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## NY AG Announces EmblemHealth Data Breach Settlement

By **Allison Grande**

Law360 (March 6, 2018, 9:15 PM EST) -- EmblemHealth has agreed to pay \$575,000 and conduct a comprehensive risk assessment to resolve the New York attorney general's probe into the exposure of more than 80,000 Social Security numbers through a mailing error, the regulator said in an announcement Tuesday during which he also discussed his push for stronger data security laws.

The settlement stems from the health plan's discovery in October 2016 that it had mailed 81,122 policyholders, including 55,664 New York residents, a paper copy of their Medicare Prescription Drug Plan Evidence of Coverage that included a mailing label with the policyholder's Social Security number on it. The disclosure breached both EmblemHealth's responsibility to safeguard patients' protected health information under the Health Insurance Portability Accountability Act and the prohibition against visibly printing Social Security numbers on envelopes under New York's General Business Law, according to the attorney general's office.

"The careless handling of Social Security numbers is never acceptable," New York Attorney General Eric Schneiderman said in a statement Tuesday. "New Yorkers need to be able to trust that companies entrusted with their private information will guard it appropriately."

The AG added that being able to provide this assurance "starts with good governance," and used the occasion to again stump for the Stop Hacks and Improve Electronic Data Security Act, or SHIELD Act, which his office **introduced in November**.

That legislation, which lawmakers in Albany are currently weighing, was presented on the heels of the massive breach disclosed by Equifax in September that compromised what has grown to be more than 147 million consumers' personal information, including Social Security numbers. The proposed bill would close certain loopholes in New York data security laws by placing a legal responsibility on companies to adopt administrative, technical and physical safeguards for the data they store.

The SHIELD Act would also expand the kinds of data that trigger automatic reporting to authorities, allow the Attorney General's Office to seek fines of up to \$5,000 per violation or \$20 per failed disclosure notice up to \$250,000, and provide a safe harbor from enforcement for companies that obtain independent certification that their data security measures meet the highest standards.

"My office will continue to push for stronger security laws and hold businesses accountable for protecting their customers' personal data," Schneiderman said Tuesday.

The EmblemHealth breach at the center of Tuesday's settlement was one of **a record 1,300 data breaches** that Schneiderman's office said it had been notified of in 2016, a 60 percent jump from the previous year.

According to the New York attorney general's announcement, while all mailings from EmblemHealth include a unique identifier that is printed on the envelope, the breach at issue occurred when the evidence of coverage mailing inadvertently included the insureds' Health Insurance Claim Number, which incorporates their Social Security number, instead of the usual unique identifier.

In a statement provided to Law360 Tuesday, EmblemHealth spokesperson Courtney Jay said that

upon discovery of the incident, the health plan "immediately took action to identify affected members and put precautionary protective measures in place."

"We are committed to providing the best service to our customers and have worked closely with the Attorney General to enhance our procedures and to give our members peace of mind," Jay said.

Aside from paying a \$575,000 penalty, EmblemHealth has agreed to implement a corrective action plan that includes a thorough analysis of security risks associated with the mailing of policy documents to policyholders, and submit a report of those findings to the Attorney General's office within 180 days of the settlement, according to the attorney general.

The health plan must also review and revise its policies and procedures based on the results of the assessment, and notify the Attorney General's office of any action it takes, the attorney general added. If no action is taken, EmblemHealth must provide a written detailed explanation of why no action is necessary, according to the regulator.

Additionally, EmblemHealth must catalog, review, and monitor mailings and make reasonable efforts to ensure that each employee that participates in mailings is properly trained for his or her assigned task, that future violations of its policies or HIPAA are reported to the proper EmblemHealth official and are remediated "as soon as practicable" and that any breach that occurs during the next three years is reported to the attorney general's office, even if that incident might not normally trigger notification requirements under New York law.

The EmblemHealth settlement comes on the heels of Schneiderman **announcing in January** that his office had reached an agreement with Aetna Inc. to resolve claims over a mailing that inadvertently revealed the HIV status of nearly 2,500 New Yorkers through transparent windows on the envelopes.

Under the terms of that pact, Aetna agreed to pay \$1.15 million, overhaul its mailing practices and hire an independent consultant to oversee and report on its compliance with the terms of the lawsuit, Schneiderman's office said.

The EmblemHealth case was handled on the New York attorney general's side by Bureau of Internet and Technology Deputy Bureau Chief Clark Russell, under the supervision of Bureau Chief Kathleen McGee.

Counsel information for EmblemHealth was not immediately available.

--Editing by Alanna Weissman.