

ATTORNEY GENERAL OF THE STATE OF NEW YORK

In the Matter of

EmblemHealth, Inc.

Assurance No.: 14-232

**ASSURANCE OF DISCONTINUANCE
UNDER EXECUTIVE LAW
SECTION 63, SUBDIVISION 15**

Pursuant to the provisions of Article 22-A of the General Business Law and Executive Law § 63, Eric T. Schneiderman, Attorney General of the State of New York, caused an inquiry to be made into certain business practices of EmblemHealth, Inc. ("Emblem"), relating to its processing of claims for preventive services. Based upon the inquiry, the New York State Office of the Attorney General ("OAG") has made the following findings, and Emblem has agreed to modify and/or discontinue certain practices and assure compliance with the following provisions of this Assurance of Discontinuance ("Assurance").

I. BACKGROUND

1. Emblem is a not-for-profit corporation formed in 2006 by the merger of Group Health Incorporated ("GHI") and the Health Insurance Plan of Greater New York ("HIP"). Emblem's principal offices are located at 55 Water Street, New York, New York 10041.

2. In the regular course of business, Emblem enrolls consumers in health plans and contracts with health care providers for the delivery of health care service to those consumers. Offering many different health plans and coverage types in New York State, Emblem, through its

GHI and HIP divisions, provides health care coverage for approximately 3.4 million New York consumers.

3. Under the federal Patient Protection and Affordable Care Act, (“Affordable Care Act”), health plan issuers like Emblem must cover in full -- and without member co-payments, coinsurance or deductibles -- in-network preventive services that have a rating of “A” or “B” by the U.S. Preventive Services Task Force, including colonoscopies and other colorectal screening. 42 U.S. Code § 300gg-13. These provisions of the Affordable Care Act apply to non-grandfathered health insurance plans in the individual and group markets for plan years beginning on or after September 23, 2010.

4. Every colonoscopy procedure requires the administration of anesthesia. Anesthesia services provided in connection with in-network Affordable Care Act-mandated preventive colonoscopies should likewise be covered without member cost-sharing, except in the rare instance where the member opts for anesthesia to be provided by an out-of-network provider despite the availability of an in-network provider.

II. THE OAG’S INVESTIGATION AND FINDINGS

5. The OAG received a complaint from an Emblem member who received a bill from an anesthesiologist for \$1320.00 for anesthesia services in connection with an in-network preventive colonoscopy procedure. The anesthesiologist did not participate in Emblem’s provider network.

6. Emblem reimbursed \$924.00 to the anesthesiologist, and informed the member that he was responsible for the remaining \$396.00 as his coinsurance obligation.

7. The OAG contacted Emblem to discuss the complaint and raise its concerns that the member was assessed cost-sharing improperly in connection with an in-network Affordable Care Act-mandated preventive colonoscopy. In response, Emblem acknowledged that it processed the anesthesia claim incorrectly under the express terms of the member's health insurance policy.

8. Emblem stated that for certain GHI group policies that have special reimbursement terms for out-of-network anesthesia services received during an in-network episode of care ("GHI Policies"), out-of-network anesthesia services performed in connection with an in-network preventive colonoscopy are considered a component of an Affordable Care Act-mandated preventive care service, and should be covered without cost-sharing.

9. At the request of the OAG, Emblem analyzed its claims data for January 1, 2012 through December 31, 2014 for the affected GHI Policies and identified 255 out-of-network anesthesia claims performed in connection with an in-network preventive colonoscopy procedure that were processed subject to member cost-sharing even though they were coded as preventive and performed during an in-network episode of care.

10. The claims requiring adjustment for this period total \$397,064.10, including interest added pursuant to New York Insurance Law Section 3224-a.

III. RELEVANT LAWS

11. Article 22-A of the New York State General Business Law prohibits "deceptive acts and practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state . . ." General Business Law § 349(a).

12. Executive Law § 63(12) prohibits repeated fraudulent or illegal acts in the transaction of business.

13. The Affordable Care Act requires that Emblem cover specified in-network preventive services, including preventive colorectal screenings, in full and without any cost-sharing requirements under non-grandfathered health insurance plans in the individual and group markets. 42 U.S.C. 300gg-13.

14. The OAG finds that the practices described above constitute repeated violations of Executive Law § 63 (12) and General Business Law § 349.

NOW, WHEREAS, Emblem neither admits nor denies the OAG's findings above and the OAG is willing to accept the terms of this Assurance under Executive Law § 63(15) and to discontinue this investigation; the parties each believe that the obligations imposed by this Assurance are prudent and appropriate; and the OAG has determined that this Assurance is in the public interest.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the parties that:

I. PROSPECTIVE RELIEF

1. Emblem will not assess any member cost-sharing (*i.e.* co-payment, coinsurance or deductible) for anesthesia services provided in connection with an Affordable Care Act-mandated preventive colonoscopy that is performed by an in-network provider. If Emblem is unable to identify whether an anesthesia claim corresponds to an in-network Affordable Care Act-mandated preventive colonoscopy at the time of the initial claim processing, it will make a retrospective adjustment.

2. As of January 1, 2015, Emblem has changed its claims processing system for the affected GHI Policies – and will maintain this system – such that it does not assess member cost-sharing for these anesthesia services.

3. As of February 1, 2015, Emblem has posted on its website information about billing and coding of Affordable Care Act-mandated preventive care services, to assist providers and help ensure that EmblemHealth can identify and process these out-of-network claims without cost-sharing.

4. As of February 1, 2015, Emblem has trained its staff in order to fully comply with all relevant New York State and federal laws and regulations and Emblem's certificates of insurance to the extent such laws, regulations and certificates of insurance relate to coverage of out of network anesthesia services received as part of an Affordable Care Act-mandated in-network preventive colonoscopy, as well as the requirements of this Assurance.

5. The parties acknowledge that effective April 1, 2015, the New York State Insurance Law will provide a dispute resolution process for emergency services and surprise bills from out-of-network providers. Notwithstanding the terms of this Assurance, Emblem's compliance with the requirements of the new law shall not be considered a violation of this Assurance of Discontinuance.

II. CONSUMER RESTITUTION

6. Emblem asserts and certifies that as a result of the OAG's inquiry, as of January 29, 2015 it has issued restitution in the amount of \$397,064.10 to GHI members under the affected GHI Policies whose claims for out-of-network anesthesia services provided in

connection with an in-network preventive colonoscopy -- from January 1, 2012 through December 31, 2014 -- were processed with cost-sharing ("Eligible Members").

7. Emblem asserts and certifies that restitution issued includes the cost-sharing amount for which the member was deemed responsible and interest pursuant to New York Insurance Law Section 3224-a.

8. Emblem shall make reasonable efforts to ensure the restitution checks are received, which shall include but not be limited to contacting the United States Post Office for a possible forwarding address.

9. By April 1, 2015, Emblem shall submit to the OAG a restitution report(s) that includes, for each claim: the claim number, the codes for the procedure, the identity of the providers involved in the claim, the date of service, the restitution amount with an explanation as to how it was calculated, and the date restitution was issued. If checks were returned, the report(s) shall also include that fact and a description of the efforts Emblem made to reach the member.

10. Emblem shall continue to cooperate with the OAG and promptly resolve all consumer complaints that the OAG submits to Emblem, or otherwise come to the attention of Emblem. Resolution of complaints includes issuing full refunds with interest to any member who complains of a cost-sharing assessment for anesthesiology services provided in connection with an Affordable Care Act-mandated preventive colonoscopy performed by an in-network provider.

III. PENALTIES

11. Within thirty days of the Effective Date of this Assurance, Emblem shall pay \$25,000.00 (twenty five thousand dollars) to the OAG, in lieu of any other action which could be taken by the OAG in consequence of the foregoing.

IV. CORRESPONDENCE AND PAYMENT

12. All payments, notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

If to the OAG to:

Carol Hunt
Assistant Attorney General
Office of the Attorney General
Health Care Bureau
120 Broadway, 26th Floor
New York, New York 10271

If to Emblem to:

Ingrid Pessa, Esquire
Assistant General Counsel
EmblemHealth, Inc.
55 Water Street
New York, NY 10041

13. All checks issued pursuant to this Assurance shall be made payable to "State of New York Department of Law."

14. All payments and correspondence related to this Assurance must reference "Assurance 14-232."

V. MISCELLANEOUS

Emblem's Representations

15. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by Emblem and its counsel and the OAG's own factual investigation. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

No Deprivation of the Public's Rights

16. Nothing herein shall be construed to deprive any person of any private right under law or equity.

No Blanket Approval by the OAG of Emblem's Practices

17. Acceptance of this Assurance by the OAG shall not be deemed or construed as approval by the OAG of any of Emblem's acts or practices, and Emblem shall make no representation to the OAG the contrary.

Monitoring by the OAG

18. To the extent not already provided under this Assurance, Emblem shall, upon request by the OAG, provide all documentation and information necessary for the OAG to verify compliance with this Assurance, at Emblem's expense. This Assurance does not in any way limit the OAG's right to obtain, by subpoena or by any other means permitted by law, documents, testimony, or other information.

No Limitation on the OAG's Authority

19. Nothing in this Assurance in any way limits the OAG's ability to investigate or take other action with respect to any non-compliance at any time by Emblem with respect to this Assurance, or Emblem's noncompliance with any applicable law with respect to any matters.

Nondisparagement of Assurance

20. Emblem shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis. Nothing in this paragraph affects Emblem's (a) testimonial obligations or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which OAG is not a party.

Governing Law; Effect of Violation of Assurance of Discontinuance

21. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

22. Under Executive Law § 63(15), evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law in any action or proceeding thereafter commenced by the OAG.

23. If a court of competent jurisdiction determines that Emblem has breached this Assurance, Emblem shall pay to the OAG the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

24. Any failure by the OAG to enforce this entire Assurance or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of the OAG's right to enforce other deadlines and provisions of this Assurance.

25. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

Entire Agreement; Amendment

26. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Emblem in agreeing to this Assurance.

27. This Assurance contains an entire, complete, and integrated statement of each and every term and provision agreed to by and among the parties, and the Assurance is not subject to any condition not provided for herein. This Assurance supersedes any prior agreements or understandings, whether written or oral, between the OAG and Emblem regarding the subject matter of this Assurance.

28. This Assurance may not be amended or modified except in an instrument in writing signed on behalf of all the parties to this Assurance.

29. The division of this Assurance into sections and subsections and the use of captions and headings in connection herewith are solely for convenience and shall have no legal effect in construing the provisions of this Assurance.

Binding Effect

30. This Assurance is binding on and inures to the benefit of the parties to this Assurance and their respective successors and assigns, provided that no party, other than the

OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without prior written consent of the OAG.

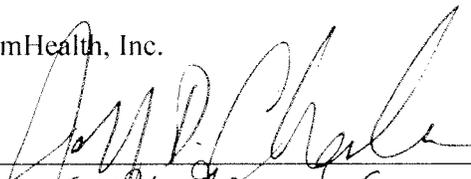
Effective Date

31. This Assurance is effective on the date that it is signed by the Attorney General or his authorized representative (the "Effective Date"), and the document may be executed in counterparts, which shall all be deemed an original for all purposes.

AGREED TO BY THE PARTIES:

Dated: March 5, 2015

EmblemHealth, Inc.

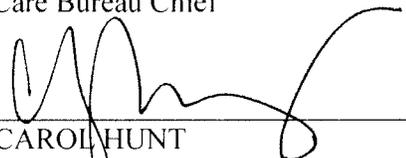
By: 
Supt General (GU1501)

CONSENTED TO:

Dated: March 10, 2015

ERIC SCHNEIDERMAN
Attorney General of the State of New York

LISA LANDAU
Health Care Bureau Chief

By: 
CAROL HUNT
Assistant Attorney General, Health Care Bureau