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problem is highlighted by the fact that suicide consistently ranks as the third leading cause of death for young people ages 15–24.

2. According to the Office of the Attorney General of New York (“OAG”), every year, almost one in four New Yorkers has symptoms of a mental disorder. In any given year, one in ten adults and children experience mental health challenges serious enough to affect functioning in work, family, and school life. Mental illness is a leading cause of disability, death (via suicide), school failure, poor overall health, incarceration, and homelessness. Lack of access to the appropriate treatment caused by a health plan’s coverage denials has serious consequences for insureds.

3. In recognition of the crisis in mental healthcare, the New York State Legislature enacted the New York Parity Law (“Timothy’s Law”), mandating that New York group health plans provide “broad-based coverage for the diagnosis and treatment of mental, nervous or emotional disorders or ailments, . . . at least equal to the coverage provided for other health conditions.” N.Y. Ins. Law. § 3221(l)(5)(A). Further, Timothy’s Law requires that an insurer “which provides coverage for inpatient hospital care or coverage for physician services shall provide comparable coverage for adults and children with biologically based mental illness,” and “for children with serious emotional disturbances . . . under the terms and conditions otherwise applicable under the policy.” N.Y. Ins. Law § 3221(l)(5)(B)(i).

4. As an insurer offering coverage under group health plans to approximately 3.4 million New York consumers—1.18 million of whom are New York City employees and retirees—Emblem is obligated to comply with Timothy’s Law. Unfortunately, it does not.

5. Last year, for example, Emblem was forced to enter into an Assurance of Discontinuance (“the AOD”) with the OAG, effective July 3, 2014, following an investigation by

the OAG into customer complaints against Emblem alleging improper denials of coverage for behavioral health services (including both mental health and substance use disorder services) that violated Timothy's Law. Pursuant to the AOD, Emblem agreed, *inter alia*, to cover medically necessary residential treatment for behavioral health conditions and discontinue the practices that violated the statute.

6. In spite of its representations in the AOD, however, Emblem continues to act in flagrant disregard of Timothy's Law and in direct contravention of its agreement with the OAG. Emblem illegally denies coverage for residential treatment of mental illness by ignoring comorbid conditions (i.e., situations in which a patient suffers from more than one mental illness) and generally accepted standards of good medical practice in the community. It also applies arbitrary deadlines for patient improvement that find no support in sound medical practice.

7. Through this action, Plaintiffs seek redress for Defendants' improper denials of insurance coverage for Jane Doe's medically necessary mental healthcare. In denying her care, Defendants not only violated Timothy's Law, they also violated the terms of the health insurance plan they were charged with administering. Additionally, because Defendants have misled consumers to believe that they faithfully honor their obligations to cover mental healthcare in the same manner in which they cover other forms of healthcare, they also violated Section 349 of the General Business Law.

PARTIES

8. Plaintiff Bonnie Birnbaum ("Mrs. Birnbaum") is a retired New York City public school teacher. Mrs. Birnbaum receives health insurance for herself and her family through the fully insured GHI City of New York Employees and Retirees Comprehensive Benefits Plan ("the

City Employees Plan”). As a retiree covered by the group health care plan, Mrs. Birnbaum is a third-party beneficiary of the insurance contract between the City of New York and GHI. Mrs. Birnbaum currently resides in Brooklyn, New York.

9. Plaintiff Jane Doe (“Jane”) is the fifteen year old daughter and dependent of Mrs. Birnbaum. Jane is a beneficiary under the City Employees Plan. Jane’s insurance coverage is through her mother’s former employment with the City of New York. As the dependent of Mrs. Birnbaum, Jane is a third-party beneficiary of the insurance contract between the City of New York and GHI.

10. Defendant Emblem is a not-for-profit corporation that was formed in 2006 through the merger of GHI and the Health Insurance Plan of Greater New York (“HIP”). Emblem’s principal offices are located at 55 Water Street, New York, NY 10041.

11. Defendant Emblem Services is an entity that provides administrative services to Emblem’s companies. Its principal offices are also located at 55 Water Street, New York, NY 10041.

12. Defendant GHI is a subsidiary of Emblem which acts as the medical claims administrator, insurer, and underwriter for the City Employees Plan. The City Employees Plan has delegated all coverage decisions to GHI, which has in turn delegated coverage decisions involving behavioral healthcare to non-party ValueOptions, Inc. (“ValueOptions”). GHI’s principal offices are located at 441 Ninth Avenue, New York, NY 10001.

JURISDICTION AND VENUE

13. This Court has personal jurisdiction over Defendants because they each transact business within the State of New York.

14. This Court has subject matter jurisdiction over this action because the causes of action asserted by Plaintiffs arise under the common law and the laws of the State of New York.

15. Pursuant to CPLR 503(a), venue is proper in this Court because Plaintiffs reside in Kings County.

FACTUAL ALLEGATIONS

Factual Allegations Regarding Jane Doe

16. Jane is a fifteen year old girl with a history of behavioral and mental disorders. She suffers from oppositional defiant disorder (“ODD”), major depression, and substance abuse.

17. In the third grade, Jane was diagnosed with Attention-Deficit/Hyperactivity Disorder due to her lack of concentration and inability to complete assignments. In the sixth grade, Jane was suspended from school for throwing a teacher’s belongings in the trash. In the eighth grade, Jane was expelled.

18. Jane began attending a therapeutic day school in the ninth grade but refused to return the following year, opting for an online education. In 2013, Jane began using ketamine, marijuana, alcohol, cocaine, and other narcotics. She received outpatient substance abuse treatment and subsequently obtained residential substance abuse treatment at the Caron Foundation on January 8, 2014.

19. Though Defendants’ behavioral health claims administrator, ValueOptions, expressly noted in its internal claims file that Jane’s “relapse/continued use potential: [was] high,” that she was recently shunned by her community, and that she experienced sufficient difficulties to be referred to the Caron Foundation by her school, ValueOptions, categorically denied her residential treatment. In a denial letter dated January 9, 2014, Defendants, through ValueOptions, wrote that “the review does not indicate . . . the likelihood of relapse requiring

treatment at the residential treatment setting level of care.” A January 9, 2014 reconsideration of Value Options’ denial, citing to ValueOptions Medical Necessity Criteria, 4.301, for Residential Substance Abuse Treatment, upheld the adverse determination on the same basis and added that Jane did “not have withdrawal symptoms”—despite the fact that ValueOptions Medical Necessity Criteria, 4.301 expressly disavows withdrawal symptoms as a precondition for substance abuse rehabilitation coverage.

20. With the help of family and friends, Jane’s parents paid approximately \$30,000 for Jane to remain at Caron until March 10, 2014. This cost was never reimbursed by Defendants.

21. Following her brief residential treatment at Caron, which was all her parents could afford, Jane remained defiant and repeatedly left her family home to attend raves for days at a time, in which she used illegal drugs and engaged in other high risk behavior. In February 2015, Jane and two adult males were found in a vehicle containing drugs and were arrested for possession. Jane’s probation officer subsequently agreed that she should be treated in a residential treatment facility. On March 12, 2015, Jane was admitted to Evolve Residential Treatment Center (“Evolve”) in California, which, as its website states, “is designed to support clients, 13-18 years old, struggling with mental health, addiction, and behavioral issues.”

22. At Evolve, Jane was diagnosed with severely impairing oppositional defiant disorder (“ODD”), major depression, and substance abuse. She displayed profound impairments, including, but not limited to: (1) oppositionality with frequent outbursts; (2) impulsivity; (3) lack of insight and judgment; (4) lack of responsibility; (5) lack of coping skills; and (6) a history of substance abuse with continued denial.

23. Jane's providers at Evolve also found that unresolved familial conflict had led to decompensation and had triggered relapse. Further, because of severe parent-child conflict, familial tensions, and parental infirmity (brought about by chronic health conditions), Jane lacked the environmental supports necessary to promote recovery through outpatient treatment.

24. On April 8, 2015, following a discussion with Evolve, ValueOptions noted in its internal claims file that Jane was:

UNABLE TO BE SAFE OUTSIDE OF MILIEU. NO SAFE D/C [discharge] PLAN IN PLACE. MEDS [medications] MUST BE INITIATED TO ADDRESS MBR [member] SX [symptoms]. IF NOT, WILL NEED TO BE SENT FOR MED NEC [medical necessity review] DUE TO LACK OF TREATMENT . . . IF NO MEDS INITIATED, DENY FOR LACK OF TREATMENT.

Ironically, while Defendants recognized Jane's continued risk factors and her unwillingness to take medication prescribed to treat her major depression, they perversely focused on her refusal to accept that medication as a sign of inactive treatment. In doing so they completely ignored her comorbid ODD diagnosis, the fact that her refusal to take depression medication was a manifestation of that condition, and the fact that medication for depression was a small part of the overall treatment she was receiving at Evolve, which included a host of intensive psychosocial interventions.

25. ValueOptions' failure to recognize the relationship between Jane's ODD diagnosis and her other conditions was not accidental. Although ValueOptions maintains clinical practice guidelines² (including those published by the American Academy of Child and Adolescent Psychiatry ("AACAP")) related to the diagnosis or treatment of most other mental disorders (including major depression), conspicuously missing from ValueOptions' database are any of the widely recognized practice guidelines (including AACAP's) for ODD and other

² Clinical practice guidelines are defined as "evidence-based recommendations to assist practitioners in determining what is covered in medical care under our health benefit plans."

serious emotional disturbances of children and adolescents. *See* <http://www.emblemhealth.com/en/Providers/Provider-Resources/Clinical-Corner/Clinical-Practice-Guidelines.aspx> (last visited June 19, 2015); http://www.valueoptions.com/providers/Handbook/treatment_guidelines.htm (last visited June 19, 2015). Defendants act as if ODD is not a condition covered by their plans.

26. On April 13, 2015, Defendants, through ValueOptions, faxed Evolve an Initial Adverse Determination stating that Jane’s residential treatment would not be covered after April 10, 2015—just 30 days after Jane’s admission. In the Initial Adverse Determination letter, citing ValueOptions Medical Necessity Criteria, 3.301, for Adolescent Residential Treatment, ValueOptions stated:

You continued to be depressed and anxious, and you exhibited impulsive and inappropriate behavior. You had remained unwilling to take the recommended medication to improve your symptoms, despite repeated staff attempts to get you to change your mind regarding this decision. There was no evidence that an active treatment plan was in effect that was likely to further resolve your ongoing symptoms within a specific timeframe. . . . Your mental health needs would have been better met by a long-term care facility such as a state hospital. Therefore, additional days of residential mental health treatment cannot be certified.

27. Following receipt of Jane’s insurance policy, on May 7, 2015, Evolve faxed an expedited appeal on Jane’s behalf, emphasizing that an active treatment plan was in place for Jane and that she had not yet received maximum benefits from residential treatment. Evolve noted that Jane’s condition actually necessitated continued services at a residential treatment facility pursuant to accepted standards of good medical practice in the community, for which numerous sources of authority were cited.

28. On May 8, 2015 at 5:17 p.m. EST, a representative from ValueOptions left Evolve a voicemail regarding Jane’s expedited appeal and requested that Jane’s provider call ValueOptions back for a “peer review” within just 47 minutes of the message being left (by ValueOptions’ close of business at 6:00 p.m. EST). The representative only referenced Jane by

an identification number, rather than her name. This made it impossible for any reasonable person to determine to which patient ValueOptions' voicemail referred and to call back before the close of business.

29. At 7:22 p.m. EST (1 hour and 22 minutes after ValueOptions' close of business), a different representative from ValueOptions left another voicemail denying Jane's appeal but misstating and misspelling her name.

30. On May 11, 2015, ValueOptions issued a Final Adverse Determination letter denying coverage for Jane's continued residential treatment. The letter stated:

You refused medications. You made no progress. You continued with passive thoughts about harming yourself. You had depression, agitation, and lability. As of 04/11/15, your symptoms would have been more appropriately treated in a long-term facility, such as a state hospital. Therefore, additional days in the current residential mental health facility could not be certified.

31. Finally, on May 12, 2015, Evolve received another voicemail from ValueOptions requesting a call back regarding the denial and the recommended level of care.

32. When a representative from Evolve returned ValueOptions' call, he was informed that Jane should seek treatment at a state hospital (notably *not* an inpatient facility that would be covered by the City Employees Plan), but that GHI was alternatively willing to cover outpatient treatment. The ValueOptions representative stated that it was the company's policy to refer adolescents to state hospitals when residential treatment was denied and a higher level of care was recommended by the insurer.

33. In other words, Defendants self-servingly attempted to shift their private obligations to the public by recommending a higher level of care paid for by the state, but then nonsensically agreed to cover a lower level of care that they acknowledged would be insufficient

to treat Jane's condition. In doing so, Defendants acted in violation of the City Employees Plan, Timothy's Law, and New York's General Business Law.

Coverage and Medical Necessity under the City Employees Plan

34. Defendants violated the terms of the Plan, which is a contract they entered into with the City of New York. As the intended third-party beneficiaries of that contract who have been harmed by Defendants' conduct, Plaintiffs seek to enforce their right to performance.

35. The Plan broadly covers medically necessary inpatient hospital care, physician services, and behavioral health care services.

36. Whether or not treatment is medically necessary is decided "in accordance with accepted standards of good medical practice in the community."

37. Among the behavioral health care services that the Plan covers are inpatient treatment of substance abuse disorders and inpatient mental health care services to diagnose and treat biologically based mental illness and children with serious emotional disturbances.³

38. Echoing Timothy's Law, *see* N.Y. Ins. Law. § 3221(1)(5)(B)(ii), the Plan defines biologically based mental illness as referring to one or more of the following conditions: schizophrenia/psychotic disorders, major depression, bipolar disorder, delusional disorders, panic disorder, obsessive-compulsive disorder, bulimia, and anorexia.

39. The Plan further states:

Children with serious emotional disturbances refer[s] to children less than eighteen (18) years of age with diagnoses of attention deficit disorders, disruptive behavior disorders, or pervasive development disorders, together with one (1) or more of the following conditions:

- Serious suicidal symptoms or other life threatening self-destructive behaviors;
- Significant psychotic symptoms (hallucinations, delusion, bizarre behaviors);

³ The Plan provides up to 365 days of such inpatient mental health care services for these conditions.

- Behavior caused by emotional disturbances that placed the child at risk of causing personal injury or significant property damage; or
- Behavior caused by emotional disturbances that placed the child at substantial risk of removal from the household.

Improper Coverage Denial at the Caron Foundation

40. In categorically denying coverage for Jane’s residential treatment at the Caron Foundation, Defendants failed to make a medical necessity determination in accordance with “accepted standards of good medical practice in the community,” as required by the Plan and reflected in their own behavioral health administrator’s guidelines. Just one day after Jane’s admission, ValueOptions denied coverage on the basis that Jane did not have a “likelihood of relapse” requiring residential treatment. Yet, ValueOptions’ internal claims file indicates that Jane’s “relapse/continued use potential” was “high.” When Jane’s provider requested reconsideration of the decision, ValueOptions denied coverage again on the same basis, but also added that Jane did not have “withdrawal symptoms.” Yet, ValueOptions Medical Necessity Criteria, 4.301, for Residential Substance Abuse Treatment, expressly disavows withdrawal symptoms as a precondition to substance abuse rehabilitation.

41. This was Defendants’ first breach of contract.

Improper Coverage Denial at Evolve

42. As stated in Evolve’s expedited appeal letter, GHI was required to provide coverage for Jane’s residential treatment under the terms of the City Employees Plan. Evolve cited several sources of accepted standards of medical practice in the community (including sources that ValueOptions claims to draw upon to create its own level of care guidelines), demonstrating that continued residential treatment was medically necessary for Jane Doe.

43. According to the *Principles of Care for Treatment of Children and Adolescents with Mental Illnesses in Residential Treatment Centers* developed by AACAP, for example,

“[t]he best intervention for serious mental health issues that cannot be treated in the child’s home environment is a facility that has a multidisciplinary treatment team providing safe, evidence-based care that is medically monitored.”

44. Moreover, the American Society of Addiction Medicine states in *The ASAM*

Criteria:

For adolescents, critical treatment interventions that require intensity and persistence over extended periods of time, such as modeling prosocial patterns of behavior and adaptive patterns of emotional responsiveness, have sometimes been likened to surrogate or remedial parenting. Just as important can be the induction into a healthy peer group, with the formation of a group identity that emphasizes recovery and overcoming adversity.

The adolescent who is appropriately placed in Level 3.5 [residential treatment] care typically has impaired functioning across a broad range of psychosocial domains. These impairments may be expressed as ***disruptive behaviors***, delinquency and juvenile justice involvement, educational difficulties, family conflicts and chaotic home situations, developmental immaturity, and psychological problems.

Such an adolescent may have a variety of psychological or psychiatric problems. ***Particularly suitable for Level 3.5 treatments are the entrenched patterns of maladaptive behavior, extremes of temperament, and developmental or cognitive abnormalities related to mental health symptoms or disorders.*** Examples of co-occurring disorders that often require extended treatment at Level 3.5 are conduct disorder and ***oppositional defiant disorder***, as well as the ***chronic patterns of disruptive behavior that may be associated with other disorders even after they have responded to acute treatment.*** Level 3.5 programs frequently work with aspects of adolescent temperament—including impulsive, extroverted, dramatic, antisocial, thrill-seeking, or other personality traits—that may otherwise have the potential to solidify as components of emerging personality disorders.

45. AACAP’s *Practice Parameter for the Assessment and Treatment of Children and*

Adolescents with Oppositional Defiant Disorder confirms:

These problems are not transient and lead to interference in several domains of functioning . . . ***Treatment must be delivered for an adequate duration (usually several months or longer)*** . . . Many authorities suggest that treatment of ODD, not unlike the treatment of [Conduct Disorder], be multitarget, multimodal, and ***extensive.***

46. AACAP's *Practice Parameter for the Assessment and Treatment of Children and*

Adolescents with Substance Use Disorder further states:

Longer duration of treatment is associated with several favorable outcomes . . . Control of substance use should not be the only goal of treatment. A broad concept of rehabilitation involves targeting associated problems and domains of functioning for treatment. Integrated interventions that concurrently deal with coexisting psychiatric and behavioral problems, family functioning, peer and interpersonal relationships, and academic/vocational functioning not only will produce general improvements in psychosocial functioning but most likely will yield improved outcomes in the primary treatment goal of achieving and maintaining abstinence.

47. The American Psychiatric Association's *Guideline for the Treatment of Patients*

with Substance Use Disorders states:

Residential treatment is indicated for patients who do not meet the clinical criteria for hospitalization but whose lives and social interactions have come to focus predominantly on substance use, who lack sufficient social and vocational skills, and who lack substance-free social supports to maintain abstinence in an outpatient setting. Residential treatment of **3 months** is associated with better long-term outcomes in such patients.

48. AACAP's *Practice Parameter for the Assessment and Treatment of Children and*

Adolescents with Depressive Disorders adds: "the decision for the level of care will depend primarily on level of function and safety to self and others, which in turn are determined by the severity of depression, presence of suicidal and/or homicidal symptoms, psychosis, substance dependence, agitation, child's and parents' adherence to treatment, parental psychopathology, and family environment."

49. Evolve also painstakingly explained that Jane qualified for residential treatment under the Child and Adolescent Level of Care Utilization System developed by AACAP and the American Association of Community Psychiatrists.

50. Yet, in responding to Jane's appeal, Defendants ignored Evolve's explanation of the medical necessity of continued residential treatment. Indeed, Defendants' claims files suggest

that their physician reviewer, Dr. Sydney Cohen, did not even read Evolve's written appeal, as his notes list only major depression as Jane's diagnosis. Without considering any of Evolve's arguments for continued treatment, Jane's ODD diagnosis, or the relationship between her comorbid conditions, Defendants simply denied coverage because Jane's condition had not improved in the short time that she was treated.

51. Moreover, now having received Jane's internal case file from ValueOptions, it is clear that Defendants' true reason for denying Jane further residential treatment was her unwillingness to accept medications for depression in the 30 days that she was treated. Yet this refusal was a direct manifestation of Jane's ODD which was a covered condition that Defendants ignored.

52. Of course, the fact that an individual has not yet responded to a treatment does not mean that the treatment is not medically necessary, particularly when dealing with conditions that *require* long-term treatment.

53. Indeed, ValueOptions' own guidelines acknowledge that, "[Residential Treatment Service] provides individuals with *severe and persistent* psychiatric disorders therapeutic intervention and specialized programming in a controlled environment with a high degree of supervision and structure." Moreover, ValueOptions' guidelines state that "[t]reatment decisions should be based on the assumption that individuals can and will improve and can and will make choices about their care and their lives, and [] treatment decisions should be designed to instill hope and pride."

54. In denying coverage of Jane's continued treatment at Evolve, ValueOptions failed to follow its own guidelines, and more importantly, accepted standards of good medical practice in the community, as required under the City Employees Plan.

55. Defendants, therefore, having delegated responsibility to ValueOptions for deciding behavioral health-related claims, acted in breach of their contract with the City of New York.

Violation of Timothy's Law

56. As previously stated, Timothy's Law requires an insurer issuing a health insurance group policy in New York, including Defendants', to provide "broad based coverage for the diagnosis and treatment of mental, nervous or emotional disorders or ailments, however defined in such policy, at least equal to the coverage provided for other health conditions." N.Y. Ins. Law § 3221(l)(5)(A). Moreover, an insurer "which provides coverage for inpatient hospital care or coverage for physician services," is required to "provide comparable coverage for adults and children with biologically based mental illness" and "for children with serious emotional disturbances . . . under the terms and conditions otherwise applicable under the policy." N.Y. Ins. Law § 3221(l)(5)(B)(i).

57. Therefore, Timothy's Law ***mandates*** that Emblem—as an insurer that provides coverage in its City Employees Plan for inpatient hospital care and coverage for physician services—also provide inpatient coverage for treatment of children with biologically based mental illness and/or serious emotional disturbances when it is medically necessary. This reflects the legislature's recognition of the critical need for inpatient care for long-term and chronic conditions.

58. Timothy's Law defines the term "biologically based mental illness" to mean "a mental, nervous, or emotional condition that is caused by a biological disorder of the brain and results in clinically significant, psychological syndrome or pattern that substantially limits the functioning of the person with the illness. Such biologically based mental illnesses are defined as

schizophrenia/psychotic disorders, major depression, bipolar disorder, delusional disorders, panic disorder, obsessive compulsive disorders, bulimia, and anorexia.” N.Y. Ins. Law § 3221(l)(5)(B)(ii).

59. Timothy’s Law further defines the term “children with serious emotional disturbances” to mean:

[P]ersons under the age of eighteen years who have diagnoses of attention deficit disorders, disruptive behavior disorders, or pervasive development disorders, and where there are one or more of the following:

- (i) serious suicidal symptoms or other life-threatening self-destructive behaviors;
- (ii) significant psychotic symptoms (hallucinations, delusion, bizarre behaviors);
- (iii) behavior caused by emotional disturbances that placed the child at risk of causing personal injury or significant property damage; or
- (iv) behavior caused by emotional disturbances that placed the child at substantial risk of removal from the household.

N.Y. Ins. Law § 3221(l)(5)(C).

60. Jane is entitled to coverage under Timothy’s Law not only for treatment of her major depression (a biologically based mental illness), but also for treatment of her ODD.

61. ODD is classified as a disruptive behavior disorder in the American Psychiatric Association’s *Diagnostic and Statistical Manual* (“DSM”). The DSM notes that ODD is characterized by a pattern of negativistic, hostile, and defiant behavior lasting at least six months, during which a minor often actively defies or refuses to comply with adults’ requests or rules.

62. Jane’s long-standing ODD has not only placed her at significant risk of personal injury (due to her repeatedly running away to use drugs), but it has also led to substantial risk of removal from her home (due to the potential for incarceration and, in ValueOptions’ self-serving opinion, institutionalization).

63. Therefore, Jane suffers from a serious emotional disturbance under the statute.

64. Yet based on ValueOptions' internal claims file for Jane, and Defendants' lack of clinical practice guidelines related to ODD, it is clear that Defendants did not even consider the condition in determining whether Jane's residential treatment was medically necessary. Rather, in denying Jane's claim, Defendants relied entirely on her unwillingness to accept medication for her depression, without independently considering her underlying ODD.

65. Even focusing exclusively on Jane's depression, Defendants acknowledged that further treatment was necessary, but at a higher level of care. Defendants simply refused to foot the bill for any further treatment. Instead, Defendants followed ValueOptions' practice of developing and implementing "a transition plan to alternative *community*-based resources."

66. The perversity of Defendants' position is highlighted by the fact that they offered to cover treatment at a *lower* level of care (outpatient treatment), after arguing that residential treatment had been inadequate for Jane's condition.

67. By refusing to acknowledge Jane's ODD diagnosis or cover residential treatment for it, Defendants acted in direct contravention of Timothy's Law's coverage mandate.

68. Moreover, by applying medical necessity criteria inconsistent with accepted standards of good medical practice in the community to Jane's comorbid conditions, Defendants violate the parity component of the Law.

69. Defendants provide full coverage of medically necessary analogous treatment for medical/physical conditions. For example, Defendants cover treatment at skilled nursing facilities ("SNF"), noting that "[o]ften a stay in an SNF is the needed step between the hospital and your own home." See http://www.emblemhealth.com/~media/Files/PDF/EMB_MB_BRO_6417_SkilledNursingFacility1.pdf.

70. Defendants discriminate against mental health claims by failing to provide coverage for such claims on equal terms.

Violation of the Assurance of Discontinuance

71. Defendants' conduct is especially alarming given Emblem's recent agreement with the OAG. In July 2014, Emblem entered into a settlement with the OAG for its failure to comply with Timothy's Law.⁴ Unfortunately, it appears that the OAG's public censure and monetary penalties⁵ were not enough to compel Defendants to actually change their practices and abide by the law. Instead, Defendants have shifted to more secretive and nefarious methods for discriminating against beneficiaries with mental illnesses and shirking their legal duties.

72. In its agreement with Emblem, the OAG outlined its findings regarding Emblem's failure to comply with Timothy's Law, which echo the allegations here. The OAG noted that in its period of investigation, Emblem had applied "more rigorous—and frequent—utilization review for behavioral health benefits⁶ than for medical/surgical benefits." The findings state:

From January 2011 through mid-2013, 18% of the reviews Emblem conducted for behavioral health treatment coverage resulted in denials, encompassing more than 7,500 denied requests; after many of these denials, the members did not receive the requested care, and did not file a claim for benefits. In contrast, Emblem's medical/surgical reviews resulted in denials only 11% of the time. Additionally, during the same period, Emblem denied 22% of behavioral health claims submitted, whereas Emblem denied only 13% of medical claims submitted during that period. Emblem also denied 38% of all substance abuse treatment claims during that time. From January 2011 through March 2014, Emblem denied at least 15,000 requests or claims of its members for behavioral health treatment due to the plan's determination that the treatment was not medically necessary, with billed charges of more than \$31,000,000.

Emblem's denial rates for more intensive levels of behavioral health care—such as inpatient treatment—are especially high. From January 2011 through mid-

⁴ Significantly, ValueOptions also entered into an Assurance of Discontinuance with the OAG for violations of Timothy's Law in March 2015.

⁵ Emblem was required to pay \$1,200,000 to the OAG as a civil penalty, and to allow independent appeals of medical necessity denials that could amount to over \$31,000,000 in previously denied benefits.

⁶ Behavioral health benefits refers to benefits for both mental health and substance use disorder services.

2013, 26% of Emblem’s reviews of its members’ requests for inpatient psychiatric treatment resulted in adverse decisions, totaling approximately 4,000 denied requests; after many of these denials, the member did not receive the requested care, and did not file a claim for benefits. Additionally, Emblem denied 36% of its members’ claims for inpatient psychiatric treatment, totaling more than 2,500 denied claims. In the same period, 39% of the reviews of Emblem members’ requests for inpatient substance abuse rehabilitation resulted in adverse decisions, totaling more than 2,300 denied requests, and Emblem denied 41% of Emblem members’ claims for that level of care, totaling almost 2,000 denied claims.

73. In contrast, “[f]rom 2011 through 2013, only 20% of Emblem’s reviews for inpatient medical/surgical treatment resulted in denials, and only 29% of inpatient medical/surgical claims were denied by Emblem.”

74. The OAG also found that Emblem was applying medical necessity criteria incorrectly to behavioral health-related claims. For example, Emblem denied coverage of substance abuse rehabilitation to members who were not experiencing “life-threatening withdrawal,” when in fact “life-threatening withdrawal” would require a more intensive level of care, such as medically managed inpatient detoxification.

75. Additionally, the OAG found that “when Emblem approve[d] more intensive levels of care, such as inpatient or partial hospitalization treatment, it [would] often approve just a few days or visits at a time, requiring members and providers to focus on health coverage rather than treatment. . . . Further, Emblem require[d] behavioral health providers—even at the outpatient level—to develop treatment and discharge plans, denying coverage if such plans [were] not filed. In contrast, Emblem d[id] not typically require medical/surgical providers to develop treatment plans or to demonstrate discharge planning.”

76. Particularly pertinent here, the OAG noted that most Emblem plans offered through HIP did not cover residential treatment for behavioral health conditions. The OAG stated:

Residential treatment is a standard, recommended, evidence-based form of behavioral health treatment. Offering medication, counseling, and structure, residential treatment facilities for behavioral health disorders provide a critical intermediate level of care between acute inpatient and outpatient treatment, enabling patients to transition back to living with their families. Residential treatment programs provide an intermediate level of care as compared to inpatient services, similar to skilled nursing treatment for medical/surgical conditions.

77. The OAG's investigation uncovered numerous other deficiencies in Emblem's administration of behavioral health benefits which are outlined in its findings but will not be repeated here.

78. For purposes of the instant case, however, it is significant that as part of the AOD, Emblem agreed to eliminate all day/visit limits for behavioral health services and to cover medically necessary residential treatment for behavioral health conditions at least by October 1, 2014.

79. Nevertheless, as evidenced by Jane Doe's case, Emblem continues to apply day/visit limits in practice and to deny coverage for medically necessary residential treatment. Under the terms of the AOD, the OAG may demand that Emblem pay liquidated damages of \$1,000 per day of non-compliance with these provisions.

80. The threat of this penalty, however, has apparently had no effect on Emblem's practices other than to make them more deceptive.

Violation of New York General Business Law § 349

81. Section 349 of New York's General Business Law declares as unlawful any "deceptive acts or practices in the conduct of any business, trade or commerce, or in the furnishing of any service in this state." This provision applies to health insurers with regard to their sale and operation of health insurance policies.

82. As detailed herein, Defendants have engaged in various misrepresentations and omissions in the sale of and/or circulation of plan documents that are directed toward consumers, including potential subscribers, to induce such consumers to subscribe, or to continue with, the City Employees Plan.

83. First, Defendants purport to provide coverage for medically necessary treatment of “children with serious emotional disturbances,” in the City Employees Plan, but in practice, have no systems in place to evaluate the medical necessity of treatment for conditions like ODD, and therefore improperly deny coverage. The plan documents simply do not provide coverage as advertised.

84. Second, Emblem has made numerous public misrepresentations touting their coverage of mental health conditions.

85. On a portion of its website titled “Behavioral Health Parity Disclosures,”⁷ Emblem advertises its purported compliance with the AOD it entered into in mid-2014. *See* <http://www.emblemhealth.com/en/Members/Member-News-and-Alerts/Member-Updates/Behavioral-Health-Parity-Disclosures.aspx> (last visited June 19, 2015). Emblem claims to “provide[] broad-based coverage for the diagnosis and treatment of behavioral health conditions, at least equal to the coverage provided for other health conditions.” Furthermore, it represents that it provides “unlimited benefits for inpatient and outpatient behavioral health care, as well as for residential treatment for behavioral health conditions for fully insured, commercial plans,” subject to medical necessity and applicable law.

86. To reiterate its fidelity to Timothy’s Law, the company declared the month of May to be “Mental Health Awareness Month.” The website states, “Mental health conditions

⁷ “Behavioral health” conditions are defined to include mental health and substance abuse disorders.

should be thought of and dealt with in the same way we think about cancer, heart disease or diabetes. We take steps to prevent those diseases and we don't put off treatment.”⁸

87. As previously stated, Defendants purport to base treatment decisions “on the assumption that individuals can and will improve,” but in reality, when a mental illness proves to require long-term care, Defendants refuse to provide coverage and instead shift their obligations to the public. This means that while plan participants pay premiums with the understanding that these premiums will, in part, entitle them to coverage for medically necessary treatment of mental illness, instead Defendants profit from these premiums at the state's expense.

88. Such conduct constitutes a deceptive act or practice under New York law.

COUNT I

CLAIM FOR RELIEF UNDER TIMOTHY'S LAW (against all Defendants)

89. The allegations contained in this Complaint are realleged and incorporated by reference as if fully set forth therein. Count I is brought under Timothy's Law, N.Y. Ins. Law § 3221(1)(5), *et seq.*

90. Timothy's Law mandates coverage for medically-necessary, ongoing treatment of adults and children with biologically based mental illnesses and children with serious emotional disturbances, recognizing the chronic and debilitating nature of their disorders. By denying Jane Doe's request for continued coverage of residential treatment for ODD and major depression, Defendants have acted in blatant disregard of the law.

91. While Defendants' City Employees Plan purports to cover medically necessary care for individuals with conditions like Jane Doe's, in practice, Defendants impose arbitrary

⁸ <http://www.emblemhealth.com/Health-and-Wellness.aspx> (last visited May 30, 2015).

time limits on inpatient treatment in a residential setting and then shift their legal obligations to the state.

92. In doing so, Defendants not only violate Timothy's Law's clear coverage mandate, but they also violate the law's parity component by failing to provide coverage for mental health care services which is equal or comparable to their coverage of other non-mental health care services.

93. The City Employees Plan requires medical necessity determinations to be made by applying generally accepted standards of medical practice in the community. Consistent with plan terms, upon information and belief, Emblem makes medical necessity determinations related to medical/surgical conditions, including analogs to residential treatment such as skilled nursing, by applying generally accepted standards of good medical practice.

94. Emblem makes medical necessity determinations related to residential treatment of mental illness, however, by applying criteria that are more restrictive and inconsistent with generally accepted standards of medical practice, in violation of the parity component of Timothy's Law.

95. Because Plaintiffs have been harmed by Defendants' violations of Timothy's Law, they seek to enjoin Defendants from applying internal policies that violate Timothy's Law, as detailed herein, and request that Defendants reprocess and reimburse benefits which were denied or reduced as a result of such policies along with appropriate interest back to the date such claims were originally submitted. Plaintiffs also sue for declaratory and injunctive relief related to enforcement of Timothy's Law, and further request attorneys' fees, costs, prejudgment interest and other appropriate relief against Defendants.

COUNT II

CLAIM FOR RELIEF UNDER NEW YORK GENERAL BUSINESS LAW § 349
(against all Defendants)

96. The allegations contained in this Complaint are realleged and incorporated by reference as if fully set forth therein. Count II is brought under General Business Law (“GBL”) § 349, New York’s Unfair Trade Practices Act.

97. Defendants have made numerous misrepresentations to consumers through announcements on their website and statements in plan documents that would suggest that Defendants are in compliance with Timothy’s Law, when in fact, they are not.

98. By applying arbitrary day/visit limits and medical necessity criteria with regard to residential treatment of mental illness in violation of Timothy’s Law and Emblem’s agreement with the OAG, Defendants have engaged in deceptive acts and practices in the conduct of their health insurance business and in the furnishing of insurance administration services in this State, in violation of GBL § 349.

99. Plaintiffs have been harmed by Defendants violations of New York’s Unfair Trade Practices Act. Plaintiffs seek to enjoin Defendants from pursuing the policies and practices that violate GBL § 349, as detailed herein, and further request attorneys’ fees, costs, prejudgment interest and other appropriate relief against Defendants.

COUNT III

CLAIM FOR BREACH OF CONTRACT
(against all Defendants)

100. The allegations contained in this Complaint are realleged and incorporated by reference as if fully set forth herein.

101. As detailed herein, Defendants breached the terms of the City Employees Plan by applying medical necessity criteria more restrictive than those mandated by the Plan terms and by altogether failing to provide any coverage for certain conditions covered in the Plan.

102. As further detailed herein, Defendants also violated the terms of the City Employees Plan by failing to comply with applicable laws, including Timothy's Law, incorporated therein.

103. As a result of Defendants' breach of the terms of the City Employees Plan, Plaintiffs were denied benefits to which they were entitled. Plaintiffs were thus injured by Defendants' deprivation of benefits.

104. As third party beneficiaries of the City Employees Plan, Plaintiffs seek damages resulting from Defendants' breach of contract. Plaintiffs further request attorneys' fees, costs, prejudgment interest and other appropriate relief against Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment in their favor against Defendants as follows:

A. Declaring that Defendants' practice of limiting residential treatment for individuals suffering from biologically based mental illnesses and for children with serious emotional disturbances based upon improper medical necessity criteria and day/visit limits is:

- (i) in violation of state laws, including Timothy's Law and § 349 of the General Business Law, as detailed herein; and
- (ii) in breach of the terms of the City Employees Plan, as detailed herein;

- B. Issuing a permanent injunction ordering Defendants to cease their use of improper medical necessity criteria and imposition of day/visit limits on Plaintiffs' claims for residential treatment of mental illness;
- C. Ordering Defendants to recalculate and issue unpaid benefits to Jane Doe whose claims were denied as a result of Defendants' actions as detailed herein;
- D. Ordering Defendants to pay damages to Plaintiffs for injuries caused by Defendants' conduct;
- E. Awarding Plaintiffs' disbursements and expenses for this action, including reasonable counsel fees, in amounts to be determined by the Court;
- F. Awarding taxable costs, as the law allows, and interest from the date of initial benefit reductions for Plaintiffs for all improperly denied amounts; and
- G. Granting such other and further relief as is just and proper.

JURY DEMAND

Plaintiffs demand trial by jury on all issues so triable.

Dated: New York, New York
June 22, 2015

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