



# Suburban Health Consortium

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## **SUBURBAN HEALTH CONSORTIUM'S GROUP HEALTH PLAN (THE "PLAN")**

### **NOTICE**

#### **TO: ALL PARTICIPANTS**

##### **Right of Subrogation and Reimbursement**

These subrogation and reimbursement provisions apply to all current or former plan participants and also to the parents, guardian, or other representative of a dependent child who incurs claims and is or has been covered by the Plan. The Plan's right to recover (whether by subrogation or reimbursement) shall apply to the personal representative of your estate, your decedents, minors, and incompetent or disabled persons. "You" or "your" includes anyone on whose behalf the Plan pays benefits. No adult Covered Person hereunder may assign any rights that the Plan may have to recover medical and/or prescription drug expenses from any tortfeasor or other person or entity to any minor child or children of said adult Covered Person without the prior written consent of the Plan.

The Plan's right of subrogation or reimbursement, as set forth below, extends to any payment you receive, or have a right to receive, including, but not limited to, any payment or right to payment from any and all insurance coverage available to you due to an injury, illness or condition for which the Plan has paid medical and/or prescription drug claims (including, but not limited to, liability coverage, uninsured motorist coverage, underinsured motorist coverage, personal umbrella coverage, medical payments coverage, workers' compensation coverage, no fault automobile coverage or any first party insurance coverage).

The Plan is always secondary to automobile no-fault coverage, personal injury protection coverage, or medical payments coverage.

No disbursement of any settlement proceeds or other recovery funds from any insurance coverage or other source will be made until the Plan's subrogation and reimbursement interest are fully satisfied.

## **Subrogation**

The right of subrogation means the Plan is entitled to pursue any claims that you may have in order to recover the benefits paid by the Plan. Immediately upon paying or providing any benefit under the Plan, the Plan shall be subrogated to (stand in the place of) all of your rights of recovery with respect to any claim or potential claim against any party, due to an injury, illness or condition to the full extent of benefits provided or to be provided by the Plan. The Plan may assert a claim or file suit in your name and take appropriate action to assert its subrogation claim, with or without your consent. The Plan is not required to pay you part of any recovery it may obtain, even if it files suit in your name.

## **Reimbursement**

If you receive any payment as a result of an injury, illness or condition, you agree to reimburse the Plan first from such payment for all amounts the Plan has paid and will pay as a result of that injury, illness or condition, up to and including the full amount of your recovery. Benefit payments made under the Plan are conditioned upon your obligation to reimburse the Plan in full from any recovery you receive for your injury, illness or condition.

## **Constructive Trust**

By accepting benefits from the Plan (whether the payment of such benefits is made to you or made on your behalf to any provider), you agree that if you receive any payment as a result of an injury, illness or condition, you will serve as a constructive trustee over those funds. Failure to hold such funds in trust will be deemed a breach of your fiduciary duty to the Plan. No disbursement of any settlement proceeds or other recovery funds from any insurance coverage or other source will be made until the Plan's subrogation and reimbursement interest are fully satisfied.

## **Lien Rights**

Further, the Plan will automatically have a lien to the extent of benefits paid by the Plan for the treatment of the illness, injury or condition upon any recovery by you whether by settlement, judgment or otherwise. The lien may be enforced against any party who possesses funds or proceeds representing the amount of benefits paid by the Plan including, but not limited to, you, your representative or agent, and/or any other source that possessed or will possess funds representing the amount of benefits paid by the Plan.

## **Assignment**

In order to secure the Plan's recovery rights, you agree to assign to the Plan any benefits or claims or rights of recovery you have under any automobile policy or other coverage, to the full extent of the

Plan's subrogation and reimbursement claims. This assignment allows the Plan to pursue any claim you may have, whether or not you choose to pursue the claim.

### **First-Priority Claim**

By accepting benefits from the Plan, you acknowledge that the Plan's recovery rights are a first-priority claim and are to be repaid to the Plan before you receive any recovery for your damages. The Plan shall be entitled to full reimbursement on a first-dollar basis from any payments, even if such payment to the Plan will result in a recovery which is insufficient to make you whole or to compensate you in part or in whole for the damages sustained. The Plan is not required to participate in or pay your court costs or attorney fees to any attorney you hire to pursue your damage claim.

### **Applicability to All Settlements and Judgments**

All terms of these subrogation and reimbursement provisions shall apply and the Plan is entitled to full recovery regardless of whether any liability for payment is admitted and regardless of whether the settlement or judgment identifies the medical and/or prescription drug benefits the Plan provided or purports to allocate any portion of such settlement or judgment to payment of expenses other than medical and/or prescription drug expenses. The Plan is entitled to recover from any and all settlements or judgments, even those designated as pain and suffering, non-economic damages and/or general damages only. The Plan's claim will not be reduced due to your own negligence.

### **Cooperation**

You agree to cooperate fully with the Plan's efforts to recover benefits paid. It is your duty to notify the Plan within 30 days of the date when any notice is given to any party, including an insurance company or attorney, of your intention to pursue or investigate a claim to recover damages or obtain compensation due to your injury, illness or condition. You must not settle or compromise any claim unless the Plan or its representative is notified in writing at least 30 days prior to such settlement or compromise and the Plan or its representative agrees to such settlement or compromise in writing. Further, you and your agents agree to provide notice prior to any disbursement of settlement or any other recovery funds obtained. You and your agents shall promptly provide all information requested by the Plan, its representative, or the Claims Administrator, including, but not limited to, completing and submitting any applications or other forms or statements as the Plan may reasonably request and all documents related to or filed in personal injury litigation, including, but not limited to, any police report, notices, or other papers received in connection with the injury, illness or condition. Failure to provide this information, failure to assist the Plan in pursuit of its subrogation rights or failure to reimburse the Plan from any settlement or recovery you receive may result in the denial of any future benefit payments or claim until the Plan is reimbursed in full, termination of your health benefits or the institution of court proceedings against you.

You shall do nothing to prejudice the Plan's subrogation or reimbursement interest or prejudice the Plan's ability to enforce these subrogation and reimbursement provisions. This includes, but is not limited to, refraining from making any settlement or recovery that attempts to reduce or exclude the full cost of all benefits provided by the Plan or disbursement of any settlement proceeds or other recovery prior to fully satisfying the Plan's subrogation and reimbursement interest.

You acknowledge that the Plan has the right to conduct an investigation regarding the injury, illness or condition to identify potential sources of recovery. The Plan reserves the right to notify all parties and their agents of its lien. Agents include, but are not limited to, insurance companies and attorneys.

### **Future Benefits**

If you fail to cooperate with and reimburse the Plan, the Plan reserves the right to deny any future benefit payments on any other claim made by you until the Plan is reimbursed in full. However, the amount of any covered services excluded under this section will not exceed the amount of your recovery.

### **Interpretation**

In the event that any claim is made that any part of these subrogation and reimbursement provisions is ambiguous or questions arise concerning the meaning or intent of any of its terms, the Plan and/or its representative shall have the sole authority and discretion to resolve all disputes regarding the interpretation of these provisions.

### **Jurisdiction**

By accepting benefits from the Plan, you agree that any court proceeding with respect to these subrogation and reimbursement provisions may be brought in any court of competent jurisdiction as the Plan may elect. By accepting such benefits, you hereby submit to each such jurisdiction, waiving whatever rights may correspond by reason of your present or future domicile. By accepting such benefits, you also agree to pay all attorneys' fees incurred by the Plan in successfully enforcing in any court proceeding the Plan's subrogation and/or reimbursement rights against you.

### **Discretionary Authority**

The Plan shall have discretionary authority to interpret and construe the terms and conditions of these subrogation and reimbursement provisions and make any determination or construction which is not arbitrary and capricious. The Plan's determination will be final and conclusive.

(12-2019)