

**\*\*\* Revised \*\*\***  
**December 9, 2019**

**MEMORANDUM**

**TO:** DEHIC SUPERINTENDENTS  
BUSINESS OFFICIALS AND HUMAN RESOURCES DEPARTMENTS OF  
DEHIC PARTICIPANTS

**FROM:** DEHIC BOARD OF TRUSTEES

**EFFECTIVE:** **December 18, 2019**

**RE:** ELIGIBILITY AND COVERAGE UNDER THE EMPIRE  
BLUECROSS BLUESHIELD PPO and EPO PLANS

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**I. Introduction**

1.1 *Purpose of Memorandum.* This memorandum is provided by DEHIC as a summary document to describe DEHIC’s interpretation of the coverage and eligibility standards of Empire Blue Cross/Blue Shield (“Empire”). This memorandum has been reviewed by Empire, and DEHIC believes it is accurate. However, final decisions on eligibility and coverage are made by Empire or the DEHIC Board of Trustees. The eligibility of Eligible Employees, retirees, and their dependents for continued coverage under the Plan will be subject to the rules of the Plan, and the policies and Bylaws of DEHIC. In the event of any dispute regarding eligibility, the determination of the Board of Trustees shall be final, subject to the agreement of Empire as Insurer.

1.2 *Empire’s Responsibility as Insurer.* Standards of eligibility and determinations of eligibility and coverage also are made by Empire, under Empire’s Insurance Contract or the PPO Plan and EPO Plan Certificates of Coverage documents as applicable (the “Plan”).

1.3 *Role of Participants.* Each covered person should understand that the coverage or eligibility under the Plan is provided by Empire and may not be expanded or modified by the Participant.

**II. Categories of Coverage**

2.1 *Choice of Coverage.* The Categories of Coverage under the Plan are Individual Coverage; Individual Medicare Coverage; one type of Family Coverage; and, one type of Family Medicare Coverage. An Eligible Employee must affirmatively choose the appropriate Category of Coverage.

2.2 *Individual Coverage.* Individual Coverage covers only the Eligible Employee or retiree. Individual Medicare Coverage provides coverage in addition to Medicare for Medicare qualified Eligible Employees or retirees in accordance with the Plan and Medicare secondary payor rules.

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2.3 *Family Coverage.* Family Coverage covers the Eligible Employee or retiree and enrolled Eligible Dependents. Family Medicare Coverage provides coverage in addition to Medicare for Medicare qualified Eligible Employees or retirees and their enrolled Eligible Dependents in accordance with the Plan and Medicare secondary payor rules.

2.4 *Change in Category of Coverage.* A change in the Category of Coverage can be made by the Eligible Employee in two situations: The first is during the Open Enrollment Period. The second is if a Qualifying Event has occurred and the election is made within the time required for that Qualifying Event.

### **III. Eligibility**

3.1 *Becoming an Eligible Employee.* An employee of a DEHIC Participant can be an Eligible Employee if they are eligible for group benefits under the Plan and under the employment rules of that DEHIC Participant. This may require working a minimum number of hours or waiting for an Employment Probationary Period to expire. Employment Probationary Periods and other qualifications for group benefits are determined by the employer (DEHIC Participant), and may differ among DEHIC Participants, but may not be inconsistent with the Plan. A retiree continues as an Eligible Employee in accordance with the conditions of the Plan.

3.2 *The Election of Family Coverage.* An Eligible Dependent becomes covered under Family Coverage when the Eligible Employee has elected Family Coverage and the Eligible Dependent has been added as described in paragraph 4.5.

3.3 *Eligible Dependents or Eligible Young Adults Who May Obtain Coverage.* Eligible Dependents are the Eligible Children, and a Spouse or the Domestic Partner of an Eligible Employee. Parents, grandchildren, nieces, nephews, brothers, sisters or other relatives of an Eligible Employee are not Eligible Dependents under any circumstances. Eligible Young Adults are persons who are Age 29 or younger, and who meet the requirements of paragraph 4.5 (b) below.

- (a) Domestic Partner. A Domestic Partner is an Eligible Dependent, if Domestic Partner Coverage is effective for the Participant of DEHIC that employs the Eligible Employee, and if the required proof of Domestic Partner status has been supplied. Domestic Partners are required to complete an Affidavit of Domestic Partnership in order to enroll in coverage.
- (b) Spouses. A Spouse of an Eligible Employee includes spouses of the opposite sex and spouses of the same sex as the Eligible Employee, if that spouse was married to the Eligible Employee under the laws of a state or country that recognizes such unions.
- (c) Eligible Children. An Eligible Child is a natural child, an Adopted Child (which includes a Newborn Adopted Child and a Proposed Adoptive Child as defined in this memorandum); the stepchild of an Eligible Employee; or

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the natural or Adopted Child of the Domestic Partner of an Eligible Employee, if all the following are true:

- (i) The child is a dependent of the Eligible Employee; and
  - (ii) The year of the child's Maximum Age has not expired.
- (d) Proposed Adoptive Child. A Proposed Adoptive Child is a child who is:
- (i) Available for adoption by the Eligible Employee;
  - (ii) Dependent on the Eligible Employee; and
  - (iii) The subject of an application, procedure or filing contemplating adoption by the Eligible Employee.
- (e) Maximum Age of Eligible Children.
- (i) Affordable Care Act Age 26 Coverage. Effective July 1, 2011, and in compliance with the Patient Protection and Affordable Care Act (PPACA) the Maximum Age of an Eligible Child expires at the end of the calendar month in which he or she reaches the age of 26 years, except for a Qualified Disabled Child.
  - (ii) New York Age 29 Law. An amendment to the Insurance law (Chapter 240 of the laws of 2009) will require Empire to make available upon request of the policyholder (DEHIC) coverage for unmarried children of Eligible Employees through age 29 without regard to the financial dependence of the child on the parent, provided the children live in New York or Empire's service area. These children are referred to as Eligible Young Adults. However, such children cannot be Eligible Young Adults if they are eligible for coverage under Medicare or another employer health benefit plan, whether insured or self-insured. The coverage extended will be provided through enrollment in Individual Coverage, and the entire cost, not to exceed 100% of the individual premium amount, will be the responsibility of the member.
- (f) Qualified Disabled Children. A Qualified Disabled Child is a natural, adopted or stepchild of an Eligible Employee, or the natural or adopted child

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of the Domestic Partner of an Eligible Employee, who is physically or mentally disabled and whose disability occurred before the expiration of the Maximum Age for that child.

- (g) Court ordered Child Support. An Eligible Child also includes a natural or adopted child of an Eligible Employee who is required to be provided coverage under a Qualified Medical Child Support Order (QMCSO). A QMCSO is a court order that provides for child support relating to health benefits for an Eligible Child of an Eligible Employee or their Spouse. QMCSOs are orders under the New York Domestic Relations Law or Section 1908 of the Social Security Act.

3.4 *Eligible Employee's Right to Waive Plan Coverage.* Otherwise Eligible Employees and retirees may waive Coverage offered through the Plan during initial eligibility, the annual open enrollment period, or when a Qualifying Event occurs (as described in Section 4.3). A Participant may request evidence of other coverage from the Eligible Employee or retiree.

#### **IV. Commencement of Coverage**

4.1 *Election of Coverage.* Coverage under the Plan is available only to the Eligible Employees of a DEHIC Participant and their Eligible Dependents. An Eligible Employee must elect in writing to be covered under the Plan in accordance with Empire's eligibility and underwriting rules. The employee is responsible to provide at the time of election of coverage, acceptable evidence of eligibility for Eligible Dependents, such as a certificate of marriage, a birth certificate, adoption papers, a DEHIC Affidavit of Domestic Partnership or other applicable proof that establishes eligibility.

4.2 *Open Enrollment Periods.* An Open Enrollment Period is a one month period during the year established by each DEHIC Participant, during which Eligible Employees may elect coverage for themselves and their Eligible Dependents under the Plan; change the Category of Coverage from Individual to Family Coverage; change the Category of Coverage from Family to Individual Coverage; or terminate coverage in accordance with the policy of a DEHIC Participant. An Eligible Employee may by notice to their employer DEHIC Participant, during the applicable Open Enrollment Period, request approval of such a change, to be effective during a subsequent open enrollment period established under another plan provided by the employer of the spouse or parent of the Eligible Employee, provided that the Eligible Employee is eligible for coverage under such other plan.

4.3 *Qualifying Events For Electing or Changing Coverage.* Qualifying Events permit changes outside of the yearly Open Enrollment Period, but the Eligible Employee must elect to make the change in writing within sixty (60) days of the Qualifying Event. Qualifying Events include:

- (a) the marriage, divorce or death of the Eligible Employee;

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- (b) the entrance into or termination of a domestic partnership by the Eligible Employee;
- (c) the death of a covered Eligible Dependent of an Eligible Employee;
- (d) the birth or adoption of an Eligible Child;
- (e) a covered Eligible Child reaching the Maximum Age;
- (f) a change in status event as defined under IRS 26 CFR Part 1, §1.125-4 Permitted Election Changes, including change of employment status, which include events that change the status of the employee, the employee's spouse, or the employee's dependent; with the consequences that the individual becomes (or ceases to be) eligible under the plan, including a commencement of or return from an unpaid leave of absence;
- (g) a Qualifying Termination of Coverage if the Eligible Employee or Qualified Dependent is covered under another plan. A Qualifying Termination of Coverage for such another plan includes:
  - (i) the termination of that other plan; or
  - (ii) the termination of the employment of the person through whom the coverage was obtained; or
  - (iii) the reduction of hours of employment of the person through whom the coverage was obtained, making them ineligible to continue coverage under such other plan; or
  - (iv) the coverage was provided in accordance with continuation of coverage required by federal or state law and was exhausted.

4.4 *Coverage for Employees Who Were Covered Elsewhere.* If an Eligible Employee obtains coverage elsewhere, they may later elect to be covered under the Plan in two situations. The first is during the Open Enrollment Period. The second is if a Qualifying Event has occurred and the election is made within the time required for that Qualifying Event.

4.5 *Procedures for Adding or Removing Dependents from Coverage.* Eligible Dependents become covered under Family Coverage when the Eligible Employee has elected Family Coverage, and the Eligible Dependent is added by the Eligible Employee. Adding Eligible Dependents and removal of persons who no longer are Eligible Dependents shall be done by the Eligible Employee submitting completed written forms that will be provided on request.

- (a) Adding Eligible Dependents. An Eligible Employee may elect coverage for an Eligible Dependent by written request during the Open Enrollment Period or within sixty (60) days after a Qualifying Event.

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- (b) Age 29 Coverage for Young Adults. A young adult who becomes an Eligible Young Adult as a result of the New York “Age 29” law (Chapter 240 of the Laws of 2009) may enroll for coverage:
- (i) when they would otherwise reach the Maximum Age; or
  - (ii) within 60 days of becoming an Eligible Young Adult (in which case coverage will be prospective and start within 30 days of the receipt by Empire of notice of the election of enrollment and the applicable premium); or
  - (iii) during the applicable annual open enrollment period; and
  - (iv) after completion of the Empire Adult Dependent Election and Eligibility Form, which must be signed by the young adult in order to enroll in coverage. The Empire Adult Election and Eligibility form shall verify that the young adult is:
    - 1. the unmarried child or stepchild of the Employee or their Spouse or Domestic Partner insured under the policy;
    - 2. under the age of 30;
    - 3. not covered by, or eligible for, employer-sponsored insurance, or a self-insured employer plan; and,
    - 4. living or working in New York State or in the plan’s service area.
- (c) Removal of Ineligible Persons. Persons who no longer are Eligible Dependents must be removed from coverage. Removal of persons from coverage is done on written forms that will be provided on request. Coverage will end when eligibility ends, regardless of a failure or delay in providing notice of a change in eligibility status.
- (d) Employee Responsibility for Proof of Eligibility and Notice of Loss of Eligibility. At any time an Eligible Employee may be required to provide proof of eligibility for any person for whom coverage is provided or to be provided under the Plan. Such proof may include (but is not limited to) a certificate of marriage, a birth certificate, adoption papers, domestic partner documentation or any other proof requested to establish eligibility. The Eligible Employee also must provide notice of a change in an Eligible Dependent’s eligibility status, such as (but not limited to) a change in eligibility due to divorce, termination of a domestic partnership, or

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attainment of the Maximum Age. Eligible Employees who have caused a Domestic Partner to be covered as an Eligible Dependent shall complete and sign a Termination of Domestic Partnership Form within 30 days of the termination of the Domestic Partnership.

4.6 *Retroactive Coverage for Eligible Dependents Upon Marriage.* An Eligible Employee may change to Family Coverage within sixty (60) days of the date of the marriage of the Eligible Employee, and in such event, the coverage for Eligible Dependents will be retroactive to the marriage date.

4.7 *Retroactive Family Coverage After Birth of a Child.* Newborn children of Eligible Employees are automatically, but temporarily, covered from the date of birth for the first forty-eight (48) hours after a vaginal delivery or ninety-six (96) hours after a C-section delivery for routine nursery care. Continued coverage thereafter will depend on the timely election of Family Coverage by the Eligible Employee. The following rules apply for this election:

- (a) An Eligible Employee may elect Family Coverage within sixty (60) days of the birth of a child and in that event Family Coverage will be effective from the date of birth.
- (b) If an Eligible Employee does not elect Family Coverage within sixty (60) days, coverage for the Newborn Child will not be retroactive. Coverage will begin on the date the Newborn Child is enrolled, if:
  - (i) Family Coverage has been elected and the enrollment was accepted before the child's first birthday; or
  - (ii) if the child is over one (1) year old, enrollment occurs in an Open Enrollment Period or within sixty (60) days of another Qualifying Event.

4.8 *Retroactive Rules for Newborn Adopted Children.* A Newborn Adopted Child is a newborn child that the Eligible Employee is seeking to adopt.

- (a) Election of Coverage for Newborn Adopted Children. Except as stated in (b) and (c) below, a Newborn Adopted Child is covered from birth if:
  - (i) the Eligible Employee has elected or timely elects Family Coverage (within sixty (60) days of birth); and
  - (ii) the Eligible Employee takes custody as soon as the child is released from the hospital after birth; and
  - (iii) the Newborn child is dependent on the Eligible Employee; and

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- (iv) legal papers seeking adoption by the Eligible Employee are filed in a court within thirty (30) days of birth.
  
- (b) Failure to Elect within 60 days. If an Eligible Employee does not elect Family Coverage within sixty (60) days of birth, coverage for the Newborn Adopted Child will not be retroactive. Coverage will begin on the date the Newborn Adopted Child is enrolled, if:
  - (i) Family Coverage has been elected and the enrollment was accepted before the child's first birthday; or
  - (ii) if the child is over one (1) year old, enrollment occurs in an Open Enrollment Period or within sixty (60) days of another Qualifying Event.
  
- (c) Exception to Rules for Newborn Adopted Children—When They Are Not Covered From Birth. A Newborn Adopted Child is not covered from birth:
  - (i) if he or she is covered under a health insurance policy providing coverage through a biological parent; or
  - (ii) a notice of revocation of the adoption has been filed and becomes effective; or
  - (ii) a natural parent validly revokes consent to the adoption.

**V. Non-Standard Eligibility Provisions**

5.1 *Special Rules for Certain Participants.* Certain DEHIC Participants have adopted or agreed to certain non-standard expansions or continuations of eligibility, which are subject to each such Participant's individually applicable standards, provided that they shall be no more lenient respecting eligibility for coverage than stated in this memorandum or than permitted by the Plan, as it is defined above. All such expansions or continuations shall by written policy be adopted by the Participant, which shall be subject at any time to disapproval by DEHIC or Empire.

5.2 *Dependent Survivor Coverage.* In the event a Participant determines to do so, coverage may be continued under Family Coverage for Eligible Dependents, or under Individual Coverage for a surviving spouse of an Eligible Employee after the death of such Eligible Employee. Under this provision, only Eligible Dependents of the Eligible Employee covered at the time of death or newborn children of the Eligible Employee born after the Eligible Employee's death are eligible for Dependent Survivor Coverage. Coverage may continue only so long as such surviving spouse or Eligible Dependents remain otherwise eligible under the Plan.



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5.3 *Extended Coverage at Eligible Employee Severance.* In the event a Participant determines to implement an employee-severance agreement that permits continuation of coverage after an Eligible Employee's separation from employment, coverage may be continued under the Plan only in accordance with this paragraph. The Participant shall notify the Board of Trustees of the terms of such an agreement as they pertain to coverage under the Plan and shall complete a change in status form provided by DEHIC. Such agreements shall not provide for payment for coverage under the Plan by the Participant for a period longer than six (6) months after the last day of active employment of the Eligible Employee by the Participant, or for coverage under the Plan beyond the expiration of benefits under the Consolidated Omnibus Budget Reconciliation Act (COBRA). The Participant shall remain solely responsible to comply with COBRA obligations including mandated notice and election rights, which may be triggered by the terms of such an agreement.

5.4 *Coverage Subsequent to End of School Year.* In the event a Participant determines to do so, and has provided written notice to DEHIC and Empire, a policy to permit an Eligible Employee to obtain coverage for an entire school year in which such Eligible Employee is employed, coverage may be continued until not later than the last day of August of such school year, even if the employment of the Eligible Employee terminates in June of that year or thereafter.

**VI. Termination of Coverage**

6.1 *Termination Under Plan Criteria.* Termination will occur in accord with Plan criteria. Such criteria include specific rules relating to Medicare, COBRA, HIPAA, Section 125 of the Internal Revenue Code and other legal standards applicable to health insurance coverage or eligibility.

6.2 *End of Coverage Date.* The date on which Coverage ends for an Eligible Employee or dependent will vary depending on the reason for termination of eligibility, or entitlement to other coverage.

- (a) *Termination of a Spouse's Coverage on Divorce or Annulment.* Spouses of Eligible Employees are no longer covered after the last day of the month in which a divorce or annulment occurs. Except if COBRA applies, this means the maximum time of coverage possible after a divorce or annulment will be less than sixty (60) days. Spousal coverage cannot be extended beyond this expiration of eligibility for any reason. No divorce decree or separation agreement is effective to extend this coverage, except as may be required under the law of the Commonwealth of Massachusetts, if applicable.
- (b) *Termination of Domestic Partner Coverage.* Eligible Dependents who are Domestic Partners of an Eligible Employee (or are children of a Domestic Partner) are no longer covered at the end of the month after the termination of the Domestic Partnership, except unless continuation of coverage is required under Section 3221(m) of the Insurance Law [termination of employment or group membership of Eligible Employee]. Upon the

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Termination of a Domestic Partnership, the Employee shall promptly and in any event within thirty (30) days, file an Affidavit of Termination of Domestic Partnership.

- (c) *Coverage of Children Ends When They Cease to be Eligible Children.* Coverage for Eligible Children ends at the expiration of the Maximum Age (i.e., at the end of the calendar month in which the Maximum Age is reached).
- (d) *Termination of Employment.* Coverage for a former employee and their dependents will end on the last day of the month in which employment is terminated, except as provided in Paragraph 5.4. A Participant may not allow continued coverage following the last day of the month in which employment is terminated or for which premium is paid unless the policy permitting such coverage is approved by DEHIC under section 5.1.
- (e) *Retirement.* Eligible Employees (and their Eligible Dependents) are entitled to retiree coverage under the Plan: (i) when retirement occurs under the rules of the applicable New York State Retirement System; or (ii) in the event such Eligible Employee retires in accordance with the rules of such System from full time employment with the Participant and defers receipt of pension benefits, when the Eligible Employee so retires; or (iii) in the event such Eligible Employee is not covered under any such Retirement System, when the Eligible Employee retires from full-time employment pursuant to the terms of a collective bargaining agreement or written agreement with the Participant. Eligibility of a retiree and their dependents for continued coverage under the Plan shall be subject to as the rules of the Plan, and the policies and Bylaws of DEHIC.
- (f) *Non-Payment of Premium by Retiree.* Coverage for a retiree and his or her dependents will terminate as of the last day for which premiums were paid. After such termination, election of coverage will not be permitted except upon approval of the Board of Trustees, and during an open enrollment period or after a Qualifying Event.

**VII. Exceptions to Plan Requirements and Avoidance of Adverse Selection**

7.1 *General Rule—Unavailability of Exceptions.* Adverse Selection is the cost-increasing effect that results from persons seeking coverage outside the normal process applicable to Eligible Employees, or after it is evident that the risk of some type of claim is higher than at the time of initial eligibility. To ensure fairness, reduce overall costs and provide an incentive for all Eligible Employees to elect coverage under the Plan, exceptions to eligibility or coverage rules generally are not available.

7.2 *Standards for Exceptions.* DEHIC will request that Empire grant an exception from strict application of enrollment or coverage criteria only:

- (a) upon the request of the DEHIC Participant, made with a justification for the request; and
- (b) upon a showing of objective facts indicating that the strict application of an eligibility rule in a particular circumstance would be unfair or unreasonable, or upon a reasonable excuse for not complying with an applicable requirement for eligibility in a timely manner; and
- (c) upon a vote of approval of an exception by the DEHIC Board of Trustees.

7.3 *Empire Decides Exception Requests.* Final decision on all exception requests transmitted to DEHIC will be made by Empire. Requests may be denied by Empire, regardless of a DEHIC recommendation.

7.4 *No Precedent for Exceptions Applies.* No precedent or right to future exception is created by any action or inaction on any past request by the Board of Trustees or Empire.

**VIII. Enforcement**

8.1 *DEHIC, Empire or a Participant May Audit at Any time.* Eligibility and coverage status of all covered persons is subject to audit at any time.

8.2 *Consequences of Ineligibility.* In addition to other possible consequences, which can be very serious, the failure to abide by the Plan's enrollment or eligibility criteria may result in immediate removal from coverage, denial of uncovered claims and recoupment of expenses or claims payments.