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FILED
NOV 18 2013

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

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8 Attorneys for
Department of Managed Health Care

10 BEFORE THE DEPARTMENT OF MANAGED HEALTH CARE
11 OF THE STATE OF CALIFORNIA

12 IN THE MATTER OF:

13 **HEALTH NET OF CALIFORNIA, INC.**

14 Respondent.

Enforcement Matter No.: 12-165

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

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

19 **I.**

20 **PARTIES**

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

24 2. Health Net of California, Inc. (Health Net or the Plan) is now, and has been since March
25 7, 1991, a full service plan (File No. 933 0300) licensed pursuant to Health and Safety Code, section
26 1353. Its principal place of business is located at 21281 Burbank Boulevard, Woodland Hills, CA
27 91367. Health Net is subject to the Knox-Keene Act and California Code of Regulations, title 28,
28

1 promulgated pursuant to the Knox-Keene Act.

2 **II.**

3 **STATUTORY AUTHORITY**

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

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

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

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

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

19 8. Health and Safety Code section 1374.72(a) states that health care service plans which
20 provide coverage for hospital, medical and surgical services shall provide coverage for the diagnosis and
21 medically necessary treatment of severe mental illnesses. The definition of severe mental illnesses
22 includes pervasive developmental disorders and/or autism. (Health & Saf. Code, § 1374.72(d).) The
23 mental health services which health care service plans must cover for the diagnosis, and treatment of
24 severe mental illnesses shall include, when medically necessary, all health care services required under
25 the Knox-Keene Act including, but not limited to, basic health care services as defined in Health and
26 Safety Code sections 1345(b) and 1367(i), and California Code of Regulations, title 28, section 1300.67.
27 (Cal. Code Regs., tit. 28, § 1300.74.72(a).)

28 9. Health and Safety Code section 1386(b)(7) provides for disciplinary action by the

1 Director upon a showing that the Plan has engaged in any conduct that constitutes fraud or dishonest
2 dealing or unfair competition, as defined by Section 17200 of the Business and Professions Code.

3 **III.**

4 **STATEMENT OF FACTS**

5 10. Health Net provides coverage for hospital, medical and surgical services. The Plan
6 routinely and in the regular course of business receives requests from Health Net enrollees seeking
7 speech and/or occupational therapy services.

8 11. Since January 1, 2010, Health Net has received at least 41 requests from enrollees
9 seeking speech and/or occupational therapy services which have been denied. The Department has
10 received 41 complaints from 40 of these enrollees.

11 12. In 28 of the complaints received by the Department, Health Net and/or its contracted
12 provider groups have cited and/or quoted the Plan's Health Net National Medical Policy #103 Speech
13 Therapy as justification for their denial of coverage for speech therapy services.

14 13. The Health Net National Medical Policy #103 Speech Therapy states in relevant part:

15 *"We do **not** consider speech therapy medically appropriate for **any** of the following: [9]
16 ... 4. **Delayed or suppressed speech development due to an idiopathic (non-diagnosable)**
17 **disease or injury which occurred before the child developed any level of functional**
18 **speech, that is, before 18 months of age."** [bolding and underlining in original.]*

19 14. The Health Net National Medical Policy #103 Speech Therapy, in relevant part, lists
20 "**Language Disorders**" and "**Cerebral Palsy**" in a table entitled "**Conditions Not Medically Necessary.**"
21 [bolding and underlining in original.] The same document on the same page states that the meaning of
22 the term "**Language Disorders**" is:

23 *"**Note:** A language disorder is an impairment in the ability to understand and/or use
24 words in context, both verbally and nonverbally. Some characteristics of language
25 disorders include improper use of words and their meanings, inability to express ideas,
26 inappropriate grammatical patterns, reduced vocabulary and inability to follow
27 directions. One or a combination of these characteristics may occur in children who are
28 affected by language learning disabilities or developmental language delay."
[Underlining in original.]*

1 15. In five of the complaints received by the Department, Health Net and/or its contracted
2 provider groups have cited and/or quoted the Plan’s Health Net National Medical Policy #218 Physical
3 and Occupational Therapy as justification for their denial of coverage for occupational therapy services.

4 16. The Health Net National Medical Policy #218 Physical and Occupational Therapy states
5 in relevant part at pages 3-4 as follows:

6 *“Medical necessity of occupational therapy has not been demonstrated for: ... [¶]
7 Sensory and auditory integration therapies for the management of individuals with
8 various communications, behavioral, emotional, and learning disorders.”*

9 17. In other cases, Health Net cited the language from the Rehabilitative Therapy exclusion
10 in its Evidence of Coverage (EOC) as justification for its denial of speech and/or occupational therapy
11 services. Prior to 2012, the Rehabilitative Therapy exclusion excluded coverage for speech and/or
12 occupational therapy services unless the enrollee’s condition had a physical cause.

13 18. In each of the above 41 instances, Health Net has unlawfully categorically denied
14 coverage for speech therapy and/or occupational therapy on the grounds that the enrollee did not have a
15 sufficient physical ailment to trigger coverage, and without regard to whether the requested therapy was
16 medically necessary to treat the enrollee’s condition.

17 19. For children with developmental disabilities, expressive language disorders, speech
18 delays and cerebral palsy, Health Net categorically denies coverage for speech and/or occupational
19 therapy on the basis that the enrollee does not have a physical condition such as a defined illness,
20 disease, injury, congenital anatomic anomaly, or surgery.

21 20. Under the Act, speech and occupational therapy are required basic health care services,
22 and therefore Health Net’s denial of coverage for speech and/or occupational therapy based on a lack of
23 physical impairment is illegal and contrary to the Act.

24 21. The Department has determined that the Plan’s denials of speech and occupational
25 therapy should not have been denied based on coverage, but rather should have been reviewed to
26 determine whether the services were medically necessary.

27 22. The Department sent 36 of the above-referenced cases that were denied by the Plan to the
28 Independent Medical Review (“IMR”) for an evaluation of the medical necessity of the disputed service.

1 services to enrollees.

2 (g) Health and Safety Code section 1374.72(a) for failing to provide coverage for
3 medically necessary treatments for enrollees with autism spectrum disorders.

4
5 **ORDER TO CEASE AND DESIST**

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

9 **ORDERS:**

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

17 2. **IT IS HEREBY FURTHER ORDERED THAT** the Plan is to cease and desist from
18 engaging in any act and/or practice that unlawfully interferes with an enrollee's right to an IMR,
19 including without limitation, the unlawful practice of mischaracterizing requests for speech and/or
20 occupational therapy as a coverage issue rather than a medical necessity issue.

21 3. **IT IS HEREBY FURTHER ORDERED THAT** the Plan is to cease and desist from
22 engaging in any act and/or practice of failing to reimburse enrollee's for past, present and future
23 medically necessary speech and/or occupational therapy services.

24 The Department reserves its right to amend this Order to include additional information,
25 including but not limited to, an accusation, Order, or other request for relief, including but not limited to
26 reimbursement to past, present and future Health Net enrollees who have been illegally denied medically
27 necessary speech and/or occupational therapy services; or for penalties incurred arising out of the
28 aforementioned findings.

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

3 Dated: November 18, 2013

BRENT A. BARNHART
Director
Department of Managed Health Care

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6 By: Carol L. Ventura
7 CAROL L. VENTURA
8 Deputy Director | Chief Counsel
9 Office of Enforcement
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