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July 20, 2010

AOR 2010-16

Federal Election Commission
Office of General Counsel
999 E Street, NW
Washington DC 20463

REQUEST FOR ADVISORY OPINION

Honorable Commissioners:

This firm represents EmblemHealth Services Company LLC ("EmblemHealth Services") and Health Insurance Plan of Greater New York ("HIP"), and I write to request an Advisory Opinion with respect to whether EmblemHealth Services may function as a connected organization for Health Insurance Plan of Greater New York Federal PAC ("HIP Health Plan Federal PAC"), a Separate Segregated Fund ("SSF"). The salient facts follow.

EmblemHealth Services was formed pursuant to and in accordance with the Delaware Limited Liability Company Act, Title 6 of the Delaware Code, Section 18-101 *et seq.* It is headquartered in New York, and is treated as a partnership for federal tax purposes. A true copy of the Limited Liability Corporation Agreement, entered into in March 2007, forming EmblemHealth Services is annexed hereto as Exhibit A.

EmblemHealth Services has two fifty percent owners, HIP, a New York not-for-profit health service corporation organized under Article 43 of the New York Insurance Law that holds a certificate of authority to operate a health maintenance organization under Article 44 of the New York State Public Health Law, and Group Health Incorporated ("GHI"), a New York not-for-profit health service corporation organized under Article 43 of the New York Insurance Law. EmblemHealth, Inc., a New York not-for-profit corporation, is the parent company and sole member of each of HIP and GHI.

EmblemHealth Services was created for the purpose of

"integrat[ing] management, financial and administrative operations over time in order to achieve efficiencies[,] ...and to provide for the efficient management and utilization of [EmblemHealth Services'] resources by [GHI and HIP] to ensure that [GHI and HIP] work together in a manner that facilitates the promotion of health, and the removal of financial barriers to quality health care

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and fosters efficient utilization of health resources for a broad cross-section of the community...”

(See Exhibit A, penultimate “Whereas” clause, and par. 3(a)(i).)

Accordingly, EmblemHealth Services has the “full power to govern and manage the Joint Operations [of GHI and HIP],” defined generally as the “performance of administrative services and operations” common to both, and specifically enumerated as “including without limitation, the following powers:

- (i) setting overall strategic direction for the Joint Operations;
- (ii) approving or modifying the portions of any operating and capital budgets that relate primarily to the Joint Operations; and
- (iii) reviewing and approving total compensation for all officers and executives of the Company [EmblemHealth Services]”¹

(See Agreement, par. 4). In exercising its powers, EmblemHealth Services does so in conjunction with the Board of Directors of parent company EmblemHealth, Inc.

HIP, which is currently exempt from federal income tax under Section 501(a) of the Internal Revenue Code (“IRC”) as an organization described in Section 501(c)(4) of the IRC, presently is the connected organization for HIP Health Plan Federal PAC.

EmblemHealth Services would like to function as the connected organization in relation to HIP Health Plan Federal PAC, use its personnel and resources to administer it and solicit the restricted class of EmblemHealth Services, GHI and/or HIP for contributions. EmblemHealth Services would also like to cause the Statement of Organization of HIP Health Plan Federal PAC to be amended to rename itself as “EmblemHealth Services Company LLC Federal Political Action Committee,” abbreviated as “EmblemHealth PAC.”

I believe that 2 U.S.C. 432(e)(5) and 11 CFR 102.12(c), as well as various Advisory Opinions (*see, e.g.*, AOs 2003-28 and 2009-14), support EmblemHealth Services’ request to function in this way.

¹ Certain powers are retained by GHI and HIP “to comply with the provisions of the New York State Department of Health Regulations (Part 98-1.11(i), *et seq.*).”

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Questions Presented

1. May EmblemHealth Services function as a connected organization for HIP Health Plan Federal PAC?
2. May HIP Health Plan Federal PAC be renamed "EmblemHealth Services Company LLC Federal Political Action Committee," abbreviated as "EmblemHealth PAC?"
3. May EmblemHealth Services, GHI and/or HIP use its personnel and resources to pay for the administrative and solicitation expenses of HIP Health Plan Federal PAC, and solicit the restricted class of EmblemHealth Services, GHI and HIP for contributions?

We look forward to confirmation that our client may proceed accordingly. If you have any questions about this Request or the underlying facts, please do not hesitate to call.

Very truly yours,



Jerry H. Goldfeder

JHG/jb

LIMITED LIABILITY COMPANY AGREEMENT

OF

EMBLEMHEALTH SERVICES COMPANY, LLC

This Limited Liability Company Agreement (this "Agreement") of EmblemHealth Services Company, LLC (the "Company"), dated as of March __, 2007, is entered into by and between Health Insurance Plan of Greater New York, a New York not-for-profit corporation ("HIP"), and Group Health Incorporated, a New York not-for-profit corporation ("GHI"), as the sole members of the Company (each, a "Member" and, collectively, the "Members").

WHEREAS, HIP is licensed as a not-for-profit health service corporation under Article 43 of the Insurance Law of the State of New York ("Insurance Law"), and holds a certificate of authority to operate a health maintenance organization ("HMO") under Article 44 of the Public Health Law of the State of New York ("Public Health Law");

WHEREAS, GHI is licensed as a not-for-profit health service corporation under Article 43 of the Insurance Law;

WHEREAS, EmblemHealth, Inc. (f/k/a HIP Foundation, Inc.), a not-for-profit corporation organized under the laws of the State of New York ("EmblemHealth"), is the sole member of each of HIP and GHI;

WHEREAS, EmblemHealth is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986, as amended (the "Code"), as an organization described in Section 501(c)(3) of the Code, HIP is exempt from federal income tax under Section 501(a) of the Code as an organization described in Section 501(c)(4) of the Code, and GHI is an organization described in Section 833(c) of the Code;

WHEREAS, HIP's tax-exempt fundamental purposes include promoting health, removing financial barriers to quality health care and fostering efficient utilization of health resources for a broad cross-section of the community;

WHEREAS, HIP and GHI desire to integrate management, financial and administrative operations over time in order to achieve efficiencies while furthering the tax-exempt purposes of HIP and triggering no material change in GHI's structure or operations within the meaning of Section 833(c)(2)(C) of the Code; and

WHEREAS, the Company was formed by the filing of a Certificate of Formation with the Secretary of State of the State of Delaware on March 6, 2006 pursuant to and in accordance with the Delaware Limited Liability Company Act, Title 6 of the Delaware Code, Section 18-101 *et seq.*, as amended from time to time (the "Act").

NOW THEREFORE, the Members hereby agrees as follows:

1. **Name.** The name of the limited liability company is EmblemHealth Services Company, LLC.

2. **Term.** The term of the Company shall be unlimited unless dissolved in accordance with this Agreement.

3. **Purposes; Limitations on Purposes.**

(a) **Purposes.** The Company is formed for the purposes of:

(i) providing for the efficient management and utilization of the Company's resources by the Members to ensure that the Members work together in a manner that facilitates the promotion of health, and the removal of financial barriers to quality health care and fosters efficient utilization of health resources for a broad cross-section of the community;

(ii) developing an integration plan for HIP and GHI and policies and procedures to be adopted by the Members in connection with their integration;

(iii) assuming the performance of administrative services and operations (the "Joint Operations") common to the Members, as delegated to the Company by the Members;

(iv) exercising management authority delegated to it by the Members under a Management Contract in accordance with New York Department of Health Regulations (Part 98-1.11(i), *et seq.*) (the "Health Regulations");

(v) using its skills and expertise to provide products and services to third parties as such opportunities may be identified; and

(vi) engaging in any and all activities necessary or incidental to the foregoing or otherwise permitted under the Act.

(b) **Limitations on Purposes.**

(i) The Company shall be operated to advance the purposes stated in Section 3(a); provided, however, that the Board of Managers shall be required to manage the Company in a manner that furthers HIP's purposes and is consistent with its status as a tax-exempt, not-for-profit organization described in Section 501(c)(4) of the Code, and without regard to whether such purposes, or the activities of the Company to achieve such purposes, earn a profit for the Company or its Members, or if the Company's resources were administered or employed in a different manner might have yielded a greater monetary return to the Company or to the Members.

(ii) The Company shall be operated so as not to trigger a material change in the manner of GHI's operations or structure in connection with the Company's provision of the Joint Operations; *i.e.*, GHI will continue to provide its high-risk coverage under the terms and conditions under which high risk coverage is being offered by it, which terms and conditions will not differ substantially from those in effect on August 16, 1986, except as otherwise determined by the Board of Managers in consultation with GHI.

4. Powers; Certain Powers Retained by the Members.

(a) **Powers.** Without limitation of the powers conferred upon a limited liability company by the Act, except as otherwise provided herein, the Company shall have the full power to govern and manage the Joint Operations, including, without limitation, the following powers:

- (i) setting overall strategic direction for the Joint Operations;
- (ii) approving or modifying the portions of any operating and capital budgets that relate primarily to the Joint Operations; and
- (iii) reviewing and approving total compensation for all officers and executives of the Company.

(b) **Powers Retained by the Members.** For the avoidance of doubt, and to comply with the provisions of the Health Regulations, each Member shall be ultimately responsible for establishment and oversight of its own policies, management and operations. Each Member specifically reserves all powers not specifically delegated to the Company, including, without limitation, the following:

- (i) hiring or terminating its chief executive officer;
- (ii) adopting budgets and maintaining its books and records;
- (iii) acquiring and disposing of assets and incurring on behalf of any managed care organization, as such term is defined in the Health Regulations (an "MCO"), liabilities not normally associated with the day-to-day operation of such MCO;
- (iv) adopting and/or enforcing policies affecting the operation of any MCO and the delivery of health care services;
- (v) overseeing any management functions delegated by any MCO to a management contractor pursuant to the provisions of Section 98-1.18 of the Health Regulations; and
- (vi) developing and implementing any MCO's fraud and abuse prevention plan.

5. Initial Members. The name and address of each Member is as listed on Schedule 1 hereto.

6. Office. The business address of the Company shall be:

c/o Health Insurance Plan of Greater New York
55 Water Street
New York, New York 10041

7. **Capital Accounts.** A Capital Account shall be established and maintained for each Member as follows:

(a) To each Member's Capital Account there shall be credited (i) the amount of cash contributed by such Member to the capital of the Company; (ii) the fair market value of property contributed by such Member to the Company (net of liabilities secured by such contributed property which the Company is deemed to assume or take subject to under Section 752 of the Code); (iii) such Member's distributive share of Company Profit (as hereinafter defined) allocated to such Member pursuant to Section 10; and (iv) such other items as may be required by Section 1.704-1(b) of the Department of the Treasury Regulations under the Code (the "Regulations").

(b) To each Member's Capital Account there shall be debited (i) the amount of cash distributed to such Member pursuant to any provision of this Agreement and the fair market value of property distributed to such Member by the Company (net of liabilities secured by such distributed property); (ii) such Member's distributive share of Company Loss (as hereinafter defined) allocated to such Member pursuant to Section 10; and (iii) such other items as may be required by Section 1.704-1(b) of the Regulations.

(c) Upon and to the extent of any transfer of all or part of a Member's interest in the Company pursuant to Section 15 hereof, the Capital Account of the transferor shall be transferred to the transferee. Except as otherwise required under applicable Regulations, an election under Section 754 of the Code shall have no effect on a transferee's Capital Account, and the credits and debits to the Capital Account required by this Section 7 shall be determined without regard to any such election.

(d) The foregoing provisions and any other provisions of this Agreement relating to the maintenance of the Members' Capital Accounts are intended to comply with Section 1.704-1(b) of the Regulations, and shall be interpreted and applied in a manner consistent with such Regulations.

8. **Capital Contributions; Percentage Interests.** Each Member has contributed to the Company the amount of cash set forth on Schedule 1 hereto. Each Member has been assigned a percentage interest (the "Percentage Interest") reflecting its relative capital contribution, as set forth on Schedule 1 hereto. The initial cash capital contributions shall be used by the Company exclusively for its operating expenses.

9. **Additional Contributions.** No Member is required to make any additional capital contribution to the Company, except as otherwise agreed by the Board of Managers.

10. **Allocation of Profit or Loss.** The Company's Profit or Loss, as hereinafter defined, and each item of income, gain, loss, deduction or credit relating thereto shall be allocated in proportion to the Percentage Interests of the Members. For purposes of this Agreement, Profit or Loss shall mean, for each fiscal year or other period, an amount equal to the Company's taxable income or loss for such fiscal year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be

stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profit or Loss shall be added to such taxable income or loss;

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profit or Loss, shall be subtracted from such taxable income or loss.

11. **Distributions.** Distributions shall be made to the Members at the times and in the aggregate amounts determined by the Members. Such distributions shall be allocated among the Members in the same proportion as their Percentage Interests.

12. **Powers; Management.**

(a) The business and affairs of the Company shall be managed by a Board of Managers (having all of the rights and powers which are possessed by managers under the Act) pursuant to Section 18-402 of the Act, subject to the provisions of this Agreement. The Board of Managers shall have the power to do any and all acts necessary or convenient to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise, possessed by managers under the Act, subject to the provisions of this Agreement. Each member of the Board of Managers shall have access to all reports and information, and to all employees and assets of the Company, as he or she shall request. The Managers shall not receive compensation for their service as Managers, but shall be reimbursed for all reasonably documented expenses reasonably incurred in furtherance of such service.

(b) The number of members of the Board of Managers shall be as determined from time to time, but not less frequently than annually, by Members representing not less than a majority of the Percentage Interests. Each of HIP and GHI shall be entitled to designate as near as practicable to one half (1/2) of the total number of Managers constituting the Board of Managers; provided that HIP shall in each case be entitled to designate a majority of the Managers. The initial Board of Managers shall consist of three (3) Managers. The Managers whom HIP is entitled to designate are referred to herein as the "HIP Designated Managers" and the Managers whom GHI is entitled to designate are referred to herein as the "GHI Designated Managers." The initial HIP Designated Managers are Anthony L. Watson and Daniel T. McGowan. The initial GHI Designated Manager is Frank J. Branchini.

(c) Each Manager shall hold office for one year, until the next annual meeting of the Members or until his or her successor has been designated, except in the event of the earlier termination of his or her office by reason of death, resignation, removal or other reason. Any Manager may resign at any time upon written notice to the Company. The resignation of any Manager shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice, and unless otherwise specified therein, the acceptance of such

resignation shall not be necessary to make it effective. A HIP Designated Manager may be removed only by HIP, and a GHI Designated Manager may be removed only by GHI.

(d) If a vacancy occurs in the office of a Manager for any reason, the Member who designated such Manager shall have the right to fill such vacancy by notice to the Company and the other Member. A Manager chosen to fill a position pursuant to this Section shall hold office until expiration of the term of his predecessor or until a successor has been designated, except in the event of the earlier termination of his office by reason of death, resignation, removal or other reason.

(e) Any action which under any provision of the Act or this Agreement is to be taken by the Board of Managers (or any committee thereof) shall be taken either (x) at a meeting of the Board of Managers (or any committee thereof) held at such place and time, on such terms (including telephone meetings at the request of any member of the Board of Managers at which all Managers participating can hear each other) and after such notice (unless waived before or after the meeting) as the Board of Managers (or any committee thereof) may determine, or (y) without a meeting by written consent signed by the required number of Managers necessary to take such action. The Board of Managers shall meet at such times as may be determined by the Board of Managers or upon the request of one Manager upon 48 hours notice to all Managers.

(f) No action may be taken at a meeting of the Board of Managers unless a quorum consisting of at least a majority of the entire Board of Managers is present.

(g) Each Manager shall be entitled to cast one vote with respect to any decision to be made by the Board of Managers. Any decision to be made by the Board of Managers shall require the affirmative vote of a majority of the entire Board of Managers. Approval or action by the Board of Managers shall constitute approval or action by the Company and shall be binding on the Members.

(h) Notwithstanding anything to the foregoing set forth herein, HIP shall have the sole power to veto any proposed action or activity by the Company if, in HIP's sole determination, such proposed action or activity could jeopardize HIP's tax-exempt status.

13. Officers; Committees. The Board of Managers may appoint one or more officers of the Company with such powers, titles and duties as may be approved by the Board of Managers. Each officer shall hold office until the death, retirement, resignation or removal of such officer. The Board of Managers may constitute one or more committees with such powers and duties as may be approved by the Board of Managers.

14. Certain Unanimous Actions. Notwithstanding anything to the contrary set forth herein, the Company and/or the Members, as applicable, shall not take any of the following actions without the unanimous consent of the Members:

(a) the sale lease or other disposition, other than in the ordinary course of business, of the Company's material assets (which for purposes of this provision means

operating assets having a book value of 5% or more of the book value of the operating assets of the Company) in one transaction or a series of related transactions;

(b) the amendment of the Company's Certificate of Formation;

(c) the issuance or incurrence of debt for borrowed money by the Company in excess of an aggregate of \$250,000; or

(d) any capital expenditure (or series of related capital expenditures) by the Company with its own funds in excess of \$250,000.

15. **Transfers.** No Member shall, directly or indirectly, sell, transfer, assign, or otherwise dispose of or encumber its interest, in whole or in part, in the Company without the prior, written consent of all Members, which consent may be given or withheld in the sole and absolute discretion of each Member. Upon the receipt of all Members' consent, a transferee shall be admitted to the Company as a substituted member ("Substituted Member") upon agreement by such transferee to be bound by the terms of this Agreement. A Member shall cease to be a Member when the Member has transferred all such Member's interest in the Company to one or more transferees and all such transferees are or become admitted as Substituted Members.

16. **Non-Consensual Transfers.** Any purported transfer of any Member's interest in the Company not in compliance with Section 15 shall be null and void, regardless of any notice provided to the Company, and shall not create any obligation or liability of the Company to the purported transferee, and any person purportedly acquiring any interest in the Company purportedly transferred without the prior, written consent required by Section 15 shall not be entitled to admission to the Company as a Substituted Member.

17. **Admission of Additional Members.** One or more additional Members may be admitted to the Company with the consent of all of the Members upon, in the case of each such Additional Member, agreement by such additional Member to be bound by this Agreement.

18. **Certain Tax Matters.**

(a) Unless otherwise agreed to by the unanimous consent of the Members, no election will be made to treat the Company as a corporation.

(b) The Company shall provide to HIP a separate statement of items of unrelated business taxable income as described in Code Section 6031(d).

(c) The Board of Managers shall, from time to time, designate a Tax Matters Member pursuant to Section 6231 of the Code and hereby designates HIP as the initial Tax Matters Member. If the Tax Matters Member resigns as Tax Matters Member, or is otherwise disqualified by, e.g., bankruptcy or insolvency, the Board of Managers will designate a successor Tax Matters Member.

19. **Liability of Member and Managers.** None of the Members or any Manager shall have any liability for the obligations or liabilities of the Company except to the extent

provided in the Act. Any liability to return distributions made by the Company is limited to mandatory requirements of the Act or of any other applicable law.

20. **Exculpation.** Notwithstanding any other provisions of this Agreement, whether express or implied, or obligation or duty at law or in equity, no Member, Manager or any officers, directors, stockholders, partners, members, employees, representatives or agents of any Member or, as applicable, any Manager or any of the respective affiliates of any of the foregoing, nor any officer, employee, representative or agent of the Company or any affiliates of any of the foregoing (individually, a "Covered Person" and, collectively, the "Covered Persons") shall be liable to the Company or any other person for any losses, claims, damages or liabilities arising from any act or omission performed or omitted by a Covered Person in connection with the Company except to the extent that it shall have been determined by a court of competent jurisdiction that any such losses, claims, damages or liabilities are attributable to such Covered Person's gross negligence, bad faith or willful misconduct. No amendment to or repeal of this Section 20 shall apply to or have any effect on the liability or alleged liability of the Covered Persons for or with respect to their acts or omissions occurring prior to such amendment or repeal.

21. **Indemnification.**

(a) The Company shall, to the fullest extent permitted by applicable law (as now or hereafter in effect), indemnify and hold harmless each Covered Person from and against any losses, claims, damages or liabilities to which the Covered Persons may become subject in connection with any matter arising out of or in connection with Company's business or affairs, unless and to the extent it shall have been determined by a court of competent jurisdiction that any such loss, claim, damage or liability is attributable to the Covered Person's gross negligence, bad faith or willful misconduct. If a Covered Person becomes involved in any capacity in any action, proceeding or investigation in connection with any matter arising out of or in connection with the Company's business or affairs, the Company will periodically advance funds to or reimburse such Covered Person for its legal and other expenses (including the cost of any investigation and preparation) incurred in connection therewith, provided that such Covered Person shall promptly repay to the Company the amount of any such advanced or reimbursed expenses paid to it if it shall be ultimately determined that such Covered Person is not entitled to be indemnified by the Company in connection with such action, proceeding or investigation as provided in the exception contained in the immediately preceding sentence. If for any reason (other than the gross negligence, bad faith or willful misconduct of a Covered Person), the foregoing indemnification is unavailable to a Covered Person, or insufficient to hold it harmless, then the Company shall contribute to the amount paid or payable by such Covered Person as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Covered Person on the other hand or, if such allocation is not permitted by applicable law, to reflect not only the relative benefits referred to above but also any other relevant equitable considerations. No amendment or repeal of any part of this Section 21 shall apply to or have any effect on any right to indemnification provided hereunder with respect to any acts or omissions occurring prior to such amendment or repeal.

(b) The rights to indemnification and to advancement of expenses conferred in this Section 21 shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, agreement, action of the Member or otherwise.

(c) The indemnification and advancement of expenses provided by this Section 21 shall continue as to a Covered Person who has ceased to serve in the relevant capacity and shall inure to the benefit of the successors, heirs, executors and administrators of such Covered Person.

22. **Amendment.** This Agreement may be amended only by a written instrument executed by the Members.

23. **Miscellaneous.** If any provision of this Agreement is invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be affected thereby. The headings in this Agreement are for reference purposes only and do not affect the meaning or interpretation of this Agreement. Unless otherwise set forth herein, references to Sections refer to the Sections of this Agreement.

24. **Certificate of Formation.** Each of the undersigned Members hereby agrees to the terms of, and approves, adopts and ratifies the filing of the Certificate of Formation in the form attached hereto as Exhibit A.

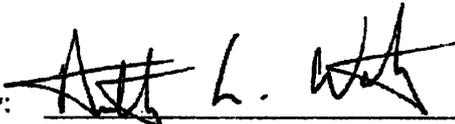
25. **Dissolution.** The Company may be dissolved only by the unanimous action of the Members or as otherwise required by applicable law.

26. **Governing Law.** This Agreement shall be governed by, and construed under, the laws of the State of Delaware, all rights and remedies being governed by said laws.

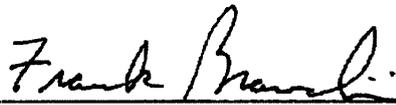
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IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Agreement as of the date first above written.

Health Insurance Plan of Greater New York,
as member

By: 
Name:
Title:

Group Health, Incorporated, as member

By: 
Name:
Title:

[Signature Page to Emblem Health, LLC Limited Liability Company Agreement]