

In the Matter of
Group Health Incorporated

Assurance No.: 12-023

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

As authorized by Article 22-A of the General Business Law and Executive Law § 63, Eric T. Schneiderman, Attorney General of the State of New York, conducted an investigation into certain claims processing practices of Group Health Incorporated (GHI). Based upon that investigation, the New York State Office of the Attorney General ("OAG") has made the following findings, and GHI has agreed to modify and/or discontinue certain practices and comply with this Assurance of Discontinuance ("Assurance").

ATTORNEY GENERAL'S INVESTIGATION

1. GHI is authorized to operate as an indemnity insurer under Article 43 of the New York Insurance Law. Its principal offices are located at 55 Water Street, New York, New York 10041.
2. GHI provides health insurance plans to consumers that often contain both in-network and out-of-network benefits. For in-network benefits, GHI contracts with participating providers and sets rates of reimbursement, and the participating provider is barred, under the agreement with GHI, from billing the member the difference between the provider's charge and GHI's reimbursement. If the member seeks out-of-network care from a non-participating provider, the member will normally have to pay more for the service than if an in-network provider had been selected. However, certain out-of-network providers of ancillary care -- including radiology, anesthesiology, pathology, or assistant surgery -- are reimbursed such that the member will have no out-of-pocket expenses.

3. Consumers often do everything possible to use in-network doctors and hospitals in order to keep their out-of-pocket costs at a minimum, but nonetheless receive a surprise bill from a specialist or provider who the patient did not know was out-of-network. These bills can reach thousands of dollars, and as a result consumers are laden with debt they cannot afford to repay. GHI partially addressed these issues with a rider that provides enhanced coverage for "ancillary" out-of-network providers and for emergency services. Unfortunately, as set forth below, GHI did not comply with its own policy.

4. The OAG received a complaint from a New York consumer who had a GHI Preferred Provider Organization (PPO) plan. In a deliberate effort to avoid any out-of-network costs, the GHI member chose an in-network physician to deliver her baby at an in-network hospital. After the services were rendered, the member received a bill in the amount of \$2,035 from an anesthesiologist who did not participate in GHI's network. The \$2,035 bill was for the difference between what GHI paid for the anesthesiologist's services in accordance with the member's out-of-network benefits, and the amount of the anesthesiologist's charge.

5. The consumer's policy included one rider that states that, for treatment at an in-network hospital, facility, or provider's office -- out-of-network radiology, anesthesiology, pathology, and assistant surgeon services are covered and the member is not subject to the member responsibility that applies to out-of-network claims. It also states: "GHI will reimburse you at the lesser of 100% of the 90th percentile of the HIAA/Ingenix Prevailing Healthcare Charges System¹ in use by GHI at the time the service was rendered or the independent Provider's submitted charge."

6. A second rider provides the same coverage as above for services received in a hospital emergency room or during admissions to a hospital from the emergency room even if the hospital or any provider (not limited to radiology, anesthesiology, pathology, or assistant surgery) is out-of-network.

7. GHI's certificate of coverage including its riders led the member to believe that receiving services at an in-network facility by a participating physician would not result in any out-of-network charges.

¹ GHI no longer uses Ingenix fee schedule for out-of-network reimbursement purposes and has switched to the fee schedules published by FAIR Health.

8. During the OAG's investigation of the complaint, GHI initially maintained that the anesthesiology claim was properly processed as out-of-network, because the anesthesiologist did not participate in GHI's provider network. GHI, however, eventually acknowledged that the member's claim was processed incorrectly, and that it should have been processed in accordance with the terms of the rider, as if the claim were in-network, and paid at the 90th percentile of the Ingenix fee.

9. At the OAG's request, GHI then analyzed its claims data for 2010 and the 1st quarter of 2011, to identify other instances in which a member's claim was processed contrary to the two riders described above, and identified 266 claims that required adjustment in the amount of \$162,069.25.

10. 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]).

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

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

NOW, WHEREAS, GHI 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. GHI has trained its staff and modified its claims processing practices, procedures, and policies in order to fully comply with all New York State laws and regulations, GHI's certificates of insurance, and the requirements of this Assurance, and has provided to the OAG documentation of all communications to GHI employees and agents regarding such training and modifications.

II. CONSUMER RESTITUTION

2. GHI asserts it has issued restitution to members who had claims incorrectly processed at an out-of-network rate from January 1, 2010 through March 31, 2011 and provided to the Attorney General electronic files of each record for members covered under the riders described in paragraph 5 and 6 above (the "riders"). GHI will similarly provide restitution for members covered under the riders during the period of January 1, 2008, through December 31, 2009 for 1) all emergency services (services received in a hospital emergency room or during admissions to a hospital from the emergency room); and 2) for radiology, anesthesiology, pathology, and/or assistant surgeon services received during treatment at an in-network facility that is indicated as place of services code 11(office), 21(Inpatient Hospital), 22(Outpatient Hospital), 20(Urgent Care Facility) and 24(Ambulatory Surgery Center) on the standard CMS 1500 medical claim form, where such provider of services was not a GHI participating provider and the reimbursement to the member was not at the 90th percentile of the Ingenix Fee Schedule. All of these members, including the members who already have been issued restitution, will be identified as "Eligible Members."

3. Restitution shall include the amount of what would have been sent to the member as indemnification had the claim been correctly processed, minus any amount GHI previously sent to the member. Restitution shall also include twelve (12) percent interest per annum from the date the Eligible Member received the initial payment. Restitution checks shall be mailed within four months from the Effective Date of this Assurance.

4. GHI shall send by regular mail the restitution check to the last known address of the Eligible Member. GHI 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.

5. In order to ensure that restitution is correctly provided to all members who had claims incorrectly processed at an out-of-network rate, within fifteen days after all restitution payments have been paid, GHI shall select an auditor, subject to approval by the OAG, who has experience auditing medical billing and insurance claims records. The auditor shall be retained within fifteen days after OAG approval of the auditor selected by GHI. Within ninety days from the date the auditor is retained, the

auditor shall complete its review of GHI records in order to determine whether all members who had claims incorrectly processed at an out-of-network rate were paid the appropriate restitution and issue the report described in paragraph 6 herein. If the auditor determines, in the course of its independent analysis, that there are members eligible for restitution in addition to those identified by GHI, GHI shall issue restitution with twelve percent interest to the member within thirty days from that determination.

6. GHI shall submit to the OAG a restitution report in the same format as the prior report submitted for the January 1, 2010 through March 31, 2011 period that includes, for each claim: the identity of the member, 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, the date restitution was issued, and the address to which the restitution was sent. The report will also include the auditor's findings about whether the auditor identified any disagreement between the GHI findings and the auditor's findings. If there is a discrepancy in the findings, GHI will provide a written explanation as to the manner by which the auditor identified the members eligible for restitution and why the members were not identified by GHI.

7. In addition to restitution, GHI will provide a written notice to Eligible Members. This notice will advise Eligible Members whose claims were adjusted that if they were balance billed by their out-of-network provider and are subject to collection activity from the provider, to contact GHI to request assistance in resolving the collection action such as satisfying a judgment. GHI will review information provided by the Eligible Member and address the collection action or judgment commenced by the out-of-network provider to the extent it is related to GHI underpayments covered under the GHI riders referenced herein, subject to the applicable coverage limitations. GHI shall submit to the OAG a report that includes, for each request made pursuant to this paragraph: the identity of the member, the identity of the providers involved in the claim, the date of service, the amount sent to collection, including interest and fees, the status of the collection activity at the time the request was made, and a detailed account of GHI's resolution of the matter.

8. GHI will complete the consumer restitution steps set forth under this Section II no later than January 1, 2013. GHI shall continue to cooperate with the OAG and promptly resolve all consumer complaints that the OAG submits to GHI, or otherwise come to the attention of GHI, which shall include issuing appropriate restitution to members.

III. COSTS

9. Within thirty days of the Effective Date of this Assurance, GHI shall pay \$25,000.00 (twenty five thousand dollars) to the OAG for costs incurred during the investigation and monitoring of this matter.

IV. CORRESPONDENCE AND PAYMENT

10. All 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 GHI to:

Nicholas P. Kambolis
Vice President, Deputy General Counsel
EmblemHealth Services Company LLC
55 Water Street
New York, NY 10041

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

12. All payments and correspondence related to this Assurance must reference "Assurance 12-023."

V. MISCELLANEOUS

Successors and Third Parties

13. This Assurance and all obligations imposed on or undertaken by GHI herein, will be binding upon and enforceable against GHI and its officers, directors, agents, employees and assignees, and any subsequent owner or operator (whether by merger, transfer of control, contractual arrangements or other means) of GHI.

GHI's Representations

14. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by GHI 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

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

No Blanket Approval by the Attorney General of GHI's Practices

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

Monitoring by the OAG

17. To the extent not already provided under this Assurance, GHI shall, upon request by the OAG, provide all documentation and information necessary for the OAG to verify compliance with this Assurance, at GHI'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 Attorney General's Authority & GHI's Duty
to Honor Investigation and Obligations**

18. 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 GHI with respect to this Assurance, or GHI's noncompliance with any applicable law with respect to any matters.

Nondisparagement of Assurance

19. GHI 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 GHI'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

20. 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.

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

22. If a court of competent jurisdiction determines that GHI has breached this Assurance, GHI 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.

23. 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.

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 a waiver of the

OAG's right to enforce other deadlines and provisions of this Assurance.

Entire Agreement; Amendment

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

26. 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 GHI regarding the subject matter of this Assurance.

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

28. 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

29. 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. GHI represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized.

Effective Date

30. 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: _____, 2012

Group Health Incorporated

By: *Nicholas P. Kambolis*
NICHOLAS P. KAMBOLIS
GENERAL COUNSEL

CONSENTED TO:

Dated: New York, New York

May 24, 2012

ERIC SCHNEIDERMAN
Attorney General of the State of New York

By: *Carol Hunt*
CAROL HUNT
Assistant Attorney General, Health Care Bureau