

1 CAROL L. VENTURA
Deputy Director | Chief Counsel, Bar No. 99570
2 DEBRA L. DENTON
Assistant Chief Counsel, Bar No. 164482
3 KYLE C. MONSON
Attorney, Bar No. 251166
4 CALIFORNIA DEPARTMENT OF
MANAGED HEALTH CARE
5 980 9th Street, Suite 500
Sacramento, CA 95814-2725
6 916-323-0435 -Phone
916-323-0438 -Fax
7

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DEPARTMENT OF MANAGED HEALTH CARE
BY *[Signature]*
Filing Clerk

8 Attorneys for
Department of Managed Health Care
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10 BEFORE THE DEPARTMENT OF MANAGED HEALTH CARE
11 OF THE STATE OF CALIFORNIA

12 IN THE MATTER OF:

Enforcement Matter No.: 13-319

13 **BLUE CROSS OF CALIFORNIA, DBA**
14 **ANTHEM BLUE CROSS**

**ORDER TO CEASE AND DESIST
UNLAWFULLY DENYING SPEECH AND
OCCUPATIONAL THERAPY**

15 Respondent.

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18 Brent Barnhart, the Director (the Director) of the Department of Managed Health Care, by and
19 through his designee, Carol L. Ventura, Deputy Director and Chief Counsel of the Office of
20 Enforcement, after investigation, determines as follows:

21 **I.**

22 **PARTIES**

23 1. The Director of the Department of Managed Health Care (the Department) is vested with
24 the responsibility to administer and enforce the Knox-Keene Health Care Service Plan Act of 1975,
25 pursuant to Health and Safety Code section 1340 et seq. (the Knox-Keene Act).

26 2. Blue Cross of California, dba Anthem Blue Cross (Anthem or the Plan) is now, and has
27 been since January 7, 1993, a full service plan (File No. 933 0415) licensed pursuant to Health and
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1 Safety Code section 1353. Its principal place of business is located at 1121 L Street, Suite 500;
2 Sacramento, CA 95814. Anthem is subject to the Knox-Keene Act and California Code of Regulations,
3 title 28, promulgated pursuant to the Knox-Keene Act.

4 II.

5 STATUTORY AUTHORITY

6 3. The Director has authority to adopt orders from time to time as are necessary to carry out
7 the provisions of the Knox-Keene Act. (Health & Saf. Code, § 1344(a).)

8 4. The Director may issue an Order directing a plan, solicitor firm, or any representative
9 thereof, a solicitor, or any person to cease and desist from engaging in any act or practice in violation of
10 the provisions of this chapter, any rule adopted pursuant to this chapter, or any order issued by the
11 Director pursuant to this chapter. (Health & Saf. Code, § 1391.)

12 5. Health and Safety Code section 1367(i) states that a health care service plan, such as
13 Anthem, shall provide to subscribers and enrollees all of the basic health care services included in
14 subdivision (b) of section 1345.

15 6. Health and Safety Code section 1345(b)(2) defines a basic health care service to include
16 ambulatory care services.

17 7. California Code of Regulations, title 28, section 1300.67(c) defines the scope of a basic
18 health care service by stating that ambulatory care services shall include diagnostic and treatment
19 services, physical therapy, speech therapy, occupational therapy services as appropriate, and those
20 hospital services, which can be reasonably provided on an ambulatory basis.

21 8. Health and Safety Code section 1374.72(a) states that health care service plans which
22 offer coverage for hospital, medical or surgical services shall provide coverage for the medically
23 necessary treatment of severe mental illnesses. The definition of severe mental illnesses includes
24 pervasive developmental disorders or autism. (Health & Saf. Code, § 1374.72(d).)

25 9. Health and Safety Code section 1386(b)(7) provides for disciplinary action by the
26 Director upon a showing that the Plan has engaged in any conduct that constitutes fraud or dishonest
27 dealing or unfair competition, as defined by Section 17200 of the Business and Professions Code.
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III.

STATEMENT OF FACTS

10. Anthem routinely and in the regular course of business receives requests from Anthem enrollees seeking speech and/or occupational therapy services.

11. Since January 1, 2010, Anthem has received at least 24 requests from enrollees seeking speech and/or occupational therapy services which have been denied. The Department has received complaints from each of these enrollees.

12. In 23 of the complaints received by the Department, Anthem and/or its contracted provider groups have cited and/or quoted the Plan's National Clinical UM Guidelines (national medical policy) # GC-REHAB-06 as justification for their denial of coverage for speech therapy services.

13. The Anthem national medical policy #CG-REHAB-06 states in relevant part as follows:

*“Speech-language pathology services (SLP) are considered **medically necessary** when ALL of the following criteria are met: [¶] 1. The services are used in the treatment of communication impairment or swallowing disorders resulting from **illness, injury, surgery, congenital abnormality**....”* [Capitalization and bolding in original.]

14. In three of the complaints received by the Department, Anthem and/or its contracted provider groups have cited and/or quoted the Plan's National Clinical UM Guidelines (national medical policy) #CG-REHAB-05 for occupational therapy as justification for their denial of coverage for occupational therapy services.

15. The Anthem national medical policy #CG-REHAB-05 states in relevant part as follows:

*“Occupational therapy (OT) services are considered **medically necessary** when ALL of the following criteria are met: [¶] 1. The therapy is aimed at preventing disability or improving, adapting or restoring functions which have been impaired or permanently lost as a result of **illness, injury, loss of a body part, or congenital abnormality**....”* [Capitalization and bolding in original.]

16. In each of the above 24 cases, Anthem unlawfully categorically denied coverage for speech therapy and/or occupational therapy on the ground that the enrollee did not have a sufficient physical condition to trigger coverage, and did not consider whether the requested therapy was medically necessary to treat the enrollee's condition.

1 including speech and occupational therapy;

2 (c) Health and Safety Code section 1386(b)(7) for engaging in conduct that
3 constitutes an unfair business practice as defined by Business and Professions Code
4 section 17200;

5 (d) Health and Safety Code section 1386(b)(3) for failure to provide basic
6 health care services to enrollees.

7 (e) Health and Safety Code section 1374.72(a) and California Code of Regulations,
8 title 28, section 1300.74.72(a) for failing to provide coverage for medically necessary treatments
9 for an enrollee with an autism spectrum disorder.

10 (f) California Code of Regulations, title 28, section 1300.74.30(h) for interfering with
11 the right of an enrollee to obtain independent medical review.

12 **ORDER TO CEASE AND DESIST**

13 **THEREFORE**, the Director of the Department of Managed Health Care, by and through his
14 designee, Carol L. Ventura, Deputy Director and Chief Counsel for Enforcement, hereby orders:

15 **ORDERS:**

16 1. **IT IS HEREBY ORDERED THAT** the Plan is to cease and desist from engaging in any
17 act and/or practice that unlawfully denies coverage for speech and/or occupational therapy services, as
18 appropriate, to enrollees in violation of the law, including but not limited to Health and Safety Code
19 section 1367(i), and California Code of Regulations, title 28, sections 1300.67(c) and 1300.74.30(h).
20 Specifically, Anthem is hereby ordered to immediately cease and desist from denying coverage of
21 speech and/or occupational therapy on the basis that an enrollee does not have a sufficient physical
22 ailment to trigger coverage under the Plan's clinical guidelines.

23 2. **IT IS HEREBY FURTHER ORDERED THAT** the Plan is to cease and desist from
24 engaging in any act or practice that unlawfully interferes with an enrollee's right to an IMR.

25 3. **IT IS HEREBY FURTHER ORDERED THAT** the Plan is to cease and desist from
26 engaging in any act and/or practice of failing to reimburse enrollees for past, present and future
27 medically necessary speech and/or occupational therapy services.

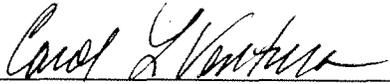
28 The Department reserves its right to amend this Order to include additional information,

1 including but not limited to, an Accusation, Order, or other request for relief, including but not limited to
2 reimbursement to past, present and future Anthem enrollees who have been illegally denied medically
3 necessary speech and/or occupational therapy services; or for penalties incurred arising out of the
4 aforementioned findings.

5 This Order shall be effective immediately and shall continue in full force and effect until further
6 Order by the Director.

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8 Dated: November 18, 2013

BRENT A. BARNHART
Director
Department of Managed Health Care

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10
11 By: 
12 CAROL L. VENTURA
13 Deputy Director | Chief Counsel
14 Office of Enforcement
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