

# Subrogation, Third Party Recovery and Reimbursement



## Benefits Subject to This Provision

This provision applies to all benefits provided under any section of this plan to:

- (a) Covered Persons (or Members) and Dependents, COBRA beneficiaries, family members, and any other person who may recover on behalf of a Covered Person or beneficiary including, but not limited to, the estate of a deceased Covered Person or beneficiary, (collectively referred to as "Covered Person"); and,
- (b) All other agents, attorneys, representatives, and persons acting for, on behalf of, in concert with, or at the direction of a Covered Person (sometimes referred to as "Covered Person's Representatives") with respect to such benefits.

## When this Provision Applies

A Covered Person may incur medical or other charges related to injuries or illnesses caused by the act or omission of Another Party including a physician or other Provider for acts or omissions including but not limited to malpractice. Another Party may be liable or legally responsible for payment of charges incurred in connection with such Injuries or Illnesses. If so, the Covered Person may have a claim against Another Party for payment of the medical or other charges.

## Defined Terms

"Another Party" means any individual or entity, other than the Plan, that is liable or legally responsible to pay expenses, compensation or damages in connection with a Covered Person's injuries or illnesses. Another Party shall include the party or parties who caused the injuries or illness (first or third parties); the insurer, guarantor or other indemnifier of the party or parties who caused the injuries or illness; a Covered Person's own insurer, such as uninsured, underinsured, medical payments, no-fault, homeowner's, renter's, or any other liability insurer; a workers' compensation insurer; a medical malpractice or similar fund; and any other person, corporation, or entity that is liable or legally responsible for payment in connection with the injuries or illness.

"Recovery" shall mean any and all money, fund, property, compensation, as well as all rights thereto, or damages paid or available to the Covered Person by Another Party through insurance payments, settlement proceeds, first or third party payments or settlement proceeds, judgments, reimbursements or otherwise (no matter how those monies may be characterized, designated, or allocated) to compensate for any losses caused by, or in connection with, the injuries or illness.

"Reimbursement" or "Reimburse" means repayment to the Plan for medical or other benefits paid or payable toward care and treatment of the illness or injury and for any other expenses incurred by the Plan in connection with benefits paid or payable.

"Subrogation" or "Subrogate" shall mean the Plan's right to pursue the Covered Person's claims against Another Party for medical or other charges paid by the plan.

## Conditions and Agreements

Benefits are payable only upon the Covered Person's acceptance of, and compliance with, the terms and conditions of this Plan. The Covered Person agrees that acceptance of benefits is constructive notice of this section. As a condition to receiving benefits under this Plan, a Covered Person and each other obligated party agree(s):

- (a) That in the event a Covered Person under this Plan, and/or the Covered Person's Representatives receives any Recovery or other benefits arising out of any injury, accident, event, or incident for

which the Covered Person has, may have, or asserts any claim or right to recovery under any theory of law or equity, tort, contract, statute, regulation, ordinance, or otherwise against any other person, entity, or source including, without limitation, any third party, insurer, insurance, and/or insurance coverage (e.g., uninsured and underinsured motorist coverage, personal injury coverage, medical payments coverage, workers' compensation, etc.), any payment or payments made by the Plan to Covered Person for such benefits shall be made on the condition and with the agreement and understanding that the Plan will be reimbursed by Covered Person and Covered Person's Representatives to the extent of, but not to exceed the Recovery amount or amounts received by Covered Person from such Another Party or source by way of any agreement, settlement judgment or otherwise;

- (b) That the Plan shall be subrogated to all rights of Recovery the Covered Person has against Another Party potentially responsible for making any payment to Covered Person as a result of any injury, damage, loss, or illness Covered Person sustains to the full extent of benefits provided or to be provided by the Plan to Covered Person or on Covered Person's behalf with respect to that illness, injury, damage, or loss immediately upon the Plan's payment or provision of any benefits to Covered Person or on Covered Person's behalf. The Plan's recovery, subrogation, and reimbursement rights provided herein exist even where a party allegedly at-fault or responsible for any loss, injury, damage, or illness Covered Person sustains does not admit responsibility and regardless of the designation or characterization given to the funds Covered Person receives or agrees to be disbursed from that party or that party's representative;
- (c) To notify GlobalHealth's Plan Administrator if a Covered Person has a potential right to receive payment from someone else; to promptly execute and deliver to the Plan Administrator, if requested by the Plan Administrator or its representatives, a Subrogation and Reimbursement agreement; and, to supply other reasonable information and assistance as requested by the Plan Administrator regarding the claim or potential claim. The Plan Administrator may determine, in its sole discretion, that it is in the Plan's best interests either to pay, or to not pay, medical or other benefits for the injuries or illness before the Subrogation and Reimbursement agreement has been signed. However, in either event, the Plan will still be entitled to Subrogation and Reimbursement according to the terms of this Section;
- (d) To serve as a constructive trustee, and to hold in constructive trust for the benefit of the Plan any Recovery from Another Party, and agrees not to dissipate any such Recovery without prior written consent of the Plan, or to otherwise prejudice or impair the Plan's first rights to any such Recovery, regardless of how such Recovery may be characterized, designated, or allocated. Covered Person agrees to hold, as trustee (or co-trustee) in trust for the benefit of the Plan all Recovery and funds Covered Person receives in payment of or as compensation for any injury, illness, damage, and loss Covered Person sustained resulting from any such event, incident, accident, injury, illness, and occurrence. Any such Recovery or funds received by, on behalf of, with the consent of, or at the direction of Covered Person, or to which Covered Person is entitled to receive or direct payment, or over which Covered Person (or a Covered Person's Representatives) has, or exercises, any control, are deemed and shall be considered and treated as assets of the Plan. Failure to hold Recovery and such funds in trust or to abide by these Plan terms will be deemed a breach of Covered Person's (or the Covered Person's Representative's) fiduciary duty to the Plan. The Plan has a right of subrogation or reimbursement before any Recovery and funds are paid to Covered Person from the responsible source and no attorneys' fees or costs may be subtracted from such amount. The Plan may, at its option and sole discretion, exercise either its subrogation and/or its repayment rights. The Plan is also entitled to any Recovery and funds Covered Person receives or is entitled to receive regardless of whether or not the payment represents full compensation to Covered Person. The Plan expressly disclaims all make whole and common fund rules and doctrines and/or any other rule or doctrine that would impair or interfere with the Plan's rights herein. The Plan shall be entitled to an accounting from the Covered Person of all Recovery, funds, and activities described herein;
- (e) To restore to the plan any such benefit paid or payable to, or on behalf of, the Covered Person when said benefits are paid or established by Another Party;

- (f) To transfer title to the Plan for all benefits paid or payable as a result of said illness or injury. The Covered Person acknowledges that the Plan has a property interest in the Covered Person's Recovery, and that the Plan's Subrogation rights shall be considered a first priority claim to any Recovery, and shall be paid from any such Recovery before any other claims for the Covered Person as the result of the illness or injury, regardless of whether the Covered Person is made whole;
- (g) That the Plan is granted a first right and priority to, as well as a first lien against, 100% of any Recovery to the extent of benefits paid or to be paid and expenses incurred by the Plan in enforcing this provision; and such lien is an asset of the Plan. The Plan's first lien fully supersedes any right of first payment, or Reimbursement out of any Recovery the Covered Person procures or may be entitled to procure regardless of whether the Covered Person is made whole or has received compensation for any of his damages or expenses, including any of his attorneys' fees or costs;
- (h) That the Covered Person also agrees to notify the Plan of Covered Person's intention to pursue or investigate a claim to recover damages or obtain compensation with respect to any matter for which Covered Person has obtained or will obtain any benefits from the Plan. Covered Person will be required to provide all information requested by the Plan or its representative regarding any such claim. Covered Person also agrees to keep the Plan informed as to all facts and communications that might affect the Plan's rights;
- (i) To refrain from releasing Another Party that may be liable for or obligated to the Covered Person for the injury or condition without obtaining the Plan's written approval;
- (j) To notify the Plan in writing of any proposed settlement and obtain the Plan's written consent before signing a settlement agreement;
- (k) Without limiting the preceding, the Plan shall be subrogated to any and all claims, causes, action, or rights that the Covered Person has or that may arise against Another Party for which the Covered Person claims an entitlement to benefits under this Plan, regardless of how classified or characterized;
- (l) If the Covered Person (or guardian or estate) decides to pursue Another Party, the Covered Person agrees to include the Plan's Subrogation claim in that action and if there is failure to do so, the Plan will be legally presumed to be included in such action or Recovery;
- (m) In the event the Covered Person decides not to pursue Another Party, the Covered Person authorizes the Plan to pursue, sue, compromise, or settle any such claim in their name, to execute any and all documents necessary to pursue said claims in their name, and agrees to fully cooperate with the Plan in the prosecution of any such claims. Such cooperation shall include a duty to provide information and execute and deliver any acknowledgement or other legal instrument documenting the Plan's Subrogation rights. The Covered Person (or guardian or estate) agrees to take no prejudicial actions against the Subrogation rights of the Plan or to in any way impede the action taken by the Plan to recover its Subrogation claim. This includes attempts by the Covered Person, (or by his or her attorney or other agent) to have payments characterized as non-medical in nature, or to direct or consent to have payments made to others (e.g., to or on behalf of relatives, attorneys, agents, representatives, or friends).
- (n) The Plan will not pay, offset any Reimbursement, or in any way be responsible for any fees or costs associated with pursuing a claim unless the Plan agrees to do so in writing. The Plan's right of first Reimbursement will not be reduced for any reason including attorneys' fees, costs, comparative negligence, limits of collectability or responsibility, or otherwise;
- (o) The Plan Administrator retains sole and final discretion for interpreting the terms and conditions of the Plan document. The Plan Administrator may amend the Plan in its sole discretion at any time without notice. This right of Subrogation shall bind the Covered Person's guardian(s), estate, executor, personal representatives, and heirs.
- (p) That the Plan Administrator may, in its sole discretion, require the Covered Person or his or her attorney to sign a subrogation/recovery agreement acknowledging and agreeing to the Plan's rights herein as a condition to any payment of benefits and as a condition to any payment of future benefits for other illnesses or injuries.

### When a Covered Person Retains an Attorney

If the Covered Person retains an attorney, the Plan Administrator may, in its sole discretion, require that the attorney sign a subrogation/recovery agreement acknowledging and agreeing to the Plan's rights herein as a condition to any payment of benefits and as a condition to any payment of future benefits for other illnesses or injuries. Additionally, the Covered Person's attorney must recognize and consent to the fact that the Plan precludes the operation of the "made-whole" and "common fund" doctrines, and the attorney must agree not to assert either doctrine in his pursuit of Recovery. The Plan will not pay the Covered Person's attorney's fees and costs associated with the recovery of funds, nor will it reduce its Reimbursement pro rata for the payment of the Covered Person's attorney's fees and costs. Attorneys' fees will be payable from the Recovery only after the Plan has received full Reimbursement. An attorney who receives any Recovery has an absolute obligation to immediately tender the Recovery to the Plan under the terms of this provision. A Covered Person's attorney who receives any such Recovery and does not immediately tender the Recovery to the Plan will be deemed to hold the Recovery in constructive trust for the Plan, because neither the Covered Person nor his attorney is the rightful owner of the Recovery and should not be in possession of the Recovery until the Plan has been fully Reimbursed.

In addition, the Plan may further require that:

- (i) Covered Person utilizes the services of attorneys, representatives, or agents who will execute a Reimbursement Agreement and who will not assert the make whole and common fund rule or doctrines, and
- (ii) Covered Person agrees to terminate any relationship with anyone who refuses to do so, or benefits will not be payable under the Plan in connection with that matter.

The Plan is also entitled to receive and has priority to receive the first funds from payments received by Covered Person until the Plan has been repaid for all sums expended. Covered Person shall execute and deliver any instruments and documents reasonably requested by the Plan and shall do whatever is necessary to fully protect all the Plan's rights. Covered Person shall do nothing to prejudice the rights of the Plan to such reimbursement and Subrogation, including, without limitation, any attempt by Covered Person or others to have payments characterized as non-medical in nature (e.g., for emotional distress, pain and suffering, embarrassment, mental anguish, loss of consortium, etc.) or to direct or consent to have payments made to others (e.g., to or on behalf of relatives, attorneys, agents, representatives, or friends).

### When the Covered Person is a Minor or is Deceased

The provisions of this section apply to the parents, trustee, guardian, or other representative of a minor Covered Person and to the heir or personal representative of the estate of a deceased Covered Person, regardless of applicable law and whether or not the representative has access or control of the Recovery.

### When a Covered Person Does Not Comply

- (a) (i) If the Subrogation agreement is not properly executed and returned as provided for in this provision; (ii) information and assistance is not provided to the Plan Administrator upon request; or, (iii) any other provision or obligation of this Section is not timely complied with, no benefits will be payable under the Plan with respect to costs Incurred in connection with such illness or injury.
- (b) If a Covered Person fails to Reimburse the Plan for all benefits paid or to be paid, as a result of their illness or injury, out of any Recovery received as provided in this Plan, or otherwise fails to comply with any other provision or obligation of this Section, the Covered Person will be liable for any and all expenses (whether fees or costs) associated with the Plan's attempt to recover such money or property from the Covered Person; and, the Plan shall be entitled to offset and apply any future benefits that might otherwise be due, for the benefit of the Covered Person, the Covered Person's family members, or any other person who directly or indirectly acted or cooperated to interfere with, impair, or defeat the Plan's rights or interests against such reimbursements that should have been made to the Plan, as well as to suspend or terminate further coverage until such reimbursements are

recovered by the Plan. This right of Reimbursement shall bind the Covered Person's guardian(s), estate, executor, personal representative, and heir(s).

- (c) Additionally, Covered Person shall be fully responsible for the actions of Covered Person's Representatives, attorneys, agents, family members, and all persons acting for, on behalf of, in concert with, or at the direction of Covered Person regarding the plan or Covered Person's obligations described herein. Covered Person shall be responsible to ensure that such persons cooperate and comply with Covered Person's obligations herein. If Covered Person or Covered Person's agents, attorneys, or any other representative fails to fully cooperate with any Subrogation, reimbursement, or repayment efforts, or directly or indirectly defeats, hinders, impedes, or interferes with any such efforts, Covered Person shall be responsible to account for and pay to the Plan all attorney's fees and costs incurred by or on behalf of the Plan in connection with such efforts.
- (d) Additionally, the Plan may, in the discretion of its final decision maker, terminate Covered Person's participation in the Plan or the participation of any other person who directly or indirectly acted or cooperated to interfere with, impair, or defeat the Plan's rights or interest. In the event that any claim is made that any wording, term, or provision set forth in this Subrogation and Right of Reimbursement portion of the Summary Plan Description is ambiguous or unclear, or if any questions arise concerning the meaning or intent of any of its terms, the Plan through its final decision maker, shall have the sole authority and discretion to construe, interpret, and resolve all disputes regarding the interpretation of any such wording, term, or provision.
- (e) If it becomes necessary for the Plan to enforce this provision by initiating any action against Covered Person, then Covered Person agrees to pay the Plan's attorney's fees and costs associated with the action if the Plan prevails in that action. The Plan may offset any such fees and costs against Covered Person's future medical expenses.
- (f) The Plan's Subrogation and Reimbursement rights described herein are essential to ensure the equitable character of the Plan and its financial soundness, and to ensure that funds are recouped and made available for the benefit of all Covered Persons under the Plan collectively.

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