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

IN THE MATTER OF:

HEALTH NET OF CALIFORNIA, INC.

Respondent.

ORDER TO CEASE AND DESIST
UNLAWFULLY DENYING SPEECH AND
OCcupational Therapy

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

I. PARTIES

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

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

II.

STATUTORY AUTHORITY

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

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

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

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

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

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

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

III.

STATEMENT OF FACTS

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

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

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

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

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

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

“Note: A language disorder is an impairment in the ability to understand and/or use words in context, both verbally and nonverbally. Some characteristics of language disorders include improper use of words and their meanings, inability to express ideas, inappropriate grammatical patterns, reduced vocabulary and inability to follow directions. One or a combination of these characteristics may occur in children who are affected by language learning disabilities or developmental language delay.” [Underlining in original.]
15. In five of the complaints received by the Department, Health Net and/or its contracted provider groups have cited and/or quoted the Plan's Health Net National Medical Policy #218 Physical and Occupational Therapy as justification for their denial of coverage for occupational therapy services.

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

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

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

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

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

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

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

22. The Department sent 36 of the above-referenced cases that were denied by the Plan to the Independent Medical Review (“IMR”) for an evaluation of the medical necessity of the disputed service.
23. The IMR determined that the requested speech therapy and/or occupational therapy were medically necessary in at least 97 percent of the cases. The IMR determined that the requested speech and/or occupational therapy services were not medically necessary in less than 3 percent of the cases.

24. In the remaining five cases, the Plan reversed its position after inquiry by the Department and provided coverage for the requested speech and/or occupational therapy services.

25. In six of the above-referenced cases, the Plan utilized its national medical policies to deny coverage for speech and/or occupational therapy for the treatment of the enrollee’s autism spectrum disorder.

26. Health Net continues to illegally deny enrollee requests seeking services for speech and/or occupational therapy.

IV.

FINDINGS

27. Health Net’s denials of enrollee requests seeking services for speech and/or occupational therapy on the basis that the enrollee has not suffered a physical condition triggering coverage under the plan’s clinical guidelines constitutes an act and/or practice in violation of the law, including, but not limited to the following provisions of the Act (and related regulations):

(a) Health and Safety Code section 1367(i) for failing to provide medically necessary basic health care services – ambulatory care services -- as defined in Health and Safety Code section 1345(b)(2);

(b) California Code of Regulations, title 28, section 1300.67(c) for failing to provide medically necessary basic health care services which this code section defines as including speech and occupational therapy;

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

(e) Health and Safety Code section 1386(b)(3) for failing to provide basic health care
services to enrollees.

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

ORDER TO CEASE AND DESIST

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

ORDERS:

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

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

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

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

Matter ID: 12-165
Doc. No.: 122063
This Order shall be effective immediately and shall continue in full force and effect until further Order by the Director.

Dated: November 18, 2013

BRENT A. BARNHART
Director
Department of Managed Health Care

By: Carol L. Ventura
Deputy Director | Chief Counsel
Office of Enforcement