

REPORT ON EXAMINATION

OF

PUPIL BENEFITS PLAN, INC.

AS OF

DECEMBER 31, 2014

DATE OF REPORT

DECEMBER 15, 2015

EXAMINER

TOMMY KONG, CFE

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Shirin Emami
Acting Superintendent

December 15, 2015

Honorable Shirin Emami
Acting Superintendent of Financial Services
Albany, New York 12257

Madam:

Pursuant to the requirements of the New York Insurance Law, and acting in accordance with the instructions contained in Appointment Number 31272, dated February 9, 2015, attached hereto, I have made an examination into the condition and affairs of Pupil Benefits Plan, Inc., a not-for-profit corporation licensed pursuant to the provisions of Article 43 of the New York Insurance Law, as of December 31, 2014, and respectfully submit the following report thereon.

The examination was conducted at the home office of Pupil Benefits Plan, Inc. located at 101 Dutch Meadows Lane, Glenville, New York.

Wherever the designations the “Plan” or “PBP” appear herein, without qualification, they should be understood to indicate Pupil Benefits Plan, Inc.

Wherever the designation the “Department” appears herein, without qualification, it should be understood to indicate the New York State Department of Financial Services.

1. SCOPE OF THE EXAMINATION

The previous examination of Pupil Benefits Plan, Inc. was conducted as of December 31, 2010. This examination of the Plan was a combined (financial and market conduct) examination and covered the four-year period from January 1, 2011 through December 31, 2014. The financial component of the examination was conducted as a financial examination, as defined in the National Association of Insurance Commissioners (“NAIC”) *Financial Condition Examiners Handbook, 2015 Edition* (the “Handbook”). The financial examination was conducted observing the guidelines and procedures in the Handbook, and where deemed appropriate by the examiner, transactions occurring subsequent to December 31, 2014 were also reviewed.

The financial portion of the examination was conducted on a risk-focused basis in accordance with the provisions of the Handbook, which provides guidance for the establishment of an examination plan based on the examiner’s assessment of risk in the Plan’s operations and utilizes that evaluation in formulating the nature and extent of the examination. The examiner planned and performed the examination to evaluate the Plan’s current financial condition, as well as to identify prospective risks that may threaten the future solvency of the Plan.

The examiner identified key processes, assessed the risks within those processes and assessed the internal control systems and procedures used to mitigate those risks. The examination also included an assessment of the principles used and significant estimates made by management, an evaluation of the overall financial statement presentation, and determined management’s compliance with the Department’s statutes and guidelines, Statutory Accounting Principles, as adopted by the Department, and NAIC annual statement instructions.

Information concerning the Plan's organizational structure, business approach and control environment were utilized to develop the examination approach. The examination evaluated the Plan's risks and management activities in accordance with the NAIC's nine branded risk categories. These categories are as follows:

- Pricing/Underwriting
- Reserving
- Operational
- Strategic
- Credit
- Market
- Liquidity
- Legal
- Reputational

The examination also evaluated the Plan's critical risk categories in accordance with the NAIC's ten critical risk categories. These categories are as follows:

- Valuation/Impairment of Complex or Subjectively Valued Invested Assets
- Liquidity Considerations
- Appropriateness of Investment Portfolio and Strategy
- Appropriateness/Adequacy of Reinsurance Program
- Reinsurance Reporting and Collectability
- Underwriting and Pricing Strategy/Quality
- Reserve Data
- Reserve Adequacy
- Related Party/Holding Company Considerations
- Capital Management

For year 2011, the Plan was audited by the accounting firm Marvin and Company, P.C. For years 2012 to 2014, the Plan was audited by the accounting firm Teal, Becker & Chiamonte, CPAs, P.C. ("TBC"). The Plan received an unmodified opinion in each of those years. Certain audit workpapers of TBC were reviewed and relied upon in conjunction with this examination.

The examiner reviewed the corrective actions taken by the Plan with respect to the recommendations concerning issues contained in the prior report on examination. The results of the examiner's review are contained in Item No. 8 of this report.

This report on examination is confined to financial statements and comments on those matters which involve departures from laws, regulations or rules, or which are deemed to require an explanation or description.

2. EXECUTIVE SUMMARY

The results of this examination revealed certain operational deficiencies during the examination period. The most significant findings of this examination include the following:

- The Plan failed to comply with the requirements of Section 4309(a)(2) of the New York Insurance Law relative to the limitation of expenses.
- The Plan failed to return any unearned premium for terminated contracts, in violation of Section 4304(c)(4) of the New York Insurance Law.
- The Plan failed to comply with Part 420.17(a) of Insurance Regulation 169 (11 NYCRR 420.17(a)) which requires the Plan to obtain authorization from the student or guardian before disclosing the student's nonpublic personal health information to the school.
- The Plan failed to take steps to ensure compliance with Section 3224-a(b) of the New York Insurance Law, regarding the denial of claims.

3. DESCRIPTION OF THE PLAN

Pupil Benefits Plan, Inc. is a not-for-profit medical expense indemnity corporation, organized pursuant to the New York Not-For-Profit Corporation Law and Section 4302(c) of the New York Insurance Law, and commenced business on July 18, 1941. The Plan provides hospital, medical and dental benefits for accidental bodily injury sustained by elementary, middle and high school students while engaging in school sponsored activities. Benefits under the

Plan's policies are secondary; therefore, all other primary insurance policies, except Medicaid, TRICARE, Child Health Care Plus and ERISA, must be exhausted before payments are to be made under the Plan. The Plan's maximum exposure per injury per student is \$50,000.

The Plan was exempt from federal income tax under the provisions of Section 501(c)(4) of the Internal Revenue Code through June 30, 1987. Effective July 1, 1987, the Plan became subject to federal income tax in accordance with changes made to the Tax Reform Act of 1986. The Plan, as a non-profit corporation organized under Article 43 of the New York Insurance Law, is exempt from New York franchise tax under Article 33, Section 1512 of the New York Tax Law.

A. Corporate Governance

Pursuant to the Plan's charter and by-laws, management of the Plan is to be vested in a board of directors consisting of not less than twenty-four (24) members, who are elected annually at the Plan's annual meeting, which is held on the first Saturday after Labor Day in September. As of December 31, 2014, the twenty-four directors of the Plan were as follows:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
<u>Officers-Employees</u>	
Dale C. Schumacher Ithaca, New York	Executive Director, The Learning Web
Theodore R. Woods North Rose, New York	Retired
<u>Provider Representatives</u>	
Eric Aronowitz, M.D. Schenectady, New York	Orthopedic Surgeon, OrthoNY, LLC.
Donald W. Henline, M.D. New Paltz, New York	Orthopedic Surgeon, Private practice
Frank S. Segreto, M.D., P.C. Oakdale, New York	Orthopedic Surgeon, Elite Sports Medicine and Rehabilitation

Name and ResidencePrincipal Business AffiliationSubscriber Representatives

Margaret Boice Norwich, New York	Retired
Edward Cinelli Bayport, New York	Retired
Paul Jenkins Glens Falls, New York	Superintendent, Glens Falls City Schools
Douglas Kenyon Glens Falls, New York	Retired
Stanley Maziejka, Ph.D. Saratoga Springs, New York	Superintendent, Stillwater Central School District
Patrick Pizzarelli Long Beach, New York	Retired
Ryan Sherman, Ph.D. Saratoga Springs, New York	Superintendent, Schuylerville Central School District
Kathy Sullivan Johnstown, New York	Retired
John Wells Taberg, New York	Retired

Public Representatives

David Civale, D.C. Scotia, New York	Chiropractor, Civale Chiropractic Care and Rehab
Thomas Heinzelman Queensbury, New York	Retired
Glen Jones, P.A. Ballston Lake, New York	Physician's Assistant, Ellis Hospital
Cliff Moses Morrisville, New York	Retired
Carl Normandin Potsdam, New York	Executive Director, New York State Public High School Athletic Association, Section 10
Michael Picciano Weedsport, New York	Retired
Luigi Rende, A.T.C. Waterford, New York	Director, The Center of Sports Medicine
Carol Rog Chenango Forks, New York	Retired
Martha Slack Massena, New York	Retired
Wilson Bruce Watkins, Ph.D. Alexandria Bay, New York	Retired

The Plan reported an incorrect number of directors in its 2014 New York Supplement.

It is recommended that the Plan report in its New York supplement only those board members who are actually on the board of directors as of the filing date of the New York supplement.

The Plan's by-law requires the board to meet at least once a year. The minutes of all meetings of the board of directors and committees thereof held during the examination period were reviewed. All such meetings were well attended, with all board members attending at least one-half of the meetings for which they were eligible to attend.

The Plan's elected board of directors participate on a voluntary basis. The board is primarily comprised of high ranking current and retired school district officials. None of the Plan's directors receive compensation nor participate in the Plan's daily operations.

The principal officers of the Plan as of December 31, 2014 were as follows:

<u>Name</u>	<u>Title</u>
Dale C. Schumacher	President
Theodore R. Woods	Secretary
Thomas D. McGuire	Treasurer and Executive Director

During the examination, it was noted that the Plan failed to file with the Department a biographical affidavit for its Treasurer and Executive Director, as required by Section 4301(k)(2)(B) of the New York Insurance Law, which states in part:

“Not more than ten days after..., such corporation shall furnish, in writing, the following information to the superintendent: the name and address of...an employee-officer of such corporation; and a biographical statement concerning such person.”

It is recommended that the Plan file with the Department a biographical affidavit for the Treasurer and Executive Director, as required by Section 4301(k)(2)(B) of the New York Insurance Law.

The Plan's daily operations are led by the Executive Director, who is assisted by the Chief Marketing Officer. Both officers have been identified as key to the ongoing operations of PBP, such that it would pose a great difficulty to the Plan, should either or both decide to leave Pupil Benefits Plan, Inc. Their level of responsibility for the Plan is at such a high level that the loss of either officer poses a significant risk of interruption to the Plan's operations. In this regard, PBP should develop a succession plan for these officers'. At the time of the examination, the Plan had not devised such plan.

It is recommended that the Plan develop a formal succession plan for its primary officers, subject to the approval of the board of directors.

A similar recommendation was included in the prior report on examination.

The Plan does not have a conflict of interest questionnaire, but does have a code of ethics statement for its board and executive members to sign. The Plan also does not have a formal written policy in place to provide guidance on conflicts of interest or ethics.

Section 4301(j)(4)(M) of the New York Insurance Law states:

“The board shall establish formal mechanisms to avoid conflicts of interest.”

It is recommended that PBP comply with Section 4301(j)(4)(M) of the New York Insurance Law by establishing a conflict of interest questionnaire for its board and executive members to complete and a formal written policy to provide guidance on conflicts of interest, and ethics.

B. Territory and Plan of Operation

The Plan is authorized to operate throughout New York State. All business is conducted from its home office in Glenville, New York. The Plan employs three (3) senior officers and six (6) full-time staff members.

Enrollment in the Plan is achieved by means of group contracts made with elementary, middle and high schools registered and approved by the Board of Regents of the State of New York. For the 2014/2015 school year, the Plan insured 405 schools and 783,172 students. The table below indicates the direct premiums written during the examination period.

<u>Year</u>	<u>Premiums</u>	<u>No. of Students</u>
2011	\$6,292,485	645,497
2012	\$7,251,780	742,149
2013	\$8,270,286	744,976
2014	\$8,982,481	783,172

C. Reinsurance

The Plan did not maintain any reinsurance arrangements during the period under examination.

D. Significant Operating Ratios

The underwriting ratios presented below are on an earned-incurred basis and encompass the four-year period covered by this examination:

	<u>Amounts</u>	<u>Ratios</u>
Claims	\$24,230,030	78.67%
Claims adjustment expenses	2,373,604	7.71%
General administrative expenses	4,535,705	14.73%
Net underwriting loss	<u>(342,307)</u>	<u>(1.11%)</u>
Premiums	<u>\$30,797,032</u>	<u>100.00%</u>

As of December 31, 2014, the Plan's total adjusted capital was \$1,885,848. This amount was above the Plan's authorized control level risk-based capital requirement of \$568,867.

E. Internal Controls

The Plan is not required to comply with Sarbanes Oxley, the NAIC Model Audit Rule, or Department Regulation No. 118 (11 NYCRR 89). The examiner noted that the Plan's documentation of its control procedures is limited, and in some respects, outdated. This limited the examiner's evaluation of control procedures to observance and interviews. Additionally, at companies such as the Plan, where proper segregation of duties may not be feasible, and/or cost prohibitive, documentation of control processes enhances the awareness and highlights the boundaries of employees' and officers' responsibilities.

It is recommended that the Plan formalize and document its internal controls processes and procedures by key functions.

A similar recommendation was included in the prior report on examination.

It is further recommended that the Plan perform risk assessments, by key functions, and document mitigating strategies utilized by the Plan.

A similar recommendation was included in the prior report on examination.

F. Limitation of Expenses

In accordance with the provisions of Section 4309(a)(2) of the New York Insurance Law, the Plan's expenditures, other than benefit payments made to or on behalf of persons covered under contracts issued by the Plan, were limited to 18% of its premiums received during 2014.

Section 4309(a)(2) of the New York Insurance Law states in part:

“No corporation subject to the provisions of this article shall, during any one year, disburse more than the percentages hereafter prescribed of the aggregate amount of the premiums received during such year as expenditures for expenses...twenty per centum reduced by one per centum for each five million dollars or fraction thereof above one million dollars of premiums received...”

The examination review revealed that the Plan’s ratio of expenses paid to direct premiums written, for each of the four years under examination, was above the maximum ratio mandated by Section 4309(a)(2) of the New York Insurance Law, as follows:

<u>Year</u>	<u>Premiums</u>	<u>Expenses</u>	<u>Expense Ratio</u>	<u>Maximum Expense Ratio per Section 4309(a)(2) of the NYIL</u>
2011	\$6,292,485	\$1,490,131	22.5%	18%
2012	\$7,251,780	\$1,726,499	21.6%	18%
2013	\$8,270,286	\$1,779,168	21.2%	18%
2014	\$8,982,481	\$1,913,511	20.4%	18%

It is recommended that the Plan comply with the requirement of Section 4309(a)(2) of the New York Insurance Law relative to the limitation of expenses.

A similar recommendation was included in the prior two reports on examination.

G. Disaster Response Plan

The Plan’s Disaster Response Plan (“DRP”) was reviewed and found to be not in compliance with Insurance Circular Letter No. 4 (2015), which requires the Plan to describe how it intends to provide its policyholders with the resources needed to recover from a disaster. The Plan’s DRP failed to include the following items:

- Board of director's support for a Disaster Response Plan;
- Appropriate emergency response training of personnel;
- Testing of the disaster response plan; and
- A description of the role of disaster liaisons, and their interaction with the Department.

The Plan also failed to file its DRP and the Department's Disaster Response Plan Questionnaire and Business Continuity Plan Questionnaire with the Department by June 1, 2015, as required by Insurance Circular Letter No. 4 (2015).

It is recommended that the Plan devise a Disaster Response Plan in accordance with Insurance Circular Letter No. 4 (2015).

It is also recommended that the Plan timely file with the Department its amended Disaster Response Plan and the Department's Disaster Response Plan Questionnaire and Business Continuity Plan Questionnaire, in accordance with Insurance Circular Letter No. 4 (2015).

H. Record Retention

According to the Plan's record retention schedule included below, the following financial records do not comply with the time frames prescribed by Part 243.2(b)(7) of Insurance Regulation No. 152 (11 NYCRR 243.2(b)(7)):

- Bank reconciliations – 3 year retention period.
- Duplicate deposit slips – 2 year retention period.
- Internal audit reports – 3 year retention period.
- Petty cash vouchers – 3 year retention period.

Part 243.2(b)(7) of Insurance Regulation No. 152 (11 NYCRR 243.2(b)(7)) states:

“(b) Except as otherwise required by law or regulation, an insurer shall maintain:...(7) A financial record necessary to verify the financial condition of an insurer, including ledgers, journals, trial balances, annual and quarterly statement workpapers, evidence of asset ownership, and source documents, for six calendar years from its creation or until after the filing of the report on examination in which the record was subject to review, whichever is longer.”

It is recommended that PBP retain its financial records for the time frames prescribed by Part 243.2(b)(7) of Insurance Regulation No. 152 (11 NYCRR 243.2(b)(7)).

4. FINANCIAL STATEMENTS

A. Balance Sheet

The following statements show the assets, liabilities and surplus as of December 31, 2014, as contained in the Plan's 2014 filed annual statement, a condensed summary of operations, and a reconciliation of the surplus account for each of the years under examination.

The firm of Marvin and Company, P.C. ("M&C") was retained by the Plan to audit the Plan's combined statutory-basis statements of financial position as of December 31, 2011, and the related statutory-basis statements of operations, surplus and cash flow for the year then ended. The firm of Teal, Becker & Chiramonte, CPAs, P.C. ("TBC") was retained by the Plan to audit the Plan's combined statutory-basis statements of financial position as of December 31st from 2012 to 2014, and the related statutory-basis statements of operations, surplus and cash flow for the years then ended.

M&C and TBC concluded that the statutory financial statements presented fairly, in all material respects, the financial position of the Plan at the respective audit dates. Balances reported in these audited financial statements were reconciled to the corresponding years' annual statements with no discrepancies noted.

Assets

Bonds	\$ 4,265,131
Common stocks	1,066,168
Real estate	250,165
Cash and short-term investments	6,619,666
Investment income due and accrued	30,607
Uncollected premiums in course of collection	1,733
Current federal income tax recoverable and interest thereon	164,600
Health care and other amounts receivable	<u>12,435</u>
Total assets	<u>\$12,410,505</u>

Liabilities

Claims unpaid	\$ 4,600,000
Unpaid claims adjustment expenses	500,631
Premiums received in advance	4,715,198
General expenses due or accrued	<u>708,828</u>
Total liabilities	<u>\$10,524,657</u>

Surplus

Aggregate write-ins for other than special surplus funds	\$ 1,178,797
Unassigned funds	<u>707,051</u>
Total surplus	<u>\$ 1,885,848</u>
Total liabilities and surplus	<u>\$12,410,505</u>

Note: The Internal Revenue Service has not conducted any audits of the federal income tax return filed on behalf of the Plan through tax year 2014. The examiner is unaware of any potential exposure of the Plan to any tax assessments, and no liability has been established herein relative to such contingency.

B. Statement of Revenue and Expenses and Surplus

Surplus increased \$191,324 during the four-year examination period, January 1, 2011 through December 31, 2014, detailed as follows:

Revenue

Premium	\$32,441,597	
Change in unearned premium reserves	(1,662,536)	
Aggregate write-ins for other non-health revenues	<u>17,971</u>	
Total revenue		\$30,797,032

Expenses

Claims	\$24,230,030	
Claims adjustment expenses	2,373,604	
General administrative expenses	<u>4,535,705</u>	
Total expenses		<u>\$31,139,339</u>
Net underwriting loss		\$ (342,307)

Investments

Net investment income earned	\$ 106,830	
Net realized capital gains	<u>100,818</u>	
Net investment gain		\$ 207,648
Aggregate write-ins for other income		<u>\$ 125,859</u>
Net loss before federal income taxes		\$ (8,800)
Federal income taxes incurred		<u>\$ (120)</u>
Net loss		<u>\$ (8,680)</u>

Change in Surplus

Surplus, per report on examination, as of December 31, 2010			\$1,694,524
	<u>Gains in Surplus</u>	<u>Losses in Surplus</u>	
Net loss		\$ 8,680	
Change in net unrealized capital gains	\$251,413		
Change in non-admitted assets	_____	<u>51,409</u>	
Net change in surplus			<u>\$ 191,324</u>
Surplus, per report on examination, as of December 31, 2014			<u>\$1,885,848</u>

5. MARKET CONDUCT ACTIVITIES

In the course of this examination, a review was made of the manner in which the Plan conducts its business practices and fulfills its contractual obligations to policyholders and claimants. The review was general in nature and is not to be construed to encompass the more precise scope of a market conduct examination. The review was directed at the practices of the Plan in the following major areas:

- A. Advertisements
- B. Agents and Brokers
- C. Cancellation Policy
- D. Claim Forms
- E. Claims Handling
- F. Complaint Handling
- G. Complaint Log
- H. Members' Handbook
- I. Privacy
- J. Prompt Pay Law

A. Advertisements

While the Plan maintained a file of all printed advertisements used during the examination period, it failed to note for each advertisement, the manner and extent of distribution and, if applicable, the form number of any policy advertised. Part 215.17(a) of Insurance Regulation 34 (11 NYCRR 215.17(a)) states:

“Advertising file. Each insurer shall maintain at its home or principal office a complete file containing every printed, published or prepared advertisement of its individual policies and typical printed, published or prepared advertisements of its blanket, franchise and group policies hereafter disseminated in this or any other state whether or not licensed in such other state, with a notation attached to each such advertisement which shall indicate the manner and extent of distribution and the form number of any policy advertised. Such file shall be subject to regular and periodical inspection by the department. All such advertisements shall be maintained in said file for a period of either four years or until the filing of the next regular report on examination of the insurer, whichever is the longer period of time.”

It is recommended that PBP note for each advertisement in its file, the manner and extent of distribution and, where applicable, the form number of any policy advertised, as required by Part 215.17(a) of Insurance Regulation 34 (11 NYCRR 215.17(a)).

B. Agents and Brokers

It was noted from a sample review of 12 agents and brokers that the Plan did not maintain a current copy of their licenses and renewal agreements, and in some cases, failed to execute the renewal agreement. This is not in compliance with Part 243.2(b)(5) of Insurance Regulation 152 (11 NYCRR 243.2(b)(5)), which states:

“(b) Except as otherwise required by law or regulation, an insurer shall maintain:...(5) A licensing record for six calendar years after the relationship is terminated for each Insurance Law licensee with which the insurer establishes a relationship. Licensing records shall be maintained so as to show clearly the dates of appointment and termination of each licensee.”

It is recommended that PBP comply with Part 243.2(b)(5) of Insurance Regulation 152 (11 NYCRR 243.2(b)(5)) by maintaining a current copy of its agents and brokers' licenses and executed renewal agreements.

C. Cancellation Policy

According to the Plan's cancellation policy, if a policyholder cancels coverage during the policy period, the unearned portion of the premium will not be returned.

Section 4304(c)(4) of the New York Insurance Law states:

"In the event of termination of a contract, the corporation shall return the unearned portion of the premium."

It is recommended that PBP amend its cancellation policy to provide for the return of unearned premiums when a policy contract is terminated, as required by Section 4304(c)(4) of the New York Insurance Law.

D. Claim Forms

A copy of the Plan's medical and dental claim forms were reviewed to determine whether they included the required fraud warning statement. For both types of claim forms used by the Plan during the examination period, the fraud warning statement was incomplete, and thus not in compliance with Part 86.4(a) of Insurance Regulation No. 95 (11 NYCRR 86.4(a)).

Both claim forms contained the following fraud warning statement:

“Any person who knowingly and with intent to defraud any insurance company or other person files a statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime.”

However, the claims forms were missing the latter part of the fraud warning statement, required by Part 86.4(a) of Insurance Regulation No. 95 (11 NYCRR 86.4(a)), as follows:

“...and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.”

It was also noted that the fraud warning statement in both claim forms was not conspicuous, given that the font size was small and unbolded. Part 86.4(d) of Insurance Regulation 95 (11 NYCRR 86.4(d)) requires the type size of the fraud warning statement, *“be printed in type which will produce a warning statement of conspicuous size.”*

It is recommended that PBP comply with Part 86.4(a) of Insurance Regulation 95 (11 NYCRR 86.4(a)) by including the complete fraud warning statement in its claim forms.

It is also recommended that PBP comply with Part 86.4(d) of Insurance Regulation 95 (11 NYCRR 86.4(d)) by changing the type size of the fraud warning statement to a conspicuous size.

E. Claims Handling

If coverage is not cancelled and premium is not received by December 31st, the Plan's policy is to stop claims payments for the insured and put all current claims on hold. New York's Prompt Pay Law ("PPL") Section 3224-a of the New York Insurance Law, requires claims to be paid or denied within a prescribed time frame. Putting claims on hold puts the Plan at risk for noncompliance with the PPL. The Plan should notify delinquent policyholders that their coverage will terminate due to nonpayment, per the terms of the contracts. The Plan should then process claims accordingly, instead of putting claims on hold.

It is recommended that PBP cease its claims processing policy of putting claims on hold and that it comply with Section 3224-a of the New York Insurance Law.

F. Complaint Handling

During the examination period, the Plan received a total of thirteen (13) complaints from the Department's Consumer Assistance Unit. Of these thirteen (13) complaints, there were four (4) complaints where the Plan failed to reply within the time frame prescribed by Part 216.4(b) of Insurance Regulation 64 (11 NYCRR 216.4(b)), which states:

"An appropriate reply shall be made within 15 business days on all other pertinent communications."

It is recommended that PBP reply to the Department within 15 business days, as required by Part 216.4(b) of Insurance Regulation 64 (11 NYCRR 216.4(b)).

G. Complaint Log

The Plan failed to maintain its complaint log fully in the manner prescribed by Insurance Circular Letter No. 11 (1978), which states in part:

“As part of its complaint handling function, the company’s consumer services department will maintain an ongoing central log to register and monitor all complaint activity. The log should be kept in a columnar form and list the following:

1. The date the complaint was received in-house.
2. The name of the complainant and the policy or claim file number.
3. The New York State Department of Financial Services file number.
4. The responsible internal division i.e. personal lines underwriting, property damage claims, etc.
5. The person in the company with whom the complainant has been dealing.
6. The person within the company to whom the matter has been referred for review.
7. The date of such referral.
8. Bearing in mind the appropriate regulation mandating timely substantive replies, the dates of correspondence to the Department Consumer Services Bureau.
 - A. The acknowledgement (if any).
 - B. The date of any substantive response.
 - C. The chronology of further contacts with this Department.
9. The subject matter of the complaint.
10. The results of the complaint investigation and the action taken.
11. Remarks about internal remedial action taken as a result of the investigation.”

The Plan’s complaint log does not include the above items 4, 8(A), 8(C), 10 and 11.

It is recommended that PBP include all required elements prescribed by Insurance Circular Letter 11 (1978).

H. Members’ Handbook

The members’ handbook does not provide the Department’s contact information, such as the Consumer Assistance Unit’s telephone number or address, and has the Department’s former

name, New York State Insurance Department, instead of New York State Department of Financial Services.

Section 4324(a)(16) of the New York Insurance Law states in part:

“(a) Each health service...or medical expense indemnity corporation subject to this article shall supply each subscriber...written disclosure information...containing at least the information set forth below.

(16) notice of all appropriate mailing addresses and telephone numbers to be utilized by subscribers seeking information...”

It is recommended that PBP update its members’ handbook with the Department’s current name and the telephone number and address of the Department’s Consumer Assistance Unit.

I. Privacy

The Plan stated that they have a privacy policy which requires nonpublic financial and health information to be protected and not disclosed without written consent. However, the privacy policy does not exist in written or electronic form. PBP employees are required to participate in a privacy awareness program, after which they are required to sign an affidavit attesting to their participation in the program and that they understood the privacy policy that was orally conveyed to them.

Having a formal privacy policy in place, which describes the policy and procedures for the handling of personal health information (“PHI”), allows an employee to refer to it for guidance when a situation arises where an employee is unsure of how to handle PHI.

It is recommended that PBP maintain a formal privacy policy, in written or electronic form, which describes the policy and procedures on handling of personal health information.

It was also noted that the Plan permitted disclosure of a student's nonpublic PHI, without the student or guardian's consent, to schools making the request. The reason, according to the Plan, is that the school is the policyholder. Regardless, a student's nonpublic PHI should not be disclosed without the student or guardian's consent.

Part 420.17(a) of Insurance Regulation 169 (11 NYCRR 420.17(a)) states the following:

“(a) A licensee shall not disclose nonpublic personal health information about a consumer or customer unless an authorization is obtained from the consumer or customer whose nonpublic personal health information is sought to be disclosed.”

It is recommended that PBP comply with Part 420.17(a) of Insurance Regulation 169 (11 NYCRR 420.17(a)) by obtaining authorization from the student or guardian before disclosing the student's nonpublic personal health information.

J. Prompt Pay Law

The Plan does not accept electronic claims, only paper claims. To determine the Plan's compliance with New York's Prompt Pay Law (Section 3224-a of the New York Insurance Law), a population consisting of all claims adjudicated between January 1, 2014 and December 31, 2014 that were not paid within the time frame prescribed by Section 3224-a(a) of the New York Insurance Law for paper claims were identified and tested.

The result of this review revealed that from the total population of 91,241 claims adjudicated in 2014, there were 46,851 (paper) claims that took longer than forty-five (45) days to pay.

Section 3224-a(a) of the New York Insurance Law states in part:

“Except in a case where the obligation of an insurer...to pay a claim submitted by a policyholder or person covered under such policy (“covered person”) or make a payment to a health care provider is not reasonably clear, or when there is a reasonable basis supported by specific information available for review by the superintendent that such claim or bill for health care services rendered was submitted fraudulently, such insurer...shall pay the claim to a policyholder or covered person or make a payment to a health care provider within thirty days of receipt of a claim or bill for services rendered that is transmitted via the internet or electronic mail, or forty-five days of receipt of a claim or bill for services rendered that is submitted by other means, such as paper or facsimile.”

A sample of 46,851 paper claims was selected to establish whether the claims were adjudicated in violation of the time frame prescribed by Section 3224-a(a) of the New York Insurance Law. A sample of 167 claims was extracted from the population of 46,851 possible violations and reviewed. Of this sample, no material violation of Section 3224-a(a) of the New York Insurance Law was noted.

The following chart illustrates the Plan’s compliance with Section 3224-a(a) of the New York Insurance Law, as determined by this examination:

Total claims population	91,241
Population of claims paid after 45 days of receipt	46,851
Sample size	167
Number of claims with violations	1
Calculated violation rate	.60%
Lower violation limit	(.57)%
Upper violation limit	1.77%
Calculated claims in violation	281
Lower limit transactions in violation	(267)
Upper limit transactions in violation	829

Note: The lower and upper error limits represent the range of potential error (e.g., if 100 samples were selected, the rate of error would fall between these limits 95 times).

Section 3224-a(b) of the New York Insurance Law states in part:

“(b) In a case where the obligation of an insurer...to pay a claim...is not reasonably clear..., an insurer...shall pay any undisputed portion of the claim...and notify the policyholder, covered person or health care provider in writing within thirty calendar days of the receipt of the claim:

- (1) that it is not obligated to pay the claim or make the medical payment, stating the specific reasons why it is not liable; or
- (2) to request all additional information needed to determine liability to pay the claim or make the health care payment.”

25,573 claims from the above mentioned population were denied after 30 days. A sample of 167 of these claims was extracted from the population and reviewed. Of this sample, there were 24 confirmed violations.

The following chart illustrates the Plan’s compliance with Section 3224-a(b) of the New York Insurance Law, as determined by this examination:

Total claims population	91,241
Population of claims adjudicated after 30 days of receipt	25,573
Sample size	167
Number of claims with violations	24
Calculated violation rate	14.37%
Lower violation limit	9.05%
Upper violation limit	19.69%
Calculated claims in violation	3,675
Lower limit transactions in violation	2,314
Upper limit transactions in violation	5,035

Note: The lower and upper error limits represent the range of potential error (e.g., if 100 samples were selected, the rate of error would fall between these limits 95 times).

It is recommended that PBP takes step to ensure compliance with Section 3224-a(b) of New York Insurance Law regarding the denial of its claims.

A similar recommendation was included in the prior report on examination.

6. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

The prior report on examination, as of December 31, 2010, contained the following sixteen (16) comments and recommendations (page number refers to the prior report on examination):

<u>ITEM NO.</u>		<u>PAGE NO.</u>
	<u>Management and Controls</u>	
1.	It is recommended that Company develop a realistic succession plan for the Company's primary officers and should be discussed with the executive committee.	4
	<i>The Plan has not complied with this recommendation. A similar recommendation is included within this report on examination.</i>	
	<u>Internal Controls</u>	
2.	It is recommended that the Company formalize and document its internal controls process and procedures, which is segregated by key functions.	7
	<i>The Plan has not complied with this recommendation. A similar recommendation is included within this report on examination.</i>	
3.	It is further recommended that the Company perform risk assessments, which is segregated by key functions and document mitigating strategies utilized by the Company.	7
	<i>The Plan has not complied with this recommendation. A similar recommendation is included within this report on examination.</i>	
	<u>Limitation of Expenses</u>	
4.	It is recommended that the Plan comply with the requirements of Section 4309(a)(2) of the New York Insurance Law relative to the limitation of expenses.	11
	<i>The Plan has not complied with this recommendation. A similar recommendation is included within this report on examination.</i>	
	<u>CPA Contracted Duties</u>	
5.	It is once again recommended that the Plan incorporate the principle of segregation of duties and cease the practice of having its CPA firm perform accounting and ancillary functions on the Plan's books of account that such CPA firm also audits.	13
	<i>The Plan has complied with this recommendation.</i>	

<u>ITEM NO.</u>		<u>PAGE NO.</u>
6.	<p>It is once again recommended that the Plan’s board of directors review the practice of having its CPA firm conduct duties which appear to be in conflict with AICPA .01 Rule 101.</p> <p><i>The Plan has complied with this recommendation.</i></p> <p><u>Information Technology</u></p>	13
7.	<p>It is recommended that the Company improve upon existing controls of its IT environment by developing and incorporating the following controls within its IT control procedures:</p> <ul style="list-style-type: none"> ▪ Ensure that file server cabinets remain locked and secured at all times with access only to authorized personnel. ▪ Evaluate and consider an image and/or digital backup of its paper claims data thereby providing duplicates and reducing the risk of losing claims and other valuable documentations through fire and theft. ▪ Invest in a sprinkler or other fire prevention equipment to protect the Company’s IT equipment such as file servers, desktop computers and claims documentations. ▪ Develop and document process and procedures to retrieve claims back up data from online backup company, as well as test for accuracy and effectiveness. <p><i>The Plan has complied with this recommendation.</i></p> <p><u>Disaster Response Plan</u></p>	19
8.	<p>It is recommended that the Company re-evaluate and amend its Disaster Response Plan by developing and incorporating the following enhancements and procedures:</p> <ul style="list-style-type: none"> ▪ Re-evaluate and update the outdated vendor contact list to include current IT hardware and programming consultants essential in the event of a disaster or disruption to its computer systems. ▪ Determine alternate (disaster recovery) sites that could provide IT equipment necessary as well as space for employees to continue their functions. ▪ Assess and incorporate steps necessary to continue or regenerate its IT business applications and claims processing in the event of a disaster that disable the Company’s current equipment and facilities. ▪ Incorporate the process and procedures to periodically test claims data backed up on line for access, accuracy and effectiveness. <p><i>The Plan has complied with this recommendation.</i></p>	20

<u>ITEM NO.</u>		<u>PAGE NO.</u>
	<u>Agents and Brokers</u>	
9.	It is recommended that Company comply with the provisions of Section 2102 (a)(1) of the New York State Insurance Law.	25
	<i>The Plan has complied with this recommendation.</i>	
	<u>Advertising</u>	
10.	It is recommended that the company complies with Department Regulation No. 152 (11 NYCRR 215.17(a)) and maintain a log of all advertisements.	25
	<i>The Plan has not fully complied with this recommendation as of the examination date. A similar recommendation is included within this report on examination.</i>	
	<u>Complaints</u>	
11.	It is recommended that the Company comply with Department Regulation No. 64 and maintain a log of complaints received regardless if they are from the Consumer Service Bureau or by a member/provider.	26
	<i>The Plan has complied with this recommendation.</i>	
12.	It is recommended that the Company follows their own documented procedures when handling consumer appeals and complaints.	26
	<i>The Plan has complied with this recommendation.</i>	
	<u>Claims Processing</u>	
13.	It is recommended that the Company develop a replacement and training plan for the Company's key claims processors that would provide practical alternatives and develop a training methodology in order to minimize delays in claims processing and risk of business interruption.	27
	<i>The Plan has complied with this recommendation.</i>	
	<u>Claims Review</u>	
14.	It is recommended that the Company comply with Section 3224-a(a) of the New York Insurance Law.	29
	<i>The Plan has complied with this recommendation.</i>	

ITEM NO.**PAGE NO.**

15. It is further recommended that the Company comply with Section 3224-a(b) of the New York Insurance Law. 29

The Plan has not complied with this recommendation. A similar recommendation is included within this report on examination.

New York Prompt Pay Law

16. It is recommended that the claims processing system be revised to recognize the date when a claim becomes eligible for payment thereby allowing the Company as well as the Department examiners to determine NY Prompt Pay Law compliance. 30

The Plan has complied with this recommendation.

7. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>	<u>PAGE NO.</u>
A. <u>Corporate Governance</u>	
i. It is recommended that the Plan report in its New York supplement only those board members who are actually on the board of directors as of the filing date of the New York supplement.	7
ii. It is recommended that the Plan file with the Department a biographical affidavit for the Treasurer and Executive Director, as required by Section 4301(k)(2)(B) of the New York Insurance Law.	8
iii. It is recommended that the Plan develop a formal succession plan for its primary officers, subject to the approval of the board of directors.	8
iv. It is recommended that PBP comply with Section 4301(j)(4)(M) of the New York Insurance Law by establishing a conflict of interest questionnaire for its board and executive members to complete and a formal written policy to provide guidance on conflicts of interest, and ethics.	8
B. <u>Internal Controls</u>	
i. It is recommended that the Plan formalize and document its internal controls process and procedures by key functions.	10
ii. It is further recommended that the Plan perform risk assessments, by key functions, and document mitigating strategies utilized by the Plan.	10
C. <u>Limitation of Expenses</u>	
It is recommended that the Plan comply with the requirement of Section 4309(a)(2) of the New York Insurance Law relative to the limitation of expenses.	11
D. <u>Disaster Response Plan</u>	
i. It is recommended that the Plan devise a Disaster Response Plan in accordance with Insurance Circular Letter No. 4 (2015).	12
ii. It is also recommended that the Plan timely file with the Department its amended Disaster Response Plan and the Department's Disaster Response Plan Questionnaire and Business Continuity Plan Questionnaire, in accordance with Insurance Circular Letter No. 4 (2015).	12

<u>ITEM</u>	<u>PAGE NO.</u>
E. <u>Record Retention</u>	
It is recommended that PBP retain its financial records for the time frames prescribed by Part 243.2(b)(7) of Insurance Regulation No. 152 (11 NYCRR 243.2(b)(7)).	13
F. <u>Advertisements</u>	
It is recommended that PBP note for each advertisement in its file, the manner and extent of distribution and, where applicable, the form number of any policy advertised, as required by Part 215.17(a) of Insurance Regulation 34 (11 NYCRR 215.17(a)).	19
G. <u>Agents and Brokers</u>	
It is recommended that PBP comply with Part 243.2(b)(5) of Insurance Regulation 152 (11 NYCRR 243.2(b)(5)) by maintaining a current copy of its agents and brokers' license and executed renewal agreements.	19
H. <u>Cancellation Policy</u>	
It is recommended that PBP amend its cancellation policy to provide for the return of unearned premiums in the event a policy contract is terminated, as required by Section 4304(c)(4) of the New York Insurance Law.	19
I. <u>Claim Forms</u>	
i. It is recommended that PBP comply with Part 86.4(a) of Insurance Regulation 95 (11 NYCRR 86.4(a)) by including the complete fraud warning statement in its claim forms.	20
ii. It is also recommended that PBP comply with Part 86.4(d) of Insurance Regulation 95 (11 NYCRR 86.4(d)) by changing the type size of the fraud warning statement to a conspicuous size.	20
J. <u>Claims Handling</u>	
It is recommended that PBP cease its claims processing policy of putting claims on hold and that it comply with Section 3224-a of the New York Insurance Law.	21
K. <u>Complaint Handling</u>	
It is recommended that PBP reply to the Department within 15 business days, as required by Part 216.4(b) of Insurance Regulation 64 (11 NYCRR 216.4(b)).	21

<u>ITEM</u>	<u>PAGE NO.</u>
L. <u>Complaint Log</u> It is recommended that PBP include all required elements prescribed by Insurance Circular Letter 11 (1978).	22
M. <u>Member's Handbook</u> It is recommended that PBP update its members' handbook with the Department's current name and the telephone number and address of the Department's Consumer Assistance Unit.	23
N. <u>Privacy</u>	
i. It is recommended that PBP maintain a formal privacy policy, in written or electronic form, which describes the policy and procedures on handling of personal health information.	23
ii. It is recommended that PBP comply with Part 420.17(a) of Insurance Regulation 169 (11 NYCRR 420.17(a)) by obtaining authorization from the student or guardian before disclosing the student's nonpublic personal health information.	24
O. <u>Prompt Pay Law</u> It is recommended that the PBP takes step to ensure compliance with Section 3224-a(b) of New York Insurance Law regarding the denial of its claims.	26

NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES

I, BENJAMIN M. LAWSKY, Superintendent of Financial Services of the State of New York, pursuant to the provisions of the Financial Services Law and the Insurance Law, do hereby appoint:

Tommy Kong

as a proper person to examine the affairs of

Pupil Benefits Plan, Inc.

and to make a report to me in writing of the condition of said

Plan

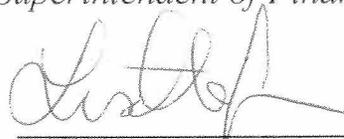
with such other information as he shall deem requisite.

In Witness Whereof, I have hereunto subscribed my name
and affixed the official Seal of the Department
at the City of New York

this 9th day of February, 2015

BENJAMIN M. LAWSKY
Superintendent of Financial Services

By:



Lisette Johnson
Bureau Chief
Health Bureau

