

ATTORNEY GENERAL OF THE STATE OF NEW YORK

In the Matter of

EmblemHealth, Inc.

Assurance No.: 13-494

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

Pursuant to the provisions of Section 63(12) of the Executive Law and Article 22-A of the General Business Law, 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 failure to comply with New York’s Age 29 Law, which requires insurers to offer members the option to keep their adult children on their health plans until they turn 30 years old. Based upon that inquiry, the Office of the Attorney General (“the OAG”) has made the following findings, and Emblem has agreed to modify its practices and assure compliance with the following provisions of this Assurance of Discontinuance (“Assurance”).

I. BACKGROUND

1. Emblem, 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”), offers health plans to New York consumers. 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 services to

those consumers. Offering hundreds of different health plans in New York State, Emblem, through its GHI and HIP divisions, provides health care coverage for approximately 3.4 million New York consumers.

II. THE OAG'S INVESTIGATION AND FINDINGS

3. The Health Care Bureau of the OAG (“HCB”) conducted an investigation into Emblem’s compliance with New York’s Age 29 Law, following the receipt of a complaint from a HIP member (the “complainant”) that her adult daughter’s claim for health benefits was denied because her insurance coverage had been terminated when she turned 26 years old. The Age 29 Law’s Young Adult Option requires health insurers to offer continuation health coverage to children of plan members until the children turn 30 years old. The HCB’s investigation revealed that neither the HIP member, nor her daughter, received a termination notice from Emblem, nor did they receive any notification of their rights, under New York’s Age 29 Law, to continue the daughter’s health coverage. Shortly after she turned 26, the daughter received substance abuse rehabilitation services, but Emblem later denied coverage, stating that she did not have insurance at the time she received the services. As a result, the complainant was forced to pay \$1,000 out of pocket for her adult daughter’s treatment, and faced additional bills totaling \$4,000.

4. Young adults between the ages of 19 and 30 often have their health coverage under their parents’ insurance policies. Young adults, due to the nature of their employment, often do not receive health benefits, as noted by the Commonwealth Fund. Therefore, without notice of their rights under the Age 29 Law, young adults in New

York face limited options for health coverage. According to the Commonwealth Fund, uninsured young adults comprise 27 percent of New York State's uninsured population.

5. The OAG's investigation showed that Emblem failed to send statutorily required letters explaining the Young Adult Option ("Notification Letters") to more than 8,000 Emblem members between 2010 and 2012. Of these members, almost 1,000 were not even notified that they had been terminated from coverage. Emblem subsequently denied approximately 175 claims of 105 members who did not receive proper Age 29 notification, totaling more than \$90,000 of unreimbursed medical treatment.

6. Emblem has reported that, prior to August 2012, it failed to send the required Age 29 Law Notification Letters to HIP members due to repeated problems with its systems for generating notifications to its members, and that, prior to May 2012, it did not send letters containing the statutorily required Age 29 Law language to GHI members.

III. RELEVANT LAWS

7. New York's Age 29 Law, enacted in 2009, extends the availability of health insurance coverage to young adults until they turn 30 years old, though their parents' policies. Under the Young Adult Option, insurers must provide: (i) written notification to group members in each certificate of coverage regarding the right to purchase continuation coverage for their adult children within sixty (60) days after termination of the adult child's coverage, within sixty (60) sixty days after qualifying as an adult child, or during an annual thirty (30) day open enrollment period; and (ii) written notice of an upcoming termination date at least sixty (60) days prior to the date the young

adult covered under the parent's policy would have coverage terminate due to reaching the maximum age for coverage. N.Y. Ins. Law. §§ 3221(r)(2)(G); 4305(l)(2)(G).

8. The New York State Executive Law authorizes the Attorney General, where there are "repeated fraudulent or illegal acts" or "persistent fraud or illegality in the carrying on, conducting or transaction of business," to seek relief, including enjoining the continuance of such business activity or of any fraudulent or illegal acts, as well as restitution and damages. N.Y. Exec. Law § 63(12).

9. Based on the findings of its investigation, the OAG has determined that Emblem's conduct has resulted in violations of N.Y. Executive Law Section 63(12) and the Age 29 Law. Emblem's practices have had the effect of unlawfully limiting Emblem members' access to continuation health coverage.

NOW, WHEREAS, Emblem admits the OAG’s findings in Paragraphs 3 through 6 above; and

WHEREAS, access to continuation health coverage for young adults is beneficial for individual and public health; and

WHEREAS, Emblem has cooperated with the OAG’s investigation; and

WHEREAS, the Attorney General is willing to accept the terms of this Assurance under Executive Law Section 63(15) and to discontinue his investigation; and

WHEREAS, the parties each believe that the obligations imposed by this Assurance are prudent and appropriate; and

WHEREAS, the Attorney General has determined that this Assurance is in the public interest.

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

IV. PROSPECTIVE RELIEF

10. Within sixty (60) days of the Effective Date, Emblem will implement the following reforms:

11. Emblem will send letters to all members who did not receive notification of the Young Adult Option, offering such members, until they reach 30 years of age, reinstatement of coverage (“Reinstatement Letters”), in the form attached as Exhibit A. Based on information provided by Emblem, it is anticipated that Emblem will send Reinstatement Letters to approximately 8,300 members.

12. Emblem will send Notification Letters to members eligible for the Young Adult Option, at least sixty (60) days before their coverage ends, in compliance with the Insurance Law Sections 3221(r)(2)(G) and 4305(1)(2)(G).

V. RETROSPECTIVE RELIEF

13. Within sixty (60) days of the Effective Date, Emblem will re-process and pay all as-yet unpaid claims of members who did not receive proper Age 29 Law notification, which Emblem denied due to lack of coverage. Emblem will send a reimbursement letter (in the form attached as Exhibit B) together with a check, to each affected member. Based on information provided by Emblem, it is anticipated that Emblem will reimburse to approximately 105 members a total of approximately \$90,000 in out-of-pocket expenses and denied claims due to lack of coverage.

14. Emblem will bear all costs of the restitution process as described above.

15. If any current or former Emblem members, whose health coverage Emblem terminated without providing Notification Letters, incurred out-of-pocket medical expenses after termination but did not file claims for those expenses, Emblem will allow such members to file claims for such expenses after the Effective Date, and Emblem will accept and pay such claims.

16. If Emblem demonstrates to the OAG that a claim of a member who did not receive proper Age 29 Law notification was reimbursed by other health coverage, it need not pay such a claim pursuant to Paragraph 13 above.

VI. MONITORING

A. Monitoring by Emblem

17. Emblem shall monitor its adherence to the requirements of all applicable provisions of the Age 29 Law and this Assurance over a one-year period beginning one (1) month after the Effective Date (the "Monitoring Period").

18. At the end of each month of the Monitoring Period, Emblem shall manually analyze a list of terminated members to determine whether Age 29 notification letters were sent to those members.

19. If the analysis performed pursuant to Paragraphs 17 and 18 above reflects that Emblem failed to send required Age 29 Notification Letters, Emblem shall develop and implement an appropriate remedial strategy, including additional monitoring.

B. Independent Audit

20. Within three (3) months of the Effective Date, Emblem shall submit to the OAG the names and addresses of three independent auditors with appropriate experience to conduct the audit set forth in paragraph 20 and their respective audit proposals for OAG approval. Emblem shall engage the services of the independent auditor whose audit proposal is among those approved by the OAG ("Auditor").

21. Emblem shall, no later than twelve (12) months following the Effective Date of this Assurance, undergo an audit by the Auditor. The Auditor shall examine Emblem's compliance with regard to the relief provisions set forth in Sections IV and V of this Assurance. If the Auditor's findings reflect that Emblem has complied with those provisions, Emblem shall be deemed compliant with this Assurance.

22. The independent audit may be extended for an additional time period(s) if the OAG finds non-compliance by Emblem with this Assurance.

VII. PENALTIES

23. Within sixty (60) days of the Effective Date, Emblem shall pay \$100,000 to the OAG as a civil penalty, in lieu of any other action which could be taken by the OAG in consequence of the foregoing.

VIII. MISCELLANEOUS

Compliance

24. Emblem shall submit to the OAG, within thirty (30) days of completion of the activities and restitution set forth above in paragraphs 10 through 22, a letter certifying and setting forth its compliance with this Assurance.

Emblem's Representations

25. 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 as set forth in the above Findings. 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.

Communications

26. All communications, reports, correspondence, and payments that Emblem submits to the OAG concerning this Assurance or any related issues is to be sent to the attention of the person identified below:

Michael D. Reisman, Esq.
Assistant Attorney General
Health Care Bureau

Office of the New York Attorney General
120 Broadway
New York, NY 10271
Michael.reisman@ag.ny.gov

27. Receipt by the OAG of materials referenced in this Assurance, with or without comment, shall not be deemed or construed as approval by the OAG of any of the materials, and Emblem shall not make any representations to the contrary.

28. All notices, correspondence, and requests to Emblem shall be directed as follows:

Jeffrey Chansler, Esq.
Senior Vice President and Deputy General Counsel
EmblemHealth
55 Water Street
New York, NY 10041-8190

Valid Grounds and Waiver

29. Emblem hereby accepts the terms and conditions of this Assurance and waives any rights to challenge it in a proceeding under Article 78 of the Civil Practice Law and Rules or in any other action or proceeding.

No Deprivation of the Public's Rights

30. Nothing herein shall be construed to deprive any member or other person or entity of any private right under law or equity.

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

31. 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, or those of its agents or assigns, and none of them shall make any representation to the contrary.

Monitoring by the OAG

32. 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. 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

33. 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.

No Undercutting of Assurance

34. 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 the OAG is not a party.

Governing Law; Effect of Violation of Assurance of Discontinuance

35. Under Executive Law Section 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.

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

37. 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.

No Presumption Against Drafter; Effect of any Invalid Provision

38. None of the parties shall be considered to be the drafter of this Assurance or any provision for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof. This Assurance was drafted with substantial input by all parties and their counsel, and no reliance was placed on any representation other than those contained in this Assurance.

39. 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

40. 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.

41. 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 and among the OAG and Emblem regarding the subject matter of this Assurance.

42. This Assurance may not be amended or modified except in an instrument

in writing signed on behalf of all the parties to this Assurance.

43. 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

44. 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

45. 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: NEW YORK, New York
January 27, 2014

EMBLEMHEALTH, Inc.

By: 

Name: **Nicholas P. Kambolis**

Title: **General Counsel**

Dated: New York, New York
January 28, 2014

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

LISA LANDAU
Health Care Bureau Chief

By: 
MICHAEL D. REISMAN
Assistant Attorney General
Health Care Bureau

EXHIBIT A



**Important Time-Sensitive Notice – Young Adult Option Under New York’s Age 29 Law
DATE**

«MAILINGID» 12310
«SUBFNAME» «SUBLNAME»
«STREET1»
«STREET2»
«CITY», «STATE» «ZIP»

RE: «MBRFNAME» «MBRLNAME»

HIP [or GHI] ID number: «MBRNMI»

Dear Subscriber:

Our records show that your child, «MBRFNAME» «MBRLNAME» was terminated due to reaching the age limit for health coverage under your plan on «MATDATE». We failed to notify you 60 days in advance of the termination date and present you and your adult child with options your child had for Continuation of Coverage, including rights under New York’s Age 29 Law.

New York’s Age 29 Law, which was enacted in 2009, requires insurers to provide written notification to group members regarding the right to purchase continuation coverage for adult children at least 60 days prior to the date the young adult who is covered under the parent’s policy would otherwise have coverage terminate due to reaching the maximum age for coverage. Under the Age 29 Law’s Young Adult Option, a group member may purchase continuation coverage for a child until the child’s 30th birthday. New York’s Age 29 requirement is separate from the Affordable Care Act requirement that, under certain circumstances, insurers allow a group member to keep a child on his/her policy, without additional charge, until the child’s 26th birthday.

In your case, your adult child’s coverage terminated upon his/her 26th birthday, but we did not inform you about the Young Adult Option for continuation coverage. We are therefore writing to offer your child the option of reinstating coverage.

The options for reinstatement are presented below and if you or your child chooses one of them, we will process the reinstatement under the terms that would have been applicable at the time of termination, effective upon payment of the applicable premium.

Options that are available to your young adult child:

1. You may reinstate coverage for this child if he or she is unmarried and cannot work because of mental illness, developmental disability, mental retardation or a physical handicap. To request a form, call **1-800-447-8255**, Monday through Friday, 8 am to 6 pm, or download one from www.emblemhealth.com/forms.

2. You have the option of coverage of an eligible child under your group policy through age 29 (the child's 30th birthday) at your own cost and without evidence of insurability while you remain covered under the group contract under the "Young Adult Option." To be eligible under the young adult option, your child must be:
 - Age twenty-nine (29) or younger;
 - Unmarried;
 - Not eligible for coverage under any employee health benefit plan, whether insured or self-insured, as an employee or member (except as a COBRA or state continuation of coverage beneficiary);
 - Not covered under Medicare; and
 - Living, working or residing in New York State or our service area.

You or your eligible young adult must pay the premium rate that applies to individual only coverage under the group contract for this coverage. You may obtain premium rate information at [WEBSITE] or by calling [PHONE NUMBER]. The young adult will be subject to his or her own separate copays, deductibles, coinsurance, coinsurance maximum and dollar and benefit maximums, as applicable. Coverage will be subject to all of the terms and conditions of the group contract. If the parent's coverage changes, the young adult option coverage will also change in the same manner.

You or your eligible young adult may request Young Adult Option coverage at this time by filling out the attached Young Adult Enrollment form.

3. Your child has the option of continuing coverage with us by converting to one of our individual plans. Visit www.emblemhealth.com/individualsandfamilies to choose one of our plans.

For more information, please call us at **1-877-411-3625**, Monday through Friday, 8:30 am to 5 pm. If you use a TDD, call **1-888-447-4833**.

We look forward to continuing to meet your health coverage needs.

Sincerely,



David Morin
Vice President
Customer Service

EXHIBIT B

[EmblemHealth Letterhead]

[date]

Dear Subscriber:

As the result of an investigation by the Health Care Bureau of the New York State Office of the Attorney General (OAG), it has come to our attention that Emblem did not send legally required notification to its members regarding the availability of continuation coverage for adult children under New York's Age 29 Law, prior to termination. Emblem has agreed to offer such members reinstatement coverage. Emblem has also agreed to pay all claims of members who did not receive proper Age 29 Law notification, where those claims were denied due to lack of coverage.

We are, therefore, enclosing a check(s) for claims you made for medical services that were previously denied due to lack of coverage. For your convenience, the statement attached to your reimbursement check(s) contains the date(s) of medical services for which payments are included in your reimbursement.

We apologize for any confusion this may have caused you. If you have any questions, you may contact EmblemHealth at _____. Also, if for any reason you think the reimbursement amount is inaccurate or that the reimbursement should include services on other dates, you may submit a written objection within thirty (30) days. Your submission should include documentation that supports your objection and be sent to:

[address for submission of objections]

If you have any concerns regarding obtaining an appropriate reimbursement, or if you disagree with Emblem's determination regarding a written objection, you may contact the OAG's Health Care Bureau for assistance by phone at (800) 428-9071 or by writing to:

NYS Office of the Attorney General
Health Care Bureau
The Capital, Albany, N.Y. 12224-0341

Yours truly,
