way to punish Judges for unpopular decisions. *See Hatter*, 532 U.S. at 571.

Second, the Judges and other state employees subject to the reduction receive substantial benefits in return. The co-payment was eliminated for a number of preventive care services, including recommended adult immunizations from participating providers; certain preventive care and screening for women, children, and adolescents; certain preventative care for men; and other items and services recommended by a federal task force. *See* Coyle Aff. Ex. H at 3. And the co-payment for certain prescription drugs was reduced by 50%. *Compare* Coyle Aff. Ex. K at 6 ($10 co-payment for 31- to 90-day supply of generic drugs from participating retail

pharmacy) *with* Coyle Aff. Ex. H at 3 ($5 co-payment for 31- to 90-day supply of generic drugs from designated specialty pharmacy). By giving Judges these benefits in return for the six percent greater contribution they pay toward their premiums, the law here is unlike the Social Security tax struck down in *Hatter*, which "imposed a substantial cost on . . . judges with little or no expectation of substantial benefit for most of them." *See* 532 U.S. at 561–62, 573.

Third, the Legislature's justification for the reduction — ameliorating a statewide budget crisis — is fully consistent with the Compensation Clause's objectives. Unlike the Social Security tax struck down in *Hatter*, which sought to impose a statutory disadvantage solely on judges to offset their constitutionally guaranteed advantage, 532 U.S. at 574–75, the health insurance premium reduction at issue here sought to reduce the State's expenditures on employee benefits across the board in an effort to address the budget crisis without cutting essential government services or raising taxes during an economic recession. No aspect of the reduction sought to offset Judges' constitutionally guaranteed advantage vis-à-vis other state employees.

Thus, under governing case law, because the State's reduced health insurance premium rate contribution does not single out Judges, it does not violate the Compensation Clause.

D. The Plaintiffs' Theory Would Lead To Absurd Results, Does Not Yield a Workable Rule, and Is Inconsistent With Historical Practice

That conclusion is further bolstered by three additional considerations. First, the theory of the Compensation Clause underlying the plaintiffs' complaint would lead to absurd results if applied to other benefits. It implies, for example, that if the State subsidized food prices at a courthouse cafeteria open to all courthouse employees (including Judges), it would be unconstitutional for the State to decrease the size of that subsidy because doing so would increase Judges' food costs and thereby decrease their take-home pay. Similarly, the plaintiffs' theory implies that if the State reimbursed state employees (including Judges) for work-related

travel at a particular mileage rate, it would be unconstitutional for the State to decrease that reimbursement rate — even if, for example, gas prices fell — because doing so would increase Judges' transportation costs and thereby decrease their take-home pay. Adopting the plaintiffs' theory would constitutionalize scores of fringe benefits that the State must be able to administer in a flexible, responsive manner across a large bureaucracy.

Second, even within the realm of health insurance benefits, the plaintiffs' theory is not conducive to any judicially administrable rule for distinguishing between permissible and prohibited changes. As the complaint points out, the cost of health insurance is not one-dimensional; it entails premiums, co-payments (for both in-network and out-of-network services), deductibles, prescription drug costs, durable medical equipment costs, etc. *See* Compl. ¶ 31. Under the plaintiffs' theory, would the Compensation Clause forbid the State from switching Judges' health insurance plan to one with higher premiums but lower co-payments? Or to a plan with lower premiums but higher deductibles? A plan with lower in-network co-payments but higher out-of-network co-payments? The lack of a workable rule further counsels against adopting the plaintiffs' novel theory.

Third, the plaintiffs' theory ignores historical practice and could call into question countless laws passed by the Legislature. To take one example, in 1983, the Legislature reduced its contribution rate from 100% of state employees' (including Judges' and Justices') health insurance premiums to 90%, with the 10% balance being deducted from the employees' paychecks. *See Matter of Retired Pub. Emps. Ass'n, Inc. v. Cuomo*, Index No. 7586/2011, 2012 N.Y. Misc. LEXIS 5714, at *2 (Sup. Ct. Albany Cnty. Dec. 17, 2012); Civil Service Law § 167(1)(a). To take a second example, the annual deductible for the Empire Plan increased from $185 for calendar year 2004, to $225 beginning in calendar year 2005, to $250 beginning in

calendar year 2010. *Compare* Coyle Aff. Ex. L at 1 *with* Coyle Aff. Ex. K at 3 *and* Coyle Aff. Ex. M at 2. To take a third example, the Empire Plan co-payment for a 30-day supply of non-preferred brand-name prescription drugs increased from $30 to $40 on July 1, 2008. *Compare* Coyle Aff. Ex. K at 6 *with* Coyle Aff. Ex. N at 2. Thus, the plaintiffs' theory could call into question decades of practice, which further counsels against adopting it. *Cf. Cnty. of Allegheny v. ACLU*, 492 U.S. 573, 670 (1989) (Kennedy, J., concurring in the judgment in part and dissenting in part) ("A test for implementing the protections of the Establishment Clause that, if applied with consistency, would invalidate longstanding traditions cannot be a proper reading of the Clause.").

Therefore, because the plaintiffs' theory would lead to absurd results, does not yield a workable rule, and is inconsistent with historical practice, and because (as explained above) the State's reduced premium contribution rate does not single out Judges, the complaint fails to state a cause of action and should be dismissed.

E. Compensation Clause Case Law From Other States Is Distinguishable, and In Any Event, Not Binding in New York

In an attempt to avoid this conclusion, the plaintiffs are likely to rely heavily on *DePascale v. State*, 211 N.J. 40 (2012), which held that New Jersey's constitutional clause barring diminutions in judicial salaries prohibited the state from increasing judges' and other state employees' mandatory contributions to their health insurance premiums and pensions. But any such reliance would be misplaced.

DePascale is distinguishable on two grounds. First, the law at issue in *DePascale* not only reduced the State's contribution to judges' health insurance premiums, but also — unlike here — required judges to contribute more (significantly more) to their pensions without increasing their pension benefits. *See* 211 N.J. at 42. Second, the law at issue in *DePascale*

reduced the State's contribution to judges' health insurance premiums by a dramatically larger amount than the law at issue here — meaning a more than 100% increase in judges' health care contributions, which, when coupled with the more than 400% mandatory increase in judges' pension contributions, resulted in a more than ten percent decline in judges' take-home pay. *See* 211 N.J. at 42–43. Unsurprisingly, the New Jersey Supreme Court found that such a large cut to judges' take-home pay presented a real and substantial threat to judicial independence. *Id.* at 43–44. Here, by contrast, the State's reduced contribution to Judges' health insurance premiums has allegedly resulted in only a "six percent [increase] in their contribution to the cost of their health insurance."[14] Compl. ¶ 31 (emphasis added).

In any event, *DePascale* is a New Jersey case interpreting New Jersey's constitution and thus is not binding on this Court. And even on its own terms, *DePascale*'s persuasive authority is limited because it misreads *Hatter* as allowing no reductions at all — direct or indirect — to judicial take-home pay except "taxes that are borne by all citizens." *See* 211 N.J. at 59. If the *Hatter* Court had intended such a bright-line rule, it would have had no occasion to consider the three factors (explained above, *see supra* at 13) for distinguishing between indirect reductions in compensation that impermissibly single out judges and those that are permissibly nondiscriminatory. *See Hatter*, 532 U.S. at 571–74. Thus, because *DePascale* does not follow *Hatter*'s reasoning, it lacks persuasive authority here.

Therefore, *DePascale* does not change the conclusion that the State's reduced contribution to the vast majority of public employees' health insurance premiums is permissible

[14] It bears emphasizing that a six percent increase in the cost of health insurance does not mean a six percent reduction in take-home pay. Rather, as a matter of arithmetic, because health insurance premiums are only a fraction of Justices' salaries, the effect of a six percent reduction in the State's premium contribution rate on their take-home pay is a fraction of six percent.

under the Compensation Clause. The complaint should be dismissed.

POINT II

EVEN IF THE STATE'S REDUCED PREMIUM CONTRIBUTION RATE VIOLATED THE COMPENSATION CLAUSE, THE SUBSTANTIALLY LARGER JUDICIAL SALARY INCREASE SIX MONTHS LATER CURED THAT VIOLATION

Even if the reduction in the rate that the State pays toward the health insurance premiums of Judges and most other state employees violated the Compensation Clause — and, as explained above, it did not — that violation was cured when the Legislature raised judicial salaries by a significantly larger amount six months later. The plaintiffs' claim is therefore moot.

The challenged law reducing the State's premium contribution rate by six percent for Justices and two percent for retired Justices took effect on October 1, 2011. *See* Compl. ¶ 30; *see also* Coyle Aff. Ex. H at 1.

Exactly six months later, on April 1, 2012, the Special Commission on Judicial Compensation's recommendation that the State raise judicial salaries was implemented. *See* Coyle Aff. Ex. J at 5, 6, 8, 9. That raise increased the salaries of Supreme Court Justices by more than seventeen percent — from $136,700 to $160,000.[15] *Id.* at 8–9.

As a result, any constitutional violation ended when the Legislature increased the salaries of Judges and Justices by an amount greater than the amount of the health insurance premium rate reduction.

It is true, as the plaintiffs will likely argue, that a subsequent increase in judicial salaries does not automatically cure a prior reduction that discriminated against judges. Rather, for a subsequent increase to cure a prior discriminatory reduction, one of the Legislature's purposes

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[15] Two further salary increases are scheduled to take effect on April 1, 2013 (increasing the salary of a Supreme Court Justice to $167,000) and April 1, 2014 (to $174,000). *See* Coyle Aff. Ex. J at 9.

for the subsequent increase must be to remedy the prior discriminatory reduction. *See Hatter*, 532 U.S. at 578–80. Otherwise, the Legislature could reduce the salaries of one group of judges and then later increase the salaries of all judges by a greater amount, leaving the targeted group at a permanent disadvantage — precisely the type of harm that the Compensation Clause aims to prevent. *See id.* at 578–79.

Here, however, health insurance costs were considered when the Legislature authorized the judicial pay raise six months after the premium contribution rate reduction. In deciding the appropriate salaries for Judges, the Final Report of the Special Commission on Judicial Compensation considered not only the "levels of compensation" of Judges and their peers in other professions, but also the "non-salary benefits," including health insurance. *See* Coyle Aff. Ex. J at 4. After considering those factors, the Commission recommended that Justices' salaries should be increased by seventeen percent. *Id.* at 8.

Moreover, unlike the troublesome hypothetical posed by the *Hatter* Court, this is not a case in which the Legislature used a subsequent salary increase for all Judges as a backhanded way to perpetuate lower salaries for one disfavored group of Judges. *See Hatter*, 532 U.S. at 578–79. Rather, here, after reducing its premium contribution rate for all Judges (as well as most other state employees), the State then increased all of their salaries across the board by a significantly greater amount.

Thus, even if the State's premium contribution rate reduction violated the Compensation Clause, the judicial salary increase six months later — which raised Judges' take-home pay above what it was before the reduced premium contribution rate took effect — cured that violation, mooting the plaintiffs' claim. On this alternative ground, the complaint should be dismissed.

POINT III

THE COMPENSATION CLAUSE DOES NOT APPLY TO RETIRED JUDGES AND JUSTICES

The complaint also claims that the State's reduced contribution rate to retired Justices' health insurance premiums violates the Compensation Clause. Even if that reduction were not an indirect, nondiscriminatory reduction permitted by the Compensation Clause (and, as explained above, *see supra* at pp. 8–19, it was), and even if the subsequent salary increase did not moot the plaintiffs' claim (and, as explained above, *see supra* at pp. 19–20, it did), the claim on behalf of retired Justices is foreclosed by the plain language of the Compensation Clause and by New York case law.

The Compensation Clause states that the compensation of a judge or Justice "shall be established by law and shall not be diminished during the term of office for which he or she was elected or appointed." N.Y. Const. art. VI, § 25(a) (emphasis added). A Supreme Court Justice's term is "fourteen years from and including the first day of January next after [his or her] election," N.Y. Const. art. VI, § 6(c), subject to the limit that he or she "shall retire on the last day of December in the year in which he or she reaches the age of seventy," N.Y. Const. art. VI, § 25(b).

Under the plain language of these constitutional provisions, a Justice's "term of office" ends when he or she retires, and thus he or she is no longer covered by the Compensation Clause's no-diminution guarantee.

That conclusion makes eminent sense in light of the Compensation Clause's purpose. The Compensation Clause exists to protect judicial independence by ensuring that judges are not pressured to decide cases in a particular way out of fear that if they do not, the Legislature may retaliate by reducing their salary. *See Hatter*, 532 U.S. at 568–69; *Maron*, 14 N.Y.3d at 250.

But once Justices retire, they are no longer deciding cases and thus their decisions can no longer be influenced by the threat of a reduction in compensation.

Accordingly, New York courts have held that the Compensation Clause does not apply to retired Judges and Justices. In *Suttlehan v. Town of New Windsor*, 953 N.Y.S.2d 278 (2d Dep't 2012), the Second Department held that there was no Compensation Clause violation when a town revoked the fully paid lifetime medical benefits it had awarded to a sitting town justice[16] effective upon his retirement because "the resolution addressed the prospective reduction of a municipal official's health benefits only after his or her retirement, not the reduction in the salary or benefits of a justice during his or her term in office." *Id.* at 279 (citing cases).

Suttlehan is on all fours with this case. There, as here, the law provided a certain level of health care benefits for sitting Justices upon their retirement. 953 N.Y.S.2d at 279; Compl. ¶¶ 25, 30, 32. There, as here, those health care benefits were reduced after the Justices had retired. 953 N.Y.S.2d at 279; Compl. ¶¶ 13–14, 30. But there, as here, the reduction did not violate the Compensation Clause because it took effect "only after his or her retirement, not . . . during his or her term in office." 953 N.Y.S.2d at 279. Indeed, if the complete elimination of health care benefits in *Suttlehan* was permissible under the Compensation Clause, then *a fortiori* the much smaller two percent reduction here is permissible. *Compare* 953 N.Y.S.2d at 279 *with* Compl. ¶ 32.

Thus, the State's reduced premium contribution rate for retired Justices does not violate the Compensation Clause. The claim on behalf of the retired Justices should be dismissed.

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[16] Though not explicitly named in Article VI, § 25(a) of the Constitution, town justices are covered by the Compensation Clause's protections during their term of office to the same extent as Supreme Court Justices. *See, e.g., Catanise v. Fayette*, 148 A.D.2d 210, 211–13 (4th Dep't 1989).

POINT IV

IN ALL EVENTS, THE JOHN AND MARY DOE PLAINTIFFS SHOULD BE DISMISSED

Finally, the complaint's attempt to sue on behalf of 2,000 John and Mary Does — "as yet unknown . . . current and retired Judges and Justices," Compl. ¶ 17 — accords with no procedure recognized by New York law and is unfair to both the unknown Judges and to the State.

While John Doe filings are unremarkable when used to preserve a plaintiff's anonymity, *see generally Doe v. Stegall*, 653 F.2d 180, 185–86 (5th Cir. 1981), no recognized New York procedure allows for the use of John Doe filings on behalf of plaintiffs who are "unknown." Compl. ¶ 17.

Doing so would be unfair to the John Does once their identities become known. Their rights stand to be finally adjudicated without their knowledge or ability to participate in the case.

Doing so would also be unfair to the State. If the identities of the John and Mary Does are not determined before the conclusion of this litigation, the State confronts a "heads you lose, tails play again" situation. If the plaintiffs prevail in this action, all Judges and Justices not explicitly named can come forward and identify themselves as the unknown John Does and take advantage of the favorable judgment. If, on the other hand, the plaintiffs lose here, all Judges and Justices not explicitly named in this action can claim that they were not the unknown John Does and then bring their own actions, since as non-parties to this action they would not be bound by the judgment. *See Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 329–30 & n.12 (1979).

If the plaintiffs wish to litigate the claims of other unknown individuals, the proper procedural method is a class action, *see* CPLR §§ 901–09, which affords the unnamed individuals notice and an opportunity to opt out of the class, *see* CPLR § 904, and which affords

the State a final judgment against all class members, *see* CPLR § 905.

Thus, the John and Mary Does should be dismissed from this action.

CONCLUSION

For these reasons, the complaint fails to state a cause of action and should be dismissed.

Dated: New York, New
February 22, 2013

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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EILEEN BRANSTEN, Justice of the Supreme Court of the State of New York, PHYLLIS ORLIKOFF FLUG, Justice of the Supreme Court of the State of New York, MARTIN J. SCHULMAN, Justice of the Supreme Court of the State of New York, F. DANA WINSLOW, Justice of the Supreme Court of the State of New York, BETTY OWEN STINSON, Justice of the Supreme Court of the State of New York, MICHAEL J. BRENNAN, Justice of the Supreme Court of the State of New York, ARTHUR M. SCHACK, Justice of the Supreme Court of the State of New York, BARRY SALMAN, Justice of the Supreme Court of the State of New York, JOHN BARONE, Justice of the Supreme Court of the State of New York, ARTHUR G. PITTS, Justice of the Supreme Court of the State of New York, THOMAS D. RAFFAELE, Justice of the Supreme Court of the State of New York, PAUL A. VICTOR, retired Justice of the Supreme Court of the State of New York, JOSEPH GIAMBOI, retired Justice of the Supreme Court of the State of New York, THE ASSOCIATION OF JUSTICES OF THE SUPREME COURT OF THE STATE OF NEW YORK, THE SUPREME COURT JUSTICES ASSOCIATION OF THE CITY OF NEW YORK, INC. and JOHN AND MARY DOES 1–2000, current and retired Judges and Justices of the Unified Court System of the State of New York,

Plaintiffs,

- against -

STATE OF NEW YORK,

Defendant.

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Index No. 159160/2012

AFFIRMATION OF GARRETT COYLE

GARRETT COYLE, an attorney admitted to practice in the State of New York, affirms under penalty of perjury:

1. I am an Assistant Attorney General in the Office of the New York State Attorney General, assigned to the defense of the above matter on behalf of the defendant, the State of New York, and am fully familiar with the facts and circumstances relating thereto and with the matters raised herein. I make this affirmation in support of the State's motion to dismiss the complaint under CPLR 3211(a)(7) for failure to state a cause of action.

2. Attached to this affirmation are true and correct copies of the following documents:

Exhibit A	Complaint, *Braunstein et al. v. State of New York*, Sup. Ct. N.Y. Cnty., Index No. 159160/2012 (filed December 26, 2012)
Exhibit B	Empire Plan Special Report for Employees of the State of New York represented by Civil Service Employees Association, Aug. 2011, available at http://www.cs.ny.gov/ebd/ebdonlinecenter/reports/11eprs/August2011_CSEA_special_EPR.pdf
Exhibit C	Empire Plan Special Report for Employees of the State of New York represented by Public Employees Federation, Nov. 2011, available at http://www.cs.ny.gov/ebd/ebdonlinecenter/reports/11eprs/November2011_PEF_special_EPR.pdf
Exhibit D	Empire Plan Report for Employees of the State of New York in the Agency Police Services Unit (APSU) who are represented by PBANYS, Apr. 2012, available at http://www.cs.ny.gov/ebd/ebdonlinecenter/reports/12eprs/April2012_APSU_EPR.pdf
Exhibit E	Empire Plan Report for Employees of the State of New York represented by Council 82, June 2012, available at http://www.cs.ny.gov/ebd/ebdonlinecenter/reports/12eprs/June2012_C82_EPR.pdf
Exhibit F	Empire Plan Special Report for Employees of the State of New York in Law Enforcement represented by the New York State Correction Officers and Police Benevolent Association, May 2012,

available at
http://www.cs.ny.gov/ebd/ebdonlinecenter/reports/12eprs/May2012_NYSCOPBA_LE_EPR.pdf

Exhibit G — Empire Plan Special Report for Employees of the State of New York designated Management/Confidential; Legislature, Aug. 2011, available at
http://www.cs.ny.gov/ebd/ebdonlinecenter/reports/11eprs/August2011_MC_special_EPR.pdf

Exhibit H — Empire Plan Special Report for Employees of the Unified Court System of the State of New York represented by Unions other than CSEA, Nov. 2011, available at
http://www.cs.ny.gov/ebd/ebdonlinecenter/reports/11eprs/November2011_UCS_special_EPR.pdf

Exhibit I — Empire Plan Special Report for New York State Retirees, Vestees and Dependent Survivors, Aug. 2011, available at
http://www.cs.ny.gov/ebd/ebdonlinecenter/reports/11eprs/August2011_RET_special_EPR.pdf

Exhibit J — Final Report of the Special Commission on Judicial Compensation, Aug. 29, 2011, available at
http://www.judicialcompensation.ny.gov/assets/FinalReportSpecialCommissionJD.pdf

Exhibit K — Empire Plan Report for Judges, Justices and Nonjudicial Employees of the Unified Court System, Nov. 2004, available at
http://www.cs.ny.gov/ebd/ebdonlinecenter/pdf_archive/ucs/ep/nov04epr.pdf

Exhibit L — Empire Plan Report for Judges, Justices and Nonjudicial Employees of the Unified Court System, Jan. 2004, available at
http://www.cs.ny.gov/ebd/ebdonlinecenter/pdf_archive/ucs/ep/jan04epr.pdf

Exhibit M — Empire Plan Report for Judges, Justices and Nonjudicial Employees of the Unified Court System, Jan. 2010, available at
http://www.cs.ny.gov/ebd/ebdonlinecenter/reports/10eprs/Jan2010_UCS_EPR.pdf

Exhibit N — Empire Plan Report for Judges, Justices and Nonjudicial Employees of the Unified Court System, July 2008, available at
http://www.cs.ny.gov/ebd/ebdonlinecenter/pdf_archive/ucs/ep/ucs_july08epr.pdf

Dated: February 22, 2013
New York, New York

Garrett Coyle

August 2011

New York State Health Insurance Program (NYSHIP) for Employees of the State of New York represented by Civil Service Employees Association (CSEA), their enrolled Dependents, COBRA Enrollees with their Empire Plan Benefits and Young Adult Option Enrollees

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1 Negotiated Changes
2 NYSHIP Changes
3 Federal Health Care Changes
3-5 October 1, 2011 Benefit Changes
6 Q & A
7-8 Copayment Chart

See pages 7 and 8 for a complete list of your 2011 copayments.

Negotiated Changes Effective October 1, 2011

This Report describes changes affecting your NYSHIP coverage that will take effect on October 1, 2011 as the result of the recently ratified contract between the State of New York and CSEA. These changes include:

NYSHIP Changes

- A change in the NYSHIP premium cost sharing between the State and its employees (see page 2)
- Updated life expectancy tables used to calculate the value of your monthly sick leave credit, which is applied to your health insurance premium in retirement (see page 2)

Empire Plan Changes

- Federal health care changes (see page 3)
- Copayment changes (see page 3)
- Changes to the Empire Plan Prescription Drug Program, including implementation of a Flexible Formulary and a Specialty Drug Program

Other negotiated changes have an effective date of January 1, 2012, including the addition of independent nurse practitioners and convenient care clinics as participating providers, the health insurance opt-out option and changes to out-of-network deductible and coinsurance amounts. Information about these negotiated changes will be provided later in the fall in the NYSHIP Annual Option Transfer Period materials and *At A Glance*.

Special Option Transfer Period in September

As the result of the negotiated changes, there will be a Special Option Transfer Period during the month of September. You will have the opportunity to change your NYSHIP option for October 2011.

Your cost of coverage under The Empire Plan or a NYSHIP HMO for October 1 through the end of 2011 will be posted on the Department web site https://www.cs.ny.gov no later than August 31, 2011. A rate flyer also will be mailed to your home on or before that date. The web site and the rate flyer will provide details of the special option transfer period.

Continued on page 2

Continued from page 1

Annual Option Transfer Period for 2012

The annual option transfer will be held, as usual, at the end of the year with changes effective for the 2012 plan year. There also will be NYSHIP rate changes for 2012. You will begin receiving information regarding the Annual Option Transfer Period in the fall. Rates for 2012 will be posted online and mailed to you as soon as they are approved.

NYSHIP Changes

Your Biweekly Premium Contribution Rate

New York State helps pay for your health insurance coverage. After the State's contribution, you are responsible for paying the balance of your premium through biweekly deductions from your paycheck. Effective October 1, 2011, your share of the cost is changing, based upon your pay grade level as shown below.

Pay Grade	Individual Coverage		Dependent Coverage	
	State Share	Employee Share	State Share	Employee Share
Grade 9 and below	88%	12%	73%	27%
Grade 10 and above	84%	16%	69%	31%

Note: This information does not apply to COBRA enrollees or Young Adult Option enrollees. These enrollees will have a rate change however, as a result of negotiated benefit changes.

Updated Life Expectancy Table

As part of your negotiated changes, effective October 1, 2011, the Actuarial Table of Life Expectancy (shown below) has been updated to reflect the fact that we Americans are living longer. This will impact the monthly sick leave credit amount that you use toward your premium payments in retirement. Since we are living longer, the number of months of life expectancy at retirement has increased and the amount of monthly sick leave credit will be lower.

Actuarial Table
Effective for Retirements on or after October 1, 2011

Age at Retirement	Life Expectancy	Age at Retirement	Life Expectancy
55	337 months	64	250 months
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58	307 months	67	223 months
59	297 months	68	214 months
60	288 months	69	205 months
61	278 months	70	197 months
62	269 months	Etc.	
63	259 months		

If you need actuarial rates for additional retirement ages, ask your agency Health Benefits Administrator.

Federal Health Care Changes

The Federal Patient Protection and Affordable Care Act (PPACA), which will be referred to as "the Act" in this article and throughout this *Empire Plan Special Report*, requires that we make several changes to your Empire Plan coverage.

The Empire Plan benefit package negotiated for employees represented by the Civil Service Employees Association (CSEA) will lose grandfathered status under PPACA, effective on October 1, 2011. This means that CSEA's Empire Plan benefits will become a nongrandfathered plan and will include all changes required by the Act according to the Act's timetable.

The Act requires the following changes effective on October 1, 2011:

Adult immunizations as recommended by the Federal Centers for Disease Control will not be subject to copayment when administered by a participating provider.

The Act requires coverage of certain preventive care services received at a network hospital or from a participating provider to be paid at 100 percent (not subject to copayment). Preventive care services covered under the Act with no copayment include:

- Immunizations as recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention,
- Preventive care and screenings for women, infants, children and adolescents as stated in guidelines supported by the Health Resources and Services Administration,
- Preventive care and screenings for men in the current recommendations of the United States Preventive Services Task Force,
- Items or services that have a rating of "A" or "B" in the current recommendations of the United States Preventive Services Task Force.

For further information on preventive services, see The Empire Plan Preventive Care Coverage Chart at the New York State Department of Civil Service web site at https://www.cs.ny.gov. Select Benefit Programs then NYSHIP Online. At the home page choose your group, if applicable then Using Your Benefits. Choose Publications and you will find the chart under Empire Plan or visit www.healthcare.gov.

Also, in a medical emergency, non-participating provider charges in a hospital emergency room will be considered under the Basic Medical Program subject to deductible, but not coinsurance.

October 1, 2011 Benefit Changes

Copayment Changes

Participating Provider Program

$20 Copayment – Office Visit/Office Surgery, Radiology/Diagnostic Laboratory Tests, Free-Standing Cardiac Rehabilitation Center Visit, Urgent Care Visit

Chiropractic Treatment or Physical Therapy Services (Managed Physical Medicine Program)

$20 Copayment – Office Visit, Radiology, Diagnostic Laboratory Tests

Hospital Services (Hospital Program)

$20 Copayment – Outpatient Physical Therapy

Mental Health and Substance Abuse Program

$20 Copayment – Visit to Outpatient Substance Abuse Treatment Program

$20 Copayment – Visit to Mental Health Practitioner

Prescription Drug Program

When you fill your Prescription for a covered drug for up to a **30-day supply at a Network Pharmacy, Mail Service Pharmacy or the designated Specialty Pharmacy,** your Copayment is:

- **$5** for most **Generic** Drugs or other Level 1 Drugs
- **$25** for a **Preferred** Drug, Compound Drug or a Level 2 Drug
- **$45** for a **Non-Preferred** Drug, or a Level 3 Drug

When you fill your Prescription for a **31- to 90-day supply at a Network Pharmacy,** your Copayment is:

- **$10** for most **Generic** Drugs or other Level 1 Drugs
- **$50** for a **Preferred** Drug, Compound Drug or a Level 2 Drug
- **$90** for a **Non-Preferred** Drug or a Level 3 Drug

When you fill your Prescription for a **31- to 90-day supply through the Mail Service Pharmacy or the designated Specialty Pharmacy,** your Copayment is:

- **$5** for most **Generic** Drugs or other Level 1 Drugs
- **$50** for a **Preferred** Drug, Compound Drug or a Level 2 Drug
- **$90** for a **Non-Preferred** Drug or a Level 3 Drug

Continued on page 4

Empire Plan Adopts Flexible Formulary for CSEA

Effective October 1, 2011, your benefits under The Empire Plan Prescription Drug Program are based on a flexible formulary. The 2011 Empire Plan Flexible Formulary drug list provides enrollees and the Plan with the best value in prescription drug spending. This is accomplished by:

- Excluding coverage for certain brand-name or generic drugs, if the drug has no clinical advantage over other covered medications in the same therapeutic class;
- Placing a brand-name drug on Level 1 or excluding or placing a generic drug on Level 3, subject to the appropriate copayment. These placements may be revised mid-year when such changes are advantageous to The Empire Plan. Enrollees will be notified in advance of such changes.
- Applying the highest copayment to non-preferred brand-name drugs that provide no clinical advantage over two or more Level 1 drug alternatives in the same therapeutic class. This may result in no Level 2 brand-name drugs.

The main features of The Empire Plan 2011 Flexible Formulary are:

- *New Copayment levels.*
- *Certain drugs will be excluded from coverage.* If a drug is excluded, therapeutic brand-name and/or generic equivalents will be covered.

Updates to the 2011 Empire Plan Flexible Formulary drug list, including the availability of certain drugs, are posted on the New York State Department of Civil Service web site at https://www.cs.ny.gov. Select Benefit Programs then NYSHIP Online. At the home page choose your group, if applicable then What's New and scroll down to Prescription Drugs: Prescription Drug Program – Changes to the Drug Lists and Notification of Safety Issues. The most current list of Prior Authorization Drugs and Excluded Drugs are shown in the articles below and on page 5.

Specialty Pharmacy Program

Effective October 1, 2011, The Empire Plan will include a Specialty Pharmacy Program to your prescription drug coverage. This Program will offer enhanced services to individuals using specialty drugs and change how you obtain those drugs under the Prescription Drug Program. Most specialty drugs will only be covered when dispensed by The Empire Plan's designated specialty pharmacy, Accredo Health Group, Inc., a subsidiary of Medco.

Accredo was selected to administer this Program because of its proven experience with providing services that help promote superior clinical outcomes. Accredo will ensure that specialty medications are utilized based on U.S. Food and Drug Administration (FDA) and best practice guidelines.

Specialty drugs are used to treat complex conditions and illnesses, such as cancer, growth hormone deficiency, hemophilia, hepatitis C, immune deficiency, multiple sclerosis and rheumatoid arthritis. These drugs usually require special handling, special administration, or intensive patient monitoring. Medications used to treat diabetes are **not** considered specialty medications. When Accredo dispenses a specialty medication, the applicable mail service copayment will be charged.

The Program will provide enrollees with enhanced services including: disease and drug education, compliance management, side-effect management, safety management, expedited, scheduled delivery of your medications at no additional charge, refill reminder calls and all necessary supplies such as needles and syringes applicable to the medication.

Enrollees currently taking drugs included in this Program will receive a letter, prior to October 1, 2011, describing the Program in more detail. When enrollees begin therapy on one of the drugs included in the Program, a letter will be sent describing the Program and any action necessary to participate in it.

The complete list of specialty drugs included in the Specialty Pharmacy Program is available on the New York State Department of Civil Service web site at https://www.cs.ny.gov. Select Benefit Programs then NYSHIP Online. At the homepage choose your group, if applicable, then Find a Provider. Scroll down to Prescription Drug Program and select Specialty Pharmacy Program. Each of these drugs can be ordered through the Specialty Pharmacy Program using the Medco Pharmacy mail order form sent to the following address:

Medco Pharmacy
P.O. Box 6500
Cincinnati, OH 45201-6500

To request mail service envelopes, refills or to speak to a specialty-trained pharmacist or nurse regarding the Specialty Pharmacy Program, call The Empire Plan toll free at 1-877-7-NYSHIP (1-877-769-7447) between 8 A.M. and 8 P.M. Monday-Friday, choose The Empire Plan Prescription Drug Program, and ask to speak with Accredo.

Prior Authorization Drugs

Effective October 1, the list of prior authorization drugs will also change. The following is a list of drugs (including generic equivalents) that require prior authorization: Actemra, Adcirca, Amevive, Ampyra, Aranesp, Avonex, Betaseron, Botox, Cimzia, Copaxone, Dysport, Egrifta, Enbrel, Epogen/Procrit, Flolan, Forteo, Gilenya, Growth Hormones, Humira, Immune

Globulins, Increlex, Infergen, Intron-A, Iplex, Kineret, Kuvan, Lamisil, Letairis, Makena, Myobloc, Nuvigil, Orencia, Pegasys, Peg-Intron, Provigil, Rebif, Remicade, Remodulin, Revatio, Ribavirin, Simponi, Sporanox, Stelara, Synagis, Tracleer, Tysabri, Tyvaso, Veletri, Ventavis, Weight Loss Drugs, Xeomin, Xolair and Xyrem.

Excluded Drugs

The following are excluded from coverage under the 2011 Empire Plan Flexible Formulary drug list: Acuvail, Adoxa, Amrix, Aplenzin, Asacol HD, BenzEFoam, Caduet, carisoprodol 250, Clobex Shampoo, Coreg CR, cyclobenzaprine hydrochloride extended release capsule (generic Amrix), Detrol LA, Dexilant, Doryx, doxycycline hyclate delayed release tablet (generic Doryx), doxycycline monohydrate 150 mg capsule (generic Adoxa), Edluar, Epiduo, Extavia, Flector, Genotropin (except for the treatment of growth failure due to Prader-Willi syndrome or Small for Gestational Age), Humatrope (except for the treatment of growth failure due to SHOX deficiency or Small for Gestational Age), lansoprazole, Metozolv ODT, Momexin Kit, Naprelan, Neobenz Micro, Nexium, Norditropin (except for the treatment of short stature associated with Noonan syndrome or Small for Gestational Age), Olux/Olux-E Complete Pack, omeprazole/sodium bicarbonate capsule (generic Zegerid), Omnitrope (except for the treatment of growth failure due to Prader-Willi Syndrome or Small for Gestational Age), Prevacid Capsule, Requip XL, Ryzolt, Soma 250, Terbinex, Treximet, Triaz, Twynsta, Veramyst, Xopenex Inhalation Solution, Zegerid capsule, Ziana and Zipsor.

The Plan reviews the drug list yearly for additional exclusions and level placement of medications. If you have been taking one or more of the medications that has changed coverage status or copayment level, you will receive a letter informing you of this change. You may want to discuss an alternative medication with your doctor that will result in your using a covered drug and/or paying a lower copayment. See the printed copy of the Flexible Formulary drug list in the center of this *Empire Plan Special Report* or visit the New York State Department of Civil Service web site at https://www.cs.ny.gov, select Benefit Programs, then NYSHIP Online and choose your group, if prompted. Alphabetic and therapeutic class versions of the 2011 Flexible Formulary are available under the Using Your Benefits button.

Instant Rebates for omeprazole (generic Prilosec) and doxycycline

For a limited time only, The Empire Plan Prescription Drug Program will offer an instant rebate of your full copayment for omeprazole (generic Prilosec) in substitution for your previous prescription for lansoprazole (generic Prevacid) or Nexium and doxycycline in place of doxycycline hyclate, which are excluded under the Flexible Formulary.

The instant rebates will apply to all omeprazole and doxycycline prescriptions filled at participating retail pharmacies or at a mail service pharmacy between October 1, 2011 and January 31, 2012. To receive your rebate (zero copayment), simply present your prescription to your retail pharmacy or send it to the mail service pharmacy. After January 31, 2012, you will pay the applicable generic copayment ($5 or $10) for subsequent refills. If you have questions about this rebate or your drug benefit, call 1-877-7-NYSHIP (1-877-769-7447) and choose The Empire Plan Prescription Drug Program.

The Empire Plan Special Report is published by the Employee Benefits Division of the New York State Department of Civil Service. The Employee Benefits Division administers the New York State Health Insurance Program (NYSHIP). NYSHIP provides your health insurance benefits through The Empire Plan.

NYSHIP
New York State Health Insurance Program

New York State
Department of Civil Service
Employee Benefits Division
Albany, New York 12239

518-457-5754 or
1-800-833-4344
(U.S., Canada, Puerto Rico, Virgin Islands)
https://www.cs.ny.gov

Q & As About The Empire Plan Flexible Formulary

Q. Why are some medications being excluded?

A. Certain drugs are being excluded under The Empire Plan Prescription Drug Program so that we can continue to provide the best value in prescription drug coverage to all enrollees under the Plan. Whenever a prescription drug is excluded, therapeutic brand and/or generic equivalents will be covered.

Q. Why is Nexium excluded from the 2011 Empire Plan Flexible Formulary?

A. Independent studies conducted by Consumer Reports, the Oregon Health Resources Commission, and AARP, to name a few, have found that there is little clinical difference in efficacy or adverse effects in the class of prescription drugs that Nexium belongs to - proton pump inhibitors (PPIs). There is, however, a significant difference in the cost. The 2011 Empire Plan Flexible Formulary continues to cover generic and other PPIs that provide the best value to the Plan.

Q. How will my local pharmacist know my drug is excluded?

A. Your local participating pharmacist will receive a message when your claim is processed that will advise the drug is not covered under The Empire Plan. If you choose to fill the prescription, you will be responsible for paying the full cost of the drug; The Empire Plan will not reimburse you for any portion of the cost.

Q. How will my physician know that my drug is excluded?

A. The 2011 Flexible Formulary drug list was sent to all participating physicians in The Empire Plan Network. Additionally, if your physician utilizes an online method of prescribing known as E-Prescribing, a message will be displayed indicating that the drug is not covered.

Q. Where can I find lower cost alternatives to the drug I am taking?

A. Suggested generic and/or preferred drug equivalents are listed on the last page of the Flexible Formulary drug list. We recommend that you talk with your physician to identify which medication is appropriate to treat your condition

Q. What will happen if I send a new prescription or request a refill from Medco Pharmacy for an excluded drug?

A. If you call in a refill of an excluded drug through a mail service pharmacy, the customer service representative or interactive voice response system will advise you that the drug is excluded, and your order will be canceled. If you mail in a refill order, you will receive a letter indicating your drug is no longer covered under the Plan. If you mail in a new prescription for an excluded drug, the mail service pharmacy will return the prescription along with a letter advising that the drug is excluded from Empire Plan coverage and can no longer be dispensed.

Q. Can I appeal a drug exclusion or copayment level placement?

A. No. Drug exclusions and level placements are a component of your benefit plan design and cannot be appealed.

Q. How do I change to one of the preferred medications on The Empire Plan Flexible Formulary? Will I need a new prescription?

A. Yes, you will need a new prescription. If you are almost out of medication, you can request that your retail pharmacist call your physician for a new prescription of a generic or preferred drug. If you use a mail service pharmacy, the mail service pharmacy will assist you with obtaining a new prescription. Please call 1-877-7-NYSHIP (1-877-769-7447) and choose The Empire Plan Prescription Drug Program for assistance.

October 1, 2011 Empire Plan Copayments

for Employees of New York State represented by CSEA

Services by Empire Plan Participating Providers

You pay only your copayment when you choose Empire Plan Participating Providers for covered services. Check your directory for Participating Providers in your geographic area, or ask your provider. For Empire Plan Participating Providers in other areas and to check a provider's current status, call the Medical Program at 1-877-7-NYSHIP (1-877-769-7447) toll free or use the Participating Provider Directory on the internet at https://www.cs.ny.gov.

Office Visit $20

Office Surgery $20

(If there are both an Office Visit charge and an Office Surgery charge by a Participating Provider in a single visit, **only one** copayment will apply, in addition to any copayment due for Radiology/Laboratory Tests.)

Radiology, Single or Series;
Diagnostic Laboratory Tests $20

(If Outpatient Radiology and Outpatient Diagnostic Laboratory Tests are charged by a Participating Provider during a single visit, **only one** copayment will apply, in addition to any copayment due for Office Visit/Office Surgery.)

Adult Immunizations ..... No copayment
(Herpes Zoster (Shingles) Vaccine for enrollees ages 55-59 ..... $20)

Allergen Immunotherapy ..... No copayment

Mammography, according to guidelines ..... No copayment

Well-Child Office Visit, including
Routine Pediatric Immunizations ..... No copayment

Prenatal Visits and Six-Week
Check-Up after Delivery ..... No copayment

Chemotherapy, Radiation Therapy,
Dialysis ..... No copayment

Authorized care at
Infertility Center of Excellence ..... No copayment

Hospital-based Cardiac
Rehabilitation Center ..... No copayment

Anesthesiology, Radiology, Pathology in connection with inpatient or outpatient network
hospital services ..... No copayment

Free-standing Cardiac Rehabilitation Center visit $20

Urgent Care Center $20

Contraceptive Drugs and Devices when
dispensed in a doctor's office $20
(in addition to any copayment(s) due for Office Visit/Office Surgery and Radiology/Laboratory Tests)

Outpatient Surgical Locations (including Anesthesiology and same-day pre-operative testing done at the center) $30

Medically appropriate professional
ambulance transportation $35

Chiropractic Treatment or Physical Therapy Services by Managed Physical Network (MPN) Providers

You pay only your copayment when you choose MPN network providers for covered services. To find an MPN network provider, ask the provider directly, or call the Medical Program at 1-877-7-NYSHIP (1-877-769-7447) toll free.
Internet: https://www.cs.ny.gov.

Office Visit $20

Radiology; Diagnostic Laboratory Tests $20

(If Radiology and Laboratory Tests are charged by an MPN network provider during a single visit, only one copayment will apply, in addition to any copayment due for Office Visit.)

Network Hospital Outpatient Department Services

Surgery $40*

Diagnostic Laboratory Tests $30*

Diagnostic Radiology $30*

Administration of Desferal for Cooley's Anemia $30*

Physical Therapy (following related surgery or hospitalization) $20

Chemotherapy,
Radiation Therapy, Dialysis ..... No copayment

Preadmission Testing/Presurgical Testing
prior to inpatient admission ..... No copayment

Hospital Outpatient Department Services

Emergency Care $60*

(The $60 hospital outpatient copayment covers use of the facility for Emergency Room Care, including services of the attending emergency room physician and providers who administer or interpret radiological exams, laboratory tests, electrocardiogram and pathology services.)

*__Only one__ copayment per visit will apply for all covered hospital outpatient services rendered during that visit. The copayment covers the outpatient facility. Provider services may be billed separately. You will not have to pay the facility copayment if you are treated in the outpatient department of a hospital and it becomes necessary for the hospital to admit you, at that time, as an inpatient.

Be sure to follow **Benefits Management Program** requirements for hospital admissions, skilled nursing facility admission and Magnetic Resonance Imaging (MRI), Magnetic Resonance Angiography (MRA), Computerized Tomography (CT), Positron Emission Tomography (PET) scan or nuclear medicine tests.

Continued on page 8

New York State
Department of Civil Service
Employee Benefits Division
P.O. Box 1068
Schenectady, New York 12301-1068
https://www.cs.ny.gov

CHANGE SERVICE REQUESTED

Please do not send mail or correspondence to the return address. See address information on page 5.

SAVE THIS DOCUMENT

NYSHIP
New York State Health Insurance Program

Information for the Enrollee, Enrolled Spouse/ Domestic Partner and Other Enrolled Dependents

CSEA Empire Plan Special Report – August 2011

Empire Plan Copayments, continued

Mental Health and Substance Abuse Services by Network Providers When You Are Referred by UnitedHealthcare

Call the Mental Health and Substance Abuse Program at 1-877-7-NYSHIP (1-877-769-7447) toll free before beginning treatment.

Visit to Outpatient Substance Abuse Treatment Program	$20
Visit to Mental Health Professional	$20
Psychiatric Second Opinion when precertified	No copayment
Mental Health Crisis Intervention (three visits)	No copayment
Inpatient	No copayment

Empire Plan Prescription Drugs

(Only **one copayment** applies for up to a 90-day supply.)

Up to a 30-day supply from a participating retail pharmacy, the Mail Service Pharmacy or the designated Specialty Pharmacy

Level 1 or most Generic Drugs	$5
Level 2 or Preferred Drug	$25
Level 3 or Non-Preferred Drug	$45**

31- to 90-day supply from a participating retail pharmacy

Level 1 or most Generic Drugs	$10
Level 2 or Preferred Drug	$50
Level 3 or Non-Preferred Drug	$90**

31- to 90-day supply through the Mail Service Pharmacy or the designated Specialty Pharmacy

Level 1 or most Generic Drugs	$5
Level 2 or Preferred Drug	$50
Level 3 or Non-Preferred Drug	$90**

** If you choose to purchase a brand-name drug that has a generic equivalent, you pay the non-preferred brand-name copayment plus the difference in cost between the brand-name drug and its generic equivalent (with some exceptions), not to exceed the full cost of the drug.

November 2011

New York State Health Insurance Program (NYSHIP)
For Employees of the State of New York represented by Public Employees Federation (PEF), their enrolled Dependents, COBRA Enrollees with their Empire Plan Benefits and Young Adult Option Enrollees

In This Report

1 Negotiated Changes
2 NYSHIP Changes
3 Federal Health Care Changes; December 1, 2011, Benefit Changes

Negotiated Changes Effective October 1 and December 1, 2011

This Report describes changes affecting your NYSHIP coverage that will take effect on October 1 and December 1, 2011, as a result of the recently ratified contract between the State of New York and PEF. They include:

October 1, 2011 Changes

- A change in the NYSHIP premium cost sharing between the State and its employees (see page 2)
- Federal health care changes (see page 3)

December 1, 2011 Changes

- Updated life expectancy tables used to calculate the value of your monthly sick leave credit, which is applied to your health insurance premium in retirement (see page 2)
- Copayment changes (see page 3)

Other negotiated changes have an effective date of January 1, 2012, including the addition of independent nurse practitioners and convenient care clinics as participating providers, the health insurance opt-out option and changes to out-of-network deductible and coinsurance amounts. Information about these negotiated changes will be provided later in the fall in the NYSHIP Annual Option Transfer Period materials and *At A Glance*.

Special Option Transfer Period (November 4 – December 5)

As the result of the negotiated changes, there will be a Special Option Transfer Period from November 4 through December 5, 2011. You will have the opportunity to change your NYSHIP option for December 2011.

Your cost of coverage under The Empire Plan or a NYSHIP HMO for December 1 will be posted on the Department web site https://www.cs.ny.gov no later than November 4, 2011. A rate flyer also will be mailed to your home. The web site and the rate flyer will provide details of the special option transfer period.

Continued on page 2

THE EMPIRE PLAN

Continued from page 1

Annual Option Transfer Period for 2012

The Annual Option Transfer Period will be held, as usual, at the end of the year with changes effective for the 2012 plan year. There also will be NYSHIP rate changes for 2012. You will begin receiving information regarding the Annual Option Transfer Period in the late fall. Rates for 2012 will be posted online and mailed to you as soon as they are approved.

NYSHIP Changes

Your Premium Contribution Percentage

New York State helps pay for your health insurance coverage. After the State's contribution, you are responsible for paying the balance of your premium through biweekly deductions from your paycheck. The cost of your NYSHIP coverage for December will reflect the new contribution percentage below. The retroactive increase in the cost of your NYSHIP coverage for October and November 2011 will be included in your premium contributions for the six biweekly paychecks beginning with the check dated December 29, 2011, for the Institutional payroll and the check dated January 4, 2012, for the Administrative payroll. Once the six biweekly adjustments are taken, your health insurance premium deduction amount will return to the 2012 premium contribution rate. (See the 2012 rate flyer for details.)

Retroactive to October 1, 2011, your share of the cost is changing, based upon your pay grade level as shown below.

Pay Grade	Individual Coverage		Dependent Coverage	
	State Share	Employee Share	State Share	Employee Share
Grade 9 and below	88%	12%	73%	27%
Grade 10 and above	84%	16%	69%	31%

Note: This information does not apply to COBRA enrollees or Young Adult Option enrollees. These enrollees will have a rate change however, as a result of negotiated benefit changes.

Updated Life Expectancy Table

As part of these changes, effective December 1, 2011, the Actuarial Table of Life Expectancy (shown below) has been updated to reflect the fact that we Americans are living longer. This will impact the monthly sick leave credit amount that you use toward your premium payments in retirement. Since we are living longer, the number of months of life expectancy at retirement has increased and the amount of monthly sick leave credit will be lower.

Actuarial Table
Effective for Retirements on or after December 1, 2011

Age at Retirement	Life Expectancy	Age at Retirement	Life Expectancy
55	337 months	64	250 months
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63	259 months		

If you need actuarial rates for additional retirement ages, ask your agency Health Benefits Administrator.

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The Federal Patient Protection and Affordable Care Act (PPACA), which will be referred to as "the Act" in this article and throughout this *Empire Plan Special Report*, requires that we make several changes to your Empire Plan coverage.

The Empire Plan benefit package negotiated for employees represented by the Public Employees Federation (PEF) loses grandfathered status under PPACA, effective on October 1, 2011. This means that your Empire Plan benefits are a nongrandfathered plan and include all changes required by the Act according to the Act's timetable.

The Act requires the following changes effective on October 1, 2011:

Adult immunizations as recommended by the Federal Centers for Disease Control will not be subject to copayment when administered by a participating provider.

The Act requires coverage of certain preventive care services received at a network hospital or from a participating provider to be paid at 100 percent (not subject to copayment). Preventive care services covered under the Act with no copayment include:

- Immunizations as recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention,
- Preventive care and screenings for women, infants, children and adolescents as stated in guidelines supported by the Health Resources and Services Administration,
- Preventive care and screenings for men in the current recommendations of the United States Preventive Services Task Force,
- Items or services that have a rating of "A" or "B" in the current recommendations of the United States Preventive Services Task Force.

For further information on preventive services, see The Empire Plan Preventive Care Coverage Chart at the New York State Department of Civil Service web site at https://www.cs.ny.gov. Select Benefit Programs then NYSHIP Online. At the home page choose your group, if applicable then Using Your Benefits. Choose Publications and you will find the chart under Empire Plan or visit www.healthcare.gov.

Also, in a medical emergency, non-participating provider charges in a hospital emergency room will be considered under the Basic Medical Program subject to deductible, but not coinsurance.

December 1, 2011 Benefit Changes

Prescription Drug Program

Your benefits under The Empire Plan Prescription Drug Program are based on a Flexible Formulary that provides enrollees and the Plan with the best value in prescription drug spending. Currently, a brand-name drug may be placed on Level 1, subject to the lowest copayment. Effective December 1, 2011, a generic drug may be excluded from coverage or placed on Level 3, subject to the applicable copayment. These placements may be revised mid-year when such changes are advantageous to The Empire Plan. Enrollees will be notified in advance of such changes.

Copayment Changes

When you fill your Prescription for a covered drug for up to a **30-day supply at a Network Pharmacy, Mail Service Pharmacy or the designated Specialty Pharmacy,** your Copayment is:

- **$5** for most **Generic** Drugs or Level 1 Drugs
- **$25** for **Preferred** Drugs, Compound Drugs or Level 2 Drugs
- **$45** for **Non-Preferred** Drugs, or Level 3 Drugs

When you fill your Prescription for a **31- to 90-day supply at a Network Pharmacy,** your Copayment is:

- **$10** for most **Generic** Drugs or Level 1 Drugs
- **$50** for **Preferred** Drugs, Compound Drugs or Level 2 Drugs
- **$90** for **Non-Preferred** Drugs or Level 3 Drugs

When you fill your Prescription for a **31- to 90-day supply through the Mail Service Pharmacy or the designated Specialty Pharmacy,** your Copayment is:

- **$5** for most **Generic** Drugs or Level 1 Drugs
- **$50** for **Preferred** Drugs, Compound Drugs or Level 2 Drugs
- **$90** for **Non-Preferred** Drugs or Level 3 Drugs

New York State
Department of Civil Service
Employee Benefits Division
P.O. Box 1068
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https://www.cs.ny.gov

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NYSHIP
New York State Health Insurance Program

Information for the Enrollee, Enrolled Spouse/ Domestic Partner and Other Enrolled Dependents

PEF Empire Plan Special Report - November 2011

It is the policy of the New York State Department of Civil Service to provide reasonable accommodation to ensure effective communication of information in benefits publications to individuals with disabilities. These publications are also available on the Department of Civil Service web site (https://www.cs.ny.gov). Click on Benefit Programs, then NYSHIP Online for timely information that meets universal accessibility standards adopted by New York State for NYS agency web sites. If you need an auxiliary aid or service to make benefits information available to you, please contact your agency Health Benefits Administrator. New York State and Participating Employer Retirees and COBRA Enrollees: Contact the Employee Benefits Division at 518-457-5754 or 1-800-833-4344 (U.S., Canada, Puerto Rico, Virgin Islands).

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The Empire Plan Special Report is published by the Employee Benefits Division of the New York State Department of Civil Service. The Employee Benefits Division administers the New York State Health Insurance Program (NYSHIP). NYSHIP provides your health insurance benefits through The Empire Plan.

NYSHIP
New York State Health Insurance Program

New York State
Department of Civil Service
Employee Benefits Division
Albany, New York 12239

518-457-5754 or 1-800-833-4344
(U.S., Canada, Puerto Rico,
Virgin Islands)
https://www.cs.ny.gov

EMPIRE PLAN REPORT

April 2012

New York State Health Insurance Program (NYSHIP)
For Employees of the State of New York in the Agency Police Services Unit (APSU) who are represented by PBANYS
and for their enrolled Dependents, COBRA Enrollees with their Empire Plan Benefits and Young Adult Option Enrollees

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20 Annual Mastectomy Notice

Negotiated Changes Effective October 1, 2011 and April 1, 2012

This Report describes changes affecting your NYSHIP coverage that have effective dates of October 1, 2011 and April 1, 2012 as a result of the recently ratified contract between the State of New York and PBANYS. They include:

October 1, 2011 Changes

- Federal health care changes (see page 6)
- A change in the NYSHIP premium cost sharing between the State and its employees (see page 2)

April 1, 2012 Changes

- Updated life expectancy tables used to calculate the value of your monthly sick leave credit which is applied to your health insurance premium in retirement (see page 2)
- The Health Insurance Opt-out Program (see pages 3-4)
- Copayment changes (see page 7)
- Changes to out-of-network deductible and coinsurance amounts (see page 8)
- Addition of Convenience Care Clinics and Licensed Nurse Practitioners as Participating Providers (see pages 9 and 10)
- Changes to The Empire Plan Prescription Drug Program, including implementation of a Flexible Formulary and a Specialty Drug Program (see page 14)

Special Option Transfer Period in March

As the result of negotiated changes, there will be a Special Option Transfer Period from March 1, 2012 through March 30, 2012. You will have the opportunity to change your NYSHIP option for April 1, 2012.

Your cost of coverage under The Empire Plan or a NYSHIP HMO for October 1 through March 31, 2012 will be posted on the Department web site https://www.cs.ny.gov no later than February 29, 2012. A rate flyer also will be mailed to your home on or before that date. The web site and the rate flyer will provide details of the Special Option Transfer Period.

NYSHIP Changes

Your Biweekly Premium Contribution Rate

New York State helps pay for your health insurance coverage. After the State's contribution, you are responsible for paying the balance of your premium through biweekly deductions from your paycheck. **Effective October 1, 2011,** your share of the cost is changing as shown below.

Individual Coverage		Dependent Coverage	
State Share	Employee Share	State Share	Employee Share
84 percent	16 percent	69 percent	31 percent

Since premium deductions for your NYSHIP coverage after October 1, 2011 have already been taken, the increase in your biweekly cost for NYSHIP coverage from October 2011 through March 2012 will be calculated to determine your retroactive health insurance special adjustment. This special adjustment will be applied to your paycheck dated March 28, 2012, the same paycheck in which you will receive your retroactive payments, in accordance with the 2011-2016 agreement between the State and PBANYS for APSU employees. In addition to the special adjustment and payments, the health insurance regular premium deduction amount will reflect the 2012 rates.

A rate flyer with rates effective April 1, 2012 will be mailed to your home before February 29, 2012. The additional cost of coverage under The Empire Plan or a NYSHIP HMO for October 1 through March 31, 2012, will be posted on the Department web site.

To calculate your retroactive health insurance special adjustment, go to our web site on or after February 29 at https://www.cs.ny.gov and click on Benefit Programs, then NYSHIP Online. Select your group if prompted, and then click on Health Benefits & Option Transfer. Choose Rates and Health Plan Choices and select Retroactive Health Insurance Special Adjustments. You will find instructions for calculating the amount of retroactive premium you owe.

Note: This information does not apply to COBRA enrollees or Young Adult Option enrollees. However, these enrollees will have a rate change as a result of negotiated benefit changes.

Updated Life Expectancy Table

As part of the changes, effective **April 1, 2012**, the Actuarial Table of Life Expectancy used to calculate the value of unused sick leave has been updated to reflect the fact that Americans are living longer. This will impact any monthly sick leave credit amount applied to your premium payments in retirement. Since we are living longer, the number of months of life expectancy at retirement has increased and the amount of monthly sick leave credit will be lower. A sick leave credit calculator is available at the New York State Department of Civil Service website at https://www.cs.ny.gov. See page 19 for navigation instructions.

Actuarial Table
Effective for Retirements on or after April 1, 2012

Age at Retirement	Life Expectancy	Age at Retirement	Life Expectancy
55	337 months	64	250 months
56	327 months	65	241 months
57	317 months	66	232 months
58	307 months	67	223 months
59	297 months	68	214 months
60	288 months	69	205 months
61	278 months	70	197 months
62	269 months	71	188 months
63	259 months	72	180 months
		Etc	

If you need actuarial rates for additional retirement ages, ask your agency Health Benefits Administrator.

Health Insurance Opt-out Program

Effective April 1, 2012, NYSHIP will offer an Opt-out Program that will allow eligible employees who have other employer-sponsored group health insurance to opt out of their NYSHIP coverage in exchange for an incentive payment. The annual incentive payment is $1,000 for waiving Individual coverage or $3,000 for waiving Family coverage. For the period April 1, 2012 – December 31, 2012, the incentive payment will be $38.47 per paycheck for individual coverage and $115.39 per paycheck for family coverage. The incentive payments will be prorated and reimbursed in your biweekly paycheck throughout the current year. **Note:** The payments will be taxable income.

Eligibility Requirements

To be eligible for the Program beginning April 1, 2012, you must have been enrolled in NYSHIP by April 1, 2011, and remain enrolled through March 31, 2012, unless you became newly eligible for NYSHIP benefits after April 1, 2011.

If you are a benefits-eligible enrollee but are newly eligible for the Health Insurance Opt-out Program due to a negotiating unit change, you must apply for the opt-out within 30 days of the date you become eligible. Your NYSHIP coverage will terminate on the date of your request to opt-out.

Once enrolled in the Opt-out Program, you are not eligible for the incentive payment during any period that you do not meet the requirements for the State contribution to the cost of your NYSHIP coverage. Also, if you are receiving the opt-out incentive for Family coverage and your last dependent loses NYSHIP eligibility, you will only be eligible for the Individual payment from that point on.

Electing to Opt Out

If you are currently enrolled in NYSHIP and wish to participate in the Opt-out Program, you must elect to opt out during the special Option Transfer Period in March and attest to having other employer-sponsored group health insurance each year. See your agency Health Benefits Administrator (HBA) and complete the 2012 Opt-out Attestation Form (PS-409).

If you are a new hire or a newly benefits-eligible employee who has other employer-sponsored group health insurance and wish to participate in the Opt-out Program, you must make your election no later than the first date of your eligibility for NYSHIP. See your agency HBA and complete the NYS Health Insurance Transaction Form (PS-404) and the 2012 Opt-out Attestation Form (PS-409).

Your NYSHIP coverage will terminate at the end of March 2012 and the incentive payments will begin on or after March 28, 2012, until the end of the plan year.

Reenrollment in NYSHIP

Employees who participate in the Opt-out Program may reenroll in NYSHIP during the next annual Option Transfer Period. To reenroll in NYSHIP coverage any other time, employees must experience a qualifying event like a change in family status (e.g.; marriage, birth, death or divorce) or loss of coverage. Employees must provide proof of the qualifying event within 30 days of the date of the event or any change in enrollment will be subject to NYSHIP's late enrollment rules. See the *NYSHIP General Information Book* for more details.

Opt-out Program Questions and Answers

Q. What is considered other employer-sponsored group health insurance coverage for the purpose of qualifying for the Opt-out Program?

A. To qualify for the Program you must be covered under an employer-sponsored group health insurance plan through other employment of your own or a plan that your spouse, domestic partner or parent has as the result of his or her employment. The other coverage cannot be NYSHIP coverage provided through employment with the State of New York. However, NYSHIP coverage through another employer such as a municipality, school district or public benefit corporation qualifies as other coverage.

Q. Will I qualify for Opt-out Program incentive payments if I change from Family to Individual coverage?

A. No. If you are enrolled for NYSHIP coverage you will not qualify for the incentive payment.

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Opt-out Program Questions and Answers

Q. If I elect the Opt-out Program for 2012, will I automatically be enrolled in the Program for the following plan year?

A. No. Unlike other NYSHIP options, you must elect the Opt-out Program on an annual basis. If you do not make an election for the next plan year, your enrollment in the Opt-out Program will end and the incentive payment credited to your paycheck will stop.

Q. If I opt out and I find that I don't like my alternate coverage (for instance, my doctor does not participate) can I withdraw my enrollment in the Opt-out Program and reenroll in NYSHIP coverage?

A. No. This is not a qualifying event. During the year you can terminate your enrollment in the Opt-out Program and reenroll in NYSHIP benefits only if you experience a qualifying event (according to federal Internal Revenue Service (IRS) rules), such as a change in family status or loss of other coverage.

Q. If my spouse's, domestic partner's or parent's employer has its open enrollment period (or option transfer period) at a different time of the year, how can I coordinate the effective date of my other coverage with the start of the Opt-out Program?

A. Under IRS rules, if an employee's spouse drops coverage under his or her employer plan during Option Transfer, the employee can be permitted to enroll the spouse mid-year in his or her employer plan — as long as the plans have different open enrollment periods. **You should check to see whether your spouse's employer will permit your spouse to enroll you as a dependent.** You are responsible for making sure your other coverage is in effect.

Q. What if I lose my other coverage and do not request enrollment for NYSHIP benefits with The Empire Plan or a NYSHIP HMO within 30 days of losing that coverage?

A. If you fail to make a timely request, you will be subject to NYSHIP's late enrollment waiting period, which is five biweekly pay periods. You will not be eligible for NYSHIP coverage during the waiting period.

Q. Can I get a lump sum payment if I elect the Opt-out Program?

A. No. The Opt-out Program incentive payment is prorated and reimbursed through your biweekly paychecks throughout the year.

Q. If I am eligible for health, dental and vision coverage as a State employee, do I have to opt out of all three benefits to receive the incentive payment?

A. No. The Opt-out Program incentive payment applies to health insurance coverage only. If you enroll in the Program, your eligibility for dental and vision coverage will not be affected.

Q. When I enroll in the Opt-out Program, what information will I need to provide about the other employer-sponsored group health coverage I will be covered by?

A. To enroll you must complete a PS-409. You will be required to attest that you are covered by other employer-sponsored group health coverage and provide information regarding the person that carries that coverage, as well as the name of the other employer and other health plan.

Q. I had Individual NYSHIP coverage prior to April 1, 2011, and changed to Family coverage when I got married in July. Will I qualify for the $3,000 family incentive payment even though I did not have Family coverage as of April 1?

A. Employees who enrolled in Family coverage due to a qualifying event and did so, on a timely basis, between April 1, 2011 and March 31, 2012 are eligible for the higher incentive payment. You will not be eligible for the higher incentive payment if you enrolled for Family coverage after April 1, 2011 and were subject to a late enrollment waiting period.

Q. Will participating in the Opt-out Program affect my eligibility for NYSHIP coverage in retirement?

A. No. Participation in the Opt-out Program satisfies the requirement of enrollment in NYSHIP at the time of your retirement.

Young Adult Children

The Federal Patient Protection and Affordable Care Act (PPACA) requires insurers to offer young adult children coverage as dependents on their parent's health insurance up to age 26. Financial dependency, student status, marital status, employment and residency can no longer be used to determine eligibility. Although the law extends coverage to married children, it does not apply to their spouse or children.

You can add a young adult child (up to age 26) to your Family coverage at no additional cost. See your agency Health Benefits Administrator (HBA) for more details.

If you currently have Individual coverage and would like to add a young adult child as a dependent, you will need to change to Family coverage. A list of Family coverage rates is available on the New York State Department of Civil Service web site at https://www.cs.ny.gov. See page 19 for navigation instructions.

A young adult child under the age of 26 and enrolled as a dependent, will continue to be enrolled until age 26, unless you choose to take him/her off your plan. Coverage as a dependent will end on the last day of the month in which the young adult child turns 26 years old.

A 26-year old dependent child who has served in a branch of the U.S. Military may qualify for up to four additional years of health insurance coverage (as a dependent), provided he/she is unmarried and a full-time student. You must be able to provide written documentation from the U.S. Military and the student's school.

When a young adult child loses eligibility for health insurance coverage, he/she may be entitled to continue coverage for up to 36 months under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) or the New York State Continuation of Coverage law. A young adult child may also be eligible to purchase his/her own NYSHIP coverage through the Young Adult Option up to age 30. For more information about continuation coverage or NYSHIP's Young Adult Option see your agency HBA.

Young Adult Option Coverage

As the result of a change in NYS Insurance Law, unmarried young adults through age 29 are eligible for NYSHIP health insurance coverage under the "Young Adult Option."

The Young Adult Option does not change NYSHIP's maximum age criteria for dependent coverage available to enrollees, but allows the adult child of an enrollee who meets the established criteria to purchase Individual health insurance coverage through NYSHIP when the young adult does not otherwise qualify as a NYSHIP dependent. Either the young adult or his/her parent may enroll the young adult in the Young Adult Option, and either may elect to be billed for the NYSHIP premium. The cost of the Young Adult Option is the full share Individual premium.

A young adult is entitled to the same health insurance coverage as his/her parent provided the young adult lives, works or resides in New York State or the insurer's service area. Additionally, NYSHIP will permit a young adult to enroll in any other NYSHIP option for which the young adult otherwise qualifies under NYSHIP rules. This means that a young adult may:

- Enroll in The Empire Plan regardless of the parent's option;
- Enroll in the same HMO as the parent if the young adult lives, works or resides in the HMO's service area or in New York State; or
- Enroll in a NYSHIP HMO that the parent is not enrolled in if the young adult lives, works or resides within the HMO service area.

There was an initial open enrollment period for the Young Adult Option throughout 2010. There will be a 30-day annual open enrollment period each year. Additionally, a young adult may enroll when NYSHIP eligibility is lost due to age or when a young adult is newly eligible because of a change in circumstances, such as loss of employer-sponsored health benefits.

The Young Adult Option application, rates and FAQs are available on the Department's web site at: https://www.cs.ny.gov/yao/. Or you may contact the Employee Benefits Division at 518-457-5754 or 1-800-833-4344 for additional information and to enroll.

New York State: Supplemental Continuation of Coverage

New York State law allows enrollees who have exhausted an 18- or 29-month continuation period under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) to extend coverage under the State's continuation law for up to 36 months. Therefore, if you qualify for COBRA continuation coverage you are eligible to continue NYSHIP coverage until the earlier of:

- 36 months (combined length of COBRA and New York State coverage);
- The end of the period in which premiums were last paid;
- The date the enrollee becomes entitled to Medicare benefits; or
- The date New York State no longer provides group health care coverage to any of its enrollees.

The cost of coverage continuation is the full premium cost for individual coverage plus a two percent administrative fee.

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Medicare Durable Medical Equipment and Prosthetics and Orthotics Supply (DMEPOS) Competitive Bidding Program

Medicare has implemented the DMEPOS Competitive Bidding Program in the following areas of the country: Charlotte-Gastonia-Concord (North Carolina and South Carolina); Cincinnati-Middletown (Ohio, Kentucky and Indiana); Cleveland-Elyria-Mentor (Ohio); Dallas-Fort Worth-Arlington (Texas); Kansas City (Missouri and Kansas); Miami-Fort Lauderdale-Pompano Beach (Florida); Orlando-Kissimmee (Florida); Pittsburgh (Pennsylvania); Riverside-San Bernardino-Ontario (California). Additional areas (including some areas in New York State) may be added to the Program in the future.

Medicare-primary enrollees who permanently reside in or travel to any of the nine geographic areas above, are required to obtain certain DMEPOS items from a Medicare contract supplier, unless an exception applies. If a Medicare contract supplier is not used, Medicare will not pay any portion of the bill. The Empire Plan will estimate what Medicare would have paid for the item(s) and subtract that amount from the enrollee's benefit. **All Medicare-primary enrollees outside these areas must continue to follow HCAP requirements to receive paid-in-full benefits.**

DMEPOS items subject to the Competitive Bidding Program include: mail-order diabetic supplies, oxygen supplies and equipment, standard power wheelchairs, scooters, and accessories, certain complex rehabilitative power wheelchairs and accessories, hospital beds and accessories, walkers and accessories, enteral nutrients and supplies, Continuous Positive Airway Pressure (CPAP) machines, Respiratory Assist Devices and related accessories and support surfaces.

For assistance in locating a Medicare contract supplier, call The Empire Plan Home Care Advocacy Program (HCAP) toll free at 1-877-7-NYSHIP (1-877-769-7447) and choose the Medical Program, then Benefits Management Program or visit: http://www.medicare.gov.

Important Information about the Pre-Tax Contribution Program (PTCP) for Enrollees with a Domestic Partner or Same-Sex Spouse

Enrollees who are eligible for the PTCP and who cover a domestic partner or same-sex spouse will be able to have their full premium contribution for the cost of family health insurance coverage deducted from their employee wages before taxes are withheld. If you cover a domestic partner or same-sex spouse who is not a federally qualified dependent, you are responsible for reporting the value of the coverage provided on your income tax return. The Department of Civil Service sends you form 1099-MISC showing this amount after the end of each tax year. Please consult your tax advisor for additional information or guidance.

If you cover a domestic partner or same-sex spouse, your payroll deduction for NYSHIP family coverage will automatically be taken on a pre-tax basis unless you have filed form PS-404 with your agency Health Benefits Administrator indicating that you want to opt out of the PTCP.

Workers' Compensation

If you become eligible for Workers' Compensation due to a work-related assault, you will be eligible for extended Workers' Compensation coverage. Health insurance coverage at the employee's share of the premium may be continued for up to 24 months from the original leave date for each incident.

Empire Plan Changes

The Federal Patient Protection and Affordable Care Act (PPACA), which will be referred to as "the Act" in this article and throughout this *Empire Plan Report*, requires that we make several changes to your Empire Plan coverage.

Your Empire Plan benefit package lost grandfathered status under PPACA as a result of the recent contract settlement as of October 1, 2011. This means that your Plan is now a nongrandfathered plan and it includes all changes required by the Act, according to the Act's timetable.

The Act requires the following changes, retroactive to October 1, 2011:

Adult immunizations as recommended by the Federal Centers for Disease Control will not be subject to copayment when administered by a participating provider.

The Act requires coverage of certain preventive care services received at a network hospital or from a participating provider to be paid at 100 percent (not subject to copayment). Preventive care services covered under the Act with no copayment include:

- Immunizations as recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

- Preventive care and screenings for women, infants, children and adolescents as stated in guidelines supported by the Health Resources and Services Administration,
- Preventive care and screenings for men in the current recommendations of the United States Preventive Services Task Force,
- Items or services that have a rating of "A" or "B" in the current recommendations of the United States Preventive Services Task Force.

For further information on preventive services, see The Empire Plan Preventive Care Coverage Chart at the New York State Department of Civil Service web site at https://www.cs.ny.gov or visit www.healthcare.gov. See page 19 for navigation instructions.

Also, in a medical emergency, non-participating provider charges in a hospital emergency room will be considered under the Basic Medical Program subject to deductible, but not coinsurance.

2012 Copayments Effective April 1

Covered services defined as preventive under PPACA (see pages 6-7) are not subject to copayment.

Participating Provider Program

$20 Copayment–Office Visit/Office Surgery, Radiology/Diagnostic Laboratory Tests, Free-Standing Cardiac Rehabilitation Center Visit, Urgent Care Visit, Convenience Care Clinics
$30 Copayment–Outpatient Surgical Location

Chiropractic Treatment or Physical Therapy Services (Managed Physical Medicine Program)

$20 Copayment–Office Visit, Radiology, Diagnostic Laboratory Tests

Hospital Outpatient Services (Hospital Program)

$20 Copayment–Physical Therapy
$40 Copayment–Diagnostic Laboratory tests and Radiology exams (including Mammography Screening) and Administration of Desferal for Cooley's Anemia
$60 Copayment–Surgery
$70 Copayment–Emergency Care

Mental Health and Substance Abuse Program

$20 Copayment–Visit to Outpatient Substance Abuse Treatment Program
$20 Copayment–Visit to Mental Health Practitioner
$70 Copayment–Hospital Emergency Care

Prescription Drug Program

When you fill your Prescription for a covered drug for up to a **30-day supply at a Network Pharmacy, Mail Service Pharmacy, or the designated Specialty Pharmacy,** your Copayment is:	When you fill your Prescription for a covered drug for a **31- to 90-day supply at a Network Pharmacy,** your Copayment is:	When you fill your Prescription for a covered drug for a **31- to 90-day supply through the Mail Service Pharmacy or the designated Specialty Pharmacy,** your Copayment is
Level 1 Drugs or for most **Generic** Drugs $5	Level 1 Drugs or for most **Generic** Drugs $10	Level 1 Drugs or for most **Generic** Drugs $5
Level 2, **Preferred** Drugs or Compound Drugs $25	Level 2, **Preferred** Drugs or Compound Drugs $50	Level 2, **Preferred** Drugs or Compound Drugs $50
Level 3 or **Non-preferred** Drugs $45	Level 3 or **Non-preferred** Drugs $90	Level 3 or **Non-preferred** Drugs $90

Note: Oral chemotherapy drugs for the treatment of cancer do not require a copayment.

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Benefits Management Program

Additional Imaging Procedures Require Prospective Procedure Review (PPR) Effective April 1, 2012

You must call The Empire Plan Benefits Management Program for Prospective Procedure Review of the following outpatient imaging procedures when performed as an elective (scheduled) procedure:

- Magnetic Resonance Imaging (MRI)/Magnetic Resonance Angiography (MRA)
- Computed Tomography (CT)
- Positron Emission Tomography (PET) Scans
- Nuclear Medicine Diagnostic Procedures

Call The Empire Plan toll free at 1-877-7-NYSHIP (1-877-769-7447), and select the Medical Program, then Benefits Management and Radiology Program.

Should you opt to have one of these procedures before the review is completed or if you do not call the Benefits Management Program before having it and UnitedHealthcare determines that the procedure was performed on a scheduled (non-emergency) basis and that the procedure was medically necessary, you are responsible for paying the lesser of 50 percent of the scheduled amounts related to the procedure or $250, plus your copayment, under the Participating Provider Program.

Under the Basic Medical Program, you are liable for the lesser of 50 percent of the reasonable and customary charges related to the procedure or $250. In addition, you must meet your Basic Medical annual deductible and you must pay the coinsurance and any provider charges above the reasonable and customary amount.

If UnitedHealthcare determines that the procedure was not medically necessary, you will be responsible for the full cost of the procedure.

The Empire Plan Future Moms Program

This voluntary program is offered to Empire Plan enrollees at no additional cost and provides support and information designed to help you have a smooth pregnancy, a safe delivery and a healthy child. If you're pregnant, or hope to be in the near future, you know there's nothing more important than safeguarding your health and the health of your baby.

When you enroll in Future Moms, you'll be contacted by a Nurse Coach, a registered nurse, who will walk you through a health assessment over the phone. If you're not currently experiencing any health concerns, your Nurse Coach will simply arrange to check back with you periodically. But, if you need assistance in dealing with health issues, your Nurse Coach will schedule more frequent calls to check on your progress. Your Nurse Coach can also arrange for a free phone consultation with a specialist to answer your questions. Registered nurses are available 24 hours a day seven days a week to answer your questions.

If you are interested in the Future Moms Program, call The Empire Plan toll free at 1-877-7-NYSHIP (1-877-769-7447) and choose the Hospital Program to enroll in the Program.

2012 Annual Deductible and Coinsurance Maximum

Under the federal Parity Law effective on January 1, 2012, The Empire Plan is not permitted to have separate deductibles and coinsurance amounts for Basic Medical and non-network coverage under the Hospital Program and the Mental Health and Substance Abuse Program. However, the Managed Physical Medicine Program will continue to have a separate deductible. Therefore, a combined deductible and a combined coinsurance amount for the employee, the enrolled spouse/domestic partner and all dependent children combined applies to the Hospital Program (coinsurance only), Basic Medical Program and non-network expenses under the Health Care Advocacy Program (deductible only) and the Mental Health and Substance Abuse Program. The combined deductible and coinsurance amounts are changing effective April 1, 2012 as the result of the recent negotiated agreement.

Effective January 1, 2012, The Empire Plan combined annual deductible is $400 for the enrollee, $400 for the enrolled spouse/domestic partner and $400 for all dependent children combined.

Effective April 1, 2012, The Empire Plan combined annual deductible increases to $1,000 for the enrollee, $1,000 for the enrolled spouse/domestic partner and $1,000 for all dependent children combined.

The deductible must be met before your Basic Medical Program and non-network expenses under the Health Care Advocacy Program and the Mental Health and Substance Abuse Program claims are considered for reimbursement.

Effective January 1, 2012, the combined coinsurance maximum (out-of-pocket) is $1,483 for the enrollee, $1,483 for the enrolled spouse/domestic partner and $1,483 for all dependent children combined.

Effective April 1, 2012, the combined coinsurance maximum (out-of-pocket) increases to $3,000 for the enrollee, $3,000 for the enrolled spouse/domestic partner and $3,000 for all dependent children combined.

The coinsurance maximum will be shared among the Basic Medical Program and non-network coverage under the Hospital Program and Mental Health and Substance Abuse Program.

After each coinsurance maximum is reached, you will be reimbursed 100 percent of the reasonable and customary amount, or 100 percent of the billed amount, whichever is less, for covered services. You will still be responsible for any charges above the reasonable and customary amount and for any penalties under the benefits management programs.

Amounts credited toward your deductible and coinsurance maximum between January 1 and April 1, 2012 will be applied toward the higher deductible and coinsurance maximum, that take effect on April 1, 2012.

The Empire Plan Medical/Surgical Benefits Program

Guaranteed Access

The Empire Plan will guarantee access to primary physicians and specialists (listed below) in New York and counties in Connecticut, Massachusetts, New Jersey, Pennsylvania and Vermont that share a border with the State of New York. When there is not an appropriate Empire Plan participating provider within a reasonable distance from an enrollee's residence (see chart below).

Enrollees must call The Empire Plan at 1-877-7-NYSHIP (1-877-769-7447) prior to receiving services, choose the Medical Program then the Benefits Management Program and use one of the approved providers to receive network benefits. You will be responsible for contacting the provider to arrange care. Appointments are subject to provider's availability and the Benefits Management Program does not guarantee that a provider will be available in a specified time period. Guaranteed access applies when The Empire Plan is your primary health insurance coverage (pays benefits first, before any other group plan or Medicare), the enrollee lives and care is provided in New York State or counties in Connecticut, Massachusetts, New Jersey, Pennsylvania and Vermont that share a border with the State of New York and there is not an appropriate Empire Plan participating provider within a reasonable distance from the enrollee's residence.

Reasonable distance from the enrollee's residence is defined by the following mileage standards:

Primary Care Physician:
Urban: 8 miles
Suburban: 15 miles
Rural: 25 miles

Specialist:
Urban: 15 miles
Suburban: 25 miles
Rural: 50 miles

Within these mileage standards, network benefits are guaranteed for the following primary care physicians and core specialties:

Primary Care Physicians: Family Practice, General Practice, Internal Medicine, Pediatrics, Obstetrics/Gynecology

Specialties: Allergy, Anesthesia, Cardiology, Dermatology, Emergency Medicine, Gastroenterology, General Surgery, Hematology/Oncology, Neurology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pulmonary Medicine, Radiology Rheumatology, Urology

Convenience Care Clinics

Effective April 1, 2012, when you need treatment for common ailments and injuries, you now have more choices. You can get high-quality, affordable services for **uncomplicated minor illnesses and preventive health care** through Convenience Care Clinics located throughout the country.

Convenience Care Clinics are health care clinics located in retail stores, supermarkets and pharmacies. They are sometimes called "retail clinics", "retail-based clinics" or "walk-in medical clinics." Convenience Care Clinics are usually supported by licensed physicians and staffed by nurse practitioners or physician assistants. Some, however, are staffed by physicians. Currently, there are over 1,350 Convenience Care Clinics located throughout the United States. Most Convenience Care Clinics are open seven days a week – 12 hours a day, Monday through Friday and eight hours a day on the weekend.

Results of your diagnosis and treatment are sent to your doctor with your permission. If you have a more severe condition, or require treatment in a different setting, the Convenience Care clinician will refer you to your doctor or an Emergency Room. Remember that Convenience Care Clinics are only covered under the Participating Provider Program. There is no coverage under the Basic Medical Program. Convenience Care Clinics can be identified in the Empire Plan Provider Directory under the choice of Other Facilities: Convenience Care Clinic.

Please note that some of the services, particularly vaccinations, are also available to the general public in retail pharmacy locations. Many Convenience Care Clinics are located adjacent to these retail pharmacies. It is important to note that only services rendered at an in-network Convenience Care Clinic are covered under the Empire Plan Medical Program. Any services rendered at any retail pharmacy, including vaccines, are not a covered benefit under the Empire Plan Medical Program.

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Licensed Nurse Practitioners

Effective April 1, 2012, Licensed Nurse Practitioners have been added to the list of UnitedHealthcare providers. Licensed Nurse Practitioners provide healthcare services similar to those of a physician. They may diagnose and treat a wide range of health problems. In addition to clinical care, licensed nurse practitioners focus on health promotion and counseling, disease prevention and health education. Licensed Nurse Practitioners provide services in accordance with the laws of the state where services are rendered.

$30 Copayment for Participating Non-Hospital Outpatient Surgical Locations

Beginning April 1, 2012, you pay the first $30 in charges (copayment) for each visit to an outpatient surgical location that has an Empire Plan agreement in effect with UnitedHealthcare.

The $30 copayment covers your elective surgery and anesthesiology, radiology and laboratory tests performed on the day of the surgery at the same outpatient surgical location.

Herpes Zoster Vaccine for Shingles

Effective April 1, 2012, the Herpes Zoster vaccine used to prevent shingles is covered as an adult immunization under the Participating Provider Program for individuals age 55 or over. Enrollees and dependents age 55-59 will pay a $20 copayment. No copayment will be required for those age 60 and older in accordance with PPACA guidelines. This coverage is consistent with established clinical guidelines. You pay only the office visit copayment, if applicable, when the Herpes Zoster vaccination is dispensed and administered by a participating provider. There is no non-network benefit and there is no benefit available under the Prescription Drug Program. Please note that if you purchase the Herpes Zoster vaccine at the pharmacy, The Empire Plan will not reimburse you for the cost.

Hearing Aids

Effective April 1, 2012, hearing aids, including evaluation, fitting and purchase, are covered up to a total maximum reimbursement of $1,500 per hearing aid per ear, once every four years. Children age 12 years and under are eligible to receive a benefit of up to $1,500 per hearing aid per ear, once every two years when it is demonstrated that a covered child's hearing has changed significantly and the existing hearing aid(s) can no longer compensate for the child's hearing loss. These benefits are not subject to deductible or coinsurance.

Enhanced Hearing Aid Benefits through EPIC Hearing Service Plan

The Empire Plan has enhanced its hearing aid benefit for enrollees and eligible dependents with the addition of the Hearing Service Plan (HSP), provided by EPIC Hearing Healthcare. The EPIC HSP is a voluntary program that offers nationwide access to hearing aids and services. The Program's review process assures you are receiving all appropriate tests and services as well as the most appropriate technology for the best price.

Although your hearing aid benefit maximum remains unchanged, the EPIC HSP offers you and your eligible dependents an additional option in utilizing your hearing aid benefit. The EPIC HSP coordinates access to quality hearing care professionals throughout the State of New York and the nation and allows for direct billing to the Plan, up to the maximum benefit, so enrollees do not have to pay any upfront costs for hearing aids. Any amount over the maximum benefit is your responsibility.

The EPIC HSP provides the following:

- Hearing aid professionals available in all 50 states
- Access to all major hearing aid manufacturers
- Prices are never marked up from wholesale
- Hearing aid price lists are provided to enrollees and dependents upon request
- All hearing aids carry an extended three-year warranty, include the first year's supply of batteries and have a 45-day, no risk trial period in New York State

If you would like to learn more about the EPIC HSP, or if you need assistance in locating an HSP provider, please call toll free 1-866-956-5400.

Prosthetic Wig Benefit

Effective April 1, 2012, wigs will be covered under the Basic Medical Program when hair loss is due to an acute or chronic condition that leads to hair loss including, but not limited to:

- Disease of endocrine glands such as Addison's disease and ovarian genesis
- Generalized disease affecting hair follicles such as systemic lupus and myotonic dystrophy
- Systemic poisons such as thallium, methotrexate and prolonged use of anticoagulants
- Local injury to scalp such as burns, radiation therapy, chemotherapy treatment and neurosurgery

Excluded from coverage is male and female pattern baldness.

There is a lifetime maximum benefit of $1,500 per individual regardless of the number of wigs purchased. Benefits are not subject to the Basic Medical deductible or coinsurance. Claims submitted for the prosthetic wig benefit must include documentation from the treating physician that states that the individual has a diagnosis for a covered condition.

Participating Diabetes Education Centers

Diabetes education can be an important part of a treatment plan for diabetes. Diabetes educators provide information on nutrition and lifestyle improvement that can help diabetics better manage their disease. The Empire Plan network includes Diabetes Education Centers that are accredited by the American Diabetes Association Education Recognition Program. If you have a diagnosis of diabetes, your visits to a network center for self-management counseling are covered and you pay only an office visit copayment for each covered visit. Covered services at a non-network diabetes education center are considered under the Basic Medical Program subject to deductible and coinsurance.

To find an Empire Plan participating Diabetes Education Center, call The Empire Plan toll free at 1-877-7-NYSHIP (1-877-769-7447) and choose the Medical Program. Or, go to the New York State Department of Civil Service web site (https://www.cs.ny.gov). See page 19 for navigation instructions.

Diabetic Shoes

Effective April 1, 2012, one pair of custom molded or depth shoes per calendar year is a covered expense under The Empire Plan if:

- You have a diagnosis of diabetes and diabetic foot disease;
- Diabetic shoes have been prescribed by your provider; and
- The shoes are fitted and furnished by a qualified pedorthist, orthotist, prosthetist or podiatrist. Shoes ordered by mail or from the internet are not eligible for benefits.

When you use an HCAP-approved provider for medically necessary diabetic shoes, you receive a paid-in-full benefit up to an annual maximum benefit of $500. To ensure that you receive the maximum benefit, you must call the Home Care Advocacy Program (HCAP). You must call The Empire Plan toll free at 1-877-7-NYSHIP (1-877-769-7447), choose the Medical Program and then the Benefits Management Program. HCAP will assist you in making arrangements to receive network benefits for diabetic shoes.

If you do not use an HCAP-approved provider for medically necessary diabetic shoes, benefits will be considered under the Basic Medical Program subject to the annual deductible with any remaining covered charges paid at 75 percent of the network allowance with a maximum annual benefit of $500.

Centers of Excellence Programs Travel Benefits

When you use a Center of Excellence for Transplants that has been preauthorized by Empire BlueCross BlueShield or a Center of Excellence for Cancer that has been preauthorized by UnitedHealthcare and the Center of Excellence is more than 100 miles from the enrollee's residence (200 miles for airfare), The Empire Plan provides reimbursement for travel, meals and one lodging per day for the patient and one travel companion.

The Centers of Excellence Programs for Transplants, Cancer and Infertility will reimburse enrollees who travel within the United States for meals and lodging based on the United States General Services Administration (GSA) per diem rate and automobile mileage (personal or rental car) based on the Internal Revenue Service medical rate. The following are the only additional travel expenses that are reimbursable: economy class airfare, train fare, taxi fare, parking, tolls and shuttle or bus fare from your lodging to the Center of Excellence. To find the current per diem rates for lodging and meals, visit the United States General Services Administration web site at www.gsa.gov and look under Travel Resources. Travel and lodging benefits are available as long as the patient remains enrolled and is receiving benefits under the Centers of Excellence program.

Kidney Resource Services Program

The Empire Plan will offer a Kidney Resource Services Program to its enrollees when The Empire Plan provides primary health insurance coverage. If you or your dependents have been diagnosed with Chronic Kidney Disease (CKD), you may be invited to participate in this Program. Participation is voluntary, free of charge and confidential.

If you agree to participate, you will receive information to help you better understand your condition. You will be offered educational materials and other services that may help to improve the management of your kidney disease. You may also be contacted by a registered nurse in conjunction with this Program.

This Program works in partnership with your physician to achieve the best possible health outcomes.

If you have questions or would like more information, call The Empire Plan toll free at 1-877-7-NYSHIP (1-877-769-7447) and choose The Empire Plan NurseLine.SM

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Mental Health Program Non-Network Benefit Changes Effective April 1, 2012

You receive non-network benefits for covered services when you do not call OptumHealth before your treatment begins and/or you call OptumHealth but do not follow OptumHealth's recommendations. Changes to non-network benefits for mental health coverage under The Empire Plan, effective April 1, 2012, are explained below.

Practitioner Services: 80 percent of Reasonable and Customary Charges

After you meet the combined annual deductible of $1,000 for you, $1,000 for your enrolled spouse/domestic partner and $1,000 for all children combined, The Empire Plan pays up to 80 percent of the reasonable and customary charges for covered mental health care services. After the combined coinsurance maximum of $3,000 for you, $3,000 for your enrolled spouse/domestic partner and $3,000 for all children combined is reached, The Empire Plan pays up to 100 percent of reasonable and customary charges for covered services.

Electro-Convulsive Therapy and Psychological Testing: 80 percent of Reasonable and Customary Charges

After you meet the combined annual deductible, The Empire Plan pays up to 80 percent of the reasonable and customary charges for covered electro-convulsive therapy and psychological testing and evaluations. After the combined coinsurance maximum is reached, The Empire Plan pays up to 100 percent of reasonable and customary charges for covered services. These benefits must be certified by OptumHealth as medically necessary before the service is received.

Inpatient Care: 90 percent of Billed Charges

The Empire Plan pays up to 90 percent of billed charges for covered acute inpatient mental health care in an approved hospital or an approved psychiatric facility. You pay the remaining 10 percent until you reach the combined coinsurance maximum of $3,000 for you, the enrollee, $3,000 for your enrolled spouse/domestic partner and $3,000 for all enrolled dependent children combined. The Empire Plan then pays 100 percent of billed charges for covered services. This benefit is not subject to a deductible.

Partial Hospitalization, Intensive Outpatient Program, Day Treatment, 23-Hour Extended Bed and 72-Hour Crisis Bed: 90 percent of Billed Charges

The Empire Plan pays up to 90 percent of billed charges for mental health care received from an approved facility. You pay the remaining 10 percent until you reach the combined coinsurance maximum of $3,000 for you, the enrollee, $3,000 for your enrolled spouse/domestic partner and $3,000 for all enrolled dependent children combined. The Empire Plan then pays 100 percent of billed charges for covered services. This benefit is not subject to a deductible.

Inpatient and Outpatient Visits: Unlimited

The number of inpatient and outpatient services for both network and non-network mental he alth treatment under The Empire Plan is unlimited when certified as medically necessary by OptumHealth.

Reasonable and Customary means the lowest of the:

- actual charge for mental health services, or
- usual charge for mental health services by the practitioner, or
- usual charge for mental health services of other practitioners in the same or similar geographic area for the same or similar service.

The determination of the reasonable and customary charge for a service or supply is made by OptumHealth.

Note: See page 8 for information about your 2012 Annual Deductible and Coinsurance Maximums.

Highlights of Non-Network* Mental Health Benefit Changes Effective April 1, 2012		
	Former	**Current**
Individual Practitioner	Plan paid 50 percent of network allowance after a $500 annual deductible	Plan pays up to 80 percent of reasonable and customary charges for covered services after you meet the combined annual deductible of $1,000 for you, $1,000 for your enrolled spouse/domestic partner and $1,000 for all children combined. After the combined outpatient coinsurance maximum of $3,000 for you, $3,000 for your enrolled spouse/domestic partner and $3,000 for all dependent children combined is reached, Plan pays up to 100 percent of reasonable and customary charges.
Electro-Convulsive Therapy/Psychological Testing	Plan paid 50 percent of network allowance after an annual deductible	Plan pays up to 80 percent of reasonable and customary charges for covered services after you meet the combined annual deductible. After the annual outpatient coinsurance maximum is reached, Plan pays up to 100 percent of reasonable and customary charges. Precertification required.
Acute Inpatient Stays	Plan paid 50 percent of network allowance after the annual deductible	Plan pays up to 90 percent of billed charges. After you pay the combined annual inpatient coinsurance maximum for yourself, your spouse/domestic partner and all dependent children combined, Plan pays 100 percent of billed charges for medically necessary care in an approved facility.
Partial Hospitalization, Intensive Outpatient Program, Day Treatment, 23-Hour Extended Bed and 72-Hour Crisis Bed	Network coverage only	Plan pays up to 90 percent of billed charges. After you pay the combined annual inpatient coinsurance maximum for yourself, your spouse/domestic partner and all dependent children combined, Plan pays 100 percent of billed charges for medically necessary care in an approved facility.
Maximum Number of Outpatient Visits and Inpatient Days	30 visits per year and 30 inpatient days per year	Unlimited when medically necessary
*Note: Network benefits remain the same.		

Call The Empire Plan toll free at 1-877-7-NYSHIP (1-877-769-7447) and choose the Mental Health/Substance Abuse Program for Clinical Referral

To ensure the highest level of benefits, you must call OptumHealth before you seek mental health treatment.

When you call and follow OptumHealth's recommendations, you are guaranteed access to network coverage at little or no cost to you.

Network providers are listed in The Empire Plan Participating Provider Directory. You may ask your agency Health Benefits Administrator for the Directory or provider information is also available on NYSHIP Online at https://www.cs.ny.gov. See page 19 for navigation instructions.

You may receive a lower level of benefits if you do not call or use network providers. And, if you submit a claim for non-network services and OptumHealth determines that your treatment was not medically necessary, your claim may not be reimbursed.

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Prescription Drug Program

Empire Plan Adopts Flexible Formulary for APSU

Effective April 1, 2012, your benefits under The Empire Plan Prescription Drug Program are based on a flexible formulary. The 2012 Empire Plan Flexible Formulary drug list provides enrollees and the Plan with the best value in prescription drug spending. This is accomplished by:

- Excluding coverage for certain brand-name or generic drugs, if the drug has no clinical advantage over other covered medications in the same therapeutic class;
- Placing a brand-name drug on Level 1 or excluding or placing a generic drug on Level 3, subject to the appropriate copayment. These placements may be revised mid-year when such changes are advantageous to The Empire Plan. Enrollees will be notified in advance of such changes.
- Applying the highest copayment to non-preferred brand-name drugs that provide no clinical advantage over two or more Level 1 drug alternatives in the same therapeutic class. This may result in no Level 2 brand-name drugs.

The main features of The Empire Plan 2012 Flexible Formulary are:

- *New Copayment levels.*
- *Certain drugs will be excluded from coverage.* If a drug is excluded, therapeutic brand-name and/or generic equivalents will be covered.

Updates to the 2012 Empire Plan Flexible Formulary drug list, including the availability of certain drugs, are posted on the New York State Department of Civil Service web site at https://www.cs.ny.gov. See page 19 for navigation instructions.

Excluded Drugs

The following drugs are excluded from coverage under the 2012 Empire Plan Flexible Formulary drug list: Acuvail, Adoxa, amiodipinol/atorvastin (generic Caduet), Amrix, Androgel, Analpram Advanced Kit, Aplenzin, Aricept 23mg, Asacol HD, BenzEFoam, Caduet, Cambiac 250, carisoprodol 250 (generic Soma 250mg), Centany AT, Clindacin PAC, clobetasol propionate (generic Clobex shampoo) Clobex shampoo, Coreg CR, cyclobenzaprine hydrochloride extended release capsule (generic Amrix), Detrol LA, Dexilant, Doryx, doxycycline hyclate delayed release tablet (generic Doryx), doxycycline monohydrate 150 mg capsule (generic Adoxa), Edluar, Epiduo, Extavia, Flector, Genotropin (except for the treatment of growth failure due to Prader-Willi syndrome or Small for Gestational Age), Humatrope (except for the treatment of growth failure due to SHOX deficiency or Small for Gestational Age), Jalyn, lansoprazole capsule, Metozolv ODT, Momexin Kit, Morgidox Kit, Naprelan, Neobenz Micro, Nexium, Norditropin (except for the treatment of short stature associated with Noonan syndrome or Small for Gestational Age), Orbivan, Olux/Olux-E Complete Pack, omeprazole/sodium bicarbonate capsule (generic Zegerid), Omnitrope (except for the treatment of growth failure due to Prader-Willi Syndrome or Small for Gestational Age), Pacnex HP/Pacnex LP/Pacnex Mx, Pennsaid, Prevacid Capsule, Requip XL, Rybix ODT, Ryzolt, Silenor, Soma 250, Sumaxin TS, Terbinex, Tobradex ST, tramadol extended release, tramadol hcl (generic Tyzolt) Treximet, Triaz, Tribenzor, Tricor, Trilipix, Twynsta, Uramaxin GT, Veramyst, Veltin, Vimovo, Xerese, Xopenex Inhalation Solution, Zegerid capsule, Ziana, Zipsor, Zuplenz and Zyclara.

The Plan reviews the drug list yearly for additional exclusions and level placement of medications. If you have been taking one or more of these drugs, you should have already received a letter informing you of this change. You may want to discuss an alternative medication with your doctor that will result in your using a covered drug and/or paying a lower copayment. See your April 1, 2012 *Empire Plan At A Glance* for a printed copy of the 2012 Empire Plan Flexible Formulary or visit the New York State Department of Civil Service web site at https://www.cs.ny.gov. See page 19 for navigation instructions.

Specialty Pharmacy Program

Effective April 1, 2012, The Empire Plan will add a Specialty Pharmacy Program to your prescription drug coverage. The Specialty Pharmacy Program will offer enhanced services to individuals using specialty drugs and change how you obtain those drugs under the Prescription Drug Program. Most specialty drugs will only be covered when dispensed by The Empire Plan's designated specialty pharmacy, Accredo, a subsidiary of Medco.

Accredo was selected to administer this Program because of its proven experience with providing services that help promote superior clinical outcomes. Accredo will ensure that specialty medications are utilized based on U.S. Food and Drug Administration (FDA) and best practice guidelines.

Specialty drugs are used to treat complex conditions and usually require special handling, special administration, or intensive patient monitoring. The major drug categories covered under the Program include, but are not limited to, drugs for the treatment of rheumatoid arthritis, cancer, multiple sclerosis, growth hormone deficiency, deep vein thrombosis and anemia (medications used to treat diabetes are not considered specialty medications). When Accredo dispenses a specialty medication, the applicable mail service copayment will be charged.

The Program will provide enrollees with enhanced services that include disease and drug education, compliance management, side-effect management, safety management, expedited, scheduled delivery of your medications at no additional charge, refill reminder calls and all necessary supplies such as needles and syringes applicable to the medication.

Enrollees currently taking drugs included in this Program received a letter, prior to April 1, 2012, describing the Program in more detail. When enrollees begin therapy on one of the drugs included in the Program, a letter will be sent describing the Program and any action necessary to participate in it.

The complete list of specialty drugs included in the Specialty Pharmacy Program is available on the New York State Department of Civil Service web site at https://www.cs.ny.gov. See page 19 for navigation instructions. Each of these drugs can be ordered through the Specialty Pharmacy Program using the Medco mail order form sent to the following address:

Medco Pharmacy
P.O. Box 6500
Cincinnati, OH 45201-6500

To request mail service envelopes, refills or to speak to a specialty-trained pharmacist or nurse regarding the Specialty Pharmacy Program, call The Empire Plan toll free at 1-877-7-NYSHIP (1-877-769-7447), between 8:00 a.m. and 8:00 p.m. and choose The Empire Plan Prescription Drug Program, and ask to speak with Accredo.

Prior Authorization Drugs

Effective April 1, the list of prior authorization drugs will also change. The following is a list of drugs (including generic equivalents) that require prior authorization: Abstral, Actemra, Actiq, Adcirca, Amevive, Ampyra, Aranesp, Avonex, Betaseron, Botox, Cayston, Cimzia, Copaxone, Dysport, Egrifta, Enbrel, Epogen/Procrit, fentanyl citrate powder, Fentora, Flolan, Forteo, Gilenya, Growth Hormones, Humira, Immune Globulins, Incivek, Increlex, Infergen, Intron-A, Iplex, Kalydeco, Kineret, Kuvan, Lamisil, Lazanda, Letairis, Makena, Myobloc, Nuvigil, Onsolis, Orencia, Pegasys, Peg-Intron, Provigil, Rebif, Remicade, Remodulin, Revatio, Ribavirin, Simponi, Sporanox, Stelara, Synagis, Tracleer, Tysabri, Tyvaso, Veletri, Ventavis, Victrelis, Weight Loss Drugs, Xeomin, Xolair and Xyrem.

Instant Rebates for omeprazole (generic Prilosec) and doxycycline

For a limited time only, The Empire Plan Prescription Drug Program will offer an instant rebate of your full copayment for omeprazole (generic Prilosec) in substitution for your previous prescription for lansoprazole (generic Prevacid) or Nexium and doxycycline in place of doxycycline hyclate, which are excluded under the Flexible Formulary.

The instant rebates will apply to all omeprazole and doxycycline prescriptions filled at participating retail pharmacies or at a mail service pharmacy between April 1, 2012 and July 31, 2012. To receive your rebate (zero copayment), simply present your prescription to your retail pharmacy or send it to the mail service pharmacy. After July 31, 2012, you will pay the applicable Level 1 copayment ($5 or $10) for subsequent refills. If you have questions about this rebate or your drug benefit, call 1-877-7-NYSHIP (1-877-769-7447) and choose The Empire Plan Prescription Drug Program.

The Empire Plan Half Tablet Program

This voluntary program allows you to reduce the out-of-pocket cost of select generic and brand-name drugs you take on a regular basis by:

- allowing your physician to write a prescription for twice the dosage of your medication and half the number of tablets (see Example),
- having you split the pills in half using the free pill splitter that The Empire Plan will provide and
- instructing the participating retail pharmacy or the mail service pharmacy to automatically reduce your copayment to half the normal charge.

Example

Old Prescription: ..... Crestor 10 mg
Quantity: ..... 30 tablets
Dosage: ..... Take 1 tablet every morning
Copayment $25

New Prescription: ..... Crestor 20 mg
Quantity: ..... 15 tablets
Dosage: ..... Take ½ tablet every morning
Copayment $12.50

Some recent articles have questioned the safety and efficacy of pill splitting programs. In most, the conclusion is that pill splitting programs are safe and save the patient money if the medications are clinically determined to be safe for splitting. The Empire Plan Half Tablet Program offered by The Empire Plan and administered by UnitedHealthcare provides many safeguards to mitigate against any possible safety questions. *Continued on page 16*

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The Empire Plan requires the following clinical criteria for medications to qualify for the Half Tablet Program:

- Each drug accepted for the Half Tablet Program must be approved by UnitedHealthcare's National Pharmacy and Therapeutic Committee.
- Medications must have a wide margin of safety so that minimal differences in tablet sizes, after splitting, will not disturb the efficacy of the medicine.
- Tablets must be able to be split relatively evenly without crumbling.
- Medications must remain chemically stable after splitting.
- Capsules, liquids, topical medications and certain coated tablets do not qualify.

You should only participate in the Program if your doctor determines that pill splitting is appropriate for you.

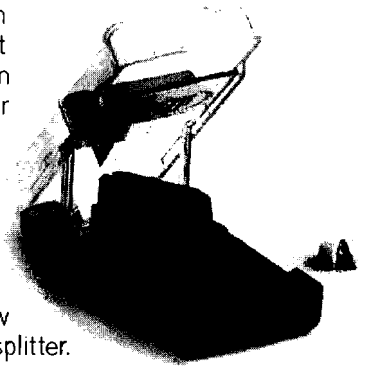
For an updated list of the medications eligible for the Half Tablet Program go to https://www.cs.ny.gov. See page 19 for navigation instructions to Find A Provider. Scroll to the Medco links and click on Empire Plan Half Tablet Program. If you have other questions, call The Empire Plan toll free at 1-877-7-NYSHIP (1-877-769-7447) and choose The Empire Plan Prescription Drug Program.

Splitting Tablets is Easy

Using a tablet splitter makes splitting your medication easy. Never attempt to split tablets with anything other than a device designed specifically for that purpose. Not all medications are appropriate for tablet splitting. Consult your doctor before splitting any prescribed medication.

Order Free Tablet Splitter

If you are on a medication eligible for the Half Tablet Program, The Empire Plan offers a free tablet splitter to each enrollee who is currently prescribed a drug that is covered as part of the Half Tablet Program. Your welcome letter will include details on how to order your free tablet splitter.



Questions & Answers About The Empire Plan Flexible Formulary

Q. Why are some medications being excluded?

A. Certain drugs are being excluded under The Empire Plan Prescription Drug Program so that we can continue to provide the best value in prescription drug coverage to all enrollees under the Plan. Whenever a prescription drug is excluded, therapeutic brand and/or generic equivalents will be covered.

Q. Why is Nexium excluded from the Empire Plan Flexible Formulary?

A. Independent studies conducted by Consumer Reports, the Oregon Health Resources Commission, and AARP, to name a few, have found that there is little clinical difference in efficacy or adverse effects in the class of prescription drugs that Nexium belongs to — proton pump inhibitors (PPIs). There is, however, a significant difference in the cost. The Empire Plan Flexible Formulary continues to cover generic and other brand-name PPIs that provide the best value to the Plan.

Q. How will my local pharmacist know my drug is excluded?

A. Your local participating pharmacist will receive a message when your claim is processed which will advise that the drug is not covered under The Empire Plan. If you choose to fill the prescription, you will be responsible for paying the full cost of the drug; The Empire Plan will not reimburse you for any portion of the cost.

Q. What will happen if I send a new prescription or request a refill from Medco Pharmacy for an excluded drug?

A. If you call in a refill of an excluded drug through a mail service pharmacy, the customer service representative or interactive voice response system will advise you that the drug is excluded, and your order will be canceled. If you mail in a refill order, you will receive a letter indicating your drug is no longer covered under the Plan. If you mail in a new prescription for an excluded drug, the mail service pharmacy will return the prescription along with a letter advising that the drug is excluded from Empire Plan coverage and can no longer be dispensed.

Q. How will my physician know that my drug is excluded?

A. The Flexible Formulary drug list was sent to all participating physicians in The Empire Plan Network. Additionally, if your physician utilizes an online method of prescribing known as E-Prescribing, a message will be displayed indicating that the drug is not covered.

Q. Where can I find lower cost alternatives to the drug I am taking?

A. Suggested generic and/or preferred brand-name drug equivalents are listed on the last page of the Flexible Formulary drug list. We recommend that you talk with your physician to identify which medication is appropriate to treat your condition.

Q. How do I change to one of the preferred medications on The Empire Plan Flexible Formulary? Will I need a new prescription?

A. Yes, you will need a new prescription. If you are almost out of medication, you can request that your retail pharmacist call your physician for a new prescription of a generic or preferred brand-name drug.

If you use a mail service pharmacy, the mail service pharmacy will assist you with obtaining a new prescription. Please call customer service at 1-877-7-NYSHIP (1-877-769-7447) and choose The Empire Plan Prescription Drug Program for assistance.

Q. Can I appeal a drug exclusion or tier placement?

A. No. Drug exclusions and level placements are a component of your benefit plan design and cannot be appealed.

Reminders 2012

Empire Plan Toll-free Script Changes

If you have called The Empire Plan toll-free number 1-877-7-NYSHIP (1-877-769-7447), you may have noticed that we've made some changes to the phone script to help serve you better. The script no longer contains up front prompts using the carrier names and it instead references program names. This change was made to alleviate confusion regarding the name of the plan since enrollees sometimes referred to the plan by the carrier name rather than The Empire Plan. The script is also shorter, to lessen your wait time.

The order of the programs and options has remained the same. However, as a reminder:

Press 1 for the Medical Program, including physician services, medical equipment and home care, administered by UnitedHealthcare

Press 2 for the Hospital Program, administered by BlueCross BlueShield

Press 3 for the Mental Health and Substance Abuse Program, administered by OptumHealth Behavioral Solutions

Press 4 for the Prescription Drug Program, administered by MedcoHealth Solutions

Press 5 for the Empire Plan NurseLine$_{SM}$ for health information and support

Remember, your plan is The Empire Plan for New York government employees.

Medicare Part B Premium Reimbursement

For most enrollees eligible for Medicare, the base cost for the Medicare Part B premium in 2012 is $99.90 per month.

Medicare Law requires some people to pay a higher premium for their Medicare Part B coverage based on their income. If you and/or any of your enrolled dependents are Medicare-primary and received a letter from the Social Security Administration (SSA) requiring the payment of an Income-Related Monthly Adjustment Amount (IRMAA) in addition to the standard Medicare Part B premium ($99.90) for 2012, you are eligible to be reimbursed for this additional premium by NYSHIP. **Note: If your 2009 adjusted gross income was less than or equal to $85,000 ($170,000 if you filed taxes as married filing jointly) you are NOT eligible for any additional reimbursement this year.**

To claim the additional IRMAA reimbursement, eligible enrollees are required to apply for and document the amount paid in excess of the standard premium. For information on how to apply, a list of the documents required or questions on IRMAA, check the Department of Civil Service web site at https://www.cs.ny.gov. Choose Benefit Programs on the home page, then NYSHIP Online and select your group, if prompted. The IRMAA letter was mailed to Medicare Part B reimbursement-eligible enrollees in January 2012 and is available under either What's New or Notices on the NYSHIP Online home page. Or call the Employee Benefits Division at 518-457-5754 or 1-800-833-4344 between the hours of 9:00 a.m. and 3:00 p.m.

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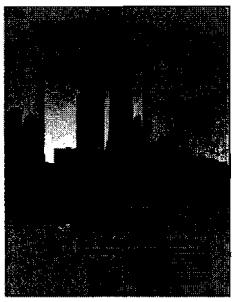
The Empire Plan At A Glance and Copayment Cards

The April 1, 2012 *Empire Plan At A Glance* along with 2012 Copayment Cards and the 2012 Flexible Formulary List will be mailed to your home in early April. These are important pieces to understand your new benefits; be sure to read them and keep them handy. If you need additional copayment cards, contact your agency Health Benefits Administrator.

Participating Provider Directories

Additional Participating Providers in Pennsylvania, Chicago and Surrounding Illinois Counties



We are pleased to announce that beginning January 1, 2012 the network of participating providers serving The Empire Plan in Illinois was expanded to include providers in the UnitedHealthcare Options (PPO) network. We are also expanding the participating provider network in Pennsylvania beginning April 1, 2012.

The Empire Plan will expand its network coverage in all counties in Pennsylvania and the following counties in Illinois: Boone, Cook, DeKalb, DuPage, Grundy, Iroquois, Kane, Kankakee, Kendall, LaSalle, Lake, McHenry, Will and Winnebago. This market also includes the zip code of 61358 in Marshall County and the zip code 60129 in Ogle County. Over 23,000 providers are being added to the network in the Illinois market and approximately 32,500 providers in the Pennsylvania market.

You can find the most current list of Empire Plan participating providers, including new Licensed Nurse Practitioners and Convenience Care Clinics, on the New York State Department of Civil Service web site at https://www.cs.ny.gov. See page 19 for navigation instructions. Or, call 1-877-7-NYSHIP (1-877-769-7447) toll free, select the Medical Program and then plan benefits to check if your provider participates in the Plan.

Retiring and Relocating?

Is 2012 the year you plan to retire from State service? Congratulations! But you should be cautious if your retirement plans include a move outside New York State. You probably already know that The Empire Plan is the only option that offers worldwide coverage, but this does not mean that participating providers are available in every location. The Empire Plan participating provider network is available through a contract with UnitedHealthcare (UHC). In seven states outside of New York (Arizona, Connecticut, Florida, New Jersey, North and South Carolina and Pennsylvania) as well as Washington D.C. and the adjoining states of Maryland and Virginia and Chicago, IL and surrounding counties, The Empire Plan network leases an enhanced UHC Participating Provider Organization (PPO) listing to provide enrollees living in these areas access to a wider range of providers. This is because large populations of Empire Plan retirees live in these regions of the country.

The Empire Plan has national contracts with Empire BlueCross BlueShield for hospital and related expenses and OptumHealth Behavioral Solutions for mental health and substance abuse services. That means the majority of providers in most out-of-state directories (other than those mentioned above) will be from these networks.

If you live in an area of the country where participating providers are not available, you still have Empire Plan non-network coverage under the Basic Medical Program or the Basic Medical Provider Discount Program, if applicable. Annual deductible and coinsurance apply. See your *Empire Plan Certificate* and Amendments for details.

If you are considering relocation after you retire, be sure to check the availability of participating providers in the new state as part of your planning process. You can do this by visiting our web site, https://www.cs.ny.gov. From the NYSHIP Online homepage choose Find a Provider, then scroll down to the Medical/Surgical Program and click on the link for Empire Plan Medical/Surgical Directory. You will be directed to another site where you can customize your search by location. If you prefer a printed directory, see your agency Health Benefits Administrator or call The Empire Plan toll-free at 1-877-7-NYSHIP (1-877-769-7447) and choose the Medical Program to request that a state directory be mailed to your home.

Preretirement Seminars

The Governor's Office of Employee Relations (GOER) with the Office of the State Comptroller presents Preretirement Seminars. As part of the seminars, a representative from the Employee Benefits Division will explain the New York State Health Insurance Program (NYSHIP) and your choices before you leave the payroll.

Call your personnel office to learn if there is a seminar available in your area and to reserve your place. Be sure to bring your personal confirmation letter from GOER when you attend. The New York State Department of Civil Service web site, https://www.cs.ny.gov, also has the seminar schedule. See this page for navigation instructions.

Since demand is greater than available seating at the seminars, you can also access helpful online pre-retirement resources at www.worklife.ny.gov/preretirement/ or www.osc.state.ny.us/retire.

There is also a helpful 25-minute DVD, Planning for Retirement, and a companion booklet that can be ordered online at https://www.cs.ny.gov. Click on Benefit Programs, then NYSHIP Online and select Planning to Retire? for more information.

NYSHIP Online Resources

Basic Navigation

Go to the New York State Department of Civil Service web site (https://www.cs.ny.gov), click on Benefit Programs, then NYSHIP Online and follow the prompts to the NYSHIP Online homepage.

Accessing Information – From the NYSHIP Online homepage, follow the instructions below to find access information referenced in this report.

Find A Provider – Select Find a Provider and scroll down to the program (Hospital, Medical/Surgical or Mental Health/Substance Abuse) you need.

The Empire Plan Preventive Care Coverage Chart – Select Using Your Benefits then Publications and scroll down to the chart.

The Empire Plan Flexible Formulary – Select Using Your Benefits and choose the Flexible Formulary in either alphabetic or therapeutic order. For updates to the list, including the availability of certain drugs, choose What's New and scroll down to Prescription Drugs: Prescription Drug Program Changes to the Drug List and Notification of Safety Issues.

Specialty Drug List – Select Find A Provider and scroll down to the Prescription Drug Program to locate the link for the Specialty Drug Program.

NYSHIP Biweekly and Monthly Premiums – Select Health Benefits and Option Transfer then Rates and Health Plan Choices and choose the Rates and Information publication.

Preretirement Seminars – Select Calendar and choose Pre-Retirement Mtg. from the Type of Event drop down menu and the time period from the Time Period to View drop down menu to see a list of seminar dates and locations.

Planning to Retire? – Select Planning to Retire and scroll down to see a checklist of things to do, the sick leave credit calculator, important information from the NYSHIP General Information Book, order videos on Planning for Retirement and Medicare and find other retirement related Empire Plan publications and links.

New York State
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NYSHIP
New York State Health Insurance Program

Information for the Enrollee, Enrolled Spouse/
Domestic Partner and Other Enrolled Dependents

APSU Empire Plan Report – April 2012

Please do not send mail or correspondence to the return address. See below for address information.

NY0900 EPR-APSU-12-1

Annual Notice of Mastectomy and Reconstructive Surgery Benefits

The Empire Plan covers inpatient hospital care for lymph node dissection, lumpectomy and mastectomy for treatment of breast cancer for as long as the physician and patient determine hospitalization is medically necessary. The Plan covers all stages of reconstructive breast surgery following mastectomy, including surgery of the other breast to produce a symmetrical appearance. The Plan also covers treatment for complications of mastectomy, including lymphedema. Prostheses and mastectomy bras are covered.

Call The Empire Plan toll free at 1-877-7-NYSHIP (1-877-769-7447) and select the Medical Program if you have questions about your coverage for implants, breast forms or other prostheses related to breast cancer treatment.

Empire Plan Benefits Management Program requirements apply. See your *Empire Plan Certificate* and *Empire Plan Reports*.

New Web Site Address

The New York State Department of Civil Service web site address has changed to https://www.cs.ny.gov. Even though you can still access our site at the old address, please update your bookmarks for our web site to the new address. The old address will only work for a limited time.

The Empire Plan Report is published by the Employee Benefits Division of the New York State Department of Civil Service. The Employee Benefits Division administers the New York State Health Insurance Program (NYSHIP). NYSHIP provides your health insurance benefits through The Empire Plan.

NYSHIP
New York State Health Insurance Program

New York State
Department of Civil Service
Employee Benefits Division
Albany, New York 12239

518-457-5754 or 1-800-833-4344
(U.S., Canada, Puerto Rico,
Virgin Islands)
https://www.cs.ny.gov

EMPIRE PLAN SPECIAL REPORT

June 2012

New York State Health Insurance Program (NYSHIP) for Employees of the State of New York represented by Council 82 (C-82) and for their enrolled Dependents, COBRA Enrollees with their Empire Plan Benefits and Young Adult Option Enrollees

In This Report

1 Negotiated Changes
2-4 NYSHIP Changes
5-8 Empire Plan Changes

Negotiated Changes Effective October 1, 2011 and September 1, 2012

This Report describes changes affecting your NYSHIP coverage that have effective dates of October 1, 2011 and September 1, 2012 as a result of the recently ratified contract between the State of New York and Council 82. They include:

October 1, 2011 Changes

- Federal health care changes (see page 5)
- A change in the NYSHIP premium cost sharing between the State and its employees (see page 2)

September 1, 2012 Changes

- Updated life expectancy tables used to calculate the value of your monthly sick leave credit, which is applied to your health insurance premium in retirement (see page 2)
- The Health Insurance Opt-out Program (see pages 3-4)
- Copayment changes (see page 5)
- Changes to out-of-network deductible and coinsurance amounts (see page 6)
- Addition of Convenience Care Clinics and Licensed Nurse Practitioners as Participating Providers (see page 7)

Special Option Transfer Period in July

As the result of negotiated changes, there will be a Special Option Transfer Period from July 2, 2012 through July 31, 2012. You will have the opportunity to change your NYSHIP option for September 1, 2012.

Your cost of coverage under The Empire Plan or a NYSHIP HMO for October 1, 2011 through August 31, 2012 will be posted on the Department web site https://www.cs.ny.gov no later than July 1, 2012. A rate flyer also will be mailed to your home. The web site and the rate flyer will provide details of the Special Option Transfer Period.

NYSHIP Changes

Your Biweekly Premium Contribution Rate

New York State helps pay for your health insurance coverage. After the State's contribution, you are responsible for paying the balance of your premium through biweekly deductions from your paycheck. **Effective October 1, 2011,** your share of the cost is changing as shown below.

Individual Coverage		Dependent Coverage	
State Share	Employee Share	State Share	Employee Share
84%	16%	69%	31%

Since premium deductions for your NYSHIP coverage after October 1, 2011 have already been taken, the increase in your biweekly cost for NYSHIP coverage from October 2011 through August 2012 will be calculated to determine your retroactive health insurance special adjustment. This special adjustment will be applied to the paycheck dated August 23, 2012 for Institution payroll and August 29, 2012 for Administration payroll, the same paycheck in which you will receive your retroactive payments, in accordance with the 2009-2016 agreement between the State and Council 82 employees. In addition to the special adjustment and payments, the health insurance regular premium deduction amount will reflect the 2012 rates.

A rate flyer with rates effective September 1, 2012 will be mailed to your home on or about July 1, 2012. The additional cost of coverage under The Empire Plan or a NYSHIP HMO for October 1, 2011 through the end of August 2012 will be posted on the Department web site.

To calculate your retroactive health insurance special adjustment, go to our web site between July 2 and July 31, 2012 at https://www.cs.ny.gov and click on Benefit Programs, then NYSHIP Online and follow the prompts to the NYSHIP Online homepage. Select Health Benefits & Option Transfer, then choose Rates and Health Plan Choices and select Retroactive Health Insurance Special Adjustment.

Note: This information does not apply to COBRA enrollees or Young Adult Option enrollees. However, these enrollees will have a rate change as a result of negotiated benefit changes.

Updated Life Expectancy Table

Effective **September 1, 2012**, the Actuarial Table of Life Expectancy used to calculate the value of unused sick leave has been updated to reflect the fact that Americans are living longer. This will impact any monthly sick leave credit amount applied to your premium payments in retirement. Since we are living longer, the number of months of life expectancy at retirement has increased and the amount of monthly sick leave credit will be lower. A sick leave credit calculator is available at the New York State Department of Civil Service web site at https://www.cs.ny.gov. Select Benefit Programs, then NYSHIP Online and follow the prompts to the NYSHIP Online homepage. Select What's New?

Actuarial Table
Effective for Retirements on or after September 1, 2012

Age at Retirement	Life Expectancy	Age at Retirement	Life Expectancy
55	337 months	64	250 months
56	327 months	65	241 months
57	317 months	66	232 months
58	307 months	67	223 months
59	297 months	68	214 months
60	288 months	69	205 months
61	278 months	70	197 months
62	269 months	71	188 months
63	259 months	72	180 months
		Etc.	

If you need actuarial rates for additional retirement ages, ask your agency Health Benefits Administrator.

Health Insurance Opt-out Program

Effective September 1, 2012, NYSHIP will offer an Opt-out Program that will allow eligible employees who have other employer-sponsored group health insurance to opt out of their NYSHIP coverage in exchange for an incentive payment. The annual incentive payment is $1,000 for waiving individual coverage or $3,000 for waiving family coverage. For the period September 1, 2012 – December 31, 2012, the incentive payment will be $38.47 per paycheck for individual coverage and $115.39 per paycheck for family coverage. The incentive payments will be prorated and reimbursed in your biweekly paycheck throughout the current year. **Note:** The payments will be taxable income.

Eligibility Requirements

To be eligible for the Program beginning September 1, 2012, you must have been enrolled in NYSHIP by April 1, 2011 and remain enrolled through August 31, 2012. If you became newly eligible for NYSHIP benefits after April 1, 2011, you must have been enrolled since your first date of eligibility.

If you are a benefits-eligible enrollee but are newly eligible for the Health Insurance Opt-out Program due to a negotiating unit change, you must apply for the opt-out within 30 days of the date you become eligible. Your NYSHIP coverage will terminate on the date your opt-out begins.

Once enrolled in the Opt-out Program, you are not eligible for the incentive payment during any period that you do not meet the requirements for the State contribution to the cost of your NYSHIP coverage. Also, if you are receiving the opt-out incentive for family coverage and your last dependent loses NYSHIP eligibility, you will only be eligible for the individual payment from that point on.

Electing to Opt Out

If you are currently enrolled in NYSHIP and wish to participate in the Opt-out Program, you must elect to opt out during the Special Option Transfer Period in July and attest to having other employer-sponsored group health insurance each year. See your agency Health Benefits Administrator (HBA) and complete the 2012 Opt-out Attestation Form (PS-409).

If you are a new hire or a newly benefits-eligible employee who has other employer-sponsored group health insurance and wish to participate in the Opt-out Program, you must make your election no later than the first date of your eligibility for NYSHIP. See your agency HBA and complete the NYS Health Insurance Transaction Form (PS-404) and the 2012 Opt-out Attestation Form (PS-409).

Your NYSHIP coverage will terminate at the end of August 2012 and the incentive payments will begin on or after August 23, 2012 for Institution payroll and August 29, 2012 for Administration payroll and continue until the end of the plan year.

Reenrollment in NYSHIP

Employees who participate in the Opt-out Program may reenroll in NYSHIP during the next annual Option Transfer Period. To reenroll in NYSHIP coverage any other time, employees must experience a qualifying event like a change in family status (e.g., marriage, birth, death or divorce) or loss of coverage. Employees must provide proof of the qualifying event within 30 days of the date of the event or any change in enrollment will be subject to NYSHIP's late enrollment rules. See your **NYSHIP General Information Book** for more details.

Opt-out Program Questions and Answers

Q. What is considered other employer-sponsored group health insurance coverage for the purpose of qualifying for the Opt-out Program?

A. To qualify for the Program you must be covered under an employer-sponsored group health insurance plan through other employment of your own or a plan that your spouse, domestic partner or parent has as the result of his or her employment. The other coverage cannot be NYSHIP coverage provided through employment with the State of New York. However, NYSHIP coverage through another employer such as a municipality, school district or public benefit corporation qualifies as other coverage.

Q. Will I qualify for Opt-out Program incentive payments if I change from family to individual coverage?

A. No. If you are enrolled for NYSHIP coverage, you will not qualify for the incentive payment.

Continued on page 4

Continued from page 3

Opt-out Program Questions and Answers

Q. If I elect the Opt-out Program for 2012, will I automatically be enrolled in the Program for the following plan year?

A. No. Unlike other NYSHIP options, you must elect the Opt-out Program on an annual basis. If you do not make an election for the next plan year, your enrollment in the Opt-out Program will end and the incentive payment credited to your paycheck will stop.

Q. If I opt out and I find that I don't like my alternate coverage (for instance, my doctor does not participate), can I withdraw my enrollment in the Opt-out Program and reenroll in NYSHIP coverage?

A. No. This is not a qualifying event. During the year, you can terminate your enrollment in the Opt-out Program and reenroll in NYSHIP benefits only if you experience a qualifying event according to federal Internal Revenue Service (IRS) rules, such as a change in family status or loss of other coverage.

Q. If my spouse's, domestic partner's or parent's employer has its open enrollment period (or option transfer period) at a different time of the year, how can I coordinate the effective date of my other coverage with the start of the Opt-out Program?

A. Under IRS rules, if an employee's spouse drops coverage under his or her employer plan during Option Transfer, the employee can be permitted to enroll the spouse mid-year in his or her employer plan — as long as the plans have different open enrollment periods. **You should check to see whether your spouse's employer will permit your spouse to enroll you as a dependent.** You are responsible for making sure your other coverage is in effect.

Q. What if I lose my other coverage and do not request enrollment for NYSHIP benefits with The Empire Plan or a NYSHIP HMO within 30 days of losing that coverage?

A. If you fail to make a timely request, you will be subject to NYSHIP's late enrollment waiting period, which is five biweekly pay periods. You will not be eligible for NYSHIP coverage during the waiting period.

Q. Can I get a lump sum payment if I elect the Opt-out Program?

A. No. The Opt-out Program incentive payment is prorated and reimbursed through your biweekly paychecks throughout the year.

Q. If I am eligible for health, dental and vision coverage as a State employee, do I have to opt out of all three benefits to receive the incentive payment?

A. No. The Opt-out Program incentive payment applies to health insurance coverage only. If you enroll in the Program, your eligibility for dental and vision coverage will not be affected.

Q. When I enroll in the Opt-out Program, what information will I need to provide about the other employer-sponsored group health coverage I will be covered by?

A. To enroll you must complete a PS-409. You will be required to attest that you are covered by other employer-sponsored group health coverage and provide information regarding the person that carries that coverage, as well as the name of the other employer and other health plan.

Q. I had individual NYSHIP coverage prior to April 1, 2011 and changed to family coverage when I got married in February 2012. Will I qualify for the $3,000 family incentive payment even though I did not have family coverage as of April 1, 2011?

A. Employees who enrolled in family coverage due to a qualifying event and did so on a timely basis, between April 1, 2011 and August 31, 2012, are eligible for the higher incentive payment. You will not be eligible for the higher incentive payment if you enrolled for family coverage after April 1, 2011 and were subject to a late enrollment waiting period.

Q. Will participating in the Opt-out Program affect my eligibility for NYSHIP coverage in retirement?

A. No. Participation in the Opt-out Program satisfies the requirement of enrollment in NYSHIP at the time of your retirement.

Empire Plan Changes

The Federal Patient Protection and Affordable Care Act (PPACA), which will be referred to as "the Act" in this article, requires that we make several changes to your Empire Plan coverage.

Your Empire Plan benefit package lost grandfathered status under the Act as a result of the recent contract settlement as of October 1, 2011. This means that your Plan is now a nongrandfathered plan and it includes all changes required by the Act, according to the Act's timetable.

The Act requires the following changes, retroactive to October 1, 2011:

The Act requires coverage of certain preventive care services received at a network hospital or from a participating provider to be paid at 100 percent (not subject to copayment). Preventive care services covered under the Act with no copayment include:

- Immunizations as recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention,
- Preventive care and screenings for women, infants, children and adolescents as stated in guidelines supported by the Health Resources and Services Administration,
- Preventive care and screenings for men in the current recommendations of the United States Preventive Services Task Force,
- Items or services that have a rating of "A" or "B" in the current recommendations of the United States Preventive Services Task Force.

For further information on preventive services, see The Empire Plan Preventive Care Coverage Chart at the New York State Department of Civil Service web site at https://www.cs.ny.gov. Select Benefit Programs, then NYSHIP Online and follow the prompts to the NYSHIP Online home page. From the home page, select Using Your Benefits then publications and you will find the chart under Empire Plan. Or, visit www.healthcare.gov.

Also, in a medical emergency, non-participating provider charges in a hospital emergency room will be considered under the Basic Medical Program subject to deductible, but not coinsurance.

Copayments Effective September 1, 2012

Covered services defined as preventive under PPACA (see above) are not subject to copayment.

Hospital Outpatient Services (Hospital Program)

$40 Copayment–Diagnostic Laboratory tests and Radiology exams (including Mammography Screening) and Administration of Desferal for Cooley's Anemia
$60 Copayment–Surgery
$70 Copayment–Emergency Care

Mental Health and Substance Abuse Program

$70 Copayment–Hospital Emergency Care

Prescription Drug Program

When you fill your Prescription for a covered drug for up to a **30-day supply at a Network Pharmacy, Mail Service Pharmacy, or the designated Specialty Pharmacy,** your Copayment is:	When you fill your Prescription for a covered drug for a **31- to 90-day supply at a Network Pharmacy,** your Copayment is:	When you fill your Prescription for a covered drug for a **31- to 90-day supply through the Mail Service Pharmacy or the designated Specialty Pharmacy,** your Copayment is:
Level 1 Drugs or for most **Generic** Drugs $5	Level 1 Drugs or for most **Generic** Drugs $10	Level 1 Drugs or for most **Generic** Drugs $5
Level 2, **Preferred** Drugs or Compound Drugs $25	Level 2, **Preferred** Drugs or Compound Drugs $50	Level 2, **Preferred** Drugs or Compound Drugs $50
Level 3 or **Non-preferred** Drugs $45	Level 3 or **Non-preferred** Drugs $90	Level 3 or **Non-preferred** Drugs $90

Note: Oral chemotherapy drugs for the treatment of cancer do not require a copayment.

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2012 Annual Deductible and Coinsurance Maximum

Under the federal Parity Law effective on January 1, 2012, The Empire Plan is not permitted to have separate deductibles and coinsurance amounts for Basic Medical and non-network coverage under the Hospital Program and the Mental Health and Substance Abuse Program. However, the Managed Physical Medicine Program will continue to have a separate deductible. Therefore, a combined deductible and a combined coinsurance amount for the employee, the enrolled spouse/domestic partner and all dependent children combined applies to the Hospital Program (coinsurance only), Basic Medical Program and non-network expenses under the Home Care Advocacy Program (deductible only) and the Mental Health and Substance Abuse Program. The combined deductible and coinsurance amounts are changing effective September 1, 2012 as the result of the recent negotiated agreement.

Effective January 1, 2012 through August 31, 2012, The Empire Plan combined annual deductible is $400 for the enrollee, $400 for the enrolled spouse/domestic partner and $400 for all dependent children combined.

Effective September 1, 2012, The Empire Plan combined annual deductible increases to $1,000 for the enrollee, $1,000 for the enrolled spouse/domestic partner and $1,000 for all dependent children combined.

The deductible must be met before your Basic Medical Program and non-network expenses under the Home Care Advocacy Program and the Mental Health and Substance Abuse Program claims are considered for reimbursement.

Effective January 1, 2012 through August 31, 2012, the combined coinsurance maximum (out-of-pocket) is $854 for the enrollee, $854 for the enrolled spouse/domestic partner and $854 for all dependent children combined.

Effective September 1, 2012, the combined coinsurance maximum (out-of-pocket) increases to $3,000 for the enrollee, $3,000 for the enrolled spouse/domestic partner and $3,000 for all dependent children combined.

The coinsurance maximum will be shared among the Basic Medical Program and non-network coverage under the Hospital Program and Mental Health and Substance Abuse Program.

After each coinsurance maximum is reached, you will be reimbursed 100 percent of the reasonable and customary amount, or 100 percent of the billed amount, whichever is less, for covered services. You will still be responsible for any charges above the reasonable and customary amount and for any penalties under the Benefits Management Program.

Amounts credited toward your deductible and coinsurance maximum from January 1, 2012 through August 31, 2012 will be applied toward the higher deductible and coinsurance maximum that take effect on September 1, 2012.

The Empire Plan Medical/Surgical Benefits Program

Guaranteed Access

The Empire Plan will guarantee access to primary care physicians and specialists (on page 7) in New York and counties in Connecticut, Massachusetts, New Jersey, Pennsylvania and Vermont that share a border with the State of New York. When there is not an appropriate Empire Plan participating provider within a reasonable distance from an enrollee's residence (see chart below), enrollees must call The Empire Plan at 1-877-7-NYSHIP (1-877-769-7447) **prior to** receiving services, choose the Medical Program then the Benefits Management Program and use one of the approved providers to receive network benefits.

You will be responsible for contacting the provider to arrange care. Appointments are subject to provider's availability and the Benefits Management Program does not guarantee that a provider will be available in a specified time period.

Guaranteed access applies when The Empire Plan is your primary health insurance coverage (pays benefits first, before any other group plan or Medicare), the enrollee resides in New York State or counties in Connecticut, Massachusetts, New Jersey, Pennsylvania and Vermont that share a border with the State of New York and there is not an appropriate Empire Plan participating provider within a reasonable distance from the enrollee's residence.

Reasonable distance from the enrollee's residence is defined by the following mileage standards:

Primary Care Physician:
Urban: 8 miles
Suburban: 15 miles
Rural: 25 miles

Specialist:
Urban: 15 miles
Suburban: 25 miles
Rural: 50 miles

Within these mileage standards, network benefits are guaranteed for the following primary care physicians and core specialties:

Primary Care Physicians: Family Practice, General Practice, Internal Medicine, Pediatrics, Obstetrics/Gynecology

Specialties: Allergy, Anesthesia, Cardiology, Dermatology, Emergency Medicine, Gastroenterology, General Surgery, Hematology/Oncology, Neurology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pulmonary Medicine, Radiology, Rheumatology, Urology

Convenience Care Clinics

Effective September 1, 2012, when you need treatment for common ailments and injuries, you now have more choices. You can get high-quality, affordable services for **uncomplicated minor illnesses and preventive health care** through Convenience Care Clinics located throughout the country.

Convenience Care Clinics are health care clinics located in retail stores, supermarkets and pharmacies. They are sometimes called "retail clinics", "retail-based clinics" or "walk-in medical clinics." Convenience Care Clinics are usually supported by licensed physicians and staffed by nurse practitioners or physician assistants. Some, however, are staffed by physicians. Currently, there are over 1,350 Convenience Care Clinics located throughout the United States. Most Convenience Care Clinics are open seven days a week, 12 hours a day, Monday through Friday and eight hours a day on the weekend.

Results of your diagnosis and treatment are sent to your doctor with your permission. If you have a more severe condition, or require treatment in a different setting, the Convenience Care clinician will refer you to your doctor or an emergency room. Remember that Convenience Care Clinics are only covered under the Participating Provider Program. There is no coverage under the Basic Medical Program. Convenience Care Clinics can be identified in the online Empire Plan Provider Directory under the choice of Other Facilities; Convenience Care Clinic.

Please note that some of the services, particularly vaccinations, are also available to the general public in retail pharmacy locations. Many Convenience Care Clinics are located adjacent to these retail pharmacies. It is important to note that only services rendered at an in-network Convenience Care Clinic are covered under the Empire Plan Medical Program. Any services rendered at any retail pharmacy, including vaccines, are not a covered benefit under the Empire Plan Medical Program.

Licensed Nurse Practitioners

Effective September 1, 2012, Licensed Nurse Practitioners have been added to the list of UnitedHealthcare providers. Licensed Nurse Practitioners provide healthcare services similar to those of a physician. They may diagnose and treat a wide range of health problems. In addition to clinical care, Licensed Nurse Practitioners focus on health promotion and counseling, disease prevention and health education. Licensed Nurse Practitioners provide services in accordance with the laws of the state where services are rendered.

Herpes Zoster Vaccine for Shingles

Effective September 1, 2012, no copayment will be required for those age 60 and older in accordance with PPACA guidelines. Enrollees and dependents age 55-59 will continue to pay a $20 copayment.

Please note that if you purchase the Herpes Zoster vaccine, or any other vaccine, at the pharmacy, The Empire Plan will not reimburse you for the cost.

Mental Health Program Non-Network Benefit Changes Effective September 1, 2012

You receive non-network benefits for covered services when you do not call OptumHealth before your treatment begins and/or you call OptumHealth but do not follow OptumHealth's recommendations. Changes to non-network benefits for mental health coverage under The Empire Plan, effective September 1, 2012, are explained below.

Practitioner Services: 80 percent of Reasonable and Customary Charges

After you meet the combined annual deductible of $1,000 for you, $1,000 for your enrolled spouse/domestic partner and $1,000 for all children combined, The Empire Plan pays 80 percent of the reasonable and customary charges for covered mental health care services. After the combined annual coinsurance maximum of $3,000 for you, $3,000 for your enrolled spouse/domestic partner and $3,000 for all children combined is reached, The Empire Plan pays up to 100 percent of reasonable and customary charges for covered services.

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New York State
Department of Civil Service
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NYSHIP
New York State Health Insurance Program

Information for the Enrollee, Enrolled Spouse/
Domestic Partner and Other Enrolled Dependents

C-82 Empire Plan Special Report June 2012

Please do not send mail or correspondence to the return address. See below for address information.

NY0971 EPR-C-82-12-1

Continued from page 7

Non-Network Bene ts (Continued)

Inpatient Care: 90 percent of Billed Charges

The Empire Plan pays up to 90 percent of billed charges for covered acute inpatient mental health care in an approved hospital or an approved psychiatric facility. You pay the remaining 10 percent until you reach the combined coinsurance maximum of $3,000 for you, the enrollee, $3,000 for your enrolled spouse/domestic partner and $3,000 for all enrolled dependent children combined. The Empire Plan then pays 100 percent of billed charges for covered services. This benefit is not subject to a deductible.

Partial Hospitalization, Intensive Outpatient Program, Day Treatment, 23-Hour Extended Bed and 72-Hour Crisis Bed: 90 percent of Billed Charges

The Empire Plan pays up to 90 percent of billed charges for mental health care received from an approved facility. You pay the remaining 10 percent until you reach the combined coinsurance maximum of $3,000 for you, the enrollee, $3,000 for your enrolled spouse/domestic partner and $3,000 for all enrolled dependent children combined. The Empire Plan then pays 100 percent of billed charges for covered services. This benefit is not subject to a deductible.

Inpatient and Outpatient Visits: Unlimited

The number of inpatient and outpatient services for both network and non-network mental health treatment under The Empire Plan is unlimited when certified as medically necessary by OptumHealth.

Note: See page 6 for information about your September 1, 2012 Annual Deductible and Coinsurance Maximums.

The Empire Plan Special Report is published by the Employee Benefits Division of the New York State Department of Civil Service. The Employee Benefits Division administers the New York State Health Insurance Program (NYSHIP). NYSHIP provides your health insurance benefits through The Empire Plan.

NYSHIP
New York State Health Insurance Program

New York State
Department of Civil Service
Employee Benefits Division
Albany, New York 12239

518-457-5754 or 1-800-833-4344
(U.S., Canada, Puerto Rico,
Virgin Islands)
https://www.cs.ny.gov

May 2012

New York State Health Insurance Program (NYSHIP)
For Employees of the State of New York in Law Enforcement (NU 21) represented by the New York State Correction Officers and Police Benevolent Association (NYSCOPBA)
and for their enrolled Dependents, COBRA Enrollees with their Empire Plan Benefits and Young Adult Option Enrollees

In This Report

1 Negotiated Changes
2-4 NYSHIP Changes
5-8 Empire Plan Changes

THE EMPIRE PLAN

Negotiated Changes Effective October 1, 2011 and July 1, 2012

This Report describes changes affecting your NYSHIP coverage that have effective dates of October 1, 2011 and July 1, 2012 as a result of the recently ratified contract between the State of New York and NYSCOPBA. They include:

October 1, 2011 Changes

- Federal health care changes (see page 5)
- A change in the NYSHIP premium cost sharing between the State and its employees (see page 2)

July 1, 2012 Changes

- Updated life expectancy tables used to calculate the value of your monthly sick leave credit which is applied to your health insurance premium in retirement (see page 2)
- The Health Insurance Opt-out Program (see pages 3-4)
- Copayment changes (see page 5)
- Changes to out-of-network deductible and coinsurance amounts (see page 6)
- Addition of Convenience Care Clinics and Licensed Nurse Practitioners as Participating Providers (see page 7)

Special Option Transfer Period in May

As the result of negotiated changes, there will be a Special Option Transfer Period from May 4, 2012 through June 4, 2012. You will have the opportunity to change your NYSHIP option for July 1, 2012.

Your cost of coverage under The Empire Plan or a NYSHIP HMO for October 1, 2011 through June 30, 2012 will be posted on the Department web site https://www.cs.ny.gov no later than May 3, 2012. A rate flyer also will be mailed to your home. The web site and the rate flyer will provide details of the Special Option Transfer Period.

NYSHIP Changes

Your Biweekly Premium Contribution Rate

New York State helps pay for your health insurance coverage. After the State's contribution, you are responsible for paying the balance of your premium through biweekly deductions from your paycheck. **Effective October 1, 2011,** your share of the cost is changing as shown below.

Pay Grade	Individual Coverage		Dependent Coverage	
	State Share	Employee Share	State Share	Employee Share
Grade 9 and below	88%	12%	73%	27%
Grade 10 and above	84%	16%	69%	31%

Since premium deductions for your NYSHIP coverage after October 1, 2011 have already been taken, the increase in your biweekly cost for NYSHIP coverage from October 2011 through June 2012 will be calculated to determine your retroactive health insurance special adjustment. This special adjustment will be applied to the paycheck dated June 20, 2012 for Administration payroll and June 28, 2012 for Institution payroll, the same paycheck in which you will receive your retroactive payments, in accordance with the 2009-2016 agreement between the State and NYSCOPBA employees in law enforcement positions. In addition to the special adjustment and payments, the health insurance regular premium deduction amount will reflect the 2012 rates.

A rate flyer with rates effective July 1, 2012 will be mailed to your home on or about May 3, 2012. The additional cost of coverage under The Empire Plan or a NYSHIP HMO for October 1, 2011 through June 30, 2012 will be posted on the Department web site.

To calculate your retroactive health insurance special adjustment, go to our web site between May 4 and June 4, 2012 at https://www.cs.ny.gov and click on Benefit Programs, then NYSHIP Online and follow the prompts to the NYSHIP Online homepage. Select Health Benefits & Option Transfer, then choose Rates and Health Plan Choices and select Retroactive Health Insurance Special Adjustments.

Note: This information does not apply to COBRA enrollees or Young Adult Option enrollees. However, these enrollees will have a rate change as a result of negotiated benefit changes.

Updated Life Expectancy Table

Effective **July 1, 2012**, the Actuarial Table of Life Expectancy used to calculate the value of unused sick leave has been updated to reflect the fact that Americans are living longer. This will impact any monthly sick leave credit amount applied to your premium payments in retirement. Since we are living longer, the number of months of life expectancy at retirement has increased and the amount of monthly sick leave credit will be lower. A sick leave credit calculator is available at the New York State Department of Civil Service web site at https://www.cs.ny.gov. Select Benefit Programs, then NYSHIP Online and follow the prompts to the NYSHIP Online homepage. Select What's New?

Actuarial Table
Effective for Retirements on or after July 1, 2012

Age at Retirement	Life Expectancy	Age at Retirement	Life Expectancy
55	337 months	64	250 months
56	327 months	65	241 months
57	317 months	66	232 months
58	307 months	67	223 months
59	297 months	68	214 months
60	288 months	69	205 months
61	278 months	70	197 months
62	269 months	71	188 months
63	259 months	72	180 months
		Etc.	

If you need actuarial rates for additional retirement ages, ask your agency Health Benefits Administrator.

Health Insurance Opt-out Program

Effective July 1, 2012, NYSHIP will offer an Opt-out Program that will allow eligible employees who have other employer-sponsored group health insurance to opt out of their NYSHIP coverage in exchange for an incentive payment. The annual incentive payment is $1,000 for waiving individual coverage or $3,000 for waiving family coverage. For the period July 1, 2012 – December 31, 2012, the incentive payment will be $38.47 per paycheck for individual coverage and $115.39 per paycheck for family coverage. The incentive payments will be prorated and reimbursed in your biweekly paycheck throughout the current year. **Note:** The payments will be taxable income.

Eligibility Requirements

To be eligible for the Program beginning July 1, 2012, you must have been enrolled in NYSHIP by April 1, 2011 and remain enrolled through June 30, 2012. If you became newly eligible for NYSHIP benefits after April 1, 2011, you must have been enrolled since your first date of eligibility.

If you are a benefits-eligible enrollee but are newly eligible for the Health Insurance Opt-out Program due to a negotiating unit change, you must apply for the opt-out within 30 days of the date you become eligible. Your NYSHIP coverage will terminate on the date your opt-out begins.

Once enrolled in the Opt-out Program, you are not eligible for the incentive payment during any period that you do not meet the requirements for the State contribution to the cost of your NYSHIP coverage. Also, if you are receiving the opt-out incentive for family coverage and your last dependent loses NYSHIP eligibility, you will only be eligible for the individual payment from that point on.

Electing to Opt Out

If you are currently enrolled in NYSHIP and wish to participate in the Opt-out Program, you must elect to opt out during the Special Option Transfer Period in May and attest to having other employer-sponsored group health insurance each year. See your agency Health Benefits Administrator (HBA) and complete the 2012 Opt-out Attestation Form (PS-409).

If you are a new hire or a newly benefits-eligible employee who has other employer-sponsored group health insurance and wish to participate in the Opt-out Program, you must make your election no later than the first date of your eligibility for NYSHIP. See your agency HBA and complete the NYS Health Insurance Transaction Form (PS-404) and the 2012 Opt-out Attestation Form (PS-409).

Your NYSHIP coverage will terminate at the end of June 2012 and the incentive payments will begin on or after June 20, 2012 for Administration payroll and June 28, 2012 for Institution payroll and continue until the end of the plan year.

Reenrollment in NYSHIP

Employees who participate in the Opt-out Program may reenroll in NYSHIP during the next annual Option Transfer Period. To reenroll in NYSHIP coverage any other time, employees must experience a qualifying event like a change in family status (e.g., marriage, birth, death or divorce) or loss of coverage. Employees must provide proof of the qualifying event within 30 days of the date of the event or any change in enrollment will be subject to NYSHIP's late enrollment rules. See your NYSHIP General Information Book for more details.

Opt-out Program Questions and Answers

Q. What is considered other employer-sponsored group health insurance coverage for the purpose of qualifying for the Opt-out Program?

A. To qualify for the Program you must be covered under an employer-sponsored group health insurance plan through other employment of your own or a plan that your spouse, domestic partner or parent has as the result of his or her employment. The other coverage cannot be NYSHIP coverage provided through employment with the State of New York. However, NYSHIP coverage through another employer such as a municipality, school district or public benefit corporation qualifies as other coverage.

Q. Will I qualify for Opt-out Program incentive payments if I change from family to individual coverage?

A. No. If you are enrolled for NYSHIP coverage, you will not qualify for the incentive payment.

Continued on page 4

Continued from page 3

Opt-out Program Questions and Answers

Q. If I elect the Opt-out Program for 2012, will I automatically be enrolled in the Program for the following plan year?

A. No. Unlike other NYSHIP options, you must elect the Opt-out Program on an annual basis. If you do not make an election for the next plan year, your enrollment in the Opt-out Program will end and the incentive payment credited to your paycheck will stop.

Q. If I opt out and I find that I don't like my alternate coverage (for instance, my doctor does not participate), can I withdraw my enrollment in the Opt-out Program and reenroll in NYSHIP coverage?

A. No. This is not a qualifying event. During the year, you can terminate your enrollment in the Opt-out Program and reenroll in NYSHIP benefits only if you experience a qualifying event according to federal Internal Revenue Service (IRS) rules, such as a change in family status or loss of other coverage.

Q. If my spouse's, domestic partner's or parent's employer has its open enrollment period (or option transfer period) at a different time of the year, how can I coordinate the effective date of my other coverage with the start of the Opt-out Program?

A. Under IRS rules, if an employee's spouse drops coverage under his or her employer plan during Option Transfer, the employee can be permitted to enroll the spouse mid-year in his or her employer plan — as long as the plans have different open enrollment periods. **You should check to see whether your spouse's employer will permit your spouse to enroll you as a dependent.** You are responsible for making sure your other coverage is in effect.

Q. What if I lose my other coverage and do not request enrollment for NYSHIP benefits with The Empire Plan or a NYSHIP HMO within 30 days of losing that coverage?

A. If you fail to make a timely request, you will be subject to NYSHIP's late enrollment waiting period, which is five biweekly pay periods. You will not be eligible for NYSHIP coverage during the waiting period.

Q. Can I get a lump sum payment if I elect the Opt-out Program?

A. No. The Opt-out Program incentive payment is prorated and reimbursed through your biweekly paychecks throughout the year.

Q. If I am eligible for health, dental and vision coverage as a State employee, do I have to opt out of all three benefits to receive the incentive payment?

A. No. The Opt-out Program incentive payment applies to health insurance coverage only. If you enroll in the Program, your eligibility for dental and vision coverage will not be affected.

Q. When I enroll in the Opt-out Program, what information will I need to provide about the other employer-sponsored group health coverage I will be covered by?

A. To enroll you must complete a PS-409. You will be required to attest that you are covered by other employer-sponsored group health coverage and provide information regarding the person that carries that coverage, as well as the name of the other employer and other health plan.

Q. I had individual NYSHIP coverage prior to April 1, 2011 and changed to family coverage when I got married in July. Will I qualify for the $3,000 family incentive payment even though I did not have family coverage as of April 1?

A. Employees who enrolled in family coverage due to a qualifying event and did so, on a timely basis, between April 1, 2011 and June 30, 2012 are eligible for the higher incentive payment. You will not be eligible for the higher incentive payment if you enrolled for family coverage after April 1, 2011 and were subject to a late enrollment waiting period.

Q. Will participating in the Opt-out Program affect my eligibility for NYSHIP coverage in retirement?

A. No. Participation in the Opt-out Program satisfies the requirement of enrollment in NYSHIP at the time of your retirement.

Empire Plan Changes

The Federal Patient Protection and Affordable Care Act (PPACA), which will be referred to as "the Act" in this article and throughout this **Empire Plan Report**, requires that we make several changes to your Empire Plan coverage.

Your Empire Plan benefit package lost grandfathered status under PPACA as a result of the recent contract settlement as of October 1, 2011. This means that your Plan is now a nongrandfathered plan and it includes all changes required by the Act, according to the Act's timetable.

The Act requires the following changes, retroactive to October 1, 2011:

The Act requires coverage of certain preventive care services received at a network hospital or from a participating provider to be paid at 100 percent (not subject to copayment). Preventive care services covered under the Act with no copayment include:

- Immunizations as recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention,
- Preventive care and screenings for women, infants, children and adolescents as stated in guidelines supported by the Health Resources and Services Administration,
- Preventive care and screenings for men in the current recommendations of the United States Preventive Services Task Force,
- Items or services that have a rating of "A" or "B" in the current recommendations of the United States Preventive Services Task Force.

For further information on preventive services, see The Empire Plan Preventive Care Coverage Chart at the New York State Department of Civil Service web site at https://www.cs.ny.gov. Select Benefit Programs, then NYSHIP Online and follow the prompts to the NYSHIP Online home page. From the home page, select Using Your Benefits then publications and you will find the chart under Empire Plan. Or, visit www.healthcare.gov.

Also, in a medical emergency, non-participating provider charges in a hospital emergency room will be considered under the Basic Medical Program subject to deductible, but not coinsurance.

Copayments Effective July 1, 2012

Covered services defined as preventive under PPACA (see above) are not subject to copayment.

Hospital Outpatient Services (Hospital Program)

$40 Copayment–Diagnostic Laboratory tests and Radiology exams (including Mammography Screening) and Administration of Desferal for Cooley's Anemia
$60 Copayment–Surgery
$70 Copayment–Emergency Care

Mental Health and Substance Abuse Program

$70 Copayment–Hospital Emergency Care

Prescription Drug Program

When you fill your Prescription for a covered drug for up to a **30-day supply at a Network Pharmacy, Mail Service Pharmacy, or the designated Specialty Pharmacy,** your Copayment is:	When you fill your Prescription for a covered drug for a **31- to 90-day supply at a Network Pharmacy,** your Copayment is:	When you fill your Prescription for a covered drug for a **31- to 90-day supply through the Mail Service Pharmacy or the designated Specialty Pharmacy,** your Copayment is:
Level 1 Drugs or for most **Generic** Drugs $5	Level 1 Drugs or for most **Generic** Drugs $10	Level 1 Drugs or for most **Generic** Drugs $5
Level 2, **Preferred** Drugs or Compound Drugs $25	Level 2, **Preferred** Drugs or Compound Drugs $50	Level 2, **Preferred** Drugs or Compound Drugs $50
Level 3 or **Non-preferred** Drugs $45	Level 3 or **Non-preferred** Drugs $90	Level 3 or **Non-preferred** Drugs $90

Note: Oral chemotherapy drugs for the treatment of cancer do not require a copayment.

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2012 Annual Deductible and Coinsurance Maximum

Under the federal Parity Law effective on January 1, 2012, The Empire Plan is not permitted to have separate deductibles and coinsurance amounts for Basic Medical and non-network coverage under the Hospital Program and the Mental Health and Substance Abuse Program. However, the Managed Physical Medicine Program will continue to have a separate deductible. Therefore, a combined deductible and a combined coinsurance amount for the employee, the enrolled spouse/domestic partner and all dependent children combined applies to the Hospital Program (coinsurance only), Basic Medical Program and non-network expenses under the Health Care Advocacy Program (deductible only) and the Mental Health and Substance Abuse Program. The combined deductible and coinsurance amounts are changing effective July 1, 2012 as the result of the recent negotiated agreement.

Effective January 1, 2012 through June 30, 2012, The Empire Plan combined annual deductible is $400 for the enrollee, $400 for the enrolled spouse/domestic partner and $400 for all dependent children combined.

Effective July 1, 2012, The Empire Plan combined annual deductible increases to $1,000 for the enrollee, $1,000 for the enrolled spouse/domestic partner and $1,000 for all dependent children combined.

Each $1,000 deductible amount shall be reduced to $500 per calendar year for employees in or equated to salary level six or below.

The deductible must be met before your Basic Medical Program and non-network expenses under the Health Care Advocacy Program and the Mental Health and Substance Abuse Program claims are considered for reimbursement.

Effective January 1, 2012 through June 30, 2012, the combined coinsurance maximum (out-of-pocket) is $854 for the enrollee, $854 for the enrolled spouse/domestic partner and $854 for all dependent children combined.

Effective July 1, 2012, the combined coinsurance maximum (out-of-pocket) increases to $3,000 for the enrollee, $3,000 for the enrolled spouse/domestic partner and $3,000 for all dependent children combined.

Each $3,000 coinsurance maximum shall be reduced to $1,500 per calendar year for employees in or equated to salary level six or below.

The coinsurance maximum will be shared among the Basic Medical Program and non-network coverage under the Hospital Program and Mental Health and Substance Abuse Program.

After each coinsurance maximum is reached, you will be reimbursed 100 percent of the reasonable and customary amount, or 100 percent of the billed amount, whichever is less, for covered services. You will still be responsible for any charges above the reasonable and customary amount and for any penalties under the Benefits Management Programs.

Amounts credited toward your deductible and coinsurance maximum from January 1, 2012 through June 30, 2012 will be applied toward the higher deductible and coinsurance maximum that take effect on July 1, 2012.

The Empire Plan Medical/Surgical Benefits Program

Guaranteed Access

The Empire Plan will guarantee access to primary care physicians and specialists (on page 7) in New York and counties in Connecticut, Massachusetts, New Jersey, Pennsylvania and Vermont that share a border with the State of New York. When there is not an appropriate Empire Plan participating provider within a reasonable distance from an enrollee's residence (see chart below), enrollees must call The Empire Plan at 1-877-7-NYSHIP (1-877-769-7447) **prior to** receiving services, choose the Medical Program then the Benefits Management Program and use one of the approved providers to receive network benefits.

You will be responsible for contacting the provider to arrange care. Appointments are subject to provider's availability and the Benefits Management Program does not guarantee that a provider will be available in a specified time period.

Guaranteed access applies when The Empire Plan is your primary health insurance coverage (pays benefits first, before any other group plan or Medicare), the enrollee resides in New York State or counties in Connecticut, Massachusetts, New Jersey, Pennsylvania and Vermont that share a border with the State of New York and there is not an appropriate Empire Plan participating provider within a reasonable distance from the enrollee's residence.

Reasonable distance from the enrollee's residence is defined by the following mileage standards:

Primary Care Physician:
Urban: 8 miles
Suburban: 15 miles
Rural: 25 miles

Specialist:
Urban: 15 miles
Suburban: 25 miles
Rural: 50 miles

Within these mileage standards, network benefits are guaranteed for the following primary care physicians and core specialties:

Primary Care Physicians: Family Practice, General Practice, Internal Medicine, Pediatrics, Obstetrics/Gynecology

Specialties: Allergy, Anesthesia, Cardiology, Dermatology, Emergency Medicine, Gastroenterology, General Surgery, Hematology/Oncology, Neurology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pulmonary Medicine, Radiology, Rheumatology, Urology

Convenience Care Clinics

Effective July 1, 2012, when you need treatment for common ailments and injuries, you now have more choices. You can get high-quality, affordable services for **uncomplicated minor illnesses and preventive health care** through Convenience Care Clinics located throughout the country.

Convenience Care Clinics are health care clinics located in retail stores, supermarkets and pharmacies. They are sometimes called "retail clinics", "retail-based clinics" or "walk-in medical clinics." Convenience Care Clinics are usually supported by licensed physicians and staffed by nurse practitioners or physician assistants. Some, however, are staffed by physicians. Currently, there are over 1,350 Convenience Care Clinics located throughout the United States. Most Convenience Care Clinics are open seven days a week, 12 hours a day, Monday through Friday and eight hours a day on the weekend.

Results of your diagnosis and treatment are sent to your doctor with your permission. If you have a more severe condition, or require treatment in a different setting, the Convenience Care clinician will refer you to your doctor or an emergency room. Remember that Convenience Care Clinics are only covered under the Participating Provider Program. There is no coverage under the Basic Medical Program. Convenience Care Clinics can be identified in the online Empire Plan Provider Directory under the choice of Other Facilities; Convenience Care Clinic.

Please note that some of the services, particularly vaccinations, are also available to the general public in retail pharmacy locations. Many Convenience Care Clinics are located adjacent to these retail pharmacies. It is important to note that only services rendered at an in-network Convenience Care Clinic are covered under the Empire Plan Medical Program. Any services rendered at any retail pharmacy, including vaccines, are not a covered benefit under the Empire Plan Medical Program.

Licensed Nurse Practitioners

Effective July 1, 2012, Licensed Nurse Practitioners have been added to the list of UnitedHealthcare providers. Licensed Nurse Practitioners provide healthcare services similar to those of a physician. They may diagnose and treat a wide range of health problems. In addition to clinical care, Licensed Nurse Practitioners focus on health promotion and counseling, disease prevention and health education. Licensed Nurse Practitioners provide services in accordance with the laws of the state where services are rendered.

Herpes Zoster Vaccine for Shingles

Effective July 1, 2012, no copayment will be required for those age 60 and older in accordance with PPACA guidelines. Enrollees and dependents age 55-59 will continue to pay a $20 copayment. Please note that if you purchase the Herpes Zoster vaccine, or any other vaccine, at the pharmacy, The Empire Plan will not reimburse you for the cost.

Mental Health Program Non-Network Benefit Changes Effective July 1, 2012

You receive non-network benefits for covered services when you do not call OptumHealth before your treatment begins and/or you call OptumHealth but do not follow OptumHealth's recommendations. Changes to non-network benefits for mental health coverage under The Empire Plan, effective July 1, 2012, are explained below.

Practitioner Services: 80 percent of Reasonable and Customary Charges

After you meet the combined annual deductible of $1,000 for you, $1,000 for your enrolled spouse/domestic partner and $1,000 for all children combined, The Empire Plan pays 80 percent of the reasonable and customary charges for covered mental health care services. After the combined annual coinsurance maximum of $3,000 for you, $3,000 for your enrolled spouse/domestic partner and $3,000 for all children combined is reached, The Empire Plan pays up to 100 percent of reasonable and customary charges for covered services.

Continued on page 8

New York State
Department of Civil Service
Employee Benefits Division
P.O. Box 1068
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NYSHIP
New York State Health Insurance Program

Information for the Enrollee, Enrolled Spouse/
Domestic Partner and Other Enrolled Dependents

NYSCOPBA (LE) Empire Plan Special Report May 2012

Please do not send mail or correspondence to the return address. See below for address information.

It is the policy of the New York State Department of Civil Service to provide reasonable accommodation to ensure effective communication of information in benefits publications to individuals with disabilities. These publications are also available on the Department of Civil Service web site (https://www.cs.ny.gov). Click on Benefit Programs, then NYSHIP Online for timely information that meets universal accessibility standards adopted by New York State for NYS agency web sites. If you need an auxiliary aid or service to make benefits information available to you, please contact your agency Health Benefits Administrator. New York State and Participating Employer Retirees and COBRA Enrollees: Contact the Employee Benefits Division at 518-457-5754 or 1-800-833-4344 (U.S., Canada, Puerto Rico, Virgin Islands).

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Inpatient Care: 90 percent of Billed Charges

The Empire Plan pays up to 90 percent of billed charges for covered acute inpatient mental health care in an approved hospital or an approved psychiatric facility. You pay the remaining 10 percent until you reach the combined coinsurance maximum of $3,000 for you, the enrollee, $3,000 for your enrolled spouse/domestic partner and $3,000 for all enrolled dependent children combined. The Empire Plan then pays 100 percent of billed charges for covered services. This benefit is not subject to a deductible.

Partial Hospitalization, Intensive Outpatient Program, Day Treatment, 23-Hour Extended Bed and 72-Hour Crisis Bed: 90 percent of Billed Charges

The Empire Plan pays up to 90 percent of billed charges for mental health care received from an approved facility. You pay the remaining 10 percent until you reach the combined coinsurance maximum of $3,000 for you, the enrollee, $3,000 for your enrolled spouse/domestic partner and $3,000 for all enrolled dependent children combined. The Empire Plan then pays 100 percent of billed charges for covered services. This benefit is not subject to a deductible.

Inpatient and Outpatient Visits: Unlimited

The number of inpatient and outpatient services for both network and non-network mental health treatment under The Empire Plan is unlimited when certified as medically necessary by OptumHealth.

Note: See page 6 for information about your 2012 Annual Deductible and Coinsurance Maximums.

The Empire Plan Special Report is published by the Employee Benefits Division of the New York State Department of Civil Service. The Employee Benefits Division administers the New York State Health Insurance Program (NYSHIP). NYSHIP provides your health insurance benefits through The Empire Plan.

NYSHIP
New York State Health Insurance Program

New York State
Department of Civil Service
Employee Benefits Division
Albany, New York 12239

518-457-5754 or 1-800-833-4344
(U.S., Canada, Puerto Rico,
Virgin Islands)
https://www.cs.ny.gov

August 2011

New York State Health Insurance Program (NYSHIP) for Employees of the State of New York designated Management/ Con dential (M/ C); Legislature, their enrolled Dependents, COBRA Enrollees with their Empire Plan Bene ts and Young Adult Option Enrollees

In This Report

1 Changes Effective October 1, 2011
2 NYSHIP Changes
3 Federal Health Care Changes; October 1, 2011 Bene t Changes

Changes Effective October 1, 2011

This Report describes changes affecting your NYSHIP coverage that will take effect on October 1, 2011. These changes are the result of collective bargaining and they have been administratively extended to M/ C; Legislature employees.

NYSHIP Changes

" DI BOHF JOUF / : 4) *1 QBFNJVN DPTUTI BSDH CFUXFFO UF 4UBUF BOE JT FN QMPZFFT (see page 2)

6 QEBUFE NBF FYCFDUBDOZ UBCMFT VTFE UP DBMDVMBUF UF VBMVF PGZPVSN PCUBJOFTJDL MPBWF credit, which is applied to your health insurance premium in retirement (see page 2)

Empire Plan Changes

' FEFSBMI FBM DBSF DI BOHFT TFF QBHF

$ PQBZN FOUD BOHFT TFF QBHF

Other changes have an effective date of January 1, 2012, including the addition of independent nurse practitioners and convenient care clinics as participating providers, the health insurance opt-out option and changes to out-of-network deductible and coinsurance amounts. Information about these changes will be provided later in the fall in the NYSHIP Annual Option Transfer Period materials and At A Glance.

Special Option Transfer Period in September

As the result of these changes, there will be a Special Option Transfer Period during the month of September. You will have the opportunity to change your NYSHIP option for October 2011.

Your cost of coverage under The Empire Plan or a NYSHIP HMO for October 1 through the end of 2011 will be posted on the Department web site https://www.cs.ny.gov no later than August 31, 2011. A rate yer also will be mailed to your home on or before that date. The web site and the rate yer will provide details of the special option transfer period.

Continued on page 2

Continued from page 1

Annual Option Transfer Period for 2012

The annual option transfer will be held, as usual, at the end of the year with changes effective for the 2012 plan year. There also will be NYSHIP rate changes for 2012. You will begin receiving information regarding the Annual Option Transfer Period in the fall. Rates for 2012 will be posted online and mailed to you as soon as they are approved.

NYSHIP Changes

Your Biweekly Premium Contribution Rate

New York State helps pay for your health insurance coverage. After the State's contribution, you are responsible for paying the balance of your premium through biweekly deductions from your paycheck. Effective October 1, 2011, your share of the cost is changing, based upon your pay grade level as shown below.

Pay Grade	Individual Coverage		Dependent Coverage	
	State Share	Employee Share	State Share	Employee Share
Grade 9 and below	88%	12%		
Grade 10 and above	84%	16%		

Note: This information does not apply to COBRA enrollees or Young Adult Option enrollees. These enrollees will have a rate change however, as a result of negotiated benefit changes.

Updated Life Expectancy Table

As part of these changes, effective October 1, 2011, the Actuarial Table of Life Expectancy (shown below) has been updated to reflect the fact that we Americans are living longer. This will impact the monthly sick leave credit amount that you use toward your premium payments in retirement. Since we are living longer, the number of months of life expectancy at retirement has increased and the amount of monthly sick leave credit will be lower.

Actuarial Table
Effective for Retirements on or after October 1, 2011

Age at Retirement	Life Expectancy	Age at Retirement	Life Expectancy
55	NPQJT	64	250 months
56	NPQJT	65	241 months
57	NPQJT	66	NPQJT
58	NPQJT	67	NPQJT
59	297 months	68	214 months
60	288 months	69	205 months
61	278 months	70	197 months
62	269 months	Etc.	
	259 months		

If you need actuarial rates for additional retirement ages, ask your agency Health Benefits Administrator.

Federal Health Care Changes

The Federal Patient Protection and Affordable Care Act (PPACA), which will be referred to as the Act in this article and throughout this Empire Plan Special Report, requires that we make several changes to your Empire Plan coverage.

The Empire Plan bene t package administratively extended to unrepresented employees will lose grandfathered status under PPACA, effective on October 1, 2011. This means that your Empire Plan bene ts will become a nongrandfathered plan and will include all changes required by the Act according to the Act s timetable.

The Act requires the following changes effective on October 1, 2011:

Adult immunizations as recommended by the ' FEFSBN\$ FOUFST GPS%JTFBTF \$ POUPMX.JMDPUCF subject to copayment when administered by a participating provider.

The Act requires coverage of certain preventive care services received at a network hospital or from a participating provider to be paid at 100 percent (not subject to copayment). Preventive care services covered under the Act with no copayment include:

- *NNVOJ BUPT BT SFDPNNFOEFE CZ UIF " EWJTPSZ Committee on Immunization Practices of the Centers for Disease Control and Prevention,
- 1SFWFOUJWF DBSF BOE TDSFFOJOHT GPSXPNFO infants, children and adolescents as stated in guidelines supported by the Health Resources and Services Administration,
- 1SFWFOUJWF DBSF BOE TDSFFOJOHT GPSNFOJDU F DVSSFOUSFDPNNFOEBUPT PGU F 6 QUFE 4 UBUFT 1SFWFOUJWF 4FSWJDFT 5BTL ' PSDF
- *UFNT PSTFSWJDFT UIBU BWF B SBUJOH PG" PS # JD UIF DVSSFOUSFDPNNFOEBUPT PGU F 6 QUFE 4 UBUFT 1SFWFOUJWF 4FSWJDFT 5BTL ' PSDF

' PSGVSUIFSJOGPSNBUPO PO QSFWFOUJWF TFSWJDFT TFF The Empire Plan Preventive Care Coverage Chart at the New York State Department of Civil Service web site at https:// www.cs.ny.gov. Select Bene t Programs then NYSHIP Online. At the home page D PPTF ZPVSHSPVQ JGBQQMJDBCM UIFO6 TJDH : PVS Bene ts. Choose Publications and you will nd the chart under Empire Plan or visit www.healthcare.gov.

Also, in a medical emergency, non-participating provider charges in a hospital emergency room will be considered under the Basic Medical Program subject to deductible, but not coinsurance.

October 1, 2011 Bene t Changes

Prescription Drug Program

Your bene ts under The Empire Plan Prescription %SVH 1SPHSBN BSF CBTFE PO B' IMY.JDM' PSN VBSZ UIBU provides enrollees and the Plan with the best value in prescription drug spending. Currently, a brand-name drug may be placed on Level 1, subject to the lowest copayment. Effective October 1, 2011, a generic drug may be excluded from coverage or placed on Level TVCKFDUUP UIF BQQMJDBCM DPQBZNFOU5I FTF placements may be revised mid-year when such changes are advantageous to The Empire Plan. Enrollees will be noti ed in advance of such changes.

Copayment Changes

When you ll your Prescription for a covered drug for up to a 30-day supply at a Network Pharmacy, Mail Service Pharmacy or the designated Specialty Pharmacy, your Copayment is:

- \$5 for most Generic Drugs or Level 1 Drugs
- \$25 for Preferred Drugs, Compound Drugs or Level 2 Drugs
- \$45 for Non-Preferred %SVHT PS - FWFM %SVHT

When you ll your Prescription for a 31- to 90-day supply at a Network Pharmacy, your Copayment is:

- \$10 for most Generic Drugs or Level 1 Drugs
- \$50 for Preferred Drugs, Compound Drugs or Level 2 Drugs
- \$90 for Non-Preferred %SVHT PS- FWFM %SVHT

When you ll your Prescription for a 31- to 90-day supply through the Mail Service Pharmacy or the designated Specialty Pharmacy, your Copayment is:

- \$5 for most Generic Drugs or Level 1 Drugs
- \$50 for Preferred Drugs, Compound Drugs or Level 2 Drugs
- \$90 for Non-Preferred %SVHT PS- FWFM %SVHT

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NYSHIP
New York State Health Insurance Program

Information for the Enrollee, Enrolled Spouse/ Domestic Partner and Other Enrolled Dependents

M/C; Legislature Empire Plan Special Report
August 2011

It is the policy of the New York State Department of Civil Service to provide reasonable accommodation to ensure effective communication of information in bene ts publications to individuals with disabilities. These publications are also available on the Department of Civil Service web site (https:/ / www.cs.ny.gov). Click on Bene t Programs, then NYSHIP Online for timely information that meets universal accessibility standards adopted by New York State for NYS agency web sites. If you need an auxiliary aid or service to make bene ts information available to you, please contact your agency Health Bene ts Administrator. New York State and Participating &NOQZFS3FUSFFTBCE$0#3" &OSMFFT $POUEDUUF &NOQZFF#FCF UT%WTJPOBU PS 64 $BCEEEB 1VFSJP3JDP 7JSHJO"TMBOET

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The Empire Plan Special Report is published by the Employee Bene ts Division of the New York State Department of Civil Service. The Employee Bene ts Division administers the New York State Health Insurance Program (NYSHIP). NYSHIP provides your health insurance bene ts through The Empire Plan.

NYSHIP
New York State Health Insurance Program

New York State
Department of Civil Service
Employee Bene ts Division
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November 2011

New York State Health Insurance Program (NYSHIP) for Employees of the Unified Court System (UCS) of the State of New York represented by Unions other than CSEA, their enrolled Dependents, COBRA Enrollees with their Empire Plan Benefits and Young Adult Option Enrollees

In This Report

1 Changes Effective December 1, 2011
2 NYSHIP Changes
3 Federal Health Care Changes
3-5 December 1, 2011, Benefit Changes
6 Q & A
7-8 Copayment Chart

See pages 7 and 8 for a complete list of your 2011 copayments.

THE EMPIRE PLAN

Changes Effective October 1 and December 1, 2011

This Report describes changes affecting your NYSHIP coverage that will take effect on October 1 and December 1, 2011, except as noted. These changes are the result of collective bargaining and have been extended to UCS employees as permitted under Civil Service Law. These changes include:

October 1, 2011 Changes

- A change in the NYSHIP premium cost sharing between the State and its employees (see page 2)
- Federal health care changes (see page 3)

December 1, 2011 Changes

- Updated life expectancy tables used to calculate the value of your monthly sick leave credit, which is applied to your health insurance premium in retirement (see page 2)
- Copayment changes (see page 3)
- Changes to the Empire Plan Prescription Drug Program, including implementation of a Flexible Formulary and a Specialty Drug Program

Other changes have an effective date of January 1, 2012, including the addition of independent nurse practitioners and convenient care clinics as participating providers, the health insurance opt-out option and changes to out-of-network deductible and coinsurance amounts. Information about these changes will be provided later in the fall in the NYSHIP Annual Option Transfer Period materials and *At A Glance*.

Special Option Transfer Period (November 4 – December 5)

As the result of these changes, there will be a Special Option Transfer Period from November 4 through December 5. You will have the opportunity to change your NYSHIP option for December 2011.

Your cost of coverage under The Empire Plan or a NYSHIP HMO for December 1 will be posted on the Department web site https://www.cs.ny.gov no later than November 4, 2011. A rate flyer also will be mailed to your home. The web site and the rate flyer will provide details of the special option transfer period.

Continued on page 2

Continued from page 1

Annual Option Transfer Period for 2012

The Annual Option Transfer Period will be held, as usual, at the end of the year with changes effective for the 2012 plan year. There also will be NYSHIP rate changes for 2012. You will begin receiving information regarding the Annual Option Transfer Period in the late fall. Rates for 2012 will be posted online and mailed to you as soon as they are approved.

NYSHIP Changes

Your Premium Contribution Percentage

New York State helps pay for your health insurance coverage. After the State's contribution, you are responsible for paying the balance of your premium through biweekly deductions from your paycheck. The cost of your NYSHIP coverage for December will reflect the new contribution percentage below. The retroactive increase in the cost of your NYSHIP coverage for October and November 2011 will be included in your premium contributions for the six biweekly paychecks beginning with the check dated December 29, 2011. for the Institutional payroll and the check dated January 4, 2012, for the Administrative payroll. Once the six biweekly adjustments are taken, your health insurance premium deduction amount will return to the 2012 premium contribution rate. (See the 2012 rate flyer for details.)

Retroactive to October 1, 2011, your share of the cost is changing, based upon your pay grade level as shown below.

Pay Grade	Individual Coverage		Dependent Coverage	
	State Share	Employee Share	State Share	Employee Share
Grade 9 and below	88%	12%	73%	27%
Grade 10 and above	84%	16%	69%	31%

Note: This information does not apply to COBRA enrollees or Young Adult Option enrollees. These enrollees will have a rate change however, as a result of these benefit changes.

Updated Life Expectancy Table

As part of these changes, effective December 1, 2011, the Actuarial Table of Life Expectancy (shown below) has been updated to reflect the fact that we Americans are living longer. This will impact the monthly sick leave credit amount that you use toward your premium payments in retirement. Since we are living longer, the number of months of life expectancy at retirement has increased and the amount of monthly sick leave credit will be lower.

Actuarial Table
Effective for Retirements on or after December 1, 2011

Age at Retirement	Life Expectancy	Age at Retirement	Life Expectancy
55	337 months	64	250 months
56	327 months	65	241 months
57	317 months	66	232 months
58	307 months	67	223 months
59	297 months	68	214 months
60	288 months	69	205 months
61	278 months	70	197 months
62	269 months	Etc.	
63	259 months		

If you need actuarial rates for additional retirement ages, ask your agency Health Benefits Administrator.

Federal Health Care Changes

The Federal Patient Protection and Affordable Care Act (PPACA), which will be referred to as "the Act" in this article and throughout this *Empire Plan Special Report*, requires that we make several changes to your Empire Plan coverage.

The Empire Plan benefit package extended to Unified Court System (UCS) employees loses grandfathered status under PPACA, effective on October 1, 2011. This means that your Empire Plan benefits are a nongrandfathered plan and include all changes required by the Act according to the Act's timetable.

The Act requires the following changes effective on October 1, 2011:

Adult immunizations as recommended by the Federal Centers for Disease Control will not be subject to copayment when administered by a participating provider.

The Act requires coverage of certain preventive care services received at a network hospital or from a participating provider to be paid at 100 percent (not subject to copayment). Preventive care services covered under the Act with no copayment include:

- Immunizations as recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention,
- Preventive care and screenings for women, infants, children and adolescents as stated in guidelines supported by the Health Resources and Services Administration,
- Preventive care and screenings for men in the current recommendations of the United States Preventive Services Task Force,
- Items or services that have a rating of "A" or "B" in the current recommendations of the United States Preventive Services Task Force.

For further information on preventive services, see The Empire Plan Preventive Care Coverage Chart at the New York State Department of Civil Service web site at https://www.cs.ny.gov. Select Benefit Programs then NYSHIP Online. At the home page choose your group, if applicable then Using Your Benefits. Choose Publications and you will find the chart under Empire Plan or visit www.healthcare.gov.

Also, in a medical emergency, non-participating provider charges in a hospital emergency room will be considered under the Basic Medical Program subject to deductible, but not coinsurance.

December 1, 2011 Benefit Changes

Copayment Changes

Participating Provider Program

$20 Copayment – Office Visit/Office Surgery, Radiology/Diagnostic Laboratory Tests, Free-Standing Cardiac Rehabilitation Center Visit, Urgent Care Visit

Chiropractic Treatment or Physical Therapy Services (Managed Physical Medicine Program)

$20 Copayment – Office Visit, Radiology, Diagnostic Laboratory Tests

Hospital Services (Hospital Program)

$20 Copayment – Outpatient Physical Therapy

Mental Health and Substance Abuse Program

$20 Copayment – Visit to Outpatient Substance Abuse Treatment Program

$20 Copayment – Visit to Mental Health Practitioner

Prescription Drug Program

When you fill your Prescription for a covered drug for up to a **30-day supply at a Network Pharmacy, Mail Service Pharmacy or the designated Specialty Pharmacy,** your Copayment is:

- **$5** for most **Generic** Drugs or other Level 1 Drugs
- **$25** for **Preferred** Drugs, Compound Drugs or Level 2 Drugs
- **$45** for **Non-Preferred** Drugs or Level 3 Drug

When you fill your Prescription for a **31- to 90-day supply at a Network Pharmacy,** your Copayment is:

- **$10** for most **Generic** Drugs or other Level 1 Drugs
- **$50** for **Preferred** Drugs, Compound Drugs or Level 2 Drugs
- **$90** for **Non-Preferred** Drugs or Level 3 Drugs

When you fill your Prescription for a **31- to 90-day supply through the Mail Service Pharmacy or the designated Specialty Pharmacy,** your Copayment is:

- **$5** for most **Generic** Drugs or other Level 1 Drugs
- **$50** for **Preferred** Drugs, Compound Drugs or Level 2 Drugs
- **$90** for **Non-Preferred** Drugs or Level 3 Drugs

Continued on page 4

Empire Plan Flexible Formulary

Effective December 1, 2011, your benefits under The Empire Plan Prescription Drug Program are based on a flexible formulary. The 2011 Empire Plan Flexible Formulary drug list (see insert) provides enrollees and the Plan with the best value in prescription drug spending. This is accomplished by:

- Excluding coverage for certain brand-name or generic drugs, if the drug has no clinical advantage over other covered medications in the same therapeutic class;
- Placing a brand-name drug on Level 1 or excluding or placing a generic drug on Level 3, subject to the appropriate copayment. These placements may be revised mid-year when such changes are advantageous to The Empire Plan. Enrollees will be notified in advance of such changes.
- Applying the highest copayment to non-preferred brand-name drugs that provide no clinical advantage over two or more Level 1 drug alternatives in the same therapeutic class. This may result in no Level 2 brand-name drugs.

The main features of The Empire Plan 2011 Flexible Formulary are:

/ FX $ PQBZN FQUIWVNT

- $ FSBUDESVHTXJMCF FYDMEFEGPN DPVFSHF If a drug is excluded, therapeutic brand-name and/or generic equivalents will be covered.

Updates to the 2011 Empire Plan Flexible Formulary drug list, including the availability of certain drugs, are posted on the New York State Department of Civil Service web site at https://www.cs.ny.gov. Select Benefit Programs then NYSHIP Online. At the home page choose your group, if applicable then What's New and scroll down to Prescription Drugs: Prescription Drug Program – Changes to the Drug Lists and Notification of Safety Issues. The most current list of Prior Authorization Drugs and Excluded Drugs are shown in the articles below and on page 5.

Specialty Pharmacy Program

Effective December 1, 2011, The Empire Plan will include a Specialty Pharmacy Program to your prescription drug coverage. This Program will offer enhanced services to individuals using specialty drugs and change how you obtain those drugs under the Prescription Drug Program. Most specialty drugs will only be covered when dispensed by The Empire Plan's designated specialty pharmacy, Accredo Health Group, Inc., a subsidiary of Medco.

Accredo was selected to administer this Program because of its proven experience with providing services that help promote superior clinical outcomes. Accredo will ensure that specialty medications are utilized based on U.S. Food and Drug Administration (FDA) and best practice guidelines.

Specialty drugs are used to treat complex conditions and illnesses, such as cancer, growth hormone deficiency, hemophilia, hepatitis C, immune deficiency, multiple sclerosis and rheumatoid arthritis. These drugs usually require special handling, special administration or intensive patient monitoring. Medications used to treat diabetes are **not** considered specialty medications. When Accredo dispenses a specialty medication, the applicable mail service copayment will be charged.

The Program will provide enrollees with enhanced services including: disease and drug education, compliance management, side-effect management, safety management, expedited, scheduled delivery of your medications at no additional charge, refill reminder calls and all necessary supplies such as needles and syringes applicable to the medication.

Enrollees currently taking drugs included in this Program will receive a letter, prior to December 1, 2011, describing the Program in more detail. When enrollees begin therapy on one of the drugs included in the Program, a letter will be sent describing the Program and any action necessary to participate in it.

The complete list of specialty drugs included in the Specialty Pharmacy Program is available on the New York State Department of Civil Service web site at https://www.cs.ny.gov. Select Benefit Programs then NYSHIP Online. At the homepage choose your group, if applicable, then Find a Provider. Scroll down to Prescription Drug Program and select Specialty Pharmacy Program. Each of these drugs can be ordered through the Specialty Pharmacy Program using the Medco Pharmacy mail order form sent to the following address:

Medco Pharmacy
P.O. Box 6500
Cincinnati, OH 45201-6500

To request mail service envelopes, refills or to speak to a specialty-trained pharmacist or nurse regarding the Specialty Pharmacy Program, call The Empire Plan toll free at 1-877-7-NYSHIP (1-877-769-7447) between 8 a.m. and 8 p.m. Monday-Friday, choose The Empire Plan Prescription Drug Program, and ask to speak with Accredo.

Prior Authorization Drugs

Effective December 1, the list of prior authorization drugs will also change. The following is a list of drugs (including generic equivalents) that require prior authorization: Abstral, Actemra, Actiq, Adcirca, Amevive, Ampyra, Aranesp, Avonex, Betaseron, Botox, Cimzia, Copaxone, Dysport, Egrifta, Enbrel,

Continued on page 5

Continued from page 4

Epogen/Procrit, fentanyl powder, Fentora, Flolan, Forteo, Gilenya, Growth Hormones, Humira, Immune Globulins, Incivek, Increlex, Infergen, Intron-A, Iplex, Kineret, Kuvan, Lamisil, Letairis, Makena, Myobloc, Nuvigil, Onsolis, Orencia, Pegasys, Peg-Intron, Provigil, Rebif, Remicade, Remodulin, Revatio, Ribavirin, Simponi, Sporanox, Stelara, Synagis, Tracleer, Tysabri, Tyvaso, Veletri, Ventavis, Weight Loss Drugs, Xeomin, Xolair and Xyrem.

Excluded Drugs

The following are excluded from coverage under the 2011 Empire Plan Flexible Formulary drug list: Acuvail, Adoxa, Amrix, Aplenzin, Asacol HD, BenzEFoam, Caduet, carisoprodol 250, Clobex Shampoo, Coreg CR, cyclobenzaprine hydrochloride extended release capsule (generic Amrix), Detrol LA, Dexilant, Doryx, doxycycline hyclate delayed release tablet (generic Doryx), doxycycline monohydrate 150 mg capsule (generic Adoxa), Edluar, Epiduo, Extavia, Flector, Genotropin (except for the treatment of growth failure due to Prader-Willi syndrome or Small for Gestational Age), Humatrope (except for the treatment of growth failure due to SHOX deficiency or Small for Gestational Age), lansoprazole, Metozolv ODT, Momexin Kit, Naprelan, Neobenz Micro, Nexium, Norditropin (except for the treatment of short stature associated with Noonan syndrome or Small for Gestational Age), Olux/Olux-E Complete Pack, omeprazole/sodium bicarbonate capsule (generic Zegerid), Omnitrope (except for the treatment of growth failure due to Prader-Willi Syndrome or Small for Gestational Age), Prevacid Capsule, Requip XL, Ryzolt, Soma 250, Terbinex, Treximet, Triaz, Twynsta, Veramyst, Xopenex Inhalation Solution, Zegerid capsule, Ziana and Zipsor.

The Plan reviews the drug list yearly for additional exclusions and level placement of medications. If you have been taking one or more of the medications that has changed coverage status or copayment level, you will receive a letter informing you of this change. You may want to discuss an alternative medication with your doctor that will result in your using a covered drug and/or paying a lower copayment. See the printed copy of the Flexible Formulary drug list in the center of this *Empire Plan Special Report* or visit the New York State Department of Civil Service web site at https://www.cs.ny.gov, select Benefit Programs, then NYSHIP Online and choose your group, if prompted. Alphabetic and therapeutic class versions of the 2011 Flexible Formulary are available under the Using Your Benefits button.

Instant Rebates for omeprazole (generic Prilosec) and doxycycline

For a limited time only, The Empire Plan Prescription Drug Program will offer an instant rebate of your full copayment for omeprazole (generic Prilosec) in substitution for your previous prescription for lansoprazole (generic Prevacid) or Nexium and doxycycline in place of doxycycline hyclate, which are excluded under the Flexible Formulary.

The instant rebates will apply to all omeprazole and doxycycline prescriptions filled at participating retail pharmacies or at a mail service pharmacy between December 1, 2011 and March 31, 2012. To receive your rebate (zero copayment), simply present your prescription to your retail pharmacy or send it to the mail service pharmacy. After March 31, 2012, you will pay the applicable generic copayment ($5 or $10) for subsequent refills. If you have questions about this rebate or your drug benefit, call 1-877-7-NYSHIP (1-877-769-7447) and choose The Empire Plan Prescription Drug Program.

The Empire Plan Special Report is published by the Employee Benefits Division of the New York State Department of Civil Service. The Employee Benefits Division administers the New York State Health Insurance Program (NYSHIP). NYSHIP provides your health insurance benefits through The Empire Plan.

NYSHIP
New York State Health Insurance Program

New York State
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Employee Benefits Division
Albany, New York 12239

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Q & As About The Empire Plan Flexible Formulary

Q. Why are some medications being excluded?

A. Certain drugs are being excluded under The Empire Plan Prescription Drug Program so that we can continue to provide the best value in prescription drug coverage to all enrollees under the Plan. Whenever a prescription drug is excluded, therapeutic brand and/or generic equivalents will be covered.

Q. Why is Nexium excluded from the 2011 Empire Plan Flexible Formulary?

A. Independent studies conducted by Consumer Reports, the Oregon Health Resources Commission, and AARP, to name a few, have found that there is little clinical difference in efficacy or adverse effects in the class of prescription drugs that Nexium belongs to - proton pump inhibitors (PPIs). There is, however, a significant difference in the cost. The 2011 Empire Plan Flexible Formulary continues to cover generic and other PPIs that provide the best value to the Plan.

Q. How will my local pharmacist know my drug is excluded?

A. Your local participating pharmacist will receive a message when your claim is processed that will advise the drug is not covered under The Empire Plan. If you choose to fill the prescription, you will be responsible for paying the full cost of the drug; The Empire Plan will not reimburse you for any portion of the cost.

Q. How will my physician know that my drug is excluded?

A. The 2011 Flexible Formulary drug list was sent to all participating physicians in The Empire Plan Network. Additionally, if your physician utilizes an online method of prescribing known as E-Prescribing, a message will be displayed indicating that the drug is not covered.

Q. Where can I find lower cost alternatives to the drug I am taking?

A. Suggested generic and/or preferred drug equivalents are listed on the last page of the Flexible Formulary drug list. We recommend that you talk with your physician to identify which medication is appropriate to treat your condition.

Q. What will happen if I send a new prescription or request a refill from Medco Pharmacy for an excluded drug?

A. If you call in a refill of an excluded drug through a mail service pharmacy, the customer service representative or interactive voice response system will advise you that the drug is excluded, and your order will be canceled. If you mail in a refill order, you will receive a letter indicating your drug is no longer covered under the Plan. If you mail in a new prescription for an excluded drug, the mail service pharmacy will return the prescription along with a letter advising that the drug is excluded from Empire Plan coverage and can no longer be dispensed.

Q. Can I appeal a drug exclusion or copayment level placement?

A. No. Drug exclusions and level placements are a component of your benefit plan design and cannot be appealed.

Q. How do I change to one of the preferred medications on The Empire Plan Flexible Formulary? Will I need a new prescription?

A. Yes, you will need a new prescription. If you are almost out of medication, you can request that your retail pharmacist call your physician for a new prescription of a generic or preferred drug. If you use a mail service pharmacy, the mail service pharmacy will assist you with obtaining a new prescription. Please call 1-877-7-NYSHIP (1-877-769-7447) and choose The Empire Plan Prescription Drug Program for assistance.

December 1, 2011 Empire Plan Copayments

for Employees of New York State in the Unified Court System represented by Unions other than CSEA

Services by Empire Plan Participating Providers

You pay only your copayment when you choose Empire Plan Participating Providers for covered services. Check your directory for Participating Providers in your geographic area, or ask your provider. For Empire Plan Participating Providers in other areas and to check a provider's current status, call the Medical Program at 1-877-7-NYSHIP (1-877-769-7447) toll free or use the Participating Provider Directory on the internet at https://www.cs.ny.gov.

Office Visit $20

Office Surgery $20

(If there are both an Office Visit charge and an Office Surgery charge by a Participating Provider in a single visit, **only one** copayment will apply, in addition to any copayment due for Radiology/Laboratory Tests.)

Radiology, Single or Series;
Diagnostic Laboratory Tests $20

(If Outpatient Radiology and Outpatient Diagnostic Laboratory Tests are charged by a Participating Provider during a single visit, **only one** copayment will apply, in addition to any copayment due for Office Visit/Office Surgery.)

Adult Immunizations ..... No copayment
(Herpes Zoster (Shingles) Vaccine for enrollees ages 55-59 ..... $20)

Allergen Immunotherapy ..... No copayment

Mammography, according to guidelines ..... No copayment

Well-Child Office Visit, including
Routine Pediatric Immunizations ..... No copayment

Prenatal Visits and Six-Week
Check-Up after Delivery ..... No copayment

Chemotherapy, Radiation Therapy,
Dialysis ..... No copayment

Authorized care at
Infertility Center of Excellence ..... No copayment

Hospital-based Cardiac
Rehabilitation Center ..... No copayment

Anesthesiology, Radiology, Pathology in connection with inpatient or outpatient network
hospital services ..... No copayment

Freestanding Cardiac Rehabilitation Center visit $20

Urgent Care Center $20

Contraceptive Drugs and Devices when
dispensed in a doctor's office $20
(in addition to any copayment(s) due for Office Visit/Office Surgery and Radiology/Laboratory Tests)

Outpatient Surgical Locations (including Anesthesiology and same-day pre-operative testing done at the center) $30

Medically appropriate professional
ambulance transportation $35

Chiropractic Treatment or Physical Therapy Services by Managed Physical Network (MPN) Providers

You pay only your copayment when you choose MPN network providers for covered services. To find an MPN network provider, ask the provider directly, or call the Medical Program at 1-877-7-NYSHIP (1-877-769-7447) toll free.
Internet: https://www.cs.ny.gov.

Office Visit $20

Radiology; Diagnostic Laboratory Tests $20

(If Radiology and Laboratory Tests are charged by an MPN network provider during a single visit, only one copayment will apply, in addition to any copayment due for Office Visit.)

Network Hospital Outpatient Department Services

Surgery $40*

Diagnostic Laboratory Tests $30*

Diagnostic Radiology $30*

Administration of Desferal for Cooley's Anemia $30*

Physical Therapy (following related surgery or hospitalization) $20

Chemotherapy,
Radiation Therapy, Dialysis ..... No copayment

Preadmission Testing/Presurgical Testing
prior to inpatient admission ..... No copayment

Hospital Outpatient Department Services

Emergency Care $60*

(The $60 hospital outpatient copayment covers use of the facility for Emergency Room Care, including services of the attending emergency room physician and providers who administer or interpret radiological exams, laboratory tests, electrocardiogram and pathology services.)

*__Only one__ copayment per visit will apply for all covered hospital outpatient services rendered during that visit. The copayment covers the outpatient facility. Provider services may be billed separately. You will not have to pay the facility copayment if you are treated in the outpatient department of a hospital and it becomes necessary for the hospital to admit you, at that time, as an inpatient.

Continued on page 8

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Department of Civil Service
Employee Benefits Division
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NYSHIP
New York State Health Insurance Program

Information for the Enrollee, Enrolled Spouse/ Domestic Partner and Other Enrolled Dependents

UCS 11/11 Empire Plan Special Report November 2011

Empire Plan Copayments, continued

Be sure to follow **Benefits Management Program** requirements for hospital admissions, skilled nursing facility admission and Magnetic Resonance Imaging (MRI), Magnetic Resonance Angiography (MRA), Computerized Tomography (CT), Positron Emission Tomography (PET) scan or nuclear medicine tests.

Mental Health and Substance Abuse Services by Network Providers When You Are Referred by UnitedHealthcare

Call the Mental Health and Substance Abuse Program at 1-877-7-NYSHIP (1-877-769-7447) toll free before beginning treatment.

Visit to Outpatient Substance Abuse Treatment Program	$20
Visit to Mental Health Professional	$20
Psychiatric Second Opinion when precertified	No copayment
Mental Health Crisis Intervention (three visits)	No copayment
Inpatient	No copayment

Empire Plan Prescription Drugs

(Only **one copayment** applies for up to a 90-day supply.)

Up to a 30-day supply from a participating retail pharmacy, the Mail Service Pharmacy or the designated Specialty Pharmacy

Most Generic Drugs or other Level 1 Drugs	$5
Preferred Drugs, Compound Drugs or Level 2 Drugs	$25
Non-Preferred Drugs or Level 3 Drugs	$45**

31- to 90-day supply from a participating retail pharmacy

Most Generic Drugs or other Level 1 Drugs	$10
Preferred Drugs, Compound Drugs or Level 2 Drugs	$50
Non-Preferred Drugs or Level 3 Drugs	$90**

31- to 90-day supply through the Mail Service Pharmacy or the designated Specialty Pharmacy

Most Generic Drugs or other Level 1 Drugs	$5
Preferred Drugs, Compound Drugs or Level 2 Drugs	$50
Non-Preferred Drugs or Level 3 Drugs	$90**

** If you choose to purchase a brand-name drug that has a generic equivalent, you pay the non-preferred brand-name copayment plus the difference in cost between the brand-name drug and its generic equivalent (with some exceptions), not to exceed the full cost of the drug.

August 2011

New York State Health Insurance Program (NYSHIP)
for New York State Retirees, Vestees and Dependent Survivors,
their enrolled Dependents, COBRA Enrollees with their Empire Plan
Bene ts and Young Adult Option Enrollees

In This Report

1 Changes Effective October 1, 2011
2 NYSHIP Changes
3 Federal Health Care Changes; October 1, 2011 Bene t Changes

Changes Effective October 1, 2011

This Report describes changes affecting your NYSHIP coverage that will take effect on October 1, 2011 as the result of collective bargaining, which have been administratively extended to NY Retirees. They include:

NYSHIP Changes

" DI BCHF JDUF / : 4) *1 QBFN JVN DPTUTI BSCH CFUXFFOUF 4UBUF BOE LT SFUJSFFT
(see page 2)

Empire Plan Changes

' FEFSBMI FBMI DBSF DI BCHFT TFF QBHF

$ PQBZN FOUD BCHFT TFF QBHF

Other changes have an effective date of January 1, 2012, including the addition of independent nurse practitioners and convenient care clinics as participating providers and changes to out-of-network deductible and coinsurance amounts. Information about these changes will be provided later in the fall in the NYSHIP Annual Option Transfer Period materials and At A Glance.

Special Option Transfer Period in September

As a result of these changes, there will be a Special Option Transfer Period during the month of September. You will have the opportunity to change your NYSHIP option for October 2011. A change during this Special Option Transfer Period will not be counted as an option change for the purpose of the once in a 12-month period limit for retirees.

Your cost of coverage under The Empire Plan or a NYSHIP HMO for October 1 through the end of 2011 will be posted on the Department web site https://www.cs.ny.gov no later than August 31, 2011. A rate yer also will be mailed to your home on or before that date. The web site and the rate yer will provide details of the special option transfer period.

Continued on page 2

THE EMPIRE PLAN

Continued from page 1

Option Transfer Period for 2012

The annual option transfer will be held, as usual, at the end of the year with changes effective for the 2012 plan year. There also will be NYSHIP rate changes for 2012. You will receive the Option Transfer publication, Choices for 2012, along with Rates and Information for 2012 in a package in the mail later this fall. Rates for 2012 will be posted online and Option Transfer information will be mailed to you as soon as they are approved.

NYSHIP Changes

Your Monthly Premium Contribution Rate

New York State helps pay for your health insurance coverage in retirement. After the State s contribution, you are responsible for paying the balance of your premium through monthly deductions from your pension check or direct billings.

Effective October 1, 2011, your share of the cost is based upon your retirement date as shown in the table below.

Retirement Date	Individual Coverage		Dependent Coverage	
	State Share	Employee Share	State Share	Employee Share
1 SPSUP+BOVBSZ	100%	0%	75%	25%
0 OPSBGFS+BOVBSZ and before January 1, 2012	88%	12%		

Note: This information does not apply to COBRA enrollees or Young Adult Option enrollees. These enrollees will have a rate change however, as a result of the October 1, 2011 bene t changes.

Federal Health Care Changes

The Federal Patient Protection and Affordable Care Act (PPACA), which will be referred to as the Act in this article and throughout this Empire Plan Special Report, requires that we make several changes to your Empire Plan coverage.

The Empire Plan bene t package for NY retirees will lose grandfathered status under PPACA, effective on October 1, 2011. This means that your Empire Plan bene ts will become a nongrandfathered plan and will include all changes required by the Act according to the Act s timetable.

The Act requires the following changes effective on October 1, 2011:

Adult immunizations as recommended by the ' FEF-SBN\$ FCUFST GPS%JTFBTF \$ POUSPMK JMDPUCF subject to copayment when administered by a participating provider.

The Act requires coverage of certain preventive care services received at a network hospital or from a participating provider to be paid at 100 percent (not subject to copayment). Preventive care services covered under the Act with no copayment include:

- *NNVQ BUPOT BT SFDPNNFOEFE CZ UIF " EVTPSZ Committee on Immunization Practices of the Centers for Disease Control and Prevention,
- 1SFWFOUJWF DBSF BOE TDSFFOJOHT GPSXPNFO infants, children and adolescents as stated in guidelines supported by the Health Resources and Services Administration,
- 1SFWFOUJWF DBSF BOE TDSFFOJOHT GPSNFOJOUIF current recommendations of the United States 1SFWFOUJWF 4FSWJDFT 5BTL ' PSDF
- *UFNT PSTFSWJDFT UIBU BVH B SBUJOH PG" PS # JO the current recommendations of the United States 1SFWFOUJWF 4FSWJDFT 5BTL ' PSDF

' PSGVSUIFSJOGPSNBUPO POUIFWFOUJWF TFSWJDFT TFF The Empire Plan Preventive Care Coverage Chart at the New York State Department of Civil Service web site at https:/ / www.cs.ny.gov. Select Bene t Programs then NYSHIP Online. At the home page choose your group, if applicable then Using Your Bene ts. Choose Publications and you will nd the chart under Empire Plan or visit www.healthcare.gov.

Also, in a medical emergency, non-participating provider charges in a hospital emergency room will be considered under the Basic Medical Program subject to deductible, but not coinsurance.

October 1, 2011 Bene t Changes

Prescription Drug Program

Your bene ts under The Empire Plan Prescription %SVH 1SPHSBN BSF CBTFE PO B' MFYJCMF' PSNVMBSZ UIBU provides enrollees and the Plan with the best value in prescription drug spending. Currently, a brand-name drug may be placed on Level 1, subject to the lowest copayment. Effective October 1, 2011, a generic drug may be excluded from coverage or placed on Level TVCKFDU UP UIF BQQMJDBCMF DPQBZNFOU5I FTF placements may be revised mid-year when such changes are advantageous to The Empire Plan. Enrollees will be noti ed in advance of such changes.

Copayment Changes

When you ll your Prescription for a covered drug for up to a 30-day supply at a Network Pharmacy, Mail Service Pharmacy or the designated Specialty Pharmacy, your Copayment is:

- $5 for most Generic Drugs or Level 1 Drugs
- $25 for Preferred Drugs, Compound Drugs or Level 2 Drugs
- $45 for Non-Preferred %SVHT PS- FWFM %SVHT

When you ll your Prescription for a 31- to 90-day supply at a Network Pharmacy, your Copayment is:

- $10 for most Generic Drugs or Level 1 Drugs
- $50 for Preferred Drugs, Compound Drugs or Level 2 Drugs
- $90 for Non-Preferred %SVHT PS- FWFM %SVHT

When you ll your Prescription for a 31- to 90-day supply through the Mail Service Pharmacy or the designated Specialty Pharmacy, your Copayment is:

- $5 for most Generic Drugs or Level 1 Drugs
- $50 for Preferred Drugs, Compound Drugs or Level 2 Drugs
- $90 for Non-Preferred %SVHT PS- FWFM %SVHT

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NYSHIP
New York State Health Insurance Program

Information for the Enrollee, Enrolled Spouse/
Domestic Partner and Other Enrolled Dependents

NY Retiree Empire Plan Special Report August 2011

Please do not send mail or correspondence to the return address. See address information below.

It is the policy of the New York State Department of Civil Service to provide reasonable accommodation to ensure effective communication of information in bene ts publications to individuals with disabilities. These publications are also available on the Department of Civil Service web site (https:/ / www.cs.ny.gov). Click on Bene t Programs, then NYSHIP Online for timely information that meets universal accessibility standards adopted by New York State for NYS agency web sites. If you need an auxiliary aid or service to make bene ts information available to you, please contact your agency Health Bene ts Administrator. New York State and Participating &NQMPZFS3FUJSFFTBOE$0#3" &OSPMMFFT $POUBDUUIF &NQMPZFF#FOF UT%JWJTJPOBU . ... PS . 6 4 $BOBEB 1VFSUP3JDP 7JSHJO*TMBOET

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Reminder

Be sure to attend a Retiree Health Insurance Information Meeting this fall for more information regarding 2012 changes. Watch your mail for a postcard announcing a meeting in your area. Your 2012 Choices publication and At A Glance will also provide more information.

The Empire Plan Special Report is published by the Employee Bene ts Division of the New York State Department of Civil Service. The Employee Bene ts Division administers the New York State Health Insurance Program (NYSHIP). NYSHIP provides your health insurance bene ts through The Empire Plan.

NYSHIP
New York State Health Insurance Program

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Department of Civil Service
Employee Bene ts Division
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R138

FINAL REPORT OF THE SPECIAL COMMISSION ON JUDICIAL COMPENSATION

AUGUST 29, 2011

SPECIAL COMMISSION ON JUDICIAL COMPENSATION

P.O. BOX 7342 - ALBANY, NEW YORK 12224

August 29, 2011

The Honorable Andrew M. Cuomo
Governor of the State of New York
State Capital
Albany, New York 12224

The Honorable Dean Skelos
President Pro Tempore of the New York State Senate
Legislative Office Building, Room 909
Albany, New York 12247

The Honorable Sheldon Silver
Speaker of the New York State Assembly
Legislative Office Building, Room 932
Albany, New York 12248

The Honorable Jonathan Lippman
Chief Judge of the State of New York
20 Eagle Street
Albany, New York 12207

Dear Governor Cuomo, Temporary President Skelos, Speaker Silver and Judge Lippman:

I am pleased to submit this report on behalf of the Special Commission on Judicial Compensation (the "Commission"). This report outlines the Commission's recommendations with respect to setting compensation for judges and justices of the State-paid courts of the Unified Court System.

The Commission has considered various factors in setting what we believe are appropriate judicial compensation levels in light of the State's current fiscal situation. The Commission received and considered many comments and letters, many of which are attached to and referenced in this report. All of the comments and submissions that have been received by the Commission may be found on the Commission's website: www.judicialcompensation.ny.gov.

I believe the Commission has come to a reasoned and fair result to address the inequity that currently exists in judicial pay for the next four years. I would also like to highlight that judicial salary levels will be reviewed again in 2015 by another statutorily-created Commission.

I would like to commend the members of the Commission for their hard work, ideas, thoughtful discussion, and partnership while undertaking this important task. I am honored to have had the opportunity to work with each member of this Commission.

Respectfully submitted,

William C. Thompson, Jr.
Chair

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Members of the Special Commission on Judicial Compensation

William C. Thompson, Jr. is the Chair of the Judicial Compensation Commission. Currently, Mr. Thompson is the Chief Administrative Officer/Senior Managing Director at Siebert Brandford Shank & Co. In addition, he is the Chair of the Battery Park City Authority. From 2002 to 2009, Mr. Thompson served as Comptroller of New York City. Before being elected to public office, he was appointed to be Brooklyn's representative to the New York City Board of Education, where he later became President for five terms. In 1993, he was the Senior Vice President at an investment firm. From 1983-1992, Mr. Thompson was the Deputy Borough President of Brooklyn. He is a graduate of New York City Public Schools and Tufts University.

Richard Cotton is the Executive Vice President and General Counsel of NBC-Universal and Chairman of the U.S. Chamber of Commerce Coalition against Counterfeiting and Piracy. Mr. Cotton has been at NBC for more than 20 years, serving as General Counsel except for his service as president and Managing Director of CNBC Europe from 2000 to 2004. Prior to NBC, during the 1980's, he practiced law in Washington, DC, and then served as the President and CEO of HCX, Inc., a Washington-based management company. During the late 1970's, Mr. Cotton held several high-level positions in the U.S. Departments of Health, Education, and Welfare and Energy. In the early 1970's, he served as law clerk to Judge J. Skelly Wright on the US Court of Appeals for the DC Circuit and then to Justice William J. Brennan, Jr. on the US Supreme Court.

William Mulrow is a Senior Managing Director at Blackstone. He has also been Chairman of Sterling Suffolk Racecourse LLC since August 2007. He was a Director of the Federal Home Loan Bank in New York City, the Municipal Assistance Corporation and the United Nations Development Corporation. In addition, Mr. Mulrow has served on the Boards of several academic institutions including the State and Local Government Center at the Kennedy School of Government at Harvard University, the Maxwell School for Public Affairs at Syracuse University and the Fordham Preparatory School in the Bronx. Mr. Mulrow earned his BA from Yale University and his MPA from Harvard University's John F. Kennedy School of Government.

James Tallon, Jr. is President of the United Hospital Fund of New York. Prior to joining the Fund in 1993, he represented Binghamton and parts of Broome County in the New York State Assembly for nineteen years. Mr. Tallon is currently chair of The Commonwealth Fund, and he chairs the Kaiser Commission on Medicaid and the Uninsured. Mr. Tallon serves as Secretary/Treasurer of the Alliance for Health Reform and also serves on the boards of the Institute on Medicine as a Profession and the New York eHealth Collaborative. In addition, Mr. Tallon is a member of the advisory board for the Jonas Center for Nursing Excellence and the New York State Board of Regents. He headed the Health Care Policy Advisory Committee during the transition period in 2006 and led the 1998-99 planning process which established the National Quality Forum. Mr. Tallon is a former member of the boards of the Joint Commission on Accreditation of Healthcare Organizations and the Center for Health Policy Development.

****Robert B. Fiske, Jr.** is Senior Counsel at Davis Polk & Wardwell LLP, the firm he joined upon graduation from law school. He graduated from Yale University in 1952 and the University of Michigan Law School in 1955. Mr. Fiske was an Assistant United States Attorney in the Southern District of New York from 1957 to 1961. He was appointed United States Attorney for the Southern District of New York by President Gerald Ford in 1976 and served in that position until 1980. While United States Attorney, he served as Chairman of the Attorney General's Advisory Committee of the United States Attorneys. He also served as Independent Counsel in the Whitewater investigation from January to October 1994. He has served as Chairman of a Judicial Commission on Drugs and the Courts appointed by former New York State Chief Judge Judith S. Kaye and as a member of the Commission for the Review of FBI Security Programs (Webster Commission). Mr. Fiske is a past President of the American College of Trial Lawyers and of the Federal Bar Council. He has served as Chairman of the Standing Committee on Federal Judiciary of the American Bar Association and as Chairman of the Planning and Program Committee of the Second Circuit Judicial Conference.

****Kathryn S. Wylde** is President and CEO of the nonprofit Partnership for New York City. She joined the Partnership in 1982, serving as President and CEO of both the New York City Investment Fund and the Housing Partnership Development Corporation. Ms. Wylde is also the Deputy Chair of the Board of the Federal Reserve Bank of New York, and serves on a number of boards and advisory groups, including the Mayor's Sustainability Advisory Board, NYC Economic Development Corporation, NYC Leadership Academy, the Research Alliance for NYC Public Schools, the Manhattan Institute, the Lutheran Medical Center, the Sila Calderon Foundation and the Independent Judicial Election Qualification Commission for the First Judicial District.

****Mark S. Mulholland** is Managing Partner at Ruskin Moscou Faltischek and a senior member of the firm's Litigation Department. Prior to joining the firm in 1991, Mr. Mulholland was at Willkie Farr & Gallagher in their commercial litigation department. He also served as a Captain in the U.S. Army Judge Advocate General's Corps and was the Senior Defense Counsel at the National Training Center at Ft. Irwin, California. In addition, he has served as Special Assistant to the U.S. Attorney for the Central District of California. Mr. Mulholland was elected as a Board Member of Brookhaven Memorial Hospital Medical Center in 2008. He served as a Trustee and Vice President of the Board of Education in his home village in the Town of Babylon, was selected to serve as a Board Member of the Long Island Aquarium and was appointed a Public Member of the New York Mercantile Exchange Adjudication Committee. He is a member of the New York State Bar Association, the Nassau County Bar Association and the Suffolk County Bar Association. Mr. Mulholland is a frequent contributor to the *New York Law Journal* and serves as a Mediator in the Eastern District of New York's Federal Court Mediation Program. Mr. Mulholland earned his BA, cum laude, from the University of Notre Dame and his JD, cum laude, from the State University of New York at Buffalo.

**** Denotes members of the Commission that opposed the final recommendations of the Commission and did not join in this report. Each dissenting member has submitted dissenting statements, which are attached to this report as Part Two.**

PART ONE
FINAL REPORT OF THE COMMISSION

I. Introduction

A diverse and thriving judiciary is central to every aspect of society. New York State is home to some of the most celebrated jurists and we must ensure that it continues to attract top talent to the bench. One way to ensure this is by adequately paying our judges. However, for several years, the State has failed to increase judicial pay and as a result, the State has started to lose some of its judicial talent. At the same time, the economy is faltering and the State is facing an unprecedented budget crisis, both of which have affected every citizen of the State. Therefore, the mandate of this Commission must be to balance these facts, objectively review current judicial salaries and bring them to a level that is fair and reasonable in light of the current economic climate.

II. Statutory Mandate

Chapter 567 of the Laws of 2010 created the Special Commission on Judicial Compensation ("Commission") to "examine, evaluate and make recommendations with respect to adequate levels of compensation and non-salary benefits for judges and justices of the state-paid courts of the unified court system."[1] The Commission consists of seven members: three members are appointed by the Governor, including the Chair; two members are appointed by the Chief Judge of the Court of Appeals; one member is appointed by the Temporary President of the Senate; and one member is appointed by the Speaker of the Assembly.

[1] *See* Chapter 567 of the Laws of 2010. (Appendix A).

The Commission must make its final, binding recommendations to the Governor, Legislature and Chief Judge of the State within 150 days of establishment.[2] After issuing its final report, the Commission will dissolve. However, a new commission will be established every four years to review and make recommendations with respect to State judicial compensation.

Pursuant to its statutory authority, the Commission must take a variety of factors into consideration in making its final recommendations, including, but not limited to:

- The overall economic climate;
- Rates of inflation;
- Changes in public-sector spending;
- The levels of compensation and non-salary benefits received by professionals in government, academia and private and nonprofit enterprise; and
- The State's ability to fund increases in compensation and non-salary benefits.

III. Findings & Recommendations of the Commission

In furtherance of its statutory mission, the Commission held meetings in New York City on July 11, August 8, and August 26, 2011 and a public hearing in Albany on July 20, 2011. The Commission received a number of written submissions, comments and testimony, which, in addition to the Commission members' independent research and thought, provided information relevant to the required statutory considerations and greatly informed these final

[2] The recommendations are deemed binding unless superseded by legislative action.

recommendations. The following sets forth the findings of the Commission with regard to setting judicial compensation levels for New York State and reflects the final vote of the Commission held on August 26, 2011.

a. *Most Recent Judicial Salary Increase*

The State became responsible for paying all judicial salaries pursuant to the Unified Court Budget Act, enacted in 1977.[3] Since 1977, the State has increased judicial salaries only six times, with the last increase taking effect in 1999.[4]

In 1997, prior to the most recent judicial salary increase, then-Chief Judge Judith Kaye established a special Commission to review the Compensation of New York State Judges. In 1999, the New York State Legislature enacted the recommendations of that judicial commission, with the salaries of State Supreme Court justices set to the United States District Court level of $136,700.[5] However, while District Court Judges have received several raises since 1999, and are currently paid an annual salary of $174,000, judges in New York State have received no salary increase since 1999. Current judicial salary levels for the Court of Appeals, Intermediate Appellate Courts, Court of Claims, Supreme Court and various countywide and citywide courts are set forth below:[6]

[3] *See* Chapter 966 of the Laws of 1976.
[4] A comprehensive history of judicial salary adjustments since 1977 may be found in the Office of Court Administration's "Submission to the 2011 Commission on Judicial Compensation," (the "OCA Submission"), Supplemental Appendix at 23-43. (Appendix C).
[5] *See* Chapter 630 of the Laws of 1998.
[6] *See* N.Y. Judiciary Law Article 7-B. Salaries for judges in countywide & citywide courts vary by jurisdiction. A comprehensive listing of those salaries may be found in the OCA Submission, Supplemental Appendix at 12-21. (Appendix C).

Statewide Courts	Salary
Court of Appeals	
Chief Judge:	$156,000
Associate Judge:	$151,200
Appellate Division	
Presiding Justice:	$142,700
Associate Justice:	$139,700
Appellate Term	
Presiding Justice:	$142,700
Associate Justice:	$139,700
Supreme Court	
Justice:	$136,700
Court of Claims	
Presiding Judge:	$144,000
Judge:	$136,700
Countywide and Citywide Courts	
Judge (various):	$27,200 - $136,700

b. *Salary Comparisons*

The Commission has considered the salary levels of other New York State officials and employees as well as judicial salaries in other states.[7] For example, annual salaries of other top New York State officials are as follows: the Governor ($179,000); the Attorney General ($151,500);[8] State Comptroller ($151,500);[9] Members of the Legislature ($79,500 plus a per diem);[10] and Executive Commissioners (maximum of $136,000).[11]

[7] A salary list of various New York State employees can be found in the Coalition of New York State Judicial Associations' "Presentation to the New York State Judicial Compensation Commission," June 10, 2011 (the "Coalition Submission") at 102-115. A salary list of salaries of New York City lawyers in private practice and physicians can be found in the Coalition Submission, at 133-137. (Appendix D).

[8] *See* N.Y. Exec. Law Section 60.

[9] *See* N.Y. Exec. Law Section 40.

[10] *See* N.Y. Exec. Law Section 5. Note that members of the Legislature work on a part-time basis.

[11] *See* N.Y. Exec. Law Section 169.

Annual salaries of the judges at the trial court level in the northeast are as follows: New Jersey ($165,000); Pennsylvania ($164,602); Connecticut ($146,780); and Massachusetts ($129,624).[12] The current annual salary of a U.S. District Court judge is $174,000.

c. *Other Factors*

Many of the submissions received by the Commission detail the economic harm that has befallen New York's judges as a result of the stagnated pay and highlighted the State's need for a fairly compensated judiciary.[13] For example, as a result of the lack of salary increases for the past twelve years, pay for New York's Supreme Court justices currently ranks twenty-first in the nation and last in the nation when salary is adjusted for cost of living.[14] Cost of living, as determined by the Consumer Price Index – Northeast Urban Region ("CPI-U")[15] has increased by approximately 41 percent since 1999.[16] Over the same period, caseloads for State judges have also steadily increased.[17]

However, notwithstanding the above, the Commission must also be mindful of the current economic climate of the State. The State has and will continue to face multi-billion dollar budget gaps, with a projected deficit of $2.5 billion next year.[18] In determining an appropriate judicial salary increase, the Commission must take into account how that increase will affect the State's financial situation.

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[12] *See* OCA Submission, Supplemental Appendix at 64-66. (Appendix C).
[13] *See* Commission website for all submissions received: www.judicialcompensation.ny.gov.
[14] *See* OCA Submission at 16. (Appendix B).
[15] U.S. Department of Labor, Bureau of Labor Statistics.
[16] *See* OCA Submission at 13. (Appendix B).
[17] *See* Coalition Submission at 16. (Appendix D).
[18] See Testimony of Robert Megna, Director of the Division of the Budget, July 20, 2011 (the "Budget Submission"), at 2-3. (Appendix E).

It is also important to note that the Commission's enacting statute provides for review of judicial salaries every four years, ensuring that judicial salaries will be reevaluated for adequacy on a regular basis going forward.

d. *Recommendations*

The Commission has determined that the appropriate benchmark at this time for the New York State judiciary is the compensation level of the Federal judiciary. The Commission recognizes the importance of the New York State judiciary as a co-equal branch of government and recognizes the importance of establishing pay levels that make clear that the judiciary is valued and respected. The Federal judiciary sets a benchmark of both quality and compensation – New York State should seek to place its judiciary on par. That is where New York State judicial compensation was in the late 1990's and our recommendation is to re-establish this benchmark with a phase-in period that takes account of the State's current financial challenges.

For the foregoing reasons, the Commission has determined that all New York State judges shall receive phased-in salary increases over the next three fiscal years, starting on April 1, 2012, with no increase in fiscal year 2015-16. State Supreme Court Justices will achieve parity with current Federal District Court judge salaries by the third fiscal year and will be paid an annual salary of $160,000 in fiscal year 2012-13, $167,000 in 2013-14 and $174,000 in 2014-15. All other judges will receive proportional salary increases. Increases for each judicial salary level in each fiscal year will be as follows:[19]

[19] Salary chart prepared by the Office of Court Administration.

Court	April 1, 2012	April 1, 2013	April 1, 2014
Court of Appeals			
Chief Judge:	$182,600	$190,600	$198,600
Associate Judge:	$177,000	$184,800	$192,500
Appellate Division			
Presiding Justice:	$172,800	$180,400	$187,900
Associate Justice:	$168,600	$176,000	$183,300
Appellate Term			
Presiding Justice:	$167,100	$174,400	$181,700
Associate Justice:	$163,600	$170,700	$177,900
Administrative Judges			
Dep. CAJ (NYC):	$168,600	$176,000	$183,300
Dep. CAJ (outside NYC):	$168,600	$176,000	$183,300
AJ (in NYC; Jud. Dist.; county):	$165,700	$172,900	$180,200
Supreme Court			
Justice:	$160,000	$167,000	$174,000
Court of Claims			
Presiding Judge:	$168,600	$176,000	$183,300
Judge:	$160,000	$167,000	$174,000
County Court			
Earning $136,700 on 3/31/12:	$160,000	$167,000	$174,000
Earning $131,400 on 3/31/12:	$153,800	$160,600	$167,300
Earning $127,000 on 3/31/12:	$148,700	$155,200	$161,700
Earning $125,600 on 3/31/12:	$147,100	$153,500	$159,900
Earning $122,700 on 3/31/12:	$143,700	$149,900	$156,200
Earning $121,200 on 3/31/12:	$141,900	$148,100	$154,300
Earning $119,800 on 3/31/12:	$140,300	$146,400	$152,500
Family Court			
Earning $136,700 on 3/31/12:	$160,000	$167,000	$174,000
Earning $127,000 on 3/31/12:	$148,700	$155,200	$161,700
Earning $125,600 on 3/31/12:	$147,100	$153,500	$159,900
Earning $119,800 on 3/31/12:	$140,300	$146,400	$152,500
Surrogate's Court			
Earning $136,700 on 3/31/12:	$160,000	$167,000	$174,000
Earning $135,800 on 3/31/12:	$159,000	$166,000	$172,900
Earning $129,900 on 3/31/12:	$152,100	$158,700	$165,400
Earning $125,600 on 3/31/12:	$147,100	$153,500	$159,900
Earning $121,200 on 3/31/12:	$141,900	$148,100	$154,300
Earning $119,800 on 3/31/12:	$140,300	$146,400	$152,500
Civil Court of NYC and Criminal Court of NYC			
Judge of the Civil Court:	$147,100	$153,500	$159,900
Housing Judge of the Civil Court:	$135,100	$141,000	$146,900
Judge of the Criminal Court:	$147,100	$153,500	$159,900

District Court			
Pres., Bd. Of Judges (Nassau):	$148,600	$155,100	$161,600
Judge (Nassau):	$143,700	$149,900	$156,200
Pres., Bd. Of Judges (Suffolk):	$148,600	$155,100	$161,600
Judge (Suffolk):	$143,700	$149,900	$156,200
City Courts outside NYC			
Earning $119,500 on 3/31/12:	$139,900	$146,000	$152,200
Earning $118,300 on 3/31/12:	$138,500	$144,600	$150,600
Earning $116,800 on 3/31/12:	$136,800	$142,700	$148,700
Earning $115,100 on 3/31/12:	$134,800	$140,700	$146,600
Earning $113,900 on 3/31/12:	$133,400	$139,200	$145,000
Earning $108,800 on 3/31/12:	$127,400	$133,000	$138,500
Earning $81,600 on 3/31/12:	$95,600	$99,700	$103,900
Earning $54,400 on 3/31/12:	$63,700	$66,500	$69,300
Earning $27,200 on 3/31/12:	$31,900	$33,300	$34,700

PART TWO

DISSENTING STATEMENTS

I. Dissenting Statement of Robert B. Fiske, Jr.

Taking all of the statutory factors into account, I have said that the sensible and fair solution would be to increase salaries, as of April 1, 2012 to $195,754 – the level that judges would be at if they had received a cost-of-living increase every year since 1999 – with annual cost-of-living increases over the next three years. Mindful of the Legislature's instruction to consider rates of inflation and the state's economic condition, an increase to $195,754 would do no more than restore to judges the purchasing power that they had in 1999. It would not compensate for the $330,000 that a judge on the bench since 1999 has lost as a result of the salary freeze, it would not amount to any sort of a raise, as that term is commonly understood, and it would still leave New York in the bottom half of all states in judicial compensation when adjusted for cost-of-living.

Nonetheless, I cannot say that the views of the majority of the Commission that the state judges should be restored to parity with the federal judges are unreasonable. I could accept parity with federal judges, but not the phase-in proposed by the majority. The phase-in only compounds the financial injury that state judges have experienced over the last twelve years, and particularly hurts judges approaching retirement, most of whom have served on the bench for the entire length of the salary freeze. And I concur with the statement of Commissioner Kathryn Wylde concerning the symbolic importance of an immediate increase to the federal level.

No discussion of the state's ability to fund increased judicial compensation can be complete without noting what the state has saved by failing to adjust judicial salaries for twelve

years. Since 1999, by not giving judges appropriate cost-of-living increases, the state has saved approximately $515 million to spend in other areas. Increasing judicial salaries to $195,754 would cost a fraction of that amount – $75 million (less than 15%) – and immediately restoring parity with federal judges would cost even less. I also believe that judges should have received a cost-of-living increase in 2015 to ensure that judicial salaries maintain their spending power.

New York's judges have been underpaid for more than a decade. While salaries have remained stagnant, caseloads have climbed, leading to a significant increase in the number of judges leaving the bench. I regret that the Commission's recommendation does not go far enough in compensating the state's judiciary or in remedying a constitutional violation twelve years in the making.

II. Dissenting Statement of Kathryn S. Wylde

The report of the Judicial Compensation Commission presents a reasonable and fair recommendation for judicial salary increases, taking account of the difficult fiscal and economic conditions facing New York State. The decision to bring state judges into parity with their federal counterparts over three years, however, does not provide the immediate redress that New York's judiciary hoped for and, I believe, deserve. For twelve years, judicial salaries were held hostage to tangential considerations, exposing judicial leadership to public humiliation and diminishing their status. Ultimately, the judiciary was forced to sue the state in order to enforce its constitutional position as an independent, co-equal branch of government. In public testimony, letters and reports, the judiciary made clear to the Commission that the long struggle for fair compensation was not just about money, but equally about the extent to which the judiciary is valued and respected by the citizens of New York State. I voted no on the recommendation of the Commission because I believe that immediate action to restore state judges to the compensation level of their federal counterparts would have made a more powerful statement about the critical importance to the state of a strong, highly qualified and independent judiciary.

III. Dissenting Statement of Mark S. Mulholland

New York's trial judges should be paid $192,000 annually. While I of course welcome any reasonable salary increase for New York's judiciary, I oppose the Commission's Report because it falls short of the mark. Slowly creeping judicial salaries up until 2014, only to reach an already outdated federal benchmark of $174,000, is insufficient.

This Commission was created to ensure the economic independence of New York's judiciary. Despite being a co-equal branch of our tripartite government, New York's judiciary is powerless to set its own pay. Judges have suffered powerlessly for twelve years while the Executive and Legislative branches have failed to agree to mete out even basic cost of living adjustments. Had they done so, New York's judges today would fairly be paid over $192,000 annually. The Commission fails its essential purpose by declining to propose an immediate adjustment to this level. Restoration would have signaled soundly that at last New York's judges are free from the shackles of politics.

The Commission ought to have recommended an annual trial-level salary of $192,000 for 2012, with consistent cost of living adjustments to follow. None of this would be a "raise" as the term is commonly used. The adjustment would simply have returned New York's judges to 1999 levels. But it would have ended an embarrassing era during which our judges have earned less than any other judges nationwide on a cost-adjusted basis, less than countless professionals within and without government, less than first-year law associates, and less even than the senior clerks who work for them.

But rather than seize the moment, the Commission is recommending an adjustment that will pay our judges in 2014 the same salary paid to federal judges in 2007. This, despite that the

federal level has been heavily criticized as out-of-date for three years already – and will be even more seriously stale come 2014. Our mission was to end the neglect – not perpetuate it.

I discount the comments submitted to the Commission by the Governor's Budget Director, Robert Megna. He stated incorrectly that our judges should be paid and treated as other State officers and employees, without regard to their judicial status. He thus ignored or failed to understand that the Commission's job was to ensure the economic independence of the Judiciary as a co-equal branch of government. We were required specifically to consider the judiciary's unique status – not ignore it. The Budget Director's analysis was wrong too as regards New York's ability to pay a fair salary, with a legitimate increase equaling less than 58 one thousandths of one percent of the total state budget. Mr. Megna admitted New York could cover the cost if need be. Our judges have already paid over $500 million toward the cost, through their salary forfeitures suffered since 1999. Judges would pay for the small increase going forward, too, without doubt, based on evidence that the Commission received regarding the role judge's play in attracting corporate activity to New York. The budget issue is a red herring, and does not excuse the Commission's failure to cure the problem it was created to correct.

EMPIRE PLAN REPORT

NOVEMBER 2004

NEW YORK STATE HEALTH INSURANCE PROGRAM (NYSHIP)
FOR JUDGES, JUSTICES AND NONJUDICIAL EMPLOYEES
OF THE UNIFIED COURT SYSTEM of the State of New York (except NYS Supreme Court Officers Association (NU SY))
And for their enrolled Dependents
and for COBRA Enrollees with their Empire Plan Benefits

This Report does not apply to the NYS Supreme Court Officers Association (NU SY). Please see the Report that applies to this group for specific benefit information.

Read this Report for important information about benefit changes.

SAVE THIS REPORT

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The Empire Plan Benefit Change Highlights

Network and Non-network Hospitals

Effective January 1, 2005

The Empire Plan Hospital Benefits Program has two levels of benefits – network and non-network. Network benefits apply when you use hospitals, hospices and skilled nursing facilities that participate in the Blue Cross and Blue Shield Association's network. See page 2 for details.

Prescription Drug Program - Three Levels, New Copayments

Effective January 1, 2005

Your prescription drug benefit is based on whether a drug is generic, preferred brand-name or non-preferred brand-name. Copayments are based on the drug, the days' supply and whether the prescription is filled at a retail pharmacy or the mail service pharmacy. See page 6 for prescription drug copayments.

Basic Medical Provider Discount Program

Available October 1, 2004

Under The Empire Plan Basic Medical Provider Discount Program, you receive discounts for care from certain physicians and other providers who are part of the MultiPlan group, a nationwide organization contracted with United HealthCare. See page 5 for details.

Centers of Excellence for Cancer Program

Available October 1, 2004

The Empire Plan now offers a Centers of Excellence for Cancer Program. The Program includes paid-in-full coverage for cancer-related expenses received through a nationwide network known as Cancer Resource Services. See page 5 for details.

The Empire Plan Copayment Changes Effective January 1, 2005

Benefits	Copayment
Hospital Benefits Program	
Outpatient Services in Network Hospital	$30
Emergency Room	$50
Physical Therapy in Network Hospital Outpatient Department	$12
Participating Provider Program	
Office Visit/Office Surgery/Radiology/Diagnostic Laboratory Tests	$12
Managed Physical Network Program	
Services by MPN Providers	$12
Mental Health and Substance Abuse Program	
Structured Outpatient Rehabilitation Program by ValueOptions Network Providers	$12
Hospital Emergency Room	$50
Prescription Drug Program	
See page 6 for prescription drug copayments.	

Network and Non-network Hospitals Effective January 1, 2005

The following applies to enrollees who have primary coverage through The Empire Plan.

Beginning January 1, 2005, The Empire Plan Hospital Benefits Program has two levels of benefits – network and non-network.

Network Benefits

Network benefits apply when you use hospitals, hospices and skilled nursing facilities that participate in the Blue Cross and Blue Shield Association's network. This is currently the largest hospital network available in the United States. Over 90 percent of hospitals nationwide and every acute care general hospital in New York State are now network hospitals.

Remember to call The Empire Plan toll free at 1-877-7-NYSHIP (1-877-769-7447) and choose Empire Blue Cross Blue Shield before a maternity or scheduled hospital admission, within 48 hours after an emergency or urgent hospital admission or for admission or transfer to a skilled nursing facility. When you call, customer service representatives will direct you to a network facility.

You continue to receive paid-in-full benefits for inpatient hospital, hospice or skilled nursing facility care at a network facility. And, when you use a network hospital, services provided by an anesthesiologist, radiologist or pathologist that are related to your hospital service but billed separately are paid in full under The Empire Plan Medical Benefits Program. Please see page 3. Outpatient hospital services from a network hospital are subject to applicable copayment(s).

A list of Empire Plan network hospitals, hospices and skilled nursing facilities is available on the New York State Department of Civil Service web site at www.cs.state.ny.us. Click on Employee Benefits, then on Empire Plan Providers and Pharmacies. You can also call The Empire Plan toll free at 1-877-7-NYSHIP (1-877-769-7447) and choose Empire Blue Cross Blue Shield.

Non-network Benefits

If you, your enrolled spouse/domestic partner or your dependent child chooses to use a non-network hospital, hospice or skilled nursing facility for non-emergency inpatient care, The Empire Plan reimburses you directly for 90 percent of the charges. You pay the remaining 10 percent of the charges until you have reached a coinsurance maximum of $1,500. You, your enrolled spouse/domestic partner and all your dependent children combined each have an annual coinsurance maximum (see below). You are responsible for full payment to the facility. For outpatient care, you pay 10 percent or $75, whichever is greater, up to the annual coinsurance maximum.

The annual coinsurance maximum (out-of-pocket costs) for services at a non-network facility for either inpatient or outpatient care is $1,500 for the enrollee, $1,500 for an enrolled spouse/domestic partner, and $1,500 for all dependent children combined. Once your out-of-pocket expenses go over $1,500 for the non-network inpatient and outpatient care, The Empire Plan pays 100 percent of non-network charges, subject to applicable outpatient network level copayment(s).

Reimbursement of Coinsurance Maximum through United HealthCare

After you have paid $500 out-of-pocket for yourself, $500 for your enrolled spouse/domestic partner or $500 for all enrolled dependent children, you may file a claim with United HealthCare for reimbursement of the next $1,000 in coinsurance. Send a copy of your Empire Blue Cross Blue Shield Explanation of Benefits showing you have paid $500 out-of-pocket costs along with the completed claim form to the United HealthCare address on page 11 of this Report. Also, see page 8 of this Report and your *Empire Plan Certificate* for information about claims.

Network Benefits at a Non-network Facility

If you receive medically necessary covered services at a non-network facility when a network facility is available, The Empire Plan provides non-network coverage. However, the Plan will approve network coverage level under the following circumstances:

- When no network facility can provide medically necessary services.
- When no network facility is available within 30 miles of your residence.
- When the admission is certified by Empire Blue Cross Blue Shield as an emergency or urgent inpatient or outpatient admission.

Emergency or urgent care delivered at a non-network facility is not subject to the annual coinsurance. Payment for medically necessary covered emergency or urgent services received in a non-network hospital is made directly to you. You pay the emergency room copayment.

The Empire Plan
Benefit Changes Effective January 1, 2005

The Empire Plan Hospital Benefits Program

$50 Copayment for Emergency Care

Beginning January 1, 2005, your copayment for emergency care in a hospital emergency room is $50. The $50 copayment covers use of the facility for emergency care and services of the attending emergency room physician and providers who administer or interpret radiological exams, laboratory tests, electrocardiogram and pathology services.

You will not have to pay the $50 copayment if you are treated in the emergency room and then admitted at that time as an inpatient.

$30 Copayment Per Outpatient Visit

Beginning January 1, 2005, your copayment for outpatient services in a network hospital or hospital extension clinic is $30 for each visit where you receive one or more of the following services: surgery, diagnostic radiology, diagnostic laboratory tests, administration of Desferal for Cooley's Anemia.

You will not have to pay this $30 facility copayment if you are treated in the outpatient department of the hospital and then admitted at that time as an inpatient.

There continues to be no copayment for the following outpatient services in a network hospital: chemotherapy, radiation therapy, dialysis, pre-admission testing/pre-surgical testing before admission as an inpatient.

$12 Copayment for Physical Therapy

Beginning January 1, 2005, your copayment is $12 for each visit to the outpatient department of a network hospital or hospital extension clinic for physical therapy when covered under the Hospital Benefits Program. Please see your *Empire Plan Certificate* for more information.

Hospital Extension Clinics

Effective January 1, 2005, The Empire Plan covers charges, including facility charges, for certain hospital services provided in a remote location of a network hospital. This coverage applies to network hospital owned and operated on-site facilities and facilities not physically located in the hospital building, including ambulatory surgical centers. The hospital must bill for the service as part of the hospital's charges.

Your copayment for emergency care in a hospital extension clinic is $50. Your copayment for outpatient services in a network hospital extension clinic is $30. You will not have to pay the emergency care or outpatient services copayment if you are treated in the extension clinic and it becomes necessary for the hospital to admit you, at that time, as an inpatient. Please see this page and your *Empire Plan Certificate* for details about hospital coverage of emergency care and outpatient services.

Non-network hospital benefits apply to services provided at extension clinics in non-network hospitals. However, network benefits apply to emergency care. Page 2 of this Report has more information about network and non-network hospitals.

The Empire Plan Benefits Management Program

Hospital Coverage

Effective January 1, 2005, you will be responsible for the full cost of any inpatient hospital day determined to be not medically necessary. Your *Empire Plan Certificate* has information about your right to appeal if you are charged for inpatient days that can be documented as medically necessary.

The Empire Plan Medical/Surgical Benefits Program

$12 Copayment

Beginning January 1, 2005, you pay a $12 copayment for services by Empire Plan participating providers that are subject to copayments. Such services include office visits, office surgery, radiology services, diagnostic laboratory services, cardiac rehabilitation center visits, urgent care center visits and contraceptive drugs and devices dispensed in a doctor's office. Your copayment for services by Managed Physical Network (MPN) providers is also $12 as of January 1, 2005.

Anesthesiology, Radiology, Pathology

Beginning January 1, 2005, if you receive anesthesia, radiology or pathology services in connection with inpatient or outpatient hospital services at an Empire Plan network hospital, covered charges billed separately by the anesthesiologist, radiologist or pathologist will be paid in full by United HealthCare.

Services provided by other specialty physicians in an Empire Plan network hospital continue to be considered under the Participating Provider Program or the Basic Medical Program.

Basic Medical Annual Deductible: $225

For calendar year 2005, The Empire Plan Basic Medical Program annual deductible for medical services performed and supplies provided by non-participating providers is $225 for you, $225 for your enrolled spouse/domestic partner and $225 for all covered dependent children combined.

Basic Medical Program Coinsurance Maximum: $900

The annual coinsurance maximum (out-of-pocket costs) under the Basic Medical Program is $900 in 2005.

Benefit Changes continued on page 4

Benefit Changes continued from page 3

Reduced Coinsurance Maximum

The following does not apply to Judges and Justices.

The Basic Medical coinsurance maximum of $900 will be reduced to $500 for employees in or equated to a salary grade 6 or below as of January 1, 2005.

United HealthCare will automatically apply the reduced coinsurance maximum to employees who meet the requirements. The employee does not need to contact the agency Health Benefits Administrator to apply for the reduction.

Prostheses and Orthotic Devices

Effective January 1, 2005, The Empire Plan includes a nationwide network of certified suppliers of prostheses and orthotic devices under the Participating Provider Program. When you use an Empire Plan participating provider, you have a paid-in-full benefit, with no copayment, for prostheses and orthotic devices. The Empire Plan benefit provides for a prosthesis or an orthotic device meeting the individual's functional needs. Replacements, when functionally necessary, are also covered. Participating providers will offer adjustments to custom-fitted devices and appropriate follow-up care.

If your need is urgent, and/or you are unable to travel to the provider's office, some participating providers will guarantee an appointment within three days and will travel up to one hour to your home. Ask the provider directly or call United HealthCare at 1-877-7-NYSHIP (1-877-769-7447) toll free.

A list of Empire Plan providers of prostheses and orthotic devices will be available on the New York State Department of Civil Service web site at www.cs.state.ny.us before the end of the year. Click on Employee Benefits and choose Empire Plan Providers and Pharmacies. Or, call United HealthCare at 1-877-7-NYSHIP (1-877-769-7447) toll free.

Prostheses and orthotic devices from non-network providers are covered under the Basic Medical Program.

External Mastectomy Prostheses

Effective January 1, 2005, one single or double external mastectomy prosthesis per calendar year is covered in full under the Basic Medical Program. This benefit has no deductible, coinsurance or copayment.

Any single external mastectomy prosthesis costing $1,000 or more requires approval through the Home Care Advocacy Program (HCAP). Call HCAP toll free at 1-877-7-NYSHIP (1-877-769-7447) and choose United HealthCare before you purchase the prosthesis. For a prosthesis requiring approval, if a less expensive prosthesis can meet an individual's functional needs, benefits will be available for the most cost-effective choice.

After purchasing a mastectomy prosthesis, submit a completed claim form to United HealthCare with the original itemized receipt. (See address on page 11 of this Report.) United HealthCare will send reimbursement for the prosthesis directly to you.

The Empire Plan continues to cover mastectomy bras under the Basic Medical Program. Please see your *Empire Plan Certificate* for information.

Hearing Aids

Beginning January 1, 2005, under the Basic Medical Program, coverage for hearing aids, including evaluation, fitting and purchase, increases up to a total maximum reimbursement of $1,200 per hearing aid, per ear. The increased benefit is available once in any four-year period for each ear. For children age 12 years and under, the increased benefit is available once in any two-year period for each ear when the child's hearing has changed and the existing hearing aid(s) no longer fills the need.

These benefits are not subject to deductible or coinsurance.

The Empire Plan Hospital Benefits Program and Medical/Surgical Benefits Program

Infertility Benefits Maximum

Beginning January 1, 2005, the lifetime maximum for certain infertility benefits, called Qualified Procedures, increases to $50,000 per individual. This is an increase from the $25,000 lifetime maximum. Please see your *Empire Plan Certificate* and *Empire Plan Reports* for information about Empire Plan infertility benefits and Qualified Procedures.

The Empire Plan Mental Health and Substance Abuse Program

$12 Copayment for Outpatient Substance Abuse Treatment

Beginning January 1, 2005, you pay a $12 copayment for each visit to an approved Structured Outpatient Rehabilitation Program for substance abuse. The copayment for an outpatient mental health visit remains $15. To qualify for benefits, all covered services must be certified as medically necessary by ValueOptions.

$50 Copayment for Emergency Care for Mental Health/Substance Abuse Treatment

Effective January 1, 2005, your copayment for emergency care in a hospital emergency room is $50. You will not have to pay this $50 copayment if you are treated in the emergency room and then admitted at that time as an inpatient. When you receive medically necessary covered services from a non-network provider in a certified emergency, the Program will provide network coverage until you can be transferred to a network facility.

Substance Abuse Care Lifetime Maximum Effective January 1, 2004

The lifetime maximum benefit for substance abuse care, including alcoholism, under non-network coverage is $250,000 for you, the enrollee, and $250,000 for each of your covered dependents. This benefit is retroactive to January 1, 2004. The previous lifetime maximum for substance abuse care was $100,000.

Basic Medical Provider Discount Program Available October 1, 2004

The following applies to enrollees who have primary coverage through The Empire Plan.

Beginning October 1, 2004, The Empire Plan includes a new program to reduce your out-of-pocket costs when you use a non-participating provider. This new program, The Empire Plan Basic Medical Provider Discount Program, offers discounts from certain physicians and other providers who are not part of The Empire Plan participating provider network. These providers are part of the MultiPlan group, a nationwide provider organization contracted with United HealthCare.

Providers in the Basic Medical Provider Discount Program accept a discounted fee for covered services. You will not be billed for charges over the discounted fee. Empire Plan Basic Medical Program provisions apply. You must meet the annual deductible. However, your 20 percent coinsurance is based on the discounted fee, not the reasonable and customary charges as under the Basic Medical Program. So, you again save on costs. Plus, you have no claims to file. The provider will submit claims for you and United HealthCare will pay the provider directly. Your Explanation of Benefits, which details claims payments, will show the discount applied to billed charges.

To find a provider in The Empire Plan Basic Medical Provider Discount Program, ask if the provider is an Empire Plan MultiPlan provider or call 1-877-7-NYSHIP (1-877-769-7447) toll free, choose United HealthCare and ask a representative for help. You can also visit the New York State Department of Civil Service web site at www.cs.state.ny.us. Click on Employee Benefits, then on Empire Plan Providers and Pharmacies.

United HealthCare has mailed you a postcard with a MultiPlan sticker. Please place the sticker on your New York Government Employee Benefit Card. If you have not received the postcard, you may call United HealthCare at 1-877-7-NYSHIP (1-877-769-7447) toll free and ask for one.

The Basic Medical Provider Discount Program will be especially helpful to you when you or your dependents are traveling or away at school in an area where participating providers are not easily available. With the addition of this Program, you have another way to manage your health care costs.

Centers of Excellence for Cancer Program Available October 1, 2004

If you or a covered dependent is diagnosed with cancer, think about using The Empire Plan Centers of Excellence for Cancer Program. The Program provides paid-in-full coverage for cancer-related expenses received through a nationwide network known as Cancer Resource Services (CRS).

To participate in this voluntary program, you must call The Empire Plan toll free at 1-877-7-NYSHIP (1-877-769-7447). Press or say 1 for United HealthCare and then press or say 5 to connect to a Cancer Resource Services nurse consultant. Or, call the CRS toll-free number, 1-866-936-6002. Nurses are available from 8 a.m. to 8 p.m. Eastern time, Monday through Friday excluding holidays.

CRS nurse consultants are experienced cancer nurses. They can answer your questions, help you understand a cancer diagnosis and cancer treatment options and provide support if you or a family member is diagnosed with cancer. CRS nurses can also help you choose the best physician and cancer center for treatment of the specific kind of cancer.

When you use a Center of Excellence for Cancer, you receive paid-in-full benefits with no copayment. The CRS network includes many of the nation's leading cancer centers. Among them are Memorial Sloan-Kettering Cancer Center in New York City, Roswell Park Cancer Institute in Buffalo, and, in Boston, Dana-Farber Cancer Institute, Brigham & Women's Hospital and Massachusetts General Hospital.

If you choose to go to a Cancer Center of Excellence located more than 100 miles from your home, the Plan will assist you and one travel companion with expenses for travel, lodging and meals. You can find more information about Cancer Resource Services online at www.urncrs.com, the CRS web site.

Since the Centers of Excellence for Cancer Program is voluntary, you are still eligible for Empire Plan benefits for your medically necessary cancer treatment if you do not use the Program. However, you must follow the requirements of the Benefits Management Program and pay any applicable deductible, coinsurance and copayments.

The Empire Plan Prescription Drug Program

Copayment Changes Effective January 1, 2005

Beginning January 1, 2005, The Empire Plan Prescription Drug Program includes generic, preferred brand-name and non-preferred brand-name drugs. Your copayment amount depends on the drug and quantity prescribed and where you fill your prescription.

Prescription Drug Copayment Chart

Supply Dispensed	generic	preferred brand-name	non-preferred brand-name
Up to a 30-day supply from a participating retail pharmacy or through the mail service pharmacy	$5 copayment	$15 copayment	$30 copayment
31- to 90-day supply through the mail service pharmacy	$5 copayment	$20 copayment	$55 copayment
31- to 90-day supply from a participating retail pharmacy	$10 copayment	$30 copayment	$60 copayment

A list of the most commonly prescribed generic and preferred brand-name drugs is on the New York State Department of Civil Service web site at www.cs.state.ny.us. Click on Employee Benefits and choose your group specific benefits. Or, call The Empire Plan Prescription Drug Program toll free at 1-877-7-NYSHIP (1-877-769-7447).

Generic Substitution

If your prescription is written for a brand-name drug that has a generic equivalent, The Empire Plan continues to cover only the cost of the drug's generic equivalent. If your prescription is written for a brand-name drug with a generic equivalent, you pay the non-preferred brand-name copayment plus the difference in cost between the brand-name and generic drug, not to exceed the full cost of the drug.

Certain drugs are excluded from this requirement. You will be responsible for the applicable preferred brand-name or non-preferred brand-name copayment.

Your *Empire Plan Certificate* has information about appealing the generic substitution requirement.

NYSHIP Changes

Domestic Partner Eligibility

Effective January 1, 2005, to enroll a domestic partner, you must be able to provide proof that you have lived together and been financially interdependent for at least six months. Also effective January 1, 2005, there is a one-year waiting period from the termination date of previous partner coverage before you may again enroll a domestic partner. Other eligibility requirements apply. Please see your *NYSHIP General Information Book* and *Empire Plan Reports* for details.

Disability Retirement

If you receive a retroactive disability retirement and have not continued your coverage, call the Employee Benefits Division at 518-457-5754 (Albany area) or 1-800-833-4344 to ask about reinstating coverage. Call as soon as you have the decision on your disability retirement. You must apply in writing for reinstatement of your NYSHIP coverage.

Please see your *NYSHIP General Information Book* and *Empire Plan Reports* for more information about disability retirement.

Medicare and COBRA Coverage

If you become eligible for Medicare after enrolling in COBRA, your COBRA coverage ends when you become entitled to receive Medicare benefits. Your covered dependents may continue COBRA coverage for the balance of 18 months from their original COBRA-qualifying event.

Report continued on page 7

Report continued from page 6

Questions and Answers
About New Benefits

Q: How will I know if my hospital is in The Empire Plan network?

A: Empire Plan network hospitals are available on the New York State Department of Civil Service web site at www.cs.state.ny.us. Choose Employee Benefits and then click on Empire Plan Providers and Pharmacies. Or, you can call The Empire Plan toll free at 1-877-7-NYSHIP (1-877-769-7447) and choose Empire Blue Cross Blue Shield to ask a representative.

Q: Is the hospital network access standard of within 30 miles of residence always based on my permanent address?

A: Not necessarily. For example, if you are temporarily living in another location or have a dependent, such as a college student, who is residing at another location, the Plan will approve network coverage at a non-network hospital if no network facility meets the access standard based on the place of residence at that time.

Q: If my Empire Plan medical provider has privileges only at a non-network hospital and that is the hospital I use, will I receive network or non-network hospital benefits? What if my Empire Plan provider sends me to a non-network hospital for lab work?

A: If you receive services at a non-network hospital and a network hospital is within 30 miles of your residence, you will receive non-network benefits and have out-of-pocket expenses. You will also receive non-network benefits if your provider sends you to a non-network hospital for lab work when a network hospital is within 30 miles of your residence.

Q: Will I get reimbursed for non-network hospital coinsurance amounts?

A: Yes. When your combined coinsurance payments for services at a non-network facility are more than $500 for you, more than $500 for your spouse/domestic partner or more than $500 for all enrolled dependent children, you may send a completed claim form to United HealthCare for reimbursement. You will be reimbursed for the amount over $500, up to the non-network hospital coinsurance maximum of $1,500. Any network level copayments paid at non-network hospitals (emergency care copayment) do not count toward the coinsurance maximum.

For example, you receive services at a non-network hospital and have an out-of-pocket expense of $400 in coinsurance. You again go to a non-network hospital in the same calendar year and pay another $400 coinsurance. You have a combined out-of-pocket expense of $800. You can now submit a claim to United HealthCare for reimbursement of $300.

Q: How will I know if my prescription is for a generic or a preferred brand-name drug?

A: You'll find a list of the most commonly prescribed generic and preferred brand-name drugs on the Department of Civil Service web site at www.cs.state.ny.us. Choose Employee Benefits and then your group-specific benefits. Or, you may call The Empire Plan toll free at 1-877-7-NYSHIP (1-877-769-7447).

Q: Will my doctor know The Empire Plan generic and preferred brand-name drugs?

A: The Empire Plan will provide doctors with the list of most commonly prescribed generic and preferred brand-name drugs. But, it is your responsibility to know if your drug falls into one of these categories. Get the list from the web site or the Plan (see above) before your doctor's appointment.

Q: Does the Basic Medical Provider Discount Program replace the Basic Medical Program?

A: No. The Basic Medical Provider Discount Program is part of the Basic Medical Program. You may still choose to receive care under the Participating Provider Program. Or, you may choose non-participating providers under the Basic Medical Program.

Q: Why would I use the Basic Medical Provider Discount Program?

A: When a participating provider is not available, or you choose to go to a non-participating provider, the Basic Medical Provider Discount Program (MultiPlan) can save you money. After you meet your deductible, you are responsible for 20 percent of the discounted fee. The MultiPlan provider cannot balance bill you.

For example, you have met your deductible for the year and receive services costing $200. The MultiPlan discounted fee is $140. Your cost is $28 (20 percent of the discounted fee). Plus, the provider submits the claim for you and United HealthCare pays the provider.

In contrast, for the same $200 cost of services under the Basic Medical Program for non-participating providers, The Empire Plan pays $128 (80 percent of the reasonable and customary charge of $160). Your cost is $72 (the difference between $200 and $128). And, you must file the claim for reimbursement yourself.

Empire Plan Reminders

The Empire Plan NurseLine℠

You can call The Empire Plan NurseLine 24 hours a day, seven days a week for health information and support. Call 1-877-7-NYSHIP (1-877-769-7447) toll free and press or say 5 to talk with a registered nurse or to reach The Empire Plan NurseLine's Health Information Library.

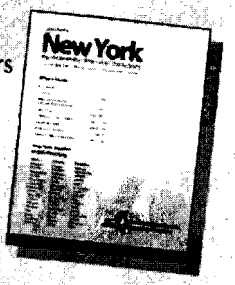
For recorded messages on more than 1,000 topics, enter PIN number 335 and a four-digit topic code from The Empire Plan NurseLine brochure. If you do not have your brochure, ask the NurseLine nurse to send you one.

Your Plan is The Empire Plan

The New York State Health Insurance Program (NYSHIP) provides your health insurance benefits through The Empire Plan. The Empire Plan is designed especially for New York's public employees and their families by the State and employee unions.

In New York State, the Empire State, you'll hear the word "Empire" again and again, even linked to other health plans. The correct name of your health insurance plan is The Empire Plan. The correct name means correct benefits. Tell your provider you're in The Empire Plan for New York State government employees.

Participating Provider Directory



You can find the most current list of Empire Plan providers on the New York State Department of Civil Service web site at www.cs.state.ny.us. Click on Employee Benefits and then on Empire Plan Providers and Pharmacies. This online list is updated regularly. You can find providers by name or location and print your own list of available providers.

If you do not have access to the internet, call The Empire Plan at 1-877-7-NYSHIP (1-877-769-7447) toll free to check if your provider participates in the Plan.

Printed directories will not be mailed automatically to the homes of active enrollees this year. If you would like to receive a printed Directory in the mail, please return the postage-paid card we sent you in September.

Remember: Always ask if the provider participates in The Empire Plan for New York State government employees before you receive services.

Claims Deadlines

March 31, 2005 (90 days after the end of the calendar year) is the last day to submit your 2004 claims to:

- United HealthCare for The Empire Plan Basic Medical Program, the Home Care Advocacy Program (HCAP), and for non-network physical medicine services
- ValueOptions for non-network mental health and substance abuse services
- Express Scripts for prescriptions filled in 2004 at non-participating pharmacies or without using your New York Government Employee Benefit Card

If The Empire Plan is your secondary insurer, you must submit claims by March 31, 2005, or within 90 days after your primary health insurance plan processes your claim, whichever is later.

You may submit claims later if it was not reasonably possible to meet the deadlines (for example, due to illness); you must provide documentation.

Ask your agency Health Benefits Administrator for claim forms, or call 1-877-7-NYSHIP (1-877-769-7447) toll free and choose United HealthCare, ValueOptions or Express Scripts.

Mail completed claim forms with supporting bills, receipts and, if applicable, a Medicare Summary Notice or statement from your other primary insurer to United HealthCare, ValueOptions and/or The Empire Plan Prescription Drug Program (Express Scripts). Addresses are on page 11 of this Report.

Note: If you are covered under The Empire Plan as an enrollee and as a dependent, you may submit claims for reimbursement of copayments to The Empire Plan as your secondary insurer.

Bills for Services

If you receive a bill for services you think are covered under The Empire Plan, call the telephone number of the provider listed on the billing statement. Explain that your health insurance plan is The Empire Plan for New York State government employees. Ask the provider to send the bill to the appropriate Empire Plan carrier, as follows:

Empire Blue Cross Blue Shield –
for inpatient and outpatient hospital and related services, skilled nursing facility care and hospice care.

United HealthCare –
for medical coverage, laboratory charges, free-standing ambulatory surgical centers, home care, chiropractic treatment and physical therapy.

When you use a participating provider, you pay the provider your copayment for covered services and United HealthCare pays the provider in accordance with the schedule of allowances. You do not have to pay the participating provider for the remaining charges.

ValueOptions –
for mental health and substance abuse care, including alcoholism.

Please see "Empire Plan Carriers and Programs" on page 11 of this Report for carrier addresses. If, after you have spoken to the provider, you continue to receive a bill you know has been paid by The Empire Plan, call 1-877-7-NYSHIP (1-877-769-7447) and choose the right carrier to report the billing.

"Guaranteed Access" to Network Benefits

The Empire Plan has three programs that guarantee network benefits are available to you nationwide: the Home Care Advocacy Program (HCAP), the Managed Physical Medicine Program and the Mental Health and Substance Abuse Program. When you follow each Program's requirements, you receive network benefits, the highest level of benefits.

Home Care Advocacy Program

To receive HCAP network benefits for home care services, durable medical equipment and supplies, you must:

- Call The Empire Plan toll free at 1-877-7-NYSHIP (1-877-769-7447) and select United HealthCare, then the Home Care Advocacy Program,* and
- Receive precertification of your home care and or equipment/supplies from United HealthCare, and
- Use an HCAP-approved provider for covered services and/or equipment/supplies.

*Exception: For diabetic supplies (except insulin pumps and Medijectors) or ostomy supplies, contact the HCAP network providers directly and toll free: National Diabetic Pharmacies (NDP), 1-888-306-7337 for diabetic supplies. (For insulin pumps and Medijectors, you must call HCAP for authorization.) Byram Healthcare Centers, 1-800-354-4054 for ostomy supplies.

Managed Physical Medicine Program

To receive network benefits for chiropractic treatment and physical therapy, you must use a Managed Physical Network (MPN) network provider for medically necessary services. You are not required to call MPN before your visit. You may contact a provider directly and ask if the provider is in the network. Or, you may call The Empire Plan toll free at 1-877-7-NYSHIP (1-877-769-7447) and choose United HealthCare. United HealthCare will help you find an MPN network provider.

If there are no network providers in your area, MPN will arrange for you to receive medically necessary services with network benefits. You will pay only your copayments for each visit. But, you must call United HealthCare before you receive services and you must use the provider with whom MPN has arranged your care.

Mental Health and Substance Abuse Program

To receive network benefits for mental health or substance abuse care, including care for alcoholism, you must call The Empire Plan toll free at 1-877-7-NYSHIP (1-877-769-7447) and choose ValueOptions before you seek treatment, and you must use a provider ValueOptions recommends.

If there are no network providers in your area, ValueOptions will arrange for you to receive medically necessary services with network benefits from a non-network provider or facility. But, you must call ValueOptions before you receive services and you must use the provider with whom ValueOptions has arranged your care.

For More Information

Please see your *Empire Plan Certificate* for more information about the Home Care Advocacy Program, the Managed Physical Medicine Program and the Mental Health and Substance Abuse Program and for requirements in emergency situations. Remember: If you follow program requirements, you are guaranteed network benefits, the highest level of coverage.

NYSHIP Reminders

Medicare Enrollment

NYSHIP (Empire Plan) provides primary coverage (pays first) for you, your enrolled spouse and other covered dependents while you are an active State employee, regardless of age or disability.

There are exceptions: Medicare is primary for an active State employee or dependent with end stage renal disease (30 or 33 months waiting period applies) and for an active State employee's domestic partner who is age 65 or over. The active employee or dependent with end stage renal disease must enroll in Medicare Parts A and B. The domestic partner must have Medicare Parts A and B in effect when first eligible at 65.

If you are planning to retire or otherwise leave State service and you or your spouse is 65 or older, or under 65 and entitled to Medicare because of disability, contact your local Social Security office three months before active employment ends to enroll in Medicare Parts A and B. After you leave the payroll, Medicare pays primary to The Empire Plan for a disabled enrollee or dependent, regardless of age. Be sure to talk with your agency Health Benefits Administrator if your spouse or dependent is under 65 and disabled at the time you leave the payroll.

Two publications, *What NYS Retirees Need to Know About Medicare and NYSHIP* and *Medicare for Disability Retirees*, have more details. Ask your agency Health Benefits Administrator for copies when you are planning to retire or leave State service.

Please also see your *NYSHIP General Information Book* for more information about Medicare and NYSHIP.

COBRA enrollees: See page 6 of this Report and your January 2004 Empire Plan Report for important information about Medicare and COBRA.

The *Empire Plan Report* is published by the Employee Benefits Division of the State of New York Department of Civil Service. The Employee Benefits Division administers the New York State Health Insurance Program (NYSHIP). NYSHIP provides your health insurance benefits through The Empire Plan.

NYSHIP
New York State Health Insurance Program

State of New York
Department of Civil Service
Employee Benefits Division
The State Campus
Albany, New York 12239
518-457-5754 (Albany area)
1-800-833-4344
(U.S., Canada, Puerto Rico, Virgin Islands)
www.cs.state.ny.us

The Empire Plan Carriers and Programs

To reach any of The Empire Plan carriers, call toll free **1-877-7-NYSHIP (1-877-769-7447).**
The one number is your first step to Empire Plan information. Check the list below to know which carrier to select. When you call 1-877-7-NYSHIP, listen carefully to your choices and press or say your selection at any time during the message. Follow the instructions and you'll automatically be connected to the appropriate carrier.

The Empire Plan Hospital Benefits Program

Empire Blue Cross Blue Shield, New York State Service Center, P.O. Box 1407, Church Street Station, New York, NY 10008-1407. Web site: www.empireblue.com. Call for information regarding hospital and related services.

Benefits Management Program for Pre-Admission Certification
You must call Empire Blue Cross Blue Shield before a maternity or scheduled hospital admission, within 48 hours after an emergency or urgent hospital admission, and before admission or transfer to a skilled nursing facility.

Centers of Excellence for Transplants Program
You must call Empire Blue Cross Blue Shield before a hospital admission for the following transplant surgeries: bone marrow, peripheral stem cell, cord blood stem cell, heart, heart-lung, kidney, liver, lung and simultaneous kidney-pancreas. Call for information about Centers of Excellence.

The Empire Plan Medical/Surgical Benefits Program

United HealthCare Insurance Company of New York, P.O. Box 1600, Kingston, NY 12402-1600. Web site: www.myuhc.com. Call for information on benefits under Participating Provider, Basic Medical Provider Discount and Basic Medical Programs, predetermination of benefits, claims and participating providers.

Managed Physical Medicine Program/MPN
Call United HealthCare for information on benefits and to find MPN network providers for chiropractic treatment and physical therapy. If you do not use MPN network providers, you will receive a significantly lower level of benefits.

Benefits Management Program for Prospective Procedure Review of MRI
You must call United HealthCare before having an elective (scheduled) Magnetic Resonance Imaging (MRI).

Home Care Advocacy Program (HCAP)
You must call United HealthCare to arrange for paid-in-full home care services, enteral formulas and/or durable medical equipment/supplies. If you do not follow HCAP requirements, you will receive a significantly lower level of benefits. Beginning January 1, 2005, you must also call United HealthCare for HCAP approval of an external mastectomy prosthesis costing $1,000 or more.

Infertility Benefits
You must call United HealthCare for prior authorization for the following Qualified Procedures, regardless of provider: Assisted Reproductive Technology (ART) procedures including in vitro fertilization and embryo placement, Gamete Intra-Fallopian Transfer (GIFT), Zygote Intra-Fallopian Transfer (ZIFT), Intracytoplasmic Sperm Injection (ICSI) for the treatment of male infertility, assisted hatching and microsurgical sperm aspiration and extraction procedures; sperm, egg and/or inseminated egg procurement and processing and banking of sperm and inseminated eggs. Call United HealthCare for information about infertility benefits and Centers of Excellence.

Centers of Excellence for Cancer Program
You must call United HealthCare to participate in The Empire Plan Centers of Excellence for Cancer Program.

The Empire Plan Mental Health and Substance Abuse Program

ValueOptions (administrator for GHI), P.O. Box 778, Troy, New York 12181-0778. You must call ValueOptions before beginning any treatment for mental health or substance abuse, including alcoholism. If you do not follow ValueOptions requirements, you will receive a significantly lower level of benefits. In a life-threatening situation, go to the emergency room. Call within 48 hours of inpatient admission.

The Empire Plan Prescription Drug Program

Express Scripts (administrator for CIGNA), P.O. Box 1180, Troy, NY 12181-1180. You must have prior authorization for: Amevive, Aralast, Aranesp, Caverject, Cerezyme, Cialis, Edex, Enbrel, Epogen/Procrit, Genotropin, Humatrope, Humira, Immune Globulins, Kineret, Lamisil, Levitra, Muse, Norditropin, Nutropin, Prolastin, Protropin, Pulmozyme, Raptiva, Remicade, Saizen, Serostim, Sporanox, TheraCys/Tice, Viagra, Xolair, Zemaira. For the most current list of prior authorization drugs, call The Empire Plan or go to www.cs.state.ny.us and click on Employee Benefits.

The Empire Plan NurseLine$_{SM}$

Call for health information and support, 24 hours a day, seven days a week. To listen to the Health Information Library, enter PIN number 335 and a four-digit topic code from The Empire Plan NurseLine brochure.

Teletypewriter (TTY) numbers for callers when using a TTY device because of a hearing or speech disability:

Empire Blue Cross Blue Shield.....TTY only: 1-800-241-6894
United HealthCare.....TTY only: 1-888-697-9054
ValueOptions.....TTY only: 1-800-334-1897
The Empire Plan Prescription Drug Program.....TTY only: 1-800-840-7879

State of New York
Department of Civil Service
Employee Benefits Division
The State Campus
Albany, New York 12239
www.cs.state.ny.us

ADDRESS SERVICE
REQUESTED

SAVE THIS DOCUMENT

NYSHIP
New York State Health Insurance Program

Information for the Enrollee, Enrolled Spouse/
Domestic Partner and Other Enrolled Dependents

UCS Empire Plan Report November 2004

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Annual Notice of Mastectomy and Reconstructive Surgery Benefits

The Empire Plan covers inpatient hospital care for lymph node dissection, lumpectomy and mastectomy for treatment of breast cancer for as long as the physician and patient determine hospitalization is medically necessary. The Plan covers all stages of reconstructive breast surgery following mastectomy, including surgery of the other breast to produce a symmetrical appearance. The Plan covers treatment for complications of mastectomy, including lymphedema. Prostheses and mastectomy bras are also covered.

Call United HealthCare toll free at 1-877-7-NYSHIP (1-877-769-7447) if you have questions about your coverage for implants, breast forms or other prostheses related to breast cancer treatment.

Empire Plan Benefits Management Program requirements apply. See your *Empire Plan Certificate* and *Empire Plan Reports*.

Losing Coverage?

Healthy NY is a State-sponsored program designed to make affordable, comprehensive health insurance available to eligible individuals without other coverage. If you know someone who needs health insurance, such as a dependent child who is losing coverage because of age or graduation, Healthy NY may meet this person's needs. Healthy NY is available through any HMO in New York State. For more information and an application: Contact an HMO, call 1-866-HEALTHYNY (1-866-432-5849) toll free or visit the web site www.HealthyNY.com.

EMPIRE PLAN REPORT

JANUARY 2004

For JUDGES, JUSTICES AND NONJUDICIAL EMPLOYEES OF THE UNIFIED COURT SYSTEM of the State of New York
And for their enrolled Dependents
and for COBRA Enrollees with their Empire Plan Benefits

Ask for Empire Plan Participating Providers

When you use participating providers, you cut down on costs to you and the Empire Plan. Participating providers do not automatically send you to another participating provider, laboratory or center. And, they might not send your tests to a participating laboratory. Tell your provider you want to use Empire Plan participating providers whenever possible. Always check with the provider directly before you receive services. Or, call 1-877-7-NYSHIP (1-877-769-7447) toll free and choose United HealthCare. Or, visit our Web site at www.cs.state.ny.us. Click on Employee Benefits and then Empire Plan Providers.

SAVE THIS REPORT

In This Report

1-2 Benefit News
2-3 Empire Plan Reminders
3 NYSHIP Reminders
4 Claims Deadlines

SPECIAL SECTIONS

NYSHIP General Information Book and Empire Plan Certificate Amendments

Empire Plan At A Glance

5 Planning for Retirement
6 New Book/Certificate

Empire Plan Benefit News

United HealthCare Medical Coverage

Annual Deductible and Coinsurance Maximum

For calendar year 2004, the Empire Plan Basic Medical Program annual deductible for medical services performed and supplies prescribed by non-participating providers remains $185 for you, $185 for your enrolled spouse/domestic partner and $185 for all covered dependent children combined.

You must meet the deductible before United HealthCare can pay Basic Medical benefits for your claims. The Basic Medical annual deductible cannot be combined with the Managed Physical Medicine Program annual deductible for non-network services or with the Mental Health and Substance Abuse Program annual deductibles for non-network services.

The annual coinsurance maximum (out-of-pocket expenses) under the Basic Medical Program remains $776 in 2004. After you and your covered dependents, combined, reach the coinsurance maximum, United HealthCare will reimburse you 100 percent of the reasonable and customary amount, or 100 percent of the billed amount, whichever is less, for covered services. You will still be responsible for any charges above the reasonable and customary amount and for any penalties under the benefits management programs.

The Basic Medical coinsurance maximum may be reduced to $500 for calendar year 2004 for nonjudicial employees earning $24,657 or less in full-time base annual salary as of April 1, 2002.

To be eligible for the reduced coinsurance maximum, the employee must meet the criteria for head of household and sole wage earner in the family. Contact your agency Health Benefits Administrator to apply for this reduction.

Empire Plan Prescription Drug Program

Prior Authorization

You must have prior authorization for certain drugs to receive Empire Plan Prescription Drug Program benefits. The prior authorization list is updated periodically. Please see page 156 of the *Empire Plan Certificate* section of this Report for a list of drugs requiring prior authorization. For the most current list of drugs requiring prior authorization, call the Empire Plan toll free at 1-877-7-NYSHIP (1-877-769-7447) and choose Express Scripts. Or, go to the New York State Department of Civil Service Web site at www.cs.state.ny.us and click on Employee Benefits.

Benefit News continued on page 2

Benefit News continued from page 1

Mandatory Generic Substitution

If your doctor writes a prescription for a brand-name drug that has a generic equivalent, you pay a $15 copayment plus the difference in cost between the brand-name drug and its generic equivalent. However, the following brand-name drugs are excluded from mandatory generic substitution: Coumadin, Dilantin, Lanoxin, Levothroid, Mysoline, Premarin, Slo-Bid, Synthroid, Tegretol. You pay only your $15 copayment for these brand-name drugs. Theo-Dur has been removed from this list because it is no longer manufactured.

Empire Plan Reminders

1-877-7-NYSHIP

1-877-7-NYSHIP (1-877-769-7447) is the one toll-free number to call for the Empire Plan carriers.

Call 1-877-7-NYSHIP to connect to:

Press or Say 1
- United HealthCare for medical/surgical benefits and claims, outpatient MRIs, the Home Care Advocacy Program (HCAP), Infertility Centers of Excellence and the Managed Physical Medicine Program

Press or Say 2
- Empire Blue Cross Blue Shield for hospital benefits and claims, pre-admission certification of inpatient hospital admission and skilled nursing facility admission and Centers of Excellence for Transplants

Press or Say 3
- ValueOptions for mental health and substance abuse benefits and claims, authorization of services and referrals to network providers

Press or Say 4
- Express Scripts for the Empire Plan Prescription Drug Program, Mail Service Pharmacy and ONECARD Rx

Press or Say 5
- The Empire Plan NurseLine℠ for health information and support

Hospital Outpatient Tests

Many diagnostic services are provided in the outpatient department of a hospital. Some examples are mammograms, chest X-rays, stress tests, colonoscopies, MRIs and blood tests. When you are physically present in the outpatient department of a hospital for a diagnostic test, you pay a $25 copayment for charges billed by the hospital for the test. If the test results are interpreted by a hospital employee or an agent of the hospital (such as an independent laboratory under contract with the hospital), and those charges are billed by the hospital, your one copayment covers these services as well. Empire Blue Cross Blue Shield reimburses the hospital directly for any balance.

However, in many cases, the results of tests performed in the outpatient department of a hospital are interpreted by an independent physician, not a hospital employee or agent. These physician charges are covered by United HealthCare under either the Participating Provider or Basic Medical Programs:

- If the physician interpreting the test results is an Empire Plan participating provider, you have no additional out-of-pocket expense. United HealthCare reimburses the provider directly for the service.
- If the physician interpreting the test results is not an Empire Plan participating provider, you are responsible for paying the provider and submitting a claim to United HealthCare for consideration under the Basic Medical Program, subject to deductible and coinsurance.

Your $25 copayment for hospital outpatient tests also covers use of the facility for outpatient surgery performed on the same day. However, if your surgery is performed by an independent physician, not a hospital employee or agent, physician charges are covered under either the Participating Provider or Basic Medical Program.

Participating Provider Directory

We mailed the 2003 *Empire Plan Participating Provider Directory* to enrollees October through November. If you haven't received your Directory, ask your agency Health Benefits Administrator for a copy.

You can find a regularly updated list of Empire Plan providers on the New York State Department of Civil Service Web site at www.cs.state.ny.us. Click on Employee Benefits and then on Empire Plan Providers. Or, call United HealthCare at 1-877-7-NYSHIP (1-877-769-7447) toll free and press or say 1 to check if your provider participates in the Plan.

Remember: Always ask if the provider participates in the Empire Plan for New York government employees before you receive services.

You are not guaranteed access to a United HealthCare participating provider in every specialty in every geographic area. You are, however, guaranteed access to network benefits under the Managed Physical Medicine, Home Care Advocacy and Mental Health and Substance Abuse Programs if you follow program requirements.

Reminders continued on page 3

Reminders continued from page 2

The Empire Plan NurseLine℠

You can call the Empire Plan NurseLine 24 hours a day, seven days a week for health information and support. Call 1-877-7-NYSHIP (1-877-769-7447) toll free and press or say 5 to talk with a registered nurse or to reach the Empire Plan NurseLine's Health Information Library.

For recorded messages on more than 1,000 topics, enter PIN number 335 and a four-digit topic code from the Empire Plan NurseLine brochure. If you do not have your brochure, ask the NurseLine nurse to send you one.

Annual Notice of Mastectomy and Reconstructive Surgery Benefits

The Empire Plan covers inpatient hospital care for lymph node dissection, lumpectomy and mastectomy for treatment of breast cancer for as long as the physician and patient determine hospitalization is medically necessary. The Plan covers all stages of reconstructive breast surgery following mastectomy, including surgery of the other breast to produce a symmetrical appearance. The Plan also covers treatment for complications of mastectomy, including lymphedema. Prosthetics and mastectomy bras are covered under the Basic Medical Program.

Call United HealthCare toll free at 1-877-7-NYSHIP (1-877-769-7447) if you have questions about your coverage for implants, breast forms or other prostheses related to breast cancer treatment.

Empire Plan Benefits Management Program requirements apply. See your *Empire Plan Certificate* and *Empire Plan Reports*.

NYSHIP Reminders

"Other Children" Eligibility

If you are caring for a child who is not your natural child, legally adopted child or dependent stepchild, this child may be eligible for NYSHIP health insurance coverage as your dependent. To be eligible, the "other child" must be unmarried and under age 19, reside permanently in your home and be chiefly dependent on you. You must have assumed legal responsibility in place of the parent. You must also verify eligibility and provide documentation when you enroll the child and every two years thereafter.

Contact your agency Health Benefits Administrator to enroll an "other child" or for more information about eligibility.

Release of Health Information to Representatives

The federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) includes national standards to protect the privacy of personal health information. Following these standards, the Employee Benefits Division limits the use and disclosure of individual health information. Persons representing a NYSHIP enrollee may need to meet certain requirements before the Division can give personal information.

Separated spouses covered under NYSHIP may receive information about themselves. Former spouses may not receive information about the enrollee, but, if they are on file in the Division as the child's personal representative, may get information about a dependent child.

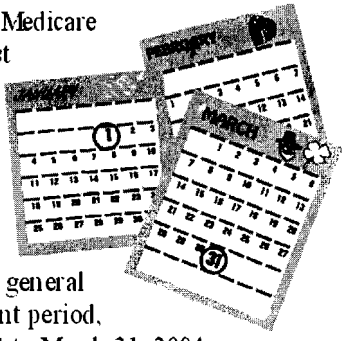
Parents wanting information about adult children with COBRA coverage must have a health care proxy, power of attorney, a court order, proof that the enrollee is incapacitated or an authorization form (available from your agency Health Benefits Administrator) signed by the adult child.

Adult children asking for information about a parent must have a health care proxy, power of attorney, a court order, proof that the enrollee is incapacitated or an authorization form (available from your agency Health Benefits Administrator) signed by the parent.

If you have questions about HIPAA and the release of personal health information, ask your agency Health Benefits Administrator. More HIPAA details and the Division's authorization form are also available on the New York State Department of Civil Service Web site, www.cs.state.ny.us. Click on Employee Benefits. Then choose HIPAA Privacy Information.

Medicare General Enrollment

If you or your dependent is eligible for primary Medicare coverage because of end stage renal disease or domestic partner status and did not enroll in Medicare when first eligible, you must sign up during the Medicare general enrollment period, January 1 to March 31, 2004. Contact your local Social Security office or call 1-800-772-1213 to enroll.



NYSHIP requires you and your covered dependents to be enrolled in Medicare Parts A and B when first eligible for Medicare coverage that pays primary to NYSHIP.

Page 5 of this Report has more information about Medicare. Also, see the Medicare section of your *NYSHIP General Information Book*.

Claims Deadlines

Claims Deadlines

March 31, 2004 (90 days after the end of the calendar year) is the last day to submit your 2003 claims to:

- United HealthCare for the Empire Plan Basic Medical Program, the Home Care Advocacy Program (HCAP), and for non-network physical medicine services
- ValueOptions for non-network mental health and substance abuse services
- Express Scripts for prescriptions filled in 2003 at non-participating pharmacies or without using your New York Government Employee Benefit Card *(Does not apply to employees represented by Civil Service Forum, Local 300)*

If the Empire Plan is your secondary insurer, you must submit claims by March 31, 2004, or within 90 days after your primary health insurance plan processes your claim, whichever is later.

You may submit claims later if it was not reasonably possible to meet the deadlines (for example, due to illness); you must provide documentation.

Ask your agency Health Benefits Administrator for claim forms, or call 1-877-7-NYSHIP (1-877-769-7447) toll free and choose United HealthCare, ValueOptions or Express Scripts.

Mail completed claim forms with supporting bills, receipts and, if applicable, a Medicare Summary Notice or statement from your other primary insurer to:

- United HealthCare
  P.O. Box 1600
  Kingston, New York 12402-1600
- ValueOptions
  P.O. Box 778
  Troy, New York 12181-0778
- Empire Plan Prescription Drug Program
  (Express Scripts)
  Claims Review Unit
  P.O. Box 1180
  Troy, New York 12181-1180

Note: If you are covered under the Empire Plan as an enrollee and as a dependent, you may submit claims for reimbursement of copayments to the Empire Plan as your secondary insurer.

Qs and As About Claims

Should I save my claims for the entire year and then submit them?

You can submit your claims for reimbursement any time after you receive non-network services. But pay attention to the claims deadlines explained on this page. And, remember: You must meet any annual deductibles before the Empire Plan will reimburse any of your non-network claims. Your *Empire Plan Certificate* has more information about filing claims.

What is a deductible?

A deductible is the amount you pay for covered expenses each calendar year before benefits will be paid under the Empire Plan Basic Medical Program, and for non-network physical medicine services and non-network mental health and substance abuse services. You must meet your deductible before your claim can be considered for payment. There are separate deductibles for the Basic Medical Program, for non-network physical medicine services, and for non-network mental health and substance abuse services. See your *Empire Plan Certificate* for more information.

Does my doctor or other provider have to fill out my claim form for United HealthCare or ValueOptions?

If you use a participating or network provider, your provider will submit claims and receive direct reimbursement. You pay only your copayment(s), if any, and you have no claim forms to file.

If you use a non-participating provider, ask the provider to fill in all the information asked for on the claim form and sign it. If the provider hasn't filled out the form, and you submit bills, the bills must include all the information asked for on the claim form. Otherwise, your claim will be delayed.

If I use a non-participating pharmacy, what portion of the cost of a prescription will I get back?

In almost all cases, you will not be reimbursed the total amount you paid for the prescription. If your prescription was filled with:

- A generic drug, a brand-name drug with no generic equivalent, or insulin, you will receive up to the amount the program would reimburse a participating pharmacy for that prescription less your copayment
- A brand-name drug with a generic equivalent (other than drugs excluded from Mandatory Generic Substitution. Please see page 2 of this Report.), you will receive up to the amount the program would reimburse a participating pharmacy for filling the prescription with that drug's generic equivalent less your copayment

Call 1-877-7-NYSHIP (1-877-769-7447) toll free and choose Express Scripts to find a participating pharmacy when you're away from home or in an emergency situation.

What if my claim is denied?

If a claim for benefits is denied in whole or in part, you may submit an appeal in writing to the appropriate carrier. (Please see the addresses on page 157 of the Book/Certificate section of this Report.) This request for review must be sent within 60 days after you receive notice of denial. If it was not reasonably possible to meet the deadline (for example, due to illness), you may submit your request later; you must provide documentation. Your *Empire Plan Certificate* has more information about claims and appeals.

Report continued on page 5

Report continued from page 4

Planning for Retirement

Changing Your Health Insurance Plan

As an active employee, you may change your health insurance plan once each year during the annual Option Transfer Period at the end of the year. When you retire, you may change your health insurance plan once at any time during a twelve-month period, for any reason. This new policy applies to State and Participating Employer retirees, vestees, dependent survivors and enrollees covered under preferred list provisions and COBRA enrollees with their benefits.

You may choose to change plans when you retire. If you want to change your health insurance plan to be effective as you begin your retirement, see your agency Health Benefits Administrator before your last day on the payroll.

Under certain circumstances, active employees may change plans outside the Option Transfer Period and retirees may change plans more than once in a twelve-month period. Please see your *NYSHIP General Information Book* for details. And, talk to your agency Health Benefits Administrator.

Medicare Enrollment

NYSHIP (Empire Plan) provides primary coverage (pays first) for you, your enrolled spouse and other covered dependents while you are an active State employee, regardless of age or disability.

There are exceptions: Medicare is primary for an active State employee or dependent with end stage renal disease (waiting period applies) and for an active State employee's domestic partner who is age 65 or over. The active employee or dependent with end stage renal disease must enroll in Medicare Parts A and B. The domestic partner must have Medicare Parts A and B in effect when first eligible at 65.

If you are planning to retire or otherwise leave State service and you or your spouse is 65 or older, or under 65 and entitled to Medicare because of disability, contact your local Social Security office three months before active employment ends to enroll in Medicare Parts A and B. After you leave the payroll, Medicare pays primary to the Empire Plan for a disabled enrollee or dependent, regardless of age. Be sure to talk with your agency Health Benefits Administrator if your spouse or dependent is under 65 and disabled at the time you leave the payroll.

Two publications, *What NYS Retirees Need to Know About Medicare and NYSHIP* and *Medicare for Disability Retirees*, have more details. Ask your agency Health Benefits Administrator for copies when you are planning to retire or leave State service.

Please also see your *NYSHIP General Information Book* for more information about Medicare and NYSHIP.

COBRA enrollees: See page 154 of the Book/Certificate section of this Report for important information about Medicare and COBRA.

Dual Annuitant Sick Leave Credit

Judges and Justices: The following does not apply to you.

At the time you retire, if you are eligible to use sick leave credits, your unused sick leave becomes a lifetime monthly credit that reduces your cost for health insurance. You may specify that you want your dependent survivors to use your monthly sick leave credit toward their NYSHIP premium if you die. This is called dual annuitant sick leave credit. If you want this option, you must choose it before your last day on the payroll. Your choice is permanent – no changes allowed even if your dependents predecease you.

The dual annuitant sick leave credit affects only the cost of your health insurance as a retiree and then the cost of your dependent survivors' health insurance, not your survivors' eligibility for health insurance. Whether or not you choose this option, your dependent survivors will be able to continue their NYSHIP health insurance if you had 10 or more years of active service at the time of your death. Other requirements may apply.

If you choose the dual annuitant sick leave credit at retirement, you will use 70 percent of the full value of your sick leave credit for as long as you live. Your eligible dependents who outlive you may continue to use 70 percent of the monthly credit for their health insurance premium.

See your *NYSHIP General Information Book* for more information about coverage for your dependent survivors.

The *Empire Plan Report* is published by the Employee Benefits Division of the State of New York Department of Civil Service. The Employee Benefits Division administers the New York State Health Insurance Program (NYSHIP). NYSHIP provides your health insurance benefits through the Empire Plan.

NYSHIP
New York State Health Insurance Program

State of New York
Department of Civil Service
Employee Benefits Division
The State Campus
Albany, New York 12239
518-457-5754 (Albany area)
1-800-833-4344
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www.cs.state.ny.us

State of New York
Department of Civil Service
Employee Benefits Division
The State Campus
Albany, New York 12239
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NYSHIP
New York State Health Insurance Program

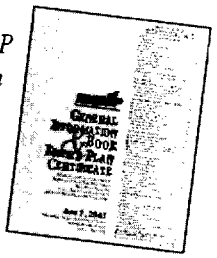
Information for the Enrollee, Enrolled Spouse/
Domestic Partner and Other Enrolled Dependents

UCS Empire Plan Report – January 2004

It is the policy of the State of New York Department of Civil Service to provide reasonable accommodation to ensure effective communication of information in benefits publications to individuals with disabilities. These publications are also available on the Department of Civil Service Web site (www.cs.state.ny.us). Click on Employee Benefits for timely information that meets universal accessibility standards adopted by New York State for NYS Agency Web sites. If you need an auxiliary aid or service to make benefits information available to you, please contact your agency Health Benefits Administrator. COBRA Enrollees: Contact the Employee Benefits Division at 518-457-5754 (Albany area) or 1-800-833-4344 (U.S., Canada, Puerto Rico, Virgin Islands).

This *Report* was printed using recycled paper and environmentally sensitive inks. CT0122 EPR-UCS-04-1

New Book/Certificate



We mailed the June 1, 2003 *NYSHIP General Information Book and Empire Plan Certificate* for Judges, Justices and Nonjudicial Employees of the Unified Court System to enrollees' homes in July. If you did not receive your copy, please contact your agency Health Benefits Administrator. The new publication is also available on the New York State Department of Civil Service Web site, www.cs.state.ny.us. Click on Employee Benefits.

The June 1, 2003 Book/Certificate replaces the January 1, 1996 Book/Certificate and *Empire Plan Reports* and Certificate Amendments issued through May 2003.

This *Empire Plan Report* has a new banner and new typeface to go along with your new Book/Certificate. Please keep this Report and any later Reports and Amendments with your new Book/Certificate.

EMPIRE PLAN REPORT

JANUARY 2010

NEW YORK STATE HEALTH INSURANCE PROGRAM (NYSHIP)
FOR JUDGES, JUSTICES AND NONJUDICIAL EMPLOYEES
OF THE UNIFIED COURT SYSTEM of the State of New York
And for their enrolled Dependents,
COBRA Enrollees with their Empire Plan Benefits and Young Adult Option Enrollees

Read this Report for important information about benefit changes.

In This Report

1 Young Adult Option Coverage
2 NYS Continuation of Coverage; Pre-Tax Contribution Program; Annual Deductible; Hearing Aid Benefits
3 Immunization Coverage; Future Moms Program; Half Tablet Program
4-5 Reminders

NYSHIP General Information Book and Empire Plan Certificate Amendments

6 Annual Notice

Copayments

See pages 301 and 302 of your *Empire Plan Certificate Amendments* for a complete list of your 2010 copayments.

NYSHIP Changes

Young Adult Option Coverage

As the result of a change in NYS Insurance Law, effective January 1, 2010, unmarried young adults through age 29 are eligible for NYSHIP health insurance coverage under the "Young Adult Option."

The Young Adult Option does not change NYSHIP's maximum age criteria for dependent coverage available to enrollees, but allows the adult child of an enrollee who meets the established criteria to purchase individual health insurance coverage through NYSHIP when the young adult does not otherwise qualify as a NYSHIP dependent. Either the young adult or his/her parent may enroll the young adult in the Young Adult Option, and either may elect to be billed for the NYSHIP premium. The cost of the Young Adult Option is the full share Individual premium. Refer to the Amendment on page 266 for eligibility criteria and other additional details.

A young adult is entitled to the same health insurance coverage as his/her parent provided the young adult lives, works or resides in New York State or the insurer's service area. Additionally, NYSHIP will permit a young adult to enroll in any other NYSHIP option for which the young adult otherwise qualifies under NYSHIP rules. This means that a young adult may:

- Enroll in The Empire Plan regardless of the parent's option;
- Enroll in the same HMO as the parent if the young adult lives, works or resides in the HMO's service area or in New York State; or
- Enroll in a NYSHIP HMO that the parent is not enrolled in if the young adult lives, works or resides within the HMO service area.

There is an initial open enrollment period for the Young Adult Option throughout 2010. Beginning in 2011 there will be a 30-day annual open enrollment period. Additionally, a young adult may enroll when NYSHIP eligibility is lost due to age or when a young adult is newly eligible because of a change in circumstances, such as loss of employer-sponsored health benefits.

The Young Adult Option application, rates and FAQs are available on the Department's web site at: https://www.cs.state.ny.us/youngadultoptionnype/index.cfm. Or you may contact the Employee Benefits Division at 518-457-5754 (Albany area) or 1-800-833-4344 for additional information and to enroll.

Changes to NYSHIP eligibility for adult children resulting from the recently enacted Federal Health Care Reform will take effect January 1, 2011. Details regarding eligibility criteria and the cost of this coverage are subject to Federal regulations, which have not yet been issued. Information will be mailed to enrollees and posted to our web site when it becomes available.

Continued on page 2

NYSHIP Changes, continued from page 1

New York State: Supplemental Continuation of Coverage

Effective January 1, 2010, The Empire Plan adopted New York State legislation to allow enrollees who have exhausted their federal Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage to extend NYSHIP coverage for an additional 18 months under the state's continuation of coverage law.

Under the new legislation, if you lose COBRA coverage because you have reached the end of your 18 or 29 month continuation period, you may request additional coverage under the New York State Insurance Law that will extend coverage until the earlier of:

- 36 months (combined length of COBRA and New York State coverage);
- The end of the period in which premiums were last paid;
- The date the enrollee becomes entitled to Medicare benefits; or
- The date New York State no longer provides group health care coverage to any of its enrollees.

Enrollees will have 60 days from the later of the end of their COBRA continuation period or receipt of notice of eligibility to apply in writing for the New York State Continuation of Coverage. The cost of coverage continuation will be the full premium cost for individual coverage plus a two percent administrative fee.

Important Information about the Pre-Tax Contribution Program (PTCP) for Enrollees with Domestic Partners

Effective January 1, 2010, NYSHIP enrollees who are eligible for the PTCP and who cover a domestic partner will be able to have their full premium contribution for the cost of family health insurance coverage deducted from their employee wages before taxes are withheld. If you cover a domestic partner who is not a federally qualified dependent, you continue to be responsible for reporting the value of the coverage provided to the domestic partner on your income tax return. The Department of Civil Service sends you form 1099-MISC showing this amount after the end of each tax year. Please consult your tax advisor for additional information or guidance.

If you cover a domestic partner, your payroll deduction for NYSHIP family coverage will automatically be taken on a pre-tax basis unless you have filed form PS-404 with your agency Health Benefits Administrator indicating that you want to opt out of the PTCP. We are in the process of implementing this change and anticipate that the tax status changes needed for PTCP payroll deductions will be completed during the first quarter of the year with an effective date of January 1, 2010.

Benefit Changes

2010 Annual Deductible and Coinsurance Maximum for Basic Medical and Non-Network Mental Health and Substance Abuse Practitioner Services

Annual Deductible: $250
Coinsurance Maximum: $500

For calendar year 2010, The Empire Plan annual deductible for services performed and supplies prescribed by non-participating or non-network providers is $250 for you, $250 for your enrolled spouse/domestic partner and $250 for all covered dependent children combined.

You must meet the deductible before benefits are paid for your claims. The annual deductible for the Basic Medical Program and the non-network portion of the Mental Health and Substance Abuse Program cannot be combined with each other or with the Managed Physical Medicine Program annual deductible for non-network services.

Effective January 1, 2010, the coinsurance maximum (out-of-pocket expense) is $500 for you, $500 for your enrolled spouse/domestic partner and $500 for all covered dependent children combined. After each coinsurance maximum is reached, you will be reimbursed 100 percent of the reasonable and customary amount, or 100 percent of the billed amount, whichever is less, for covered services. You will still be responsible for any charges above the reasonable and customary amount and for any penalties under the benefits management programs.

Each Basic Medical coinsurance maximum of $500 will be reduced to $300 for employees in or equated to a salary grade 6 or below as of January 1, 2010.

UnitedHealthcare will automatically apply the reduced coinsurance maximum to employees who meet the requirements. The employee does not need to contact the agency Health Benefits Administrator to apply for the reduction.

Enhanced Hearing Aid Benefits through EPIC Hearing Service Plan

The Empire Plan has enhanced its hearing aid benefit for enrollees and eligible dependents with the addition of the Hearing Service Plan (HSP), provided by EPIC Hearing Healthcare. The EPIC HSP is a voluntary program that offers nationwide access to hearing aids and services. The Program's review process assures you are receiving all appropriate tests and services as well as the most appropriate technology for the best price.

Although your hearing aid benefit maximum remains unchanged, the EPIC HSP offers you and your eligible dependents an additional option in utilizing your hearing aid benefit. The

EPIC HSP coordinates access to quality hearing care professionals throughout the State of New York and the nation and allows for direct billing to the Plan, up to the maximum benefit, so enrollees do not have to pay any upfront costs for hearing aids. Any amount over the maximum benefit is your responsibility.

The EPIC HSP provides the following:

- Hearing aid professionals available in all 50 states
- Access to all major hearing aid manufacturers
- Prices are never marked up from wholesale
- Hearing aid price lists are provided to enrollees and dependents upon request
- All hearing aids carry an extended three-year warranty, include the first year's supply of batteries and have a 45-day, no risk trial period in New York State

If you would like to learn more about the EPIC HSP, or if you need assistance in locating an HSP provider, please call toll free 866-956-5400.

Immunization Coverage

Immunizations have become a topic of interest this year because of the Novel H1N1 (swine flu) virus. As a result, it is very important that Empire Plan enrollees understand their coverage for immunizations.

There is no copayment under the Participating Provider Program for routine well-child care for children up to age 19 including pediatric examinations, immunizations and the cost of oral and injectable substances when administered according to pediatric care guidelines. The H1N1 vaccine is included in the vaccines offered to children under pediatric care guidelines. Coverage is also available under the Basic Medical Program subject to deductible and coinsurance.

Adult immunizations are covered when provided by a participating provider. You pay only a copayment for influenza, (including the H1N1 vaccine), pneumonia, measles-mumps-rubella (MMR), varicella (chickenpox) and tetanus immunizations. Female enrollees and dependents age 19 through 26 years pay a copayment for human papiloma virus (HPV) immunization for cervical cancer prevention, and Empire Plan enrollees and dependents age 55 or older are covered for the Shingles (Herpes Zoster) vaccine. If an immunization is not identified as covered it will not be considered for reimbursement. Adult immunizations are not covered under the Basic Medical Program.

IMPORTANT! Vaccines dispensed or administered by the pharmacy are not covered by The Empire Plan.

The Empire Plan Future Moms Program

This voluntary program is offered to Empire Plan enrollees at no additional cost and provides support and information designed to help you have a smooth pregnancy, a safe delivery and a healthy child. If you're pregnant, or hope to be in the near future, you know there's nothing more important than safeguarding your health and the health of your baby.

When you enroll in Future Moms, you'll be contacted by a Nurse Coach, a registered nurse, who will walk you through a health assessment over the phone. If you're not currently experiencing any health concerns, your Nurse Coach will simply arrange to check back with you periodically. But, if you need assistance in dealing with health issues, your Nurse Coach will schedule more frequent calls to check on your progress. Your Nurse Coach can also arrange for a free phone consultation with a specialist to answer your questions. Registered nurses are available 24 hours a day 7 days a week to answer your questions.

If you are interested in the Future Moms Program, call The Empire Plan toll free at 1-877-7-NYSHIP (1-877-769-7447) and choose Empire BlueCross BlueShield to enroll in the program.

The Empire Plan Half Tablet Program

Some recent articles have questioned the safety and efficacy of pill splitting programs. In most, the conclusion is that pill splitting programs are safe and save the patient money if the medications are clinically determined to be safe for splitting. The Empire Plan Half Tablet Program offered by The Empire Plan and administered by UnitedHealthcare provides many safeguards to mitigate against any possible safety questions.

The Empire Plan requires the following clinical criteria for medications to qualify for the Half Tablet Program:

- Each drug accepted for the Half Tablet Program must be approved by UnitedHealthcare's National Pharmacy and Therapeutic Committee.
- Medications must have a wide margin of safety so that minimal differences in tablet sizes, after splitting, will not disturb the efficacy of the medicine.
- Tablets must be able to be split relatively evenly without crumbling.
- Medications must remain chemically stable after splitting.
- Capsules, liquids, topical medications and certain coated tablets do not qualify.

You should only participate in the program if your doctor determines that pill splitting is appropriate for you.

For an updated list of the medications eligible for the Half Tablet Program go to https://www.cs.state.ny.us and select Benefit Programs in the left hand navigation on the home page. Follow the prompts to NYSHIP Online then choose Find a Provider. Scroll to the Medco links and click on Empire Plan Half Tablet Program. If you have other questions, call The Empire Plan toll free at 1-877-7-NYSHIP (1-877-769-7447) and choose The Empire Plan Prescription Drug Program.

Reminders

Dependent Verification

In the January 2009 Empire Plan Report and through information you received from Budco Health Service Solutions (Budco), we notified enrollees with family coverage that they were required to submit documentation of eligibility for each of their dependents (covered under NYSHIP) to Budco, the vendor contracted to perform the Dependent Eligibility Verification Project. If you received a letter from Budco stating that your dependent is ineligible because you did not respond to their request for documentation, or because you submitted incomplete documentation, your dependent was removed from coverage retroactively to February 1, 2009.

To reinstate coverage for any eligible dependents removed from coverage, you must provide proof of eligibility directly to the Department of Civil Service.

If you have questions, please visit the Department of Civil Service web site at www.cs.state.ny.us/nyshipeligibilityproject or call 1-800-409-9059 Monday through Friday 8:00 a.m. to 5:00 p.m. Eastern Time. The toll free telephone number will be available through June 30, 2010.

The Empire Plan At A Glance and Copayment Cards

In late November 2009, the January 1, 2010 *Empire Plan At A Glance* along with January 1, 2010 Copayment Cards and the 2010 Preferred Drug List were mailed to your home. These are important pieces to understand your 2010 benefits; be sure to read them and keep them handy. If you need additional copayment cards, contact your agency Health Benefits Administrator.

Medicare Part B Premium Reimbursement

For most enrollees eligible for Medicare, the base cost for the Medicare Part B premium is $96.40 per month, the same as it was in 2009. However, if you and/or your covered dependent are new to Medicare in 2010 or if your Part B premium is not deducted from your Social Security check(s) the standard Part B premium for 2010 will be $110.50 per month.

If you or your dependent is Medicare primary, NYSHIP automatically reimburses you for the base cost of the Part B premium unless you receive reimbursement from another source. Due to programming constraints, NYSHIP cannot automatically reimburse you for a premium amount other than the standard premium of $96.40. Therefore, if you or your dependent pays a higher premium, you will need to apply for reimbursement of any amount over $96.40. During May, the Department of Civil Service will mail information to enrollees who receive Medicare Part B reimbursement for themselves and/or a dependent that will explain how to request reimbursement of the additional $14.10 for those paying $110.50 per month. Note: NYSHIP will not reimburse any penalty charged for late enrollment in Medicare, nor will it duplicate Medicare reimbursement received from another employer.

Reimbursement of the Medicare Part B Income-Related Monthly Adjustment Amount (IRMAA) for Medicare-Primary Enrollees

Medicare Law requires some people to pay a higher premium for their Medicare Part B coverage based on their income. If you and/or any of your enrolled dependents are Medicare-primary and received a letter from the Social Security Administration (SSA) requiring the payment of an Income-Related Monthly Adjustment Amount (IRMAA) in addition to the standard Medicare Part B premium ($96.40) for 2009, you are eligible to be reimbursed for this additional premium by NYSHIP.
Note: If your 2007 adjusted gross income was less than or equal to $85,000 ($170,000 if you filed taxes as married filing jointly) you are NOT eligible for any additional reimbursement this year.

To claim the additional IRMAA reimbursement, eligible enrollees are required to apply for and document the amount paid in excess of the standard premium. For information on how to apply, a list of the documents required or questions on IRMAA, check the Department of Civil Service web site at https://www.cs.state.ny.us. Choose Benefit Programs on the home page, then NYSHIP Online and select your group, if prompted. The IRMAA letter was mailed to Medicare Part B reimbursement-eligible enrollees in January 2010 and is available under What's New on the NYSHIP Online home page. Or call the Employee Benefits Division at 518-457-5754 (if you are located in the 518 area code) or 1-800-833-4344 between the hours of 9:00 a.m. and 3:00 p.m.

Continued on page 5

Reminders, continued from page 4

Pre-Retirement Seminars

The Governor's Office of Employee Relations (GOER) in partnership with the Office of the State Comptroller presents Pre-Retirement Seminars. As part of the seminars, a representative from the Employee Benefits Division will explain the New York State Health Insurance Program (NYSHIP) and your choices before you leave the payroll.

Call your personnel office to learn if there is a seminar available in your area and to reserve your place. Be sure to bring your personal confirmation letter from GOER when you attend. The New York State Department of Civil Service web site, https://www.cs.state.ny.us, also has the seminar schedule. Click on Benefit Programs, select your group and benefit plan if prompted, and then on Calendar.

Since demand is greater than available seating at the seminars, you can also access helpful online pre-retirement resources at www.worklife.state.ny.us/preretirement/index.html or www.osc.state.ny.us/retire.

There is also a helpful 25-minute DVD, Planning for Retirement, and a companion booklet that can be ordered online at https://www.cs.state.ny.us. Click on Benefit Programs, then NYSHIP Online and select Planning to Retire? for more information.

The 2010 Census

The census is a count of everyone living in the United States. This includes people of all ages, races, ethnic groups, both citizens and non-citizens. Census questionnaires will be mailed in March 2010.

It's Easy - The questionnaire contains only a few simple questions and takes just a few minutes to answer and return, postage free, by mail.

Safe - The Census Bureau protects information that identifies respondents and their households for 72 years.

And Important - It determines the annual distribution of $300 billion of government funding for critical community services and generates thousands of jobs across the country. Participation ensures New Yorkers get their fair share of government funding, census jobs and Congressional seats.

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NYSHIP
New York State Health Insurance Program

Information for the Enrollee, Enrolled Spouse/
Domestic Partner and Other Enrolled Dependents

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Annual Notice of Mastectomy and Reconstructive Surgery Benefits

The Empire Plan covers inpatient hospital care for lymph node dissection, lumpectomy and mastectomy for treatment of breast cancer for as long as the physician and patient determine hospitalization is medically necessary. The Plan covers all stages of reconstructive breast surgery following mastectomy, including surgery of the other breast to produce a symmetrical appearance. The Plan also covers treatment for complications of mastectomy, including lymphedema. Prostheses and mastectomy bras are covered.

Call The Empire Plan toll free at 1-877-7-NYSHIP (1-877-769-7447) and select UnitedHealthcare if you have questions about your coverage for implants, breast forms or other prostheses related to breast cancer treatment.

Empire Plan Benefits Management Program requirements apply. See your *Empire Plan Certificate* and *Empire Plan Reports*.

The *Empire Plan Report* is published by the Employee Benefits Division of the State of New York Department of Civil Service. The Employee Benefits Division administers the New York State Health Insurance Program (NYSHIP). NYSHIP provides your health insurance benefits through The Empire Plan.

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EMPIRE PLAN REPORT

JULY 2008

NEW YORK STATE HEALTH INSURANCE PROGRAM (NYSHIP)
FOR JUDGES, JUSTICES AND NONJUDICIAL EMPLOYEES
OF THE UNIFIED COURT SYSTEM OF THE STATE OF NEW YORK
And for their enrolled Dependents
and for COBRA Enrollees with their Empire Plan Benefits

Read this Report for important information about benefit changes.

In This Report

1 Benefit Changes
2 Prescription Drug Program
NYSHIP General Information Book and Empire Plan Certificate Amendments
3 Benefits Management Program; Centers of Excellence Programs for Transplants and Cancer
4 NYSHIP Changes

Empire Plan Benefit Changes
Effective July 1, 2008

The Empire Plan Medical/Surgical Benefits Program

$30 Copayment for Non-Hospital Outpatient Surgical Locations

Beginning July 1, 2008, you pay the first $30 in charges (copayment) for each visit to an outpatient surgical location that has an agreement in effect with UnitedHealthcare.

The $30 copayment covers your elective surgery and anesthesiology, radiology and laboratory tests performed on the day of the surgery at the same outpatient surgical location.

Herpes Zoster Vaccine for Shingles

Effective July 1, 2008, the Herpes Zoster Vaccine used to prevent shingles is covered as an adult immunization under the Participating Provider Program for individuals age 55 or over. Since shingles usually occurs in the senior population, this coverage is consistent with established clinical guidelines. You pay only the office visit copayment when you receive the Herpes Zoster vaccination from a Participating Provider. There is no non-network benefit.

Prosthetic Wig Benefit

Effective January 1, 2008, wigs will be covered under the Basic Medical Program when hair loss is due to an acute or chronic condition that leads to hair loss including, but not limited to:

- Disease of endocrine glands such as Addison's disease and ovarian genesis
- Generalized disease affecting hair follicles such as systemic lupus and myotonic dystrophy
- Systemic poisons such as Thallium, Methotrexate and prolonged use of anticoagulants
- Local injury to scalp such as burns, radiation therapy, chemotherapy treatment and neurosurgery

Excluded from coverage is male and female pattern baldness.

There is a lifetime maximum benefit of $1,500 per individual regardless of the number of wigs purchased. Benefits are not subject to the Basic Medical deductible or coinsurance. Claims submitted for the prosthetic wig benefit must include documentation from the treating physician that states that the individual has a diagnosis for a covered condition.

Participating Diabetes Education Centers

Diabetes education can be an important part of a treatment plan for diabetes. Diabetes educators provide information on nutrition and lifestyle improvement that can help diabetics better manage their disease. The Empire Plan network now includes Diabetic Education Centers that are accredited by the American Diabetes Association Education Recognition Program. If you have a diagnosis of diabetes, your visits to a network center for self-management counseling are covered and you pay only an office visit copayment for each covered

Benefit Changes continued on page 2

Benefit Changes continued from page 1

visit. Covered services at a non-network diabetes education center are considered under the Basic Medical Program subject to deductible and coinsurance.

To find an Empire Plan participating diabetes education center, call The Empire Plan toll free at 1-877-7-NYSHIP (1-877-769-7447) and choose UnitedHealthcare. Or, go to the New York State Department of Civil Service web site (www.cs.state.ny.us), click on Benefit Programs and then NYSHIP Online. Select your group if prompted, click on Find a Provider and then Medical and Surgical Providers under UnitedHealthcare.

Diabetic Shoes

Effective July 1, 2008, one pair of custom molded or depth shoes per calendar year are a covered expense under The Empire Plan if:

- You have a diagnosis of diabetes and diabetic foot disease;
- Diabetic shoes have been prescribed by your provider; and
- The shoes are fitted and furnished by a qualified perdorthist, orthotist, prosthetist or podiatrist. Shoes ordered by mail or from the internet are not eligible for benefits.

When you use an HCAP-approved provider for medically necessary diabetic shoes, you receive a paid-in-full benefit up to an annual maximum benefit of $500. To ensure that you receive the maximum benefit, you must make a pre-notification call to the Home Care Advocacy Program (HCAP). You must call The Empire Plan toll free at 1-877-7-NYSHIP (1-877-769-7447), choose UnitedHealthcare and then the Benefits Management Program. HCAP will assist you in making arrangements to receive network benefits for diabetic shoes.

If you do not receive medically necessary diabetic shoes from an HCAP-approved provider, benefits will be considered under the Basic Medical Program subject to the annual deductible with any remaining covered charges paid at 75% of the network allowance with a maximum annual benefit of $500.

The Empire Plan Prescription Drug Program

Effective July 1, 2008, your prescription drug copayments for non-preferred brand-name drugs will be:

Up to a 30-day supply from a participating retail pharmacy or through the mail service	$40
A 31- to 90-day supply through the mail service	$65
A 31- to 90-day supply from a participating retail pharmacy	$70

You will find a list of the most commonly prescribed generic and brand-name drugs on the New York State Department of Civil Service web site at www.cs.state.ny.us. Click on Benefit Programs and then NYSHIP Online. Choose your group, if prompted, and click on Using Your Benefits. Or call The Empire Plan Prescription Drug Program toll free at 1-877-7-NYSHIP (1-877-769-7447).

Special Option Transfer Period

As a result of the July 1 copayment increases, you are eligible to change your NYSHIP Option from The Empire Plan to an HMO with a lower non-preferred drug or outpatient surgery copayment if there is one where you live or work. For information about this special option transfer, see your agency Health Benefits Administrator. There are limitations to the permitted changes and deadlines apply.

Kidney Resource Services Program

Effective July 1, 2008, The Empire Plan will offer a Kidney Resource Services Program to its enrollees when The Empire Plan is your primary health insurance coverage. If you or your dependents have been diagnosed with Chronic Kidney Disease (CKD), you may be invited to participate in this disease management program. Participation is voluntary, free of charge and confidential.

If you agree to participate, you will receive information to help you better understand your condition. You will be offered educational materials and other services that may help to improve the management of your kidney disease. You may also be contacted by a Registered Nurse in conjunction with this program.

This program works in partnership with your physician to achieve the best possible health outcomes.

If you have questions or would like more information, call The Empire Plan toll free at 1-877-7-NYSHIP (1-877-769-7447) and choose the option for The Empire Plan NurseLine.

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www.cs.state.ny.us

Benefits Management Program

Additional Imaging Procedures Require Prospective Procedure Review (PPR) Effective July 1, 2008

You must call The Empire Plan Benefits Management Program for Prospective Procedure Review of the following outpatient imaging procedures when performed as an elective (scheduled) procedure:

- Computed Tomography (CT)/Computed Axial Tomography (CAT) Scans
- Magnetic Resonance Imaging (MRI)/Magnetic Resonance Angiography (MRA)
- Positron Emission Tomography (PET) Scans
- Nuclear Medicine Diagnostic Procedures

Call The Empire Plan toll free at 1-877-7-NYSHIP (1-877-769-7447), and select UnitedHealthcare, then Benefits Management to reach the Care Coordination Unit.

Should you opt to have one of these procedures before the review is completed or if you do not call the Benefits Management Program before having it and UnitedHealthcare determines that the procedure was performed on a scheduled (non-emergency) basis and that the procedure was medically necessary, you are responsible for paying the lesser of 50 percent of the scheduled amounts related to the procedure or $250, plus your copayment, under the Participating Provider Program.

Under the Basic Medical Program, you are liable for the lesser of 50 percent of the reasonable and customary charges related to the procedure or $250. In addition, you must meet your Basic Medical annual deductible and you must pay the coinsurance and any provider charges above the reasonable and customary amount.

If UnitedHealthcare determines that the procedure was not medically necessary, you will be responsible for the full cost of the procedure.

Centers of Excellence Programs for Transplants and Cancer

Effective July 1, 2008, when you use a Center of Excellence for Transplants that has been pre-authorized by Empire BlueCross BlueShield or a Center of Excellence for Cancer that has been pre-authorized by UnitedHealthcare and the Center of Excellence is more than 100 miles from the enrollee's residence (200 miles for airfare), The Empire Plan provides travel, meals and one lodging per day for the patient and one travel companion. The Empire Plan will reimburse for meals and lodging based on the United States General Services Administration (GSA) per diem rate and automobile mileage (personal or rental car) based on the Internal Revenue Service medical rate. The following are the only additional travel expenses that are reimbursable: economy class airfare, train fare, taxi fare, parking, tolls and shuttle or bus fare from your lodging to the Center of Excellence. To find the current per diem rates for lodging and meals, visit the United States General Services Administration web site at www.gsa.gov and look under Travel Resources. Travel and lodging benefits are available as long as the patient remains enrolled and receiving benefits under the Centers of Excellence programs for Transplants or Cancer. The $10,000 lifetime maximum for travel, meals and lodging for the Centers of Excellence for Cancer Program has been eliminated.

State of New York
Department of Civil Service
Employee Benefits Division
P.O. Box 1068
Schenectady, New York 12301-1068
www.cs.state.ny.us

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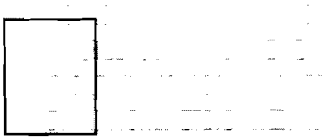
NYSHIP
New York State Health Insurance Program

Information for the Enrollee, Enrolled Spouse/
Domestic Partner and Other Enrolled Dependents



It is the policy of the State of New York Department of Civil Service to provide reasonable accommodation to ensure effective communication of information in benefits publications to individuals with disabilities. These publications are also available on the Department of Civil Service web site (www.cs.state.ny.us). Click on Benefit Programs, then NYSHIP Online for timely information that meets universal accessibility standards adopted by New York State for NYS agency web sites. If you need an auxiliary aid or service to make benefits information available to you, please contact your agency Health Benefits Administrator. New York State and Participating Employer Retirees and COBRA Enrollees: Contact the Employee Benefits Division at 518-457-5754 (Albany area) or 1-800-833-4344 (U.S., Canada, Puerto Rico, Virgin Islands).

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NYSHIP Changes Effective July 1, 2008

Leaving School Before Graduation

Beginning July 1, 2008, an enrolled, full-time student dependent age 19 or older who completes a semester will continue to be covered under NYSHIP until the last day of the third month following the month in which the dependent completes the semester unless the dependent otherwise loses NYSHIP eligibility. For example, if the dependent child completes the Spring semester in May, the last day of coverage would be August 31. However, if the dependent reaches age 25 before August 31, coverage ends on the dependent's birthday. This coverage extension applies to each semester the dependent child completes, including the semester in which the requirements for graduation are completed. A semester is considered to be completed if the student attends classes through the last required date of attendance for the semester, even if a passing grade is not achieved for coursework.

If a dependent student age 19 or older leaves school prior to the successful completion of a semester and proof of attendance during the semester is provided, coverage ends on the last day of the month in which the dependent attended school or the end of the third month following the month that the last semester was completed, whichever is later. If the required proof is not provided, coverage will end on the first day of the incomplete semester or three months after the previously completed semester whichever is later.

Generally a dependent child over the age of 19 must be a full-time student at an accredited secondary or preparatory school, college or other educational institution to be eligible for NYSHIP coverage. Refer to your *General Information Book* for additional eligibility information for dependent children who are disabled, on medical leave or have military service.

Workers' Compensation

If you become eligible for Workers' Compensation due to a work-related assault you will be eligible for extended Workers' Compensation coverage. Effective July 1, 2008, health insurance coverage at the employee's share of the premium may be continued for up to 24 months per injury.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

---------- x

Index No. 159160/2012

EILEEN BRANSTEN, Justice of the Supreme Court of the State of New York, PHYLLIS ORLIKOFF FLUG, Justice of the Supreme Court of the State of New York, MARTIN J. SCHULMAN, Justice of the Supreme Court of the State of New York, F. DANA WINSLOW, Justice of the Supreme Court of the State of New York, BETTY OWEN STINSON, Justice of the Supreme Court of the State of New York, MICHAEL J. BRENNAN, Justice of the Supreme Court of the State of New York, ARTHUR M. SCHACK, Justice of the Supreme Court of the State of New York, BARRY SALMAN, Justice of the Supreme Court of the State of New York, JOHN BARONE, Justice of the Supreme Court of the State of New York, ARTHUR G. PITTS, Justice of the Supreme Court of the State of New York, THOMAS D. RAFFAELE, Justice of the Supreme Court of the State of New York, PAUL A. VICTOR, retired Justice of the Supreme Court of the State of New York, JOSEPH GIAMBOI, retired Justice of the Supreme Court of the State of New York, THE ASSOCIATION OF JUSTICES OF THE SUPREME COURT OF THE STATE OF NEW YORK, THE SUPREME COURT JUSTICES ASSOCIATION OF THE CITY OF NEW YORK, INC. AND JOHN AND MARY DOES 1-2,000, current and retired Judges and Justices Of the Unified Court System of the State Of New York,

Plaintiffs,

-against-

STATE OF NEW YORK

Defendant.

AFFIDAVIT OF HONORABLE PHILLIP R. RUMSEY

The Honorable Phillip R. Rumsey states under penalty of perjury that the following is true and correct:

1. I am currently a Justice of the Supreme Court for Cortland County in the 6th Judicial District of New York. During the relevant time period, I was the President of the Association of Justices of the Supreme Court of the State of New York. I respectfully submit this Affidavit in support of Plaintiffs' opposition to the motion to dismiss ("Motion") filed by Defendant New York State ("Defendant"). The statements contained herein are based upon personal knowledge. I am fully familiar with the facts herein and the document annexed hereto based upon my receipt and review of it.

2. On or about September 30, 2011, I received a letter from the Office of Judicial Support that notified the Justices and Judges of the Unified Court System of the changes to our health benefits provided through the New York State Employee Health Insurance Plan ("NYSHIP") that were being implemented by the Department of Civil Service. This letter outlined some of the significant changes to our health benefits that would be effective October 1, 2011.

3. Annexed hereto as Exhibit 1 is a true and correct copy of the letter from the Office of Judicial Support within the Office of Court Administration to all Justices and Judges of the Unified Court System, dated September 30, 2011.

4. The week that includes September 30, 2011 was the first time that I received any notification regarding the changes to our health benefits by the Department of Civil Service.

5. To my knowledge, current Justices were notified on or about September 30, 2011 of the reduction in the State's contribution to their health insurance premiums.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 2nd day of April, 2013.

Hon. Phillip R. Rumsey

STATE OF NEW YORK)
CITY OF CORTLAND)
County of Cortland)

The foregoing affidavit was subscribed, sworn to and acknowledged before me this 2nd day of April, by Hon. Phillip R. Rumsey.

My commission expires: June 30, 2014

Notary Public: Sheryl A. Holbrook

[SEAL]

SHERYL HOLBROOK
Notary Public, State of New York
01HO4864033
Qualified in Cortland County
Commission Expires June 30 2014

STATE OF NEW YORK
OFFICE OF
COURT ADMINISTRATION

M E M O R A N D U M

To: All Justices and Judges of the Unified Court System

From: Office of Judicial Support

Date: September 30, 2011

Earlier this week, a memorandum was sent to Judges notifying them that the Department of Civil Service is implementing changes to the health benefits provided through the New York State Employee Health Insurance Plan (NYSHIP), many of which are effective October 1, 2011. Detailed information regarding these changes is being mailed directly by the Department of Civil Service Employee Benefits Division. Outlined below are some of the significant changes, as described to us.

Premium Contribution Increase

Effective October 1, 2011, premium contributions will increase by six percent. The higher contribution rate triggers a Special Option Transfer Period in October to allow you to change your health insurance plan. Because the effective date of the premium changes coincides with the Special Option Transfer Period, the increased premium rates for October will be pro-rated and included in the premium costs paid in October through December of 2011. A chart that sets forth the new bi-weekly premium payment for each benefit plan is included in the Department of Civil Services materials.

Co-Payments

Effective October 1, 2011, co-payments for office visits/office surgery; diagnostic laboratory/radiology tests; urgent care; and specialists increase from $15 to $20.

Prescription Drug Program

Effective October 1, 2011, the co-payment structure will change as follows (current co-pays in parenthesis):

Retail Pharmacy or Mail Order		30 day supply
Generic	$5	($5)
Preferred	$25	($15)
Non-Preferred	$45	($40)
Retail Pharmacy	**31 to 90 day supply**	
Generic	$10	($10)
Preferred	$50	($30)
Non-Preferred	$90	($70)
Mail Order Pharmacy		**31 to 90 day supply**
Generic	$5	($5)
Preferred	$50	($20)
Non-Preferred	$90	($65)

Empire Plan Flexible Formulary Drug Program

Effective October 1, 2011, the Empire Plan will implement a flexible formulary program which excludes coverage for certain brand name and prescription drugs. Letters were sent to enrollees immediately affected by this change, advising them of available alternatives, and suggesting that they address the matter with their physicians.

Health Insurance Opt Out Benefit

Enrollees who provide proof of alternate insurance may opt out of NYSHIP and receive an annual payment of $1000 (individual) or $3000 (family) from the State. The Executive is currently working out the details of this payout option.

Premium Contribution Rate in Retirement

Recently, the premium contribution rate for retirees increased by two percent. For retirements that take effect on or after January 1, 2012, the premium contribution rate will increase by an additional four percent, for a total increase of six percent.

As additional information is available, we will share it with you.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

EILEEN BRANSTEN, Justice of the Supreme Court of the State of New York, PHYLLIS ORLIKOFF FLUG, Justice of the Supreme Court of the State of New York, MARTIN J. SCHULMAN, Justice of the Supreme Court of the State of New York, F. DANA WINSLOW, Justice of the Supreme Court of the State of New York, BETTY OWEN STINSON, Justice of the Supreme Court of the State of New York, MICHAEL J. BRENNAN, Justice of the Supreme Court of the State of New York, ARTHUR M. SCHACK, Justice of the Supreme Court of the State of New York, BARRY SALMAN, Justice of the Supreme Court of the State of New York, JOHN BARONE, Justice of the Supreme Court of the State of New York, ARTHUR G. PITTS, Justice of the Supreme Court of the State of New York, THOMAS D. RAFFAELE, Justice of the Supreme Court of the State of New York, PAUL A. VICTOR, retired Justice of the Supreme Court of the State of New York, JOSEPH GIAMBOI, retired Justice of the Supreme Court of the State of New York, THE ASSOCIATION OF JUSTICES OF THE SUPREME COURT OF THE STATE OF NEW YORK, THE SUPREME COURT JUSTICES ASSOCIATION OF THE CITY OF NEW YORK, INC. AND JOHN AND MARY DOES 1-2,000, current and retired Judges and Justices Of the Unified Court System of the State Of New York, Plaintiffs, -against- STATE OF NEW YORK, Defendant.	Index No. 159160/2012 Justice C. Edmead

MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

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Attorneys for Plaintiffs

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Plaintiffs, current and retired Judges and Justices and the named representative associations, respectfully submit this memorandum of law in opposition to Defendant's Motion to Dismiss.

PRELIMINARY STATEMENT

Historical context properly frames the issue of whether Defendant violated the New York Constitution by diminishing the compensation of Plaintiffs. In 2009, after ten years of not receiving any increases in salary despite continuous appeals to the legislative and executive branches, supported by numerous good government groups, New York State Judges were finally compelled to file three separate actions against the Legislature and the Governor concerning the practice of "linkage." As a result of the litigation, the Court of Appeals in *Maron v. Silver*, 14 N.Y.3d 230 (2010), determined that the Legislature had improperly linked judicial salary adjustments with legislative and policy issues. The Court of Appeals directed the Legislature to take "appropriate and expeditious" action consistent with its opinion but did not order an increase in salary. *Id.* at 263.

Almost an entire year later, in response to *Maron*, the Legislature enacted, and the Governor signed, the Act of Dec. 10, 2010, ch. 567 (the "Salary Commission Law"). This legislation created a special commission on judicial compensation to examine, evaluate and make findings every four years with respect to judicial compensation (but again did not actually effectuate a salary increase). *See* Salary Commission Law, available at http://open.nysenate.gov/legislation/bill/S68010-2009. Appointed in May 2011, the Salary Commission submitted its final report on August 29, 2011, raising the Judges' salaries over a three-year period so that by the third year certain judges' salaries would be comparable to federal judges' current salaries. The Salary Commission Law provides that unless the Legislature and

the Governor enact a statute by April 1 of the following year to modify or reject the findings of the Salary Commission, the Salary Commission's conclusions are effective automatically. The Salary Commission's findings were not modified or abrogated, and on April 1, 2012, Judges received their first salary increase since 1999.

This historical back-drop underscores how the State's arguments herein add insult to what has been over a decade of injury to Plaintiffs. Two months after the Salary Commission reached its conclusions and disbanded, Defendant proceeded, by enactment of Section 167.8 of the Civil Service Law, to reduce its contribution to Plaintiffs' health insurance benefits, thereby unconstitutionally decreasing their compensation. Defendant concedes that it effectively reduced Plaintiffs' compensation, however, it argues that the diminution in judicial compensation is nonetheless constitutional, because, it claims, the reduction is somehow "indirect." Defendant acts as if the last thirteen years never existed, ignoring the legal rebuke issued by the Court of Appeals, the remedial action taken by the Salary Commission and applicable law.

By this motion, Defendant asks this Court to dismiss this case without so much as a review of the facts and evidence surrounding its decision to diminish Plaintiffs' compensation. For all the reasons explained below, Defendant's motion should be denied.

Under the Compensation Clause of the New York State Constitution, Article VI, § 25(a), judicial compensation shall not be diminished. In New York, compensation includes wages and benefits. Because of the reduction by the State of its contribution rate to health insurance premiums, unless redressed by this Court, sitting Judges' and Justices' take-home pay would be reduced by the State's 6% (2% for retired Judges) lower contribution rate per year going forward. Thus, by reducing Plaintiffs' health insurance benefits, Defendant directly reduced Plaintiffs' compensation in violation of the Compensation Clause. Even if the reduction could

be considered indirect, it is applied in a discriminatory manner to Plaintiffs. Defendant concedes that the reduction did not affect all state employees equally. Neither did Plaintiffs obtain the benefits that other state employees received in exchange for a reduced premium contribution rate. Nor, despite Defendant's implication, has this violation been cured – there has been no salary increase with the purpose to remedy this violation.

Plaintiffs do not maintain that they are exempt from the duties of every other citizen. It is not an unconstitutional diminution if general tax rates rise. But, here, the diminution of benefits imposed by Section 167.8 does not affect the citizens at large. Indeed, it affects only state employees (including the State's Judges), but not even all of them. It is, therefore, unconstitutional, in violation of the Compensation Clause.

FACTS

In Summer 2011, the Salary Commission solicited submissions of relevant information to assist its determination of the appropriate level of judicial salaries. Numerous submissions were provided. The Salary Commission held three meetings: on July 11, 2011, August 8, 2011 and August 26, 2011. On July 20th, a public hearing was also held where attendees were encouraged to present testimony to the Salary Commission. The New York State Director of the Budget appeared before the Commission at the July 20th hearing and laid out the State's budgetary concerns. The Budget Director described the State's fiscal and economic conditions and explained that during the last decade the State had chosen to allow spending to grow faster than its ability to pay. He asked the Salary Commission, under the circumstances, to consider a fair, affordable and sustainable compensation level for the State's Judges. At no time was the plan to reduce the State's contribution of health insurance benefits for Judges brought to the attention of the Salary Commission. *See* NYS Division of the Budget Megna Testimony

http://www.judicialcompensation.ny.gov/submissions. The Salary Commission issued its final report and conclusions on August 29, 2011.

During the same time frame, Defendant was actively engaged in collective bargaining with its represented employees. Collective bargaining agreements were executed in June 2011, which contained terms reducing health insurance benefits in exchange for avoiding layoffs of state employees. Thereafter, Defendant amended Section 167.8 of the Civil Service Law, effective August 17, 2011, to allow the president of the Civil Service Department, with approval of the Budget Director, to impose the collective bargaining terms upon unrepresented state employees and retirees. *See* Civ. Serv. Law § 167.8. During the last week of August, notification was sent to state employees represented by the Civil Service Employees Association ("CSEA"), employees designated Management/Confidential, and retirees, which announced the New York State Health Insurance Program ("NYSHIP") rate changes.

On September 27, 2011, the Civil Service Department formally proposed emergency rules to implement changes in the state/state employee contributions for health insurance premiums for individuals designated managerial or confidential or otherwise excluded from collective bargaining within the meaning of the Taylor Law, Civil Service Law Article 14, *i.e.,* Plaintiffs. Almost a month after the Salary Commission submitted its findings and disbanded, sitting Judges, for the first time, were notified on or about September 30, 2011 (Affidavit of Philip R. Rumsey, sworn to April 2, 2013 ("Rumsey Aff."), at ¶ 5), of the reduction in the State's contribution to their health insurance premiums of 6% for sitting Judges and 2% for retired Judges. *See* Rumsey Aff. at Ex. 1. The reduction in contribution to health insurance premiums by the State meant that Plaintiffs were made to pay more per year for their health insurance premiums. The reduction became effective October 1, 2011.

ARGUMENT

POINT I

JUDICIAL COMPENSATION HAS BEEN DIMINISHED BY DEFENDANT'S REDUCTION OF ITS PERCENTAGE CONTRIBUTION TO PLAINTIFFS' HEALTH INSURANCE BENEFITS THEREBY VIOLATING THE COMPENSATION CLAUSE

A. Judicial Compensation Cannot Be Diminished Under The Express Provisions Of The Compensation Clause Of The New York State Constitution

The Compensation Clause provides:

> [t]he compensation of a judge of the court of appeals, a justice of the supreme court, a judge of the court of claims, a judge of the county court, a judge of the surrogate's court, a judge of the family court, a judge of the court for the city of New York ... , a judge of the district court or of a retired judge or justice shall be established by law and *shall not be diminished* during the term of office for which he or she was elected or appointed.

N.Y. Const., art. VI, § 25(a) (emphasis added). According to the plain language of the State Constitution, a justice's or retired justice's compensation shall not be diminished. *See Matter of Maron v. Silver*, 14 N.Y.3d 230, 250 (2010) ("the state compensation clause plainly prohibited the diminution of judicial compensation by legislative act during a judge's term of office"); *Matter of Catanise v. Town of Fayette*, 148 A.D.2d 210, 212 (4th Dep't 1989) ("the constitution expressly prohibited any reduction in the compensation of a justice of the peace during his term of office"). The Compensation Clause and its federal counterpart share a common purpose: "to promote judicial independence and ensure that the pay of prospective judges, who choose to leave their practices or other legal positions for the bench, will not diminish." *Maron*, 14 N.Y.3d at 250 (citing *United States v. Will*, 449 U.S. 200, 221 (1980)).

The Compensation Clause exists to ensure the independence of the Judiciary and a meaningful Separation of Powers. *The Federalist*, No. 78, at 392-99 (Alexander Hamilton)

(Gary Wills ed., 1982) (*The Federalist*). A key element of judicial independence is a protected salary. "Next to permanency in office, nothing can contribute more to the independence of the judges than a fixed provision for their support. ... In the general course of human nature, a power over a man's subsistence amounts to a power over his will." *The Federalist, supra,* No. 79, at 400 (Alexander Hamilton). As acknowledged by Defendant, the United States Supreme Court has recognized that the "guarantees of compensation and life tenure exist, not to benefit the judges, but as a limitation imposed in the public interest." *United States v. Hatter*, 532 U.S. 557, 568 (2001) (internal cites omitted). The Court further found that these guarantees promote public welfare "by helping to induce learned men and women to quit the lucrative pursuits of the private sector and help to secure an independence of mind and spirit." *Id.*; *see also Beer v. United States*, 696 F.3d 1174, 1184 (Fed. Cir. 2012) (the compensation clause ensures a prospective judge that in abandoning private practice, the compensation of the new post will not diminish).

The purpose of protecting against any form of diminution in judicial salary is to preserve this independence of the Judiciary. "[I]f judges were subservient [to] either the legislature or executive branches of the government, the central unit, balance and harmony of the government would be destroyed." *Gordy v. Dennis*, 176 Md. 106, 114 (1939); *see also Maron*, 14 N.Y.3d at 258 (a fundamental principle is that each branch should be free from interference); *DePascale v. State of New Jersey*, No. MER-L-1893 (Sup. Ct. N.J. Mercer Co., Oct. 17, 2011), *aff'd*, 211 N.J. 40, 54 (N.J. 2012) (the Compensation Clause ensures that the judicial branch will be capable of carrying out its mission in our constitutional democracy). With New York State Judges not having permanency in office, protection of their compensation is all the more critical to ensure the Judiciary's independence and the Separation of Powers.

B. Plaintiffs' Compensation Has Been Diminished

New York courts have specifically held that health benefits comprise part of judicial compensation. *See Roe III v. Bd. of Trustees of the Village of Bellport,* 65 A.D.3d 1211, 1211-12 (2d Dep't 2009) (defining compensation as "wages and benefits") (citing *Larabee v. Governor of State of New York,* 65 A.D.3d 74, 86 (1st Dep't 2009) ("a legislative reduction of 'wages and benefits' of a town justice during a term in the office is violative of the separation of powers clause" under the State Compensation Clause). Defendant does not dispute that state-paid health insurance benefits are included within Plaintiffs' compensation.

Defendant acknowledges that "when the State reduced its contribution here, it increased the remaining balance that NYSHIP then collected from Judges' salaries." *See* Def. Br. at 13. Until Defendant's recent improper actions, Section 167 of the Civil Service Law provided that enrollees pay 10% of the cost of coverage for themselves and 25% for the cost of coverage for dependents. Civ. Serv. Law § 167(1). However, the amendment to Section 167.8 has resulted in an increase, as of October 1, 2011, to them in the cost of their health insurance, along with increases in other aspects, such as for co-payments, deductibles and prescription drugs. As recognized broadly throughout the country, this type of legislative action constitutes a reduction in judicial compensation. *See DePascale v. State of New Jersey*, 211 N.J. 40, 62 (2012) (the state statute "is an employer-generated reduction in the take-home salaries of justices and judges during the terms of their appointments—a direct violation of the No–Diminution Clause of our State Constitution"); *Hudson v. Johnstone*, 660 P.2d 1180, 1182 (Alaska 1983) ("Requiring a judge to contribute via a salary deduction to a retirement system diminishes a judge's compensation."); *see also Roe III*, 65 A.D.3d at 1211-12 (a legislative reduction of wages and benefits violates the separation of powers doctrine); *Stiftel v. Carper*, 378 A.2d 124, 132 (Decl.

Ch. 1977) (finding a violation of the Delaware Constitution where the State amended the State Judiciary Pension Act to require an increased contribution rate for participation in the judicial retirement system).

C. Defendant's Reduction Does Not Meet The Exception To The "No Diminishment Rule" Of The Compensation Clause

Diminution may be effected in multiple ways—"[s]ome may be direct and others indirect or even evasive. . . But all which by their necessary operation and effect withhold or take from the judge a part of that which has been promised by law for his services must be regard[ed] as within the prohibition." *O'Donoghue v. United States*, 289 U.S. 516, 533 (1933). The Supreme Court has carved out one exception to the "no diminishment rule," that the Compensation Clause does not forbid the enactment of a generally applicable, non-discriminatory tax of judges' compensation. *See United States v. Hatter*, 532 U.S. 557 (2001).

However, that is not the situation here. In *Hatter*, the Supreme Court specifically held that

> the Compensation Clause offers protections that extend beyond a legislative effort directly to diminish a judge's pay, say, by ordering a lower salary. Otherwise a legislature could circumvent even the most basic Compensation Clause protection by enacting a discriminatory tax law, for example, that precisely but indirectly achieved the forbidden effect.

Hatter, 532 U.S. at 569.

In *Hatter*, the federal judiciary brought an action challenging the constitutionality of two taxes, a Medicare tax and a Social Security tax. With respect to the Medicare tax, the Supreme Court found that because it applied to all citizens; the indirect diminishment was constitutional because it did not uniquely disadvantage the judiciary. The Supreme Court reasoned that "the Compensation Clause offers no reason for exonerating a judge from the ordinary duties of a

citizen, which he shares with all others." *Id.* at 569-70 (internal citations omitted). Conversely, the Social Security tax was not imposed on all citizens; rather, it imposed an additional financial burden upon federal judges from which virtually all other public employees could opt out. Federal judges also gained no substantial benefit from the newly imposed tax because the majority of them had already qualified for Social Security before becoming judges. *Id.* at 573. In considering this application, the Court recognized that

> Were the Compensation Clause to permit Congress to enact a discriminatory law [that indirectly reduced judicial compensation], it would authorize the Legislature to diminish, or to equalize away, those very characteristics . . . , the public needs to secure that Judicial independence upon which its rights depend.

Id. at 576.

Defendant's diminution of judicial compensation here does not fall within the exception to the "no diminishment rule." The Supreme Court in *Hatter* stated that "the Compensation Clause does not forbid Congress to enact a law imposing *a nondiscriminatory tax* (including an increase in rates or a change in conditions) upon judges, whether those judges were appointed before or after the *tax law* in question was enacted or took effect." 532 U.S. at 571 (emphasis added). Defendant's attempt to expand the holding of *Hatter* to include all laws, not merely tax laws, is too facile for it ignores that unlike a tax law, Section 167.8 was imposed by the State not as a sovereign, but as an employer, and, as explained below, it does not affect all residents of New York State or even all State employees equally.

1. Defendant's reduction of judicial compensation is direct

Defendant concedes that laws that reduce Judges' salary directly are *per se* impermissible under the Compensation Clause. *See* Def. Br. at 11. However, Defendant characterizes the applicable law as having only an "indirect effect of reducing [Plaintiffs'] take-home pay." *See*

Def. Br. at 13. Regardless of the wordplay, Plaintiffs' take-home pay and pension would be less per year going forward. Defendant concedes that it reduced Plaintiffs' health insurance benefits by reducing its contribution rate of health insurance premiums. *See* Def. Br. at 13. Therefore, because benefits are encompassed within the term compensation, *see* Section B *supra*, and this "benefit" has incontrovertibly been reduced, Defendant has impermissibly diminished compensation for Compensation Clause purposes.

Defendant's attempt to expand the holding in *Hatter* to include "all laws," not just a tax law (*see* Def. Br. at 11) is unpersuasive. In *Hatter*, the Supreme Court specifically found that "*a tax law*, unlike a law mandating a salary reduction, affects compensation indirectly, not directly." *Id.* at 571 (emphasis added). However, in its analysis, the Court reasoned that tax laws were indirect reductions of judicial compensation, not that all indirect reductions met with constitutional approval. Far from supporting Defendant here, *Hatter*, in determining that a Medicare tax law was a constitutional reduction in judicial compensation, premised its holding on the tax being imposed by the government as a sovereign, not as an employer (*id.* at 584 (Scalia, J. concurring) and because it affected all citizens equally (*id.* at 572), neither factor was present here. [1]

The increased health premium contributions imposed on Plaintiffs by Defendant is distinguishable from the Medicare tax in *Hatter*. Section 167.8 is not a tax law. It is a subsection of the Civil Service Law, which sets forth the contribution of the health benefits for current state and retired state employees. Defendant negotiated the collective bargaining agreement with its represented employees and amended Section 167.8 as an employer, not as a

[1] According to Defendant, there are only approximately 1,200 State judges or justices. *See* Def. Br. at 14. The population of New York State was over 19.57 million people according to the 2010 Census, clearly this reduction does not affect all residents of New York State.

sovereign. Then, the Civil Service Department extended the collective bargaining agreement terms to the unrepresented State employees and State retirees, again, as an employer. The reduced contribution does not affect all citizens, it does not affect all New York residents, and it does not even affect all New York State employees. The reduction runs afoul of the basic precept for the exception to the no diminishment rule.[2]

In this regard, the reasoning of the New Jersey Supreme Court in *DePascale* is apposite. The New Jersey Constitution contains almost identical language to the New York State Constitution with regard to the protection of judicial compensation. In *DePascale*, the Legislature enacted a statute that altered the state-administered health benefits program and required increased public employee contributions, including that of judges. *See* 211 N.J. at 42. The plaintiff, a judge, sought a finding that the statute diminished judicial salaries in violation of the New Jersey Compensation Clause. *See id.* The court concluded that the contributions to pension and benefits which were deducted from a judge's paycheck directly related to the amount of salary paid to that judge. *See id.* at 62. Therefore, plaintiff's salary was being diminished by legislative action in contravention of the Constitution of the State of New Jersey. *See id.* The court held that the enactment was an employer-generated reduction in the take-home salaries of judges and justices during the terms of their appointments, which directly violated the no-diminution clause, stating:

> Here, the State is not asking plaintiff to share in the material burden of the government, which he already does through the

[2] Any argument that because the change is "indirect" it fails to effect a loss of compensation is wrong. Here, the State transmits its contribution to NYSHIP, which collects the remaining balance from the employee's salary and then pays the full premium amount to the insurer chosen by the employee still constitutes a reduction in compensation. After collective bargaining with the union represented state employees, Defendant amended the Civil Service Law to include Plaintiffs. Defendant directly affected judicial compensation by the amendment of the Civil Service Law without any regard to the constitutional protections afforded Plaintiffs.

> payment of taxes, but rather that he shoulder an increased share of the burden of paying for the pension and health care benefits to which he has been entitled since his appointment to the bench. Clearly, the pension and health contribution paid by plaintiff is dramatically different than a general tax paid by all citizens . . . or a state tax, paid by *all citizens* who reside in a particular State.

DePascale, No. MER-L-1893 at *37-38 (internal citations omitted) (emphasis added). Like here, the New Jersey State government was acting as an employer by requiring its employees to contribute to pension and health benefits, as opposed to imposing the contributions on all citizens. *Id.* at 51. Following federal case law, the New Jersey Supreme Court affirmed the decision below, determining that the sole exception to the federal Compensation Clause prohibiting salary reductions is a tax borne by all citizens.[3] *Id.* at 59 (the Supreme Court "has never given any signal that even an indirect reduction in a judge's salary during the term of his appointment would be tolerable under the Federal Constitution – with one exception, a nondiscriminatory tax").

DePascale is on all fours with the case at bar, and Defendant's attempts to distinguish it fail. New Jersey's Compensation Clause and New York's Compensation Clause are virtually the same. *See* N.J. Const. of 1844, art. VII, § 2, ¶ 1 (stating that "[t]he justices of the supreme court and chancellor ... shall, at stated times, receive for their services a compensation which shall not be diminished during the term of their appointments"); N.J. Const. of 1947, art. VI, § VI, ¶ 6. ("The Justices of the Supreme Court shall receive the same salary as members of the United States Supreme Court, which shall not be diminished during the Justices' tenure in office.") The reasoning of the New Jersey Supreme Court is persuasive and should be accepted by this Court. Indeed, New York's Compensation Clause is more protective of judicial health benefits because

[3] Defendant concedes that New York courts also follow federal Compensation Clause jurisprudence. Def. Br. at 9.

of its use of the term "compensation," which encompasses wages and benefits, versus "salary" which could be argued to be more limited.

Defendant's attempt to distinguish *DePascale* by comparing the difference in contribution rates is unpersuasive. A diminution is a diminution – the Constitution does not speak of acceptable versus unacceptable ranges of violations.[4] Significantly, Defendant points to no precedent that the Compensation Clause allows a small, but prohibits a larger diminution of judicial compensation. If permitted, here, Section 167.8 would lay the foundation for the State to continually eat into Judges' compensation. Moreover, as the court in *DePascale* aptly states, "however artfully the State describes the effect of [the statute] – as either a direct or indirect diminution in salary – it remains, regardless of the wordplay, an unconstitutional diminution." 211 N.J. at 44. The diminution of judicial compensation here is unconstitutional as analyzed under both *Hatter* and *DePascale*. Defendant's actions improperly reduce judicial compensation, which is plainly prohibited by the Compensation Clause.

2. Defendant's reduction is discriminatory and singles out Judges

Even if viewed as an "indirect reduction" of judicial compensation, Defendant's action is prohibited by the Compensation Clause. The Supreme Court specifically rejected the argument that "Article III protects judges only against a reduction in stated salary, not against indirect measures that only reduce take-home pay." *See Hatter*, 532 U.S. at 576 (citing *O'Malley v. Woodrough*, 307 U.S. 277, 282 (1939) (implying Compensation Clause would bar a

[4] Even if one somehow could have an "acceptable" degree of constitutional violation, Defendant errs in making light of the impact of the changes in question. First, in context, Defendant ignores that the Judiciary suffered from the lack of any wage increases for over a decade; that even with the enacted increases, New York Judges and Justices are still not paid the same amount as their federal counterparts, and these Judges have lost over $500 million in purchasing power over the past decade because they did not receive any increase in compensation since 1999. *See* Def. Coyle Aff. Ex. J at 11-12 (Fiske Jr., dissenting), 14-15 (Mulholland, dissenting). The 6% reduction in Defendant's contribution rate for health benefits is not *de minimis*, especially in light of the historical context.

discriminatory tax); *United States. v. Will*, 449 U.S. 200, 226 (1980) (indicating Compensation Clause bars indirect efforts to reduce judges' salaries through taxes when those taxes discriminate). The argument that the increased health insurance contributions were nondiscriminatory because they apply to all state employees, including judges, is unpersuasive. *Hatter*, 532 U.S. at 571 ("the Legislature cannot directly reduce judicial salaries even as part of an equitable effort to reduce *all* Government salaries."); *DePascale*, No. MER-L-1893 at *50-51 (finding a constitutional violation where increased health insurance contributions were applied to all public employees, including judges).

In *DePascale*, the New Jersey Supreme Court recognized that the increased costs were to be borne by a broader group of employees, not just the Judiciary. Nonetheless, the increase did not apply to all citizens like the Medicare tax in *Hatter*, and was thus found unconstitutional. Even if the class at issue was properly that of public employees, the court found that the analysis did not end there, for the Constitution protects the compensation of judges, not that of all public employees. Consequently, that the state statute did not discriminate between judges and other public employees is not the proper analytical framework; because the provision increased the amount that all public employees must contribute, it ran afoul of that constitutional protection for the compensation of the Judiciary. *See DePascale*, 211 N.J. at 43 ("The Framers of the Constitution prohibited the Legislature from diminishing the salaries of sitting justices and judges – not other public employees.")

The diminution here is not akin to the Medicare tax in *Hatter*. Increased contributions of health insurance premiums are *not* borne by all residents of New York State. Section 167.8 imposed the increased contributions solely on employees and retired employees of the State. *See id.* In this way, Section 167.8 is more similar to the Social Security tax in *Hatter* found to be

unconstitutional. *See Hatter*, 532 U.S. at 572. The Court analyzed four features of the Social Security tax law to determine its unconstitutionality, as applied to federal judges. Application of each of those factors here demonstrates that Section 167.8 is unconstitutional as applied to Plaintiffs.

a. Plaintiffs have been discriminated against within their class

First, the Supreme Court determined the appropriate class against which to measure the asserted discrimination by the Social Security tax was federal employees. *Hatter*, 532 U.S. at 572 (determining that the appropriate class was federal employees, where the law brought federal employees within the Social Security system). Even if the proper class was viewed as the State's public employees, Defendant concedes that the reduction does not even affect all employees of the State of New York. *See* Def. Br. at 8, 11, 12, 13 (provision reduced "the *vast majority of other state employees'* health insurance premiums"; reduced "*most other state employees'* health insurance premiums"; "reduction of its contribution to Judges' and Legislators' and *most other state employees'* health insurance premiums"; "*vast majority of state employees*" (emphasis added)). Indeed, even those state employees that were affected by the reduction were not treated equally, Plaintiffs did not receive the same benefits that represented State employees received. Hence, in failing to have universal application, the reduction falls far short of the *Hatter* test for constitutionality.

As related above, Defendant negotiated and executed collective bargaining agreements with its represented employees, thereby reducing its contribution to its employees' health insurance premiums in exchange for limiting further layoffs of its employees. Plaintiffs are unrepresented, and indeed, not eligible for collective bargaining. *See* Civil Service Law Ch. 7, Art. 14, § 201(7)(a). Defendant amended Section 167.8 to include unrepresented state

employees and retired state employees in a bargain to which they were not subject and for which they could not benefit. In exchange for the reduction in health insurance premiums contribution, the State agreed to not lay off represented state employees. With no seat at the bargaining table and not gaining the layoff protection achieved by the represented employees, as Plaintiffs' employment is set by statutory terms limits, Plaintiffs were nevertheless required to pay an increased amount.

Defendant states that 75% of active state employees are subject to the reduced premium contribution rate and of those subject to the reduced premium the Judges are less than 1%.[5] Def. Br. at 14. Defendant's arguments highlight the inequality of Section 167.8 on two levels. First, according to Defendant, 25% of active state employees are exempt from the reduced premium contribution. Thus, unlike Plaintiffs, many State employees were unaffected by the change in contribution rate. Second, according to Defendant, there are approximately 186,000 state employees and 161,000 of those state employees were represented and negotiated the reduction to the contribution of health insurance premiums. *See* Def. Br. at n. 1, 4-9. Therefore, most State employees agreed as part of bargaining to the reduction in exchange for a benefit.[6] Under either of these two sets of calculations presented by Defendant, it is demonstrated that the diminution is clearly discriminatory; virtually all of the state employees were treated differently than Plaintiffs – either by being represented during the collective bargaining negotiations or otherwise exempt.

[5] Defendant does not specify the reason why 25% of state employees are exempt.

[6] As noted above, unlike Plaintiffs who are not eligible to participate in collective bargaining, approximately 94% of all members of the executive branch are unionized. *See* http://www.goer.ny.gov/GOER_Information/FAQs.cfm#18.

Defendant argues that the Legislature would not use such a blunt instrument to cut contribution to the health insurance premiums of well over 100,000 non-judge state employees to punish the Judges for unpopular decisions. However, this is the quintessential red herring. Nowhere in the Constitution or in the case law interpreting the Compensation Clause is there a requirement that reduction in judicial compensation must be linked to punishment for unpopular decisions. While that may have been an initial rationale for protecting judicial compensation, it is not a predicate to proving a violation. Both federal and state courts have determined that it is unnecessary to consider or find the existence of any improper motive or evidence that Congress or the Legislature singled out or discriminated against the judges to intimidate or influence them. *See Hatter*, 532 U.S. at 577 (evidence that Congress singled out judges for special treatment in order to intimidate, influence, or punish them is not necessary); *Larabee v. Governor*, 65 A.D.3d 74, 99 (1st Dep't 2009) (the absence of undue influence is not dispositive). Such a requirement – and the difficultly in proof – would place at risk this most fundamental of protections.

Defendant also erroneously argues that because it reduced its contribution to the State Legislators' health insurance premiums, it is constitutional to reduce Plaintiffs' health insurance premiums. The Court of Appeals has determined that it violates the Separation of Powers Doctrine to link judicial compensation to unrelated legislative objectives and policy initiatives. *See Maron*, 14 N.Y.S.3d at 257; *see also Hatter*, 532 U.S. at 571 (impermissible to reduce judicial salaries, even if reducing all Government salaries). Indeed, any argument by Defendant that Plaintiffs' compensation has been linked to other initiatives or considerations of compensation adjustment for employees outside the Judiciary serves only to acknowledge that its conduct was unlawful.

b. Defendant has imposed a new financial obligation on Plaintiffs

The second factor that the Court analyzed in *Hatter* was whether the Social Security tax imposed a new financial obligation. *See Hatter*, 532 U.S. at 573 ("the new law imposed a substantial cost on federal judges with little or no expectation of substantial benefit for most of them"). Here, the law as applied in practice imposes a new financial obligation upon Plaintiffs. The Supreme Court found that the Social Security tax was being imposed on federal judges when virtually all of the remaining federal employees (but not the judges) could opt out of it. This differentiation in treatment, not arising out of malice, was found to be sufficiently discriminatory to violate the no diminution protection. *Id.* It follows that *Hatter* cannot support Defendant's argument that the challenged provision does not single out Judges. *See id.* ("The practical upshot is that the law permitted nearly every current federal employee, but not federal judges, to avoid the newly imposed financial obligation."). [7] The amended Section 167.8 imposed a new financial obligation on Plaintiffs, which was not imposed equally on all state employees, let alone all of its citizens.

c. Defendant's claimed benefit is not applicable to Plaintiffs

In *Hatter*, the Court analyzed whether the new law imposed a substantial cost on federal judges with little or no expectation of substantial benefit for most of them. As in *Hatter*, Section 167.8 imposes a substantial cost on Plaintiffs with little or no expectation of substantial benefit. By including Plaintiffs in amended Section 167.8, all members of the Judiciary were adversely affected. Inclusion meant that Judges must pay more for their health insurance premiums each

[7] The Social Security tax law gave 96% of all current employees total freedom to enter or not to enter the system as they chose. *Id.* at 572-73. The remaining 4% had the freedom to maintain their pre-1984 payroll deductions, provided they were enrolled in a covered system. *Id.* at 573. The law defined a covered system in a way that included virtually all of the 4%, except for federal judges. *Id.* Because federal judges were excluded from opting out of the Social Security tax, they were impermissibly singled out in violation of the Compensation Clause.

year. Even according to Defendant, the agreement between the unions and the State was "[i]n exchange for avoiding layoffs of thousands of state employees, the union agreed to a three-year salary freeze, an unpaid furlough, and a reduction in the percentage contribution that the State pays towards their health insurance premiums." Def. Br. at 3. The benefit, in exchange for the reduction in the contribution, was the avoidance of layoffs, which has no application to Plaintiffs.

While Defendant points to a reduction in co-pays for preventive care services and certain prescription drugs, neither equal the increase costs of health insurance premiums passed on to Plaintiffs. Hence, Defendant's claim that increased costs are not significant is not only wrong, and not only legally irrelevant (*supra*, at 13), but it ignores thirteen years of a lack of increased compensation which the Judges were made to bear.

d. Defendant's budgetary justification for violating the Compensation Clause is unsound

The last factor analyzed by the Court was that there must be a sound justification for the discrimination that outweighs the objectives of the Compensation Clause. *See Hatter*, 532 U.S. at 573. Defendant argues that the reduction is necessary to ameliorate a statewide budget crisis. This was the precise argument advanced by the State of New Jersey and rejected by that state's Supreme Court. *DePascale*, 211 N.J. at 44 ("Whatever good motives the Legislature might have, the Framers' message is simple and clear. Diminishing judicial salaries during a jurist's term of appointment is forbidden by the Constitution."); *see also Stilp v. Commonwealth*, 588 Pa. 539, 584-85 (Pa. 2006) ("for this Court to accept the notion that legislative pronouncements of benign intent can control a constitutional inquiry concerning diminishing judicial compensation would be tantamount to ceding our constitutional duty, and our

independence"). Defendant must adhere to the requirements of the State Constitution when solving the State's fiscal issues. *See Maron*, 14 N.Y.3d at 257 (judicial compensation cannot be linked to other unrelated policy initiatives); *DePascale*, 211 N.J. at 64, 47 A.3d at 705 ("any solution to the State's serious fiscal issues must conform to the requirements of our Constitution").

Indeed, Defendant's own representation that Judges comprise less than 1% of the active state employees demonstrates that the dollar amount at issue here could hardly be material in remedying the state budgetary issues. Or, stated conversely, continuing the Judge's benefits at their pre-amendment levels could not possibly cause such financial distress that would justify violating the Constitution.[8] Moreover, at the time that the collective bargaining terms were being negotiated, the Salary Commission was analyzing the appropriate level of judicial salaries. It is noteworthy that the Salary Commission had already taken into account the ability of the State to pay Judges' salaries in determining its recommended increase. *See* Def. Coyle Aff. Ex. J at 11 (Fiske Jr., dissenting) (recommending an increase to $195,754, Fiske stated: "No discussion of the state's ability to fund increased judicial compensation can be complete without noting what the state has saved by failing to adjust judicial salaries for twelve years. Since 1999, by not giving the judges appropriate cost-of-living increases, the state has saved approximately $515 million to spend in other areas."); Def. Coyle Aff. Ex. J at 14-15 (Mulholland, dissenting)

[8] Nor is Defendant's argument that the rule is unworkable persuasive. Defendant offers no explanation for why it could not revert to its prior contribution rate. While, Defendant claims that this is unworkable (*see* Def. Br. at 16), that contention makes no sense. *See Hatter*, 532 U.S. at 580 (finding no reason why exemption from Social Security would prove unworkable). Defendant can simply change the contribution rate of Plaintiffs' health insurance premiums – insurance companies do this all the time for different groups of insureds. Moreover, as Defendant points out, the Judges are less than 1% of the active state employees, returning to the contribution rate in effect for decades certainly cannot be construed as unworkable. For example, in *Stiftel*, the court stopped any further pension contribution deductions under the amended statute, and granted restitution of all sums wrongfully deducted and withheld under the amendment since its effective date. 378 A.2d at 132. Finally, it would seem that the system must be workable as 25% of state employees were excluded from the reduction.

(recommending an increase to $192,000, Mulholland stated: "Mr. Megna admitted New York could cover the cost if need be. Our judges have already paid over $500 million toward the cost, through their salary forfeitures suffered since 1999").

The Salary Commission recommended an increase to $160,000, as of April 1, 2012, consistent with the budgetary issues brought to its attention at the time of its findings. *See* NYS Division of the Budget Megna Testimony http://www.judicialcompensation.ny.gov/submissions ("the State's overall economic climate should be considered when setting a new level of judicial compensation"); Def. Coyle Aff. Ex. J at 1 ("The Commission has considered various factors in setting what they believe are appropriate judicial compensation levels in light of the State's current fiscal situation"); Def. Coyle Aff. Ex. J at 7 ("In determining an appropriate judicial salary increase, the Commission must take into account how that increase will affect the State's financial situation"). Significantly, the Budget Director presented the fiscal impact on raising judicial salaries on the economic condition of the State. He asked the Salary Commission to be rational and fair and not to increase judicial salaries well-above most other public officials so that the entire system would not be skewed. (However, the Budget Director never hinted at, much less represented, that there would be a reduction in the Judges' health insurance benefits. Hence, the Salary Commission could not have factored in this cost.) Defendant is thus trying to have it both ways: plead poverty to the Salary Commission and then, only after the Commission considered that position, hit the Judges with a further diminution.

Accordingly, the Salary Commission must be deemed to have already taken the fiscal conditions of the State into consideration in setting the salaries of the Judiciary. To then change the Judges' benefits would be a double-hit for the same objective, after thirteen years without any increase, then followed by a modest increase and then a reduction. Plaintiffs should not be

mandated to forego their constitutional rights and the protection of their compensation to address budget crises. The budget difficulty is not a legitimate justification for the reduction of judicial compensation, and this Court should not be persuaded by such a plain attempt to skirt the Compensation Clause.

None of the cases cited by Defendant provide support for the reduction of judicial compensation at issue here. Defendant cites to *Hatter* and *Maron* for the proposition that *a nondiscriminatory tax* is not prohibited by the Compensation Clause and that judges are not immune from sharing with their *fellow citizens the material burden of the government.* However, the reduction here is not a nondiscriminatory tax on all residents of the State of New York; it is a direct diminution of compensation. *See Hatter*, 532 U.S. at 576-77; *Maron*, 14 N.Y.3d at 254. *Robinson v. Sullivan,* 905 F.2d 1199, 1202 (8th Cir. 1990), is not to the contrary. There, the court faced an amendment to the Social Security Act that covered judges with senior status who performed judicial services but not those senior judges who no longer performed such services. The Eighth Circuit explained that social security retirement insurance benefits are earned and paid as part of a general social welfare plan and not specifically as judicial compensation. Section 167.8 is not a general social welfare plan, like social security, it is a reduction by an employer of its contribution rate to its employees' health insurance premiums. Defendant also cites to the holding in *Black v. Graves*, 257 A.D. 176, 177 (3d Dep't 1939), that judges are required to pay income tax to which *all other state residents* were already subject. Again, these are not the facts here, where the reduction does not affect all state residents. Similarly inapposite is *Atkins v. United States*, 556 F.2d 1028, 1045 (Ct. Cl. 1977). The court there analyzed a claim of an inflationary decrease in compensation due to neglect, it did not approve a specifically amended statute decreasing judicial compensation like that at issue here.

United States v. Will, 449 U.S. 200, also relied upon by Defendant, actually supports Plaintiffs' position. There Congress enacted statutes to stop or to reduce previously authorized cost–of–living increases for the Executive, Legislative and Judicial Branches initially intended to be automatically operative under a statutory scheme. The Government contended that Congress could reduce compensation as long as it did not "discriminate" against judges. *Id.* at 226. The Court found that Congress violated the Compensation Clause for year one because "[t]he inclusion in the freeze of other officials in the Legislative and the Executive Branches, who are not protected by the Compensation Clause does not insulate a direct diminution in judges' salaries; the Constitution makes no exceptions for 'nondiscriminatory' reductions."

Defendant's reduction in judicial compensation is discriminatory in its impact on Plaintiffs and is prohibited by the Compensation Clause. *See Hatter*, 532 U.S. at 575 (finding that the Compensation Clause does not authorize the Legislature to diminish or to equalize away those very characteristics of the Judicial Branch that Article III guarantees – *i.e.*, protection of judicial compensation).

Finally, Defendant posits a collection of "absurd result" arguments (*see* Def. Br. at 15-17), which border on the nonsensical, and the Court should give them no weight. As one example, Defendant pretends that a decrease in the size of a State subsidy to food prices at the courthouse cafeteria would, under Plaintiffs' theory, be an unconstitutional diminution. Of course, it is that contention that is absurd. Unlike a mandated decrease in the health insurance premium rate, Plaintiffs do not have to purchase food from the courthouse. For the same reason, Defendant's other examples are equally frivolous. [8]

[8] In addition, any argument that inconsistent historical practice justifies the unconstitutional reduction here is invalid. Plaintiffs have not waived their constitutional right to the protection of their compensation under the

POINT II

THE LONG OVERDUE INCREASE IN JUDICIAL SALARIES DOES NOT REMEDY THE UNCONSTITUTIONAL DIMINISHMENT OF JUDICIAL COMPENSATION CAUSED BY DEFENDANT

The April 2012 increase in judicial salaries cannot cure Defendant's constitutional violation here. Defendant argues that even if the reduction was a constitutional violation, it was cured when the salaries of the Plaintiffs were increased by an amount greater than the amount of the health insurance premium rate reduction. Def. Br. at 19. Putting aside that such view would entitle Plaintiffs to reimbursement for six months of unconstitutional charges, the basic premise of that contention is flawed. The purpose of a "remedial" increase must be to cure the preceding unconstitutional harm. *See Hatter*, 532 U.S. at 581. The salary increase here was never meant to remedy the reduction in the State's contribution rate for health insurance premiums.

Defendant argues that the "Special Commission on judicial compensation considered not only the 'levels of compensation' of Judges and their peers in other professions, but also the 'non-salary' benefits, including health insurance." Def. Br. at 20. Defendant, however, carefully avoids claiming that the Salary Commission actually considered the reduction in the health insurance premiums contributions at issue. This omission speaks volumes, for the Salary Commission did not consider the reduction, and indeed, was not even informed of any contemplated reduction of health benefits applicable to Plaintiffs. *See* NYS Division of the Budget Megna Testimony http://www.judicialcompensation.ny.gov/submissions.

Compensation Clause. *See e.g., Johnson v. Zerbst*, 304 U.S. 458, 464 (1939) (for a waiver of constitutional rights to be effective it must be established that there was an intentional relinquishment of a known right or privilege).

The statutory authority creating the Salary Commission provided that the Salary Commission must take into account "the State's ability to fund increases in compensation and non-salary benefits," Act of Dec. 10, 2010, ch. 567, which it did. However, the Salary Commission was not provided with any information regarding any increase in Plaintiffs' health insurance premiums prior to its final report. Thus, the Salary Commission did not and could not have taken into account the State's reduction when it made its findings.

As previously noted, submissions were provided to the Salary Commission throughout summer 2011. On July 20, 2011, the Budget Director testified at the hearing and presented the financial overview of the State's budget. Not a word was mentioned about any impending reduction in the contribution to the health insurance premiums for Plaintiffs.[9]

The Salary Commission reviewed numerous submissions regarding the appropriate salary increase, however, there was no submission or testimony provided to the Salary Commission regarding any reduction in judicial health insurance benefits. The Salary Commission made its final report on August 29, 2011 and did not include any mention of an increase in health insurance contributions as one of the factors which motivated its conclusions. Indeed, there was no reference to any possible health contribution reduction for Judges in its final report. *See* Def. Coyle Aff. at Ex. J. The Salary Commission was then disbanded having completed its duties and thus, could not make any further findings regarding the changes put in place in October 2011.[10]

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[9] It is certainly reasonable to infer that Defendant knew of its forthcoming proposed reduction to the Judges' health insurance premiums contribution prior to the Salary Commission's final report and did not present this information to the Salary Commission. If so, this willful omission would reflect bad faith and, indeed, be supportive evidence of Defendant's discriminatory behavior and singling out of Plaintiffs – exactly the behavior that the Compensation Clause and the Separation of Powers Doctrine were designed to prevent.

[10] The Salary Commission dissolved on August 29, 2011. *See* Act of Dec. 10, 2010, ch. 567 (the commission must be dissolved no later than 150 days after its establishment).

It was not until September 27, 2011, a month after the Salary Commission made its findings, that the Civil Service Department filed an emergency rule proposal in its effort to implement changes in the state/state employee contributions for health insurance premiums for individuals designated managerial or confidential or otherwise excluded from collective bargaining within the meaning of the Taylor Law, Civil Service Law Article 14. Indeed, it was not until the end of September that the Judges were first notified of the intended reduction in the State's contribution to their health insurance premiums (*see* Rumsey Aff. at ¶ 5), with the reduction becoming effective October 1, 2011, two months after the Salary Commission submitted its findings. Therefore, the Salary Commission did not and could not have taken this reduction into account when making its final conclusions for judicial compensation increases for the next four years.[11] Thus, it is most disingenuous for Defendant to argue that one of the purposes of the salary increase was to account for the diminishment of the Plaintiffs' compensation by the reduction in health insurance premium contributions, (*see* Def. Br. at 20), when the reduction occurred after the final report and was not brought to the Salary Commission's attention prior to its findings.[12]

Moreover, Defendant's argument that the violation was cured six months later — by the Legislature's failure to overrule the Salary Commission's conclusions (*see* Def. Br. at 19) — is particularly galling. Defendant has not offered a scintilla of evidence that the Legislature

[11] If Defendant challenges this absence of knowledge, Plaintiffs would be entitled to discovery on the matter, thus rendering the motion to dismiss inappropriate.

[12] Defendant also put forward the salary increases in 2013 and 2014 as curing the constitutional violation. Again, this reference is misleading. These future increases were based on the Salary Commission's August 29, 2011 final report, before there was any indication of a change in Plaintiffs' healthcare costs.

considered the health insurance increase in its abstaining to modify or reject the Salary Commission's findings.

Accordingly, the salary increase by the Salary Commission cannot be held to cure the unconstitutional harm, because the increase was not in any way intended to remedy the premium contribution reduction. *See Hatter*, 532 U.S. at 580-811 (finding nothing in the record to suggest that the later salary increase was meant to cure the preceding constitutional violation).

POINT III

AN INCREASE IN RETIRED JUDGES' AND JUSTICES' HEALTH INSURANCE PREMIUMS VIOLATES THE COMPENSATION CLAUSE

Defendant argues that retired judges are not protected by the Compensation Clause. However, the New York Compensation Clause specifically includes the category of retired jurists. Section 25 provides that:

> "[t]he compensation of ... *a retired judge or justice* shall be established by law and shall not be diminished during the term of office for which he or she was elected or appointed."

N.Y. Const., art. VI, § 25(a) (emphasis added). This provision follows the public policy for complete independence of the judiciary despite its inferior bargaining power with the other co-equal branches of the government. Unlike federal judges who are appointed for life, the New York State Constitution makes it mandatory for State Judges to retire at age 70. N.Y. Const., art. VI, § 25(b). At the same time, the New York Constitution plainly mandates that retired Judges' compensation cannot be diminished. This provision ensures that, as they near retirement age, Judges cannot be unduly influenced by concerns that their benefits could be diminished by the legislative and executive branches once they retire. Defendant's argument that once Judges retire, "they can no longer be influenced by the threat of a reduction in compensation," is too

narrow an interpretation of the protection provided by the Compensation Clause and the Separation of Powers Doctrine. *See* Def. Br. at 22. The Constitution establishes the independence of the judiciary no matter what age the specific judge may be at any given time. The independence of the judiciary is supreme to the workings of the justice system. Therefore, in line with the Constitutional mandate that maintains the independence of the judiciary, retired judges' compensation cannot be decreased after they retire.

Defendant argues that the phrase "[d]uring the term of office for which he or she was elected or appointed" does not apply to retired judges because a justice's term of office ends when he or she retires. However, Defendant fails to cite any support for its argument. Indeed, if Defendant's interpretation of the Compensation Clause were correct, it would be superfluous to include "a retired judge or justice" within the Compensation Clause. *See Branford House, Inc. v. Michetti*, 81 N.Y.2d 681, 688 (1993) (a construction rendering statutory language superfluous is to be avoided); *see also* McKinney's Cons. Laws of N.Y., Book 1, Statutes § 231 (courts should give effect to every word of the statute). Therefore, it follows that the "term of office" for a retired judge begins on the date of his or her retirement. Thus, the compensation to which a judge is entitled at the date of retirement cannot be diminished during his or her retirement.

Defendant misinterprets the facts and the law in *Suttlehan v. Town of New Windsor*, 31 Misc.3d 290, 294 (Sup. Ct. Orange Co. 2011) *aff'd*, 100 A.D.3d 623, 624 (2d Dep't 2012). In *Suttlehan*, the plaintiff was an active judge when a resolution to allow for fully paid *post-retirement* health benefits was revoked and in its place the resolution required an imposition of a contribution of 10% of health care premiums. *Suttlehan*, 100 A.D.3d at 623. Months after the enactment of the resolution, plaintiff retired; consequently his post-retirement compensation was

not diminished during his retirement – the diminution of his future post-retirement benefits occurred while he was active and thus did not violate the constitutional protection.

The same analysis under *Hatter* and *DePascale* applies to retired Plaintiffs as it does to current sitting ones. Retired Judges are constitutionally protected from diminution of their compensation. Furthermore, the Salary Commission did not increase any payment to retired Plaintiffs; its report only addressed current sitting Judges' salaries. Thus, there could be no possible cure of the violation.

The practical implication of Defendant's argument is that the New York Constitution affords absolutely no protection for a retired Judge or Justice; this was not the intent of the drafters of the New York Constitution. Moreover, it would be naïve to contend that if Defendant had the right to diminish compensation as soon as a judge retires that such a power would not hang over each judge's head like a sword of Damocles, an ever present reminder of the State's control over a judge's future livelihood.

POINT IV

JOHN AND MARY DOE PLAINTIFFS SHOULD NOT BE DISMISSED

The John and Mary Doe Plaintiffs are not unknown. The Complaint explicitly identified these plaintiffs as current and retired Judges and Justices of the Unified Court System of the State of New York. Thus, Defendant's fairness argument is misplaced. The relief sought herein is declaratory relief. A judgment, no matter what the outcome, would be grounds for res judicata or collateral estoppel effect for all current and retired Judges and Justices. A class action is unnecessary in a declaratory judgment action. *Larabee v. Governor of State*, 37 Misc.3d 748, 749 n.1 (Sup. Ct. New York County 2012) (noting that "[w]hile the action was brought by four judges, without any request that it be certified as a class action, it has at all times been

recognized by the parties that the issue with respect to constitutionality affects all members of the judiciary who are part of the Unified Court System").

Moreover, Defendant maintains records of compensation payments being made to all current and retired Judges and is directly aware of the names and addresses of each and every Doe. Thus, there can be no prejudice to Defendant by allowing the John and Mary Doe plaintiffs to remain in this declaratory action.

CONCLUSION

For the reasons stated above, Plaintiffs respectfully request that Defendant's Motion to Dismiss be denied in its entirety.

Dated: New York, New York
April 12, 2013

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Plaintiffs,

- against -

STATE OF NEW YORK,

Defendant.

Index No. 159160/2012

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF DEFENDANT'S MOTION TO DISMISS

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Defendant the State of New York respectfully submits this reply memorandum of law in further support of its motion to dismiss the complaint.

PRELIMINARY STATEMENT

In response to the State's motion to dismiss their Compensation Clause challenge to the State's reduced contribution rate to their (and the vast majority of other state employees') health insurance premiums, the plaintiffs introduce some fifteen years of history mentioned nowhere in their complaint, advance an interpretation of *United States v. Hatter*, 532 U.S. 557 (2001), that has been rejected by lower courts (without mentioning those cases), and rely heavily on distinguishable out-of-state authority. Those red herrings should not distract from the dispositive fact in this case: The State's reduced premium contribution rate reduced judicial take-home pay indirectly, not directly, without singling out Judges but rather applying on equal terms to well over 100,000 other state employees. The plaintiffs' claim thus fails under *Hatter*.

ARGUMENT

I. THE PLAINTIFFS' CLAIM FAILS UNDER THE *HATTER* FRAMEWORK

In its opening brief, the State argued that the Compensation Clause allows broadly applicable, nondiscriminatory laws that indirectly reduce judicial take-home pay — like the State's reduced contribution rate to the vast majority of state employees' health insurance premiums at issue here. *See* State's MTD Br. at 8–19, NYSCEF Doc. No. 4.

In response, the plaintiffs advance three principal arguments. First, they claim that the Compensation Clause case law allowing laws that indirectly reduce Judges' take-home pay without singling out Judges is limited to universally applicable tax laws. *See* MTD Opp'n Br. at 8–10, NYSCEF Doc. No. 25. Second, they claim that the State's reduced premium contribution rate is a direct, rather than an indirect, reduction. *See* MTD Opp'n Br. at 9–13. Third, they

claim that the State's reduced premium contribution rate singles out Judges for disadvantageous treatment. *See* MTD Opp'n Br. at 13–23. All three contentions are wrong.

A. *Hatter* Allows Indirect, Nondiscriminatory Reductions to Judicial Take-Home Pay Beyond Tax Laws

The plaintiffs' first argument — that *Hatter*'s holding that the Compensation Clause allows indirect, nondiscriminatory reductions to judicial take-home pay is limited to tax laws that apply to all citizens — misreads *Hatter*.

While it is true that the specific facts of *Hatter* involved two tax laws, nothing in the opinion purported to limit its holding to tax laws. To the contrary, *Hatter*'s reasoning applies more broadly than just tax laws: "[T]h[e] prophylactic considerations that may justify an absolute rule forbidding direct salary reductions are absent here, where indirect taxation is at issue[, because i]n practice, the likelihood that a nondiscriminatory tax represents a disguised legislative effort to influence the judicial will is virtually nonexistent." 532 U.S. at 571. That logic applies with equal force to other broadly applicable, nondiscriminatory laws that indirectly reduce Judges' take-home pay: in practice, the likelihood that such laws represent a disguised legislative effort to influence the judicial will is virtually nonexistent.[1]

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[1] The plaintiffs claim that *Hatter* premised its holding on the fact that the Medicare tax was "imposed by the government as a sovereign, not as an employer." MTD Opp'n Br. at 10. But the plaintiffs fail to cite any part of the Court's opinion mentioning that distinction. Rather, the plaintiffs misleadingly cite the dissenting opinion — which they (doubly misleadingly) call a "concurring" opinion — and they cite a passage in which the dissenters explained why they disagreed with the standard adopted by the Court. MTD Opp'n Br. at 10; *cf. Hatter*, 532 U.S. at 581–82 (Scalia, J., concurring in part and dissenting in part) ("I part paths with the Court on the issue of extending the Medicare tax to federal judges in 1983, which I think was also unconstitutional. . . . I agree with the Court, therefore, that *Evans* was wrongly decided — not, however, because in *Evans* there was no discrimination, but because in *Evans* the universal application of the tax demonstrated that the Government was not reducing the compensation of its judges but was acting as sovereign rather than employer, imposing a general tax.") (emphasis deleted). The Court should not countenance such tactics.

For this reason, lower courts have held that *Hatter* applies to other expenses incurred by judges — not just taxes.[2] For example, *McBryde v. United States*, 299 F.3d 1357 (Fed. Cir. 2002), held that the government did not violate the Compensation Clause by denying reimbursement of a judge's litigation expenses allegedly promised by statute. *Id.* at 1368–69. The court explained that *Hatter* applies to all expenses that have the effect of reducing judges' take-home pay — of which a tax is merely one example: "[L]itigation expenses — like most expenses of life [including the taxes at issue in *Hatter*] — do not reduce compensation[;] expenses simply claim a portion of the judge's compensation after it has been paid." *Id.* Following *Hatter*'s reasoning, the court concluded that such expenses violate the Compensation Clause only if they "discriminate[e]" against judges because only then is there any "opportunity . . . for the government to exert undue influence over an independent judiciary." *Id.* at 1369; *see also Sweeney v. Cannon*, 23 A.D.2d 1, 9 (2d Dep't 1965) (rejecting Compensation Clause challenge to statute requiring attorneys admitted to practice — including sitting Judges — to pay registration fee; "'[o]ne might as well say that if a Judge needs a car to get to work, his car license fee could not be changed while he was in office'").

Thus, the plaintiffs are wrong that *Hatter* is limited to tax laws.[3] To the contrary, *Hatter* stands for the proposition that the Compensation Clause allows broadly applicable,

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[2] Academic commentators agree. *See* Jonathan L. Entin & Erik M. Jensen, *Symposium: Judicial Independence and Judicial Accountability: Searching for the Right Balance: Taxation, Compensation, and Judicial Independence*, 56 Case W. Res. L. Rev. 965, 968 n.12 (2006) ("[W]e do not think that, under the Compensation Clause, anything serious turns on whether Social Security levies that reduce a judge's take-home income are taxes or something else.").

[3] Moreover, if the plaintiffs' reading of *Hatter* were correct, the State could simply charge state employees a "health insurance tax" in the amount of the reduced premium contribution rate at issue here — a result that would elevate form over substance.

nondiscriminatory laws that indirectly reduce judges' take-home pay — like the State's reduced contribution rate to the vast majority of state employees' health insurance premiums here.

B. The State's Reduced Contribution to Judges' and Most Other State Employees' Health Insurance Premiums Is an *Indirect* Reduction

In the alternative, the plaintiffs argue that the State's reduced premium contribution rate is a direct, rather than an indirect, reduction in their take-home pay. They claim that health benefits constitute compensation, and thus that the State's reduced premium contribution rate directly reduced their compensation. MTD Opp'n Br. at 10.

The flaw in the plaintiffs' argument is that they are still receiving exactly the same health insurance coverage that they were receiving before the State reduced its premium contribution rate. The only change is that when the State reduced its premium contribution rate, it increased the remaining balance that NYSHIP then collects from the plaintiffs' (and most other state employees') gross salaries. Accordingly, the State's reduced premium contribution rate is just like the Medicare tax upheld in *Hatter*: Neither affects Judges' gross salaries; rather, both simply increase the amount deducted from Judges' gross salaries. *See Hatter*, 532 U.S. at 561–62, 571–72. Thus, the State's reduced premium contribution rate affects the plaintiffs' take-home pay indirectly, not directly.[4] *See McBryde*, 299 F.3d at 1368–69 ("[L]itigation expenses —

[4] In an attempt to escape this conclusion, the plaintiffs rely heavily on *DePascale v. State*, 211 N.J. 40 (2012). *See* MTD Opp'n Br. at 11–13. But as explained in the State's opening brief, *DePascale* is distinguishable on two grounds. *See* State's MTD Br. at 17–18.

First, unlike here, *DePascale* involved an increase in judges' mandatory pension contributions — a distinction the plaintiffs do not respond to.

Second, the reduction in judicial take-home pay in *DePascale* was drastically larger than here. The law in *DePascale* reduced judicial take-home pay by more than $17,000 per year; here, by contrast, for an individual active Justice enrolled in the Empire Plan, the State's reduced contribution rate means he or she must contribute approximately $3.12

like most expenses of life — do not reduce compensation[;] expenses simply claim a portion of the judge's compensation after it has been paid.").

C. The State's Reduced Premium Contribution Rate Does Not Single Out Judges

Finally, the plaintiffs fall back on a third argument: that the State's reduced premium contribution rate singles out Judges for disadvantageous treatment. MTD Opp'n Br. at 13–23. They fail to explain, however, how the State's reduced premium contribution rate can be said to single out 1,200 Judges and Justices for disadvantageous treatment when it applies on identical terms to well over 100,000 other state employees.

1. *The Appropriate Class Against Which to Measure the Alleged Discrimination Is All State Employees*

The plaintiffs acknowledge that the threshold question in evaluating whether the State's reduced premium contribution rate impermissibly singles out Judges is to determine the appropriate class against which to measure the alleged discrimination. MTD Opp'n Br. at 15. The State's opening brief explained that because the State was acting in its capacity as employer when it reduced its premium contribution rate, the appropriate class here is all state employees.

In response, in an attempt to inflate the denominator so as to make the State's reduced premium contribution rate seem more discriminatory against Judges, the plaintiffs contend that the appropriate class in this case is all New York citizens. MTD Opp'n Br. at 14. But as the plaintiffs admit, the State here was acting in its capacity as employer, not sovereign; the State

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more (in pre-tax dollars) per biweekly pay period, or $81.14 per year. The plaintiffs' sole response is that "[a] diminution is a diminution," regardless of size. MTD Opp'n Br. at 13. But it is not difficult to intuit the difference in the threat to judicial independence between the two laws.

In addition, the State's opening brief explained that *DePascale* is not binding on this Court and that its persuasive authority is limited because it misreads *Hatter*. *See* State's MTD Br. at 18. The plaintiffs do not respond to those arguments.

does not provide health insurance to all New Yorkers. MTD Opp'n Br. at 9, 11, 12. Thus, the appropriate class here is all state employees, just as in *Hatter* the appropriate class was all federal employees. *See Hatter*, 532 U.S. at 572.

The plaintiffs harp on the fact that unlike most other state employees, Judges are unrepresented and not eligible for collective bargaining. MTD Opp'n Br. at 15–16. That fact is true, but it cuts against the plaintiffs. It suggests that the appropriate class against which to measure the alleged discrimination is not all state employees, but rather all state employees not subject to a collective bargaining agreement. If so, then the plaintiffs' argument that the State's reduced premium contribution rate singles out Judges for disadvantageous treatment becomes even weaker because Civil Service Law § 167(8) applies on the exact same terms to all state employees not subject to a collective bargaining agreement: All such employees are subject to the same reduced premium contribution rate from the State, and none of them had a seat at the collective bargaining table.

The plaintiffs then argue that even if the appropriate class is all state employees, the State's reduced premium contribution rate nevertheless singles out Judges for disadvantageous treatment because some 25% of state employees are not yet subject to the reduced premium contribution rate.[5] MTD Opp'n Br. at 16. But the dispositive question under *Hatter* is not whether the plaintiffs can point to any other individuals within the appropriate class who are treated better than Judges; rather, the question is whether Judges are "singl[ed] out . . . for disadvantageous treatment." *Hatter*, 532 U.S. at 576. It strains logic for the plaintiffs to claim that the State's reduced premium contribution rate "singl[es] out" 1,200 Judges and Justices for

[5] The approximately 25% of state employees not subject to the reduced premium contribution rate belong to unions who have yet to ratify new collective bargaining agreements.

disadvantageous treatment when it applies on identical terms to well over 100,000 non-judge state employees.

The plaintiffs fall back on the unremarkable proposition that to establish a Compensation Clause violation, they do not need to show that the "reduction in judicial compensation [was] linked to punishment for unpopular decisions." MTD Opp'n Br. at 17. That argument attacks a straw person. The State has never argued that the absence of a punitive legislative motive by itself precludes a Compensation Clause violation.[6] Rather, the State explained that under *Hatter*, a law that indirectly reduces judicial take-home pay without singling out Judges — like the State's reduced premium contribution rate here — does not violate the Compensation Clause because the likelihood that such a law represents a "disguised legislative effort to influence the judicial will is virtually nonexistent." State's MTD Br. at 12 (quoting *Hatter*, 532 U.S. at 571).

2. *The State's Reduced Premium Contribution Rate Applies on Equal Terms to the Vast Majority of State Employees*

The plaintiffs then misstate the second factor that *Hatter* analyzed to determine whether the challenged law impermissibly singles out Judges. The plaintiffs claim that "[t]he second

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[6] In arguing that the State did not single out Judges here, the State's opening brief emphasized that the reduced premium contribution rate applies on the same terms to the Legislators themselves. *See* State's MTD Br. at 1, 5, 12–14. In response, the plaintiffs argue that by treating Judges the same as Legislators, the State somehow violated the separation of powers doctrine by "link[ing] judicial compensation to unrelated legislative objectives and policy initiatives." MTD Opp'n Br. at 17 (citing *Matter of Maron v. Silver*, 14 N.Y.3d 230, 257 (2010)). But it does not follow that just because the State's reduced premium contribution rates applies on equal terms to Judges and Legislators (and most other state employees), the State has tied judicial compensation to unrelated objectives, rather than independently assessing judicial compensation on the merits. Moreover, if the plaintiffs' argument were the law, it would create a Catch-22: If the State treats Judges the same as Legislators, it violates the separation of powers doctrine; but if the State treats Judges differently than Legislators, it singles them out in violation of the Compensation Clause. In any event, the complaint does not assert a separation-of-powers claim, so the Court need not consider the plaintiffs' argument.

factor that the Court analyzed in *Hatter* was whether the Social Security tax imposed a new financial obligation." MTD Opp'n Br. at 18. The actual factor that *Hatter* analyzed was whether the challenged law applies to other members of the appropriate class or just to Judges. *See Hatter*, 532 U.S. at 572 ("Second, the law, as applied in practice, in effect imposed a new financial obligation upon sitting judges, but it did not impose a new financial burden upon any other group of (then) current federal employees.").

Here, as explained above and in the State's opening brief, well over 75% of the State's 186,000 employees are subject to the reduced premium contribution rate. Judges and Justices comprise less than one percent of those subject to the reduced premium contribution rate. In other words, besides the 1,200 Judges and Justices, well over 100,000 other members of the class of all state employees are subject to the reduced premium contribution rate. *See* State's MTD Br. at 14. The argument that such a broadly applicable law singles out Judges is untenable.

3. ***The Plaintiffs Receive Substantial Benefits in Return***

The plaintiffs next claim that they do not receive substantial benefits in return for the reduced premium contribution rate. MTD Opp'n Br. at 18–19. In so doing, they attack another straw person, claiming that the avoidance of layoffs (which does not apply to Judges) was the chief benefit offered in exchange for the reduced premium contribution rate. But as the State's opening brief explained, the chief benefit is the elimination or reduction of co-payments for a wide variety of services and prescription drugs. *See* State's MTD Br. at 14–15. The plaintiffs do not dispute that they enjoy those benefits.

4. ***The State's Justification for the Reduced Premium Contribution Rate Is Fully Consistent With the Compensation Clause's Objectives***

Finally, the State's opening brief argued that the State's justification for the reduced premium contribution rate — ameliorating the statewide budget crisis — is fully consistent with

Compensation Clause objectives because it does not seek to offset Judges' constitutionally guaranteed advantage vis-à-vis other state employees; rather, it treats them equally. *See* State's MTD Br. at 15.

The plaintiffs do not dispute that point. Rather, they argue only that the State's justification is not sufficiently compelling because Judges comprise a tiny fraction of those subject to the reduced premium contribution rate, and thus they could be exempted from the reduction without causing budgetary distress. MTD Opp'n Br. at 20–21. But the question under *Hatter* is not whether the State's proffered justification is sufficiently compelling; rather, the only question under *Hatter* is whether the State's proffered justification is consistent with Compensation Clause objectives. *See Hatter*, 532 U.S. at 576 (analyzing whether law's "justification [is that it was] necessary to offset advantages related to constitutionally protected features of the judicial office"). The plaintiffs do not dispute that the State's justification here is entirely consistent with Compensation Clause objectives.

Finally, the State's opening brief explained that the plaintiffs' theory would lead to absurd results.[7] State's MTD Br. at 15–17. Under the plaintiffs' theory, the State could not decrease a subsidy on food at the courthouse cafeteria because doing so would increase Judges' food costs and thereby decrease their take-home pay. State's MTD Br. at 15. The plaintiffs' sole

[7] The State's opening brief also argued that the plaintiffs' theory ignores historical practice, as the State has made similar reductions in the past. *See* State's MTD Br. at 16–17. In response, the plaintiffs argue only that they have not waived their right to challenge the State's reduced premium contribution rate. MTD Opp'n Br. at 23 n.8. But the State did not argue that the plaintiffs had waived their argument; rather, the State argued that the Compensation Clause should be interpreted so as not to invalidate longstanding historical practices. *See Cnty. of Allegheny v. ACLU*, 492 U.S. 573, 670 (1989) (Kennedy, J., concurring in the judgment in part and dissenting in part) ("A test for implementing the protections of [a constitutional clause] that, if applied with consistency, would invalidate longstanding traditions cannot be a proper reading of the Clause.").

response is that Judges do not have to purchase food from the courthouse cafeteria. MTD Opp'n Br. at 23. But of course Judges do not have to purchase health insurance from the State, either: Judges who have health insurance from another source can opt out of the State's health insurance (and in exchange receive an annual incentive payment of $1,000 per individual or $3,000 per family). Thus, the plaintiffs fail to show how their theory would not lead to absurd results.[8]

In sum, the plaintiffs offer no effective rejoinder to the State's argument that because the State's reduced premium contribution rate reduces judicial take-home pay only indirectly, and because it applies on equal terms to the vast majority of state employees — including the Legislators themselves — without singling out Judges for disadvantageous treatment, it does not violate the Compensation Clause. The complaint should be dismissed.

II. IN ANY EVENT, THE SUBSEQUENT, SUBSTANTIALLY LARGER JUDICIAL SALARY INCREASE CURED ANY COMPENSATION CLAUSE VIOLATION

The State's opening brief argued that even if the State's reduced premium contribution rate violated the Compensation Clause, the substantially larger judicial salary increase six months later cured that violation. *See* State's MTD Br. at 19–20.

The plaintiffs do not dispute that Judges' take-home pay following the judicial salary increase is substantially higher than before the State reduced its health insurance premium contribution rate. Nor do they dispute that the State considered Judges' non-salary benefits when deciding the appropriate size of the judicial salary increase. And they do not contend that the State's reduced premium contribution rate is a surreptitious attempt to perpetuate lower salaries

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[8] The plaintiffs fail to respond to the State's second example of how their theory would lead to absurd results: Under their theory, the State could not reduce the mileage reimbursement rate for employee travel, even if gas prices fell, because doing so would increase Judges' transportation costs and thereby decrease their take-home pay. State's MTD Br. at 15–16.

for one disfavored group of Judges, as in the troublesome hypothetical discussed in *Hatter*.

Rather, the plaintiffs' sole response is that the Special Commission on Judicial Compensation was not aware of the reduced premium contribution rate when it recommended that judicial salaries be increased. *See* MTD Opp'n Br. at 24–26. But the question under *Hatter* is whether remedying the prior violation was one of the Legislature's — not the Commission's — purposes in implementing the salary increase. *See Hatter*, 532 U.S. at 579 (concluding that the "salary increases amounted to a congressional effort to adjust judicial salaries to reflect 'fluctuations in the value of money'") (emphasis added). The plaintiffs cannot dispute that the Legislature was aware of the reduced premium contribution rate when it implemented the judicial salary increase. *See Delese v. Tax Appeals Tribunal*, 3 A.D.3d 612, 614 (3d Dep't 2004) ("A fundamental rule of statutory construction provides that the Legislature does not act in a vacuum, but is aware of the existing state of the law at the time it enacts new legislation.").

Thus, even if the State's reduced premium contribution rate violated the Compensation Clause, the substantially larger judicial salary increase six months later cured that violation.

III. THE RETIRED JUSTICES' CLAIM SHOULD BE DISMISSED

The State's opening brief argued that the retired Judges' claim fails because the Compensation Clause applies only during a Judge's "term of office." State's MTD Br. at 21–22.

In response, the plaintiffs claim that "the 'term of office' for a retired judge begins on the date of his or her retirement," such that the Compensation Clause applies for life, even though he or she is no longer hearing cases. Otherwise, they claim, the Compensation Clause's mention of "a retired judge or justice" would be superfluous. MTD Opp'n Br. at 28.

The plaintiffs cite no authority for their ipse dixit claim that retired Judges and Justices

have a lifetime "term of office" for Compensation Clause purposes beginning at their date of retirement. Their interpretation would stretch the Compensation Clause well beyond its purpose of promoting judicial independence because once Justices retire, they are no longer susceptible to influence by the threat of a reduction in compensation.[9]

Nor does the State's reading render the phrase "a retired judge or justice" superfluous. That phrase protects retired Judges appointed for continued service under Judiciary Law § 115 and Article VI, Section 25 of the Constitution, which allow a retired Judge to be appointed for continued service for two-year terms until age 76 if their services are necessary and they have the mental and physical capacity. Jud. Law § 115(1)–(2); N.Y. Const. art. VI, § 25(b). Accordingly, the "term of office" of a retired Judge appointed for continued service is two years, during which the Compensation Clause's protections apply. But no named plaintiff in this action is a retired Judge appointed for continued service. The only retired Justices named as plaintiffs here, Justice Paul A. Victor and Justice Joseph Giamboi, were both older than 76 years old — and thus constitutionally ineligible to continue serving as retired Judges — when the State's reduced premium contribution rate took effect on October 1, 2011. *See* Jud. Law § 115(2). Thus, the retired Justices' claim should be dismissed.

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[9] The plaintiffs claim that *Suttleham v. Town of New Windsor*, 953 N.Y.S.2d 278 (2d Dep't 2012), stands for the proposition that the State may eliminate the promised post-retirement compensation of an active Judge, but once the Judge retires, the State can no longer adjust his or her compensation or benefits. MTD Opp'n Br. at 28–29. But nothing in the *Suttleham* opinion suggests that the result would have been different had the reduction occured after the town justice retired. *See Suttleham*, 953 N.Y.S.2d at 279 ("[T]he resolution addressed the prospective reduction of a municipal official's health benefits only after his or her retirement, not the reduction in the salary or benefits of a justice during his or her term in office."). Moreover, the plaintiffs' reading would turn the Compensation Clause on its head, implying that the State may cut the compensation of Judges who are still deciding cases and who can still therefore be influenced by the threat of a reduction in compensation, but that the State may not cut the compensation of Judges once they are retired and no longer susceptible to influence.

IV. THE JOHN AND MARY DOE PLAINTIFFS SHOULD BE DISMISSED

In its opening brief, the State argued that no recognized New York procedure allows for the use of John Doe filings in these circumstances.[10] *See* State's MTD Br. at 23-24.

In response, the plaintiffs' only argument is that allowing the John and Mary Doe plaintiffs to remain would not be unfair.[11] But they fail to identify any statute, rule, regulation, or case allowing John Doe plaintiffs for a purpose other than to preserve their anonymity.

Thus, the John and Mary Does should be dismissed from this action.

CONCLUSION

For these reasons, the complaint should be dismissed.

Dated: New York, New
April 29, 2013

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10 The complaint alleges that the identities of the John and Mary Does are "unknown." *See* Compl. ¶ 17. Their opposition brief attempts to disavow that allegation, claiming that "[t]he John and Mary Doe Plaintiffs are not unknown." MTD Opp'n Br. at 29.

11 The plaintiffs contend that if the John and Mary Doe plaintiffs remain, the judgment in this action, "no matter what the outcome, would be grounds for res judicata or collateral estoppel effect for all current and retired Judges and Justices." MTD Opp'n Br. at 29. That contention is not true. *See Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 329 n.12 (1979) ("Under the mutuality requirement [of the collateral estoppel doctrine], a plaintiff [who was not a party to the original action is] not . . . bound by the judgment [if] the original defendant w[i]n[s].").

Certification Pursuant to C.P.L.R. 2105

I, Brian A. Sutherland, an attorney admitted to practice in the courts of this State, hereby certify that the documents contained in this record on appeal are true and complete copies of the originals filed with the Clerk of the Court, New York County, via the NYSCEF system.

Dated: September 3, 2013
New York, New York

BRIAN A. SUTHERLAND
Assistant Solicitor General

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