

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into by Julie A. Su, Acting Secretary of Labor, United States Department of Labor (the “Secretary”), and EmblemHealth, Inc. (“Emblem”) (collectively, the “Parties”), to settle all claims and issues arising out of, resulting from, or relating to the Secretary’s investigation of potential violations by Emblem of the provisions of Title I of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001 *et seq.*, with respect to the administration of ERISA-covered health benefits plans (the “Affected Plans”).

The Parties agree as follows:

I. PROSPECTIVE RELIEF

I.A. Emblem shall refrain from engaging in cross-plan offsetting while administering any Affected Plan. Cross-plan offsetting refers to the practice by which Emblem recoups alleged overpayments to a healthcare provider under one Affected Plan by reducing subsequent payments owed to the same provider or plan participants under a different Affected Plan.

I.B. Emblem shall take all steps necessary to ensure that the Affected Plans and Emblem’s policies, procedures, and practices are amended effective no later than January 1, 2024, or as soon as reasonably practical for insured plans subject to state regulatory authority, to eliminate references to the practice of cross-plan offsetting with respect to the Affected Plans.

II. RETROSPECTIVE RELIEF

II.A. By January 1, 2024, Emblem shall repay to any current or former participants or beneficiaries of any Affected Plan or their estates (collectively, the “Affected Participants”) the amount of any reduction in reimbursement by Emblem to that Affected Participant that occurred

as a result of Emblem's cross-plan offsetting from July 16, 2015 through the date of this Agreement.

II.B. By January 1, 2024, Emblem shall send Exhibit A to this Agreement as a letter by first class mail to all Affected Participants of any Affected Plan at any time from July 16, 2015 through the date of this Agreement, as to whom Emblem's records indicate Emblem withheld payment to a provider of \$50.00 or more pursuant to its cross-plan offsetting practice on any claim. Emblem shall send the letter to the Affected Participants at their last known address (or to the estates of deceased participants, if known to Emblem), notifying Affected Participants of the possible availability of the retrospective relief detailed in this Section II.

II.C. By January 1, 2024, Emblem shall send the text of Exhibit A to this Agreement by email to Affected Participants of any Affected Plan at any time from July 16, 2015 through the date of this Agreement, as to whom Emblem's records indicate Emblem withheld payment to a provider pursuant to its cross-plan offsetting practice on any claim. Emblem shall send the text of the Exhibit A to the Affected Participants at their last known email address (or to the estates of deceased participants, if known to Emblem), notifying Affected Participants of the possible availability of the retrospective relief detailed in this Section II.

II.D. Should Emblem have actual notice that any Affected Participant does not receive a letter and also does not receive an email (either because it was undeliverable or Emblem did not have the Affected Participant's last known e-mail address) as described in paragraphs II.B and C above, Emblem shall make the reasonable best efforts described in this paragraph within 30 days of such notice to identify and reach such participants (including but not limited to phoning Affected Participants to ask for an updated email address or mailing address, and thereafter sending a new copy by email or first class mail). Actual notice means that an Affected Participant's letter is

returned to Emblem by the U.S. Postal Service as “undeliverable,” “unclaimed,” or “return to sender,” and Emblem is notified via email that the Affected Participant’s email was not delivered for any reason.

II.E. Emblem shall post a notice on any web portal maintained for participants’ access containing the language of Exhibit B to this agreement in a conspicuous, easy to access location.

II.F. Emblem shall allow Affected Participants up to 365 days from the date Emblem sends the letters and emails described in paragraphs II.B and C and posts the notices described in paragraph II.E to contact Emblem to request relief under this Agreement.

II.G. For any Affected Participants who contact Emblem to seek retrospective relief in response to the letter, Emblem shall undertake a review of whether since July 16, 2015, the participant incurred any out-of-pocket costs as a result Emblem’s cross-plan offsetting practice. For any Affected Participants who incurred out-of-pocket costs as a result of Emblem’s cross-plan offsetting practice and for whom there is appropriate documentation of same submitted to Emblem in the time provided hereunder, Emblem shall reimburse Affected Participants in the amount of the out-of-pocket costs, including any fees, penalties, or interest incurred by the Affected Participant, as described in paragraph II.J below.

II.H. In determining whether Affected Participants were balance billed by providers as a result of Emblem’s cross-plan offsetting practice, Emblem may make reasonable requests of participants for corroborating documentation, provided that Emblem shall take reasonable steps to determine if Affected Participants were balance billed using information in Emblem’s possession. Such steps may include, without limitation, Emblem comparing amounts billed to Affected Participants against Emblem’s records showing the amount allowed for the relevant claims and any amount offset from payments to providers. In such a case, if the Affected Participants’ bills

are higher than the allowed amount and cross-plan offsetting was applied to the claim, Emblem shall accept that as conclusive evidence that the Affected Participants were balance billed by providers as a result of Emblem's cross-plan offsetting practice.

II.I. In determining whether Affected Participants incurred out-of-pocket costs as a result of Emblem's cross-plan offsetting practice, Emblem may make reasonable requests of participants for corroborating documentation, provided that Emblem shall accept as conclusive any of the following, or any other appropriate documentation sufficient to show out-of-pocket costs (provided that the documentation is connected to a claim to which cross-plan offsetting applied and for which the Affected Participant was balance billed by the provider):

- evidence of payment of a provider's bill by the Affected Participant (including any interest, fees, or penalties connected to the payment of the bill);
- evidence of payment by the Affected Participant to a collection agency on behalf of a provider (including any interest, fees, or penalties connected to the payment);
- evidence of a garnishment or lien against an Affected Participant arising from an unpaid provider bill; or
- evidence of court costs or allowed attorney's fees paid by an Affected Participant in a legal proceeding commenced due to the cross-plan offsetting practice.

In order to be entitled to any relief under this Section II, Emblem may require that all documentation required herein be provided within 180 days (but not less than that) of the latest date of any request(s) made by Emblem to the Affected Participant under paragraphs II.H or II.I above.

II.J. For any Affected Participants who contact Emblem and satisfy the requirements in paragraphs II.H and II.I for retrospective relief provided herein, Emblem shall undertake the following as applicable:

- a. to reimburse the Affected Participant for out-of-pocket costs as a result of the cross-plan offsetting practice. Emblem shall reimburse such Affected Participants within 30 days of Emblem's receipt of the documentation referenced in Para. II.H and II.I above; and/or
- b. to make reasonable best efforts to resolve any outstanding bill, collection, or collection action so that the Affected Participant does not incur any out-of-pocket costs as a result of the cross-plan offsetting practice (including out-of-pocket costs incurred as a result of interest, fees, costs, or penalties arising from collections or a collections action). Such efforts may include, without limitation, negotiating an agreement with the provider or collections agency for payment to the provider or collection agency for the services for which the cross-plan offsetting was imposed on the provider, including obtaining a release of the Affected Participant for any liability for the bills at issue, inclusive of accrued interest, fees, and penalties. Emblem shall make best efforts to resolve any outstanding bills or collection actions within 30 days of Emblem's receipt of the documentation referenced in Para. II.H and II.I. above.

II.K. For any Affected Participant for whom Emblem provides retrospective relief pursuant to this Agreement, Emblem shall notify in writing such participant of the opportunity to provide evidence of adverse information in the participant's credit report related to the bill resolved by Emblem and to request that Emblem notify each of the three major consumer reporting agencies

of the resolution of this claim and attaching a copy of this Agreement. Prior to providing notification to the consumer reporting agencies, Emblem may require that such participant provide written consent prior to Emblem providing such corrective notice to the consumer reporting agencies.

II.L. Emblem shall provide written reports to the Secretary, through the U.S. Department of Labor's Employee Benefits Security Administration's New York Regional Office, via e-mail to licetti.thomas@dol.gov¹ or via First Class Mail to: Regional Director, Employee Benefits Security Administration, 201 Varick Street, Room 746, New York, NY 10014, including the following: (1) the identities of each Affected Participant who requested retrospective relief, along with the dates such requests were made; (2) a short statement of the reasons why each claim was granted, denied in part, denied in full, or remains pending, and the date(s) of such action(s); and (3) for any Affected Participants for which Emblem gained actual notice that its notification letter and email were not received, as described in Para II.D above, the step(s) taken to identify and reach those Affected Participants and the date those step(s) were taken. Emblem shall also include in its first written report a summary of the number of Affected Participants it notified by mail and email and the date(s) on which it did so. Emblem shall provide reports every six months during the two-year period following the date of execution of this Agreement, with a supplemental report every 12 months as long as any retrospective relief claim remains unresolved with Emblem. Emblem shall cooperate with the Secretary's reasonable requests for additional information regarding Affected Participants' requests to Emblem for retrospective relief and regarding Emblem's adjudication of those requests.

¹ If there is a change to the email address to which the reports are to be submitted, the Secretary will notify Emblem of this change by emailing JChansler@EmblemHealth.com and CManalansan@emblemhealth.com.

III. OTHER TERMS

III.A. This Agreement is a binding contract and all parties hereto are bound to perform hereunder as set forth herein. The respective obligations of Emblem and of the Secretary hereunder are binding upon each of them and their respective successors and assigns, and the obligations of each are fully enforceable by the other. Emblem and the Secretary waive any challenge they may have to the enforceability of this Agreement.

III.B. Emblem has executed a conditional Consent Order and Judgment which is attached as Exhibit C to this Agreement. The Secretary shall not file in any court, or seek to enforce, the Consent Order and Judgment against Emblem, or file a complaint relating to the terms of this Agreement or the Consent Order and Judgment, unless (a) Emblem has failed to abide by any material term of this Agreement, and (b) in the case where the Secretary alleges that Emblem has not abided by any material term of this Agreement, the Secretary has complied with paragraph III.C. below.

III.C. Emblem agrees that the Secretary may seek to enforce the fully executed Consent Order and Judgment against Emblem or otherwise seek to file a complaint against Emblem if Emblem violates a material term of this Agreement; provided, however, that the Secretary first satisfies the following procedures of this paragraph:

- a. Should the Secretary conclude that Emblem has violated a material term of this Agreement, the Secretary shall provide written notice to Emblem providing a description of the alleged violation of the Agreement, including the provision of this Agreement that the Secretary asserts has been violated and the factual basis on which the Secretary asserts such provision has been violated.

- b. Upon Emblem's receipt of such notice, the Parties agree to meet and confer in good faith to resolve the alleged violation no later than thirty (30) days following the Secretary's sending of such notice.
- c. Should the parties be unable to resolve the dispute by means of good faith negotiations or Emblem fail to cure the asserted violation within thirty (30) days following the meet and confer described in subparagraph III.C.b, the Secretary may seek to enforce the Consent Order and Judgment in a court of competent jurisdiction.
- d. Reasonable delays in executing the relevant provisions of the Agreement that are outside the control of Emblem shall not be deemed a "material breach" of the Agreement.

III.D. In any action brought by the Secretary to enforce the Consent Order and Judgment against Emblem, Emblem waives any defense based upon the passage of time for claims on or after July 16, 2015, including but not limited to any statute of limitations defense.

III.E. Each party shall bear its own fees and expenses in connection with any stage of this settlement and the investigation of this matter.

III.F. Each signatory to this Agreement expressly acknowledges and represents that they are authorized and empowered to enter into this Agreement on behalf of the party represented.

III.G. If any provision of this Agreement is declared null and void by a competent court with jurisdiction over the matter for any reason, such provision is considered severable, separate, and apart from the remainder of the Agreement, and the remainder of the Agreement remains in full force and effect.

III.H. This Agreement may be executed in counterparts and/or by electronic signature, each of which will be deemed to be an original.

This Agreement has been executed by each of the parties on and as of the date indicated below the Secretary's signature line which follows.

FOR THE SECRETARY OF LABOR:

Dated: September 29, 2023

/s/ Amanda M. Wilmsen

AMANDA M. WILMSEN
AMY TAI
Trial Attorneys

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Attorneys for Acting Secretary of Labor

FOR EMBLEMHEALTH, INC.:

Dated: September 29, 2023



JEFFREY CHANSLER
Chief Legal Officer

/s/ /s/

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Attorneys for EmblemHealth, Inc.

Exhibit A

Exhibit A to Settlement Agreement

EMBLEMHEALTH, INC.
55 WATER STREET
NEW YORK, NY 10041
[Phone] [Fax]

[Date]

[Address]

Dear _____:

EmblemHealth is reviewing out-of-network medical claims that were processed on your behalf during the period from July 16, 2015 to September 30, 2023 as the result of an agreement with the U.S. Department of Labor.

Participants, such as yourself, may have been responsible for payments to out-of-network providers that should have been covered by your EmblemHealth insurance plan. Specifically, as part of EmblemHealth's agreement with the U.S. Department of Labor, you are entitled to reimbursement from EmblemHealth for any amount that your provider charged you as a result of EmblemHealth withholding payment to your provider because EmblemHealth previously overpaid your provider for a claim not related to you or your beneficiaries. If EmblemHealth withheld payment to your provider for this reason, it would be reflected on any Explanations of Benefits (EOBs) with the code "860 ADJUST/VOID CLAIM-ABNORMAL-EFFECTS 1099 AMT & NOT REMITS".

According to our records, in [year(s)] you received medical services from out-of-network providers submitted as claims to EmblemHealth from which EmblemHealth withheld payment to the provider for EmblemHealth's previous alleged overpayments to the provider. As a result, in that year, your provider may have billed you for some, all, or a portion of the amount withheld by EmblemHealth.

If you incurred out-of-pocket costs related to out-of-network medical services in [year(s)] resulting from the practice described above, please contact EmblemHealth at [number] or complete and return the enclosed form using the enclosed envelope. Examples of out-of-pocket costs may include:

- Paying a bill from a medical provider (including paying interest, fees, or penalties for late payment);
- Paying a collection agency hired by a provider (including interest, fees, or penalties);
- Having your wages garnished or a lien imposed because of an unpaid medical bill;
- Defending a legal proceeding regarding an unpaid medical bill; and/or
- Declaring bankruptcy because of a medical bill.

Exhibit A to Settlement Agreement

Keep in mind that the out-of-pocket costs referred to above must be costs that you incurred because your provider billed you as a result of EmblemHealth withholding payment to your provider due to a previous overpayment it paid to your provider, not for any other reason, including cost sharing, like copays, coinsurance and deductibles required under your plan.

Additionally, if you are still being billed by a medical provider or hospital or pursued by a collection agency because of a previous alleged overpayment by EmblemHealth to your provider, please contact EmblemHealth. We will make our best efforts to try to resolve the outstanding bill or collections.

You have up to 365 days from the date of this letter to contact us about this issue, but we would prefer to hear from you as soon as possible. If you do not contact us within 365 days from the date of this letter, any right to review by EmblemHealth that you may have under this letter will be considered to be waived.

Please keep in mind that the settlement with the U.S. Department of Labor does not change participants' responsibilities for other copays and co-insurance requirements required under the Plan, including that participants may be responsible for a significant share of out-of-network claims or services that are not covered by the Plan. *If your medical bills result from other cost-sharing provisions of your plan rather than previous alleged overpayments to your provider, you would not be eligible for reimbursement by EmblemHealth as set forth in this letter.*

Thank you for your prompt response. If you have any questions, please call EmblemHealth at [number].

Sincerely,

[Name]

[Title]

Exhibit A to Settlement Agreement

[Enclosed Form]

Name: _____

[Other required information: _____]

I may have incurred out-of-pocket costs related to out-of-network medical services because of alleged previous overpayment(s) to my providers (for example, because I received an Explanation of Benefits (EOB) with the code “860 ADJUST/VOID CLAIM-ABNORMAL-EFFECTS 1099 AMT & NOT REMITS”): _____

Date(s) of bill(s): _____

Date(s) of payment(s): _____

I have attached the following:

- ____ Evidence of payment of a provider’s bill, including any interest, fees, or penalties connected to the payment of the bill.
- ____ Evidence of payment to a collection agency on behalf of a provider, including any interest, fees, or penalties connected to the payment.
- ____ Evidence of a garnishment or lien against me arising from an unpaid provider bill.
- ____ Evidence of court costs or allowed attorney’s fees paid in a legal proceeding commenced against me.
- ____ Other: _____

Exhibit B

NOTICE

EmblemHealth is reviewing out-of-network medical claims that were processed during the period from July 16, 2015 to September 30, 2023 as the result of an agreement with the U.S. Department of Labor.

Participants, such as yourself, may have been responsible for payments to out-of-network providers that should have been covered by your EmblemHealth insurance plan if your plan is offered by a private employer. Specifically, as part of EmblemHealth's agreement with the U.S. Department of Labor, you are entitled to reimbursement from EmblemHealth for any amount that your provider charged you as a result of EmblemHealth withholding payment to your provider because EmblemHealth previously overpaid your provider for a claim not related to you or your beneficiaries. If EmblemHealth withheld payment to your provider for this reason, it would be reflected on any Explanations of Benefits (EOBs) with the code "860 ADJUST/VOID CLAIM-ABNORMAL-EFFECTS 1099 AMT & NOT REMITS".

If you incurred out-of-pocket costs related to out-of-network medical services in [year(s)] resulting from the practice described above, please contact EmblemHealth at [number]. Examples of out-of-pocket costs may include:

- Paying a bill from a medical provider (including paying interest, fees, or penalties for late payment)
- Paying a collection agency hired by a provider (including interest, fees, or penalties)
- Having your wages garnished or a lien imposed because of an unpaid medical bill
- Defending a legal proceeding regarding an unpaid medical bill
- Declaring bankruptcy because of a medical bill.

Keep in mind that the out-of-pocket costs referred to above must be costs that you incurred because your provider billed you as a result of EmblemHealth withholding payment to your provider due to a previous overpayment it paid to your provider, not for any other reason, including cost sharing, like copays, coinsurance and deductibles required under your plan.

Additionally, if you are still being billed by a medical provider or hospital or pursued by a collection agency because of a previous overpayment by EmblemHealth to your provider, please contact EmblemHealth at [number]. We will make our best efforts to try to resolve the outstanding bill or collections.

You have until [365 days from posting date] to contact us about this issue, but we would prefer to hear from you as soon as possible. If you do not contact us within that time period, any right to

Exhibit B to Settlement Agreement

review by EmblemHealth that you may have under this notice will be considered to be waived.

Please keep in mind that the settlement with the U.S. Department of Labor does not change participants' responsibilities for other copays and co-insurance requirements required under the Plan, including that participants may be responsible for a significant share of out-of-network claims or services that are not covered by the Plan. *If your medical bills result from other cost-sharing provisions of your plan rather than previous alleged overpayments to your provider, you would not be eligible for reimbursement by EmblemHealth as set forth in this notice.*

Exhibit C

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

----- :
SECRETARY OF LABOR, :
United States Department of Labor, :
 :
Plaintiff, :
 :
v. : Civil Action No.
 :
EMBLEMHEALTH, INC., :
 :
Defendant. :
----- :
 :

CONSENT ORDER AND JUDGMENT

The Secretary of Labor, United States Department of Labor (the “Secretary”) and Defendant EmblemHealth, Inc. (“Emblem”), have agreed to resolve all matters in controversy in this action between them pursuant to the terms of a Settlement Agreement dated September 29, 2023 (the “Settlement Agreement”), which included their mutual agreement on the following terms of this Consent Order and Judgment (“Order”) as a compromise and settlement of all such matters which are alleged in the Secretary’s Complaint.

WHEREAS this action was filed by the Secretary pursuant to Title I of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, *et seq.* (“ERISA”), and by the authority vested in the Secretary by sections 502(a)(2) and (5) of ERISA, 29 U.S.C. §§ 1132(a)(2) and (5);

WHEREAS the Complaint alleges that Emblem violated ERISA sections 404(a)(1)(A), (B), and (D); 406(a)(1)(D), (b)(1), and (b)(2); and 503, 29 U.S.C. §§ 1104(a)(1)(A), (B), and (D); 1106(a)(1)(D), (b)(1), and (b)(2); and 1133;

WHEREAS Emblem acknowledges service of the Complaint and admits that the Court has jurisdiction over the parties and the subject matter of this action;

WHEREAS Emblem waives its answer and has agreed not to submit any filing in this matter denying the Secretary's allegations, without admitting or denying those allegations;

WHEREAS the Secretary has agreed to resolve all claims asserted in the Complaint against Emblem for the relief set forth below;

WHEREAS, Emblem does not challenge that the present enforcement action by the Secretary was brought within the applicable limitations period for such actions and waives any defense based upon the passage of time including, but not limited to, any statute of limitations defense for claims on or after July 16, 2015;

WHEREAS, the Secretary and Emblem expressly waive any further findings of fact and conclusions of law, and consent to the entry of this Order as a full and complete resolution of all of the claims and issues arising between them, or could have arisen between them, in this action without trial or adjudication of any issue of fact or law raised in the Secretary's Complaint;

ACCORDINGLY, it is ORDERED, ADJUDGED, and DECREED as follows:

1. The Court has jurisdiction over the parties to this Order and the subject matter of this action and is empowered to provide the relief herein.
2. Emblem is enjoined from violating any provision in the parties' Settlement Agreement, which is incorporated herein by reference and attached hereto as Exhibit 1.
3. Within thirty (30) days of the entry of this Order, and to the extent that they have not already done so, Emblem shall refrain from engaging in cross-plan offsetting while administering any ERISA-covered health benefits plan ("Affected Plan") as set forth in section I.A. of the Settlement Agreement.

4. Within thirty (30) days of the entry of this Order, and to the extent that they have not already done so, Emblem shall take all steps necessary to ensure that the Affected Plans and Emblem's policies, procedures, and practices are amended and effective as set forth in section I.B. of the Settlement Agreement.

5. Within thirty (30) days of the entry of this Order, and to the extent that they have not already done so, Emblem shall repay to any current or former participants or beneficiaries of any Affected Plan or their estates (collectively, the "Affected Participants") the amount of any reduction in reimbursement by Emblem to that Affected Participant that occurred as a result of Emblem's cross-plan offsetting from July 16, 2015 through the effective date of the amendments described in paragraph 4 of this Consent Judgment, as set forth in section II.A. of the Settlement Agreement.

6. Within thirty (30) days of the entry of this Order, and to the extent that they have not already done so, Emblem shall comply with all provisions of sections II.B.-II.L. of the Settlement Agreement.

7. By consenting to the entry of this Order, all parties represent that they, along with their respective successors and assigns, agree to be bound by its terms and the terms of Exhibit 1 hereto, and cannot appeal this Order. Emblem expressly represents that it will abide by any further Orders of this Court, subject to its right to appeal from such additional Orders. This Order is not binding on any governmental agency other than the United States Department of Labor.

8. Each party will bear their own costs, expenses, and attorneys' fees in connection with any stage of this proceeding and any investigation incident thereto.

9. Emblem expressly acknowledges that it has notice of and understands the provisions of this Order; acknowledges its responsibilities pursuant to this Order; and

acknowledges that it, along with its officers, agents, employees, and attorneys, and other persons who are in active concert or participation with them may be subject to sanctions in contempt of this Court if they fail to comply with the provisions of this Order.

10. Each signatory to this Order expressly acknowledges and represents that they are authorized and empowered to consent to this Order on behalf of the party represented.

11. If any provision of this Order is declared null and void by a competent court with jurisdiction over the matter for any reason, such provision shall be considered severable, separate, and apart from the remainder of the Order, and the remainder of the Order will remain in full force and effect.

12. This Court shall retain jurisdiction over this matter following its entry of the Consent Judgment, for purposes of enforcing this Consent Judgment.

13. This Order may be executed in counterparts and/or by electronic signature, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

The Court finds that there is no just reason to delay the entry of this Order and, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, expressly directs the entry thereof as a final Order.

SO ORDERED:

DATED: _____
New York, New York

UNITED STATES DISTRICT JUDGE

The Parties hereby consent to the entry of this Judgment.

FOR EMBLEMHEALTH, INC.:



09/29/2023

JEFFREY CHANSLER
Chief Legal Officer

Date

/s/ /s/

9/29/23

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9/29/23

Date

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