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8 Attorneys for the Department of Managed Health Care

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

11 IN THE MATTER OF:

Enforcement Matters Nos. 14-151, 15-003,
15-138, and 15-176

12 BLUE CROSS OF CALIFORNIA, dba
13 ANTHEM BLUE CROSS,
14 Respondent.

**SETTLEMENT AGREEMENT AND
ORDER**

RECITALS

17 1. The California Department of Managed Health Care (the "Department") has
18 conducted an investigation, including a Non-Routine Survey, of the provider directories of Blue
19 Cross of California dba Anthem Blue Cross ("Anthem" or "Plan") (the Department and Anthem are
20 collectively referred to as the "Parties"). Anthem, having been represented by counsel, is willing to
21 enter into this Settlement Agreement (the "Agreement"), resolving with the Department issues
22 arising out of the Non-Routine Survey and the deficiencies cited therein, as described in facts set
23 forth below, or incorporated by reference herein.

24 2. This Agreement ("Agreement") is made and entered into by and between the
25 following parties: Anthem and the Department for the sole purpose of resolving the dispute
26 regarding the accuracy of Anthem's online Provider Directory ("Provider Directory" or "Provider
27 Finder") for its individual health plan products for the 2014 benefit year (and associated
28 Enforcement Matters 15-003, 15-138, and 15-176).

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1 3. In June 2014, the Department initiated a Non-Routine Survey (“Non-
 2 Routine Survey”) under California Code of Regulations, title 28, section 1300.82(b), to test claimed
 3 inaccuracies in the Provider Directory as indicated by numerous consumer complaints to the
 4 Department and to the media; as well as concerns expressed by the California Medical Association
 5 to the Department; and, the Department’s informal survey results derived from a sampling of the
 6 providers listed in the Plan’s Provider Directory. (“Provider Directory,” as used herein, refers to the
 7 Plan’s online Provider Directory for its individual market, as listed on its internet website.) Anthem
 8 uses the information in its Provider Databases to generate its Provider Directory using its Provider
 9 Finder Application (“Provider Finder Tool”).

10 4. On November 7, 2014, the Department issued the Final Report for the Non-Routine
 11 Survey (“Final Report”) to the Plan.

12 5. The Plan submitted its Response to the Final Report (“Plan’s Response to Final
 13 Report”) on November 17, 2014, which is posted on the Department’s internet website.

14 6. The Department issued the Final Report on November 18, 2014. The Final Report
 15 found that the significant number of inaccuracies contained in the Plan’s Provider Directory resulted
 16 in a highly unacceptable consumer experience, and that California consumers could not reach and/or
 17 did not have access to some providers who were represented in the Provider Directory as being part
 18 of the Plan’s individual product networks.

19 7. Among the four (4) deficiencies identified in the Final Report, the Department
 20 determined that there was sufficient evidence to support an administrative accusation and the
 21 imposition of administrative penalties for the following deficiencies, whether or not corrected:

- 22 a. Deficiency # 3: The Plan failed to meet its statutory obligation to provide enrollees
 23 with accurate contracted provider lists, either upon request, or through provider
 24 listings set forth on the Plan’s internet website. (Health and Saf. Code, § 1367.26.)
 25 Final Report Deficiency Status: Not Corrected.

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b. Deficiency #4: The Plan failed to submit a required Amendment filing to inform the Department of a greater than 10% change in the list of providers and to resubmit its updated provider list for re-review and approval. (Health and Saf. Code, § 1300.52(f).) Final Report Deficiency Status: Corrected.

8. The Plan's Response to the Final Report disputed the methodology of the Non-Routine Survey and contested Deficiencies Numbers 1 through 4. However, the Plan and Department both acknowledged that the Plan had corrected Deficiency Number 4.

9. A dispute therefore exists between the Department and the Plan regarding the uncorrected Deficiencies Numbers 1 through 3 and whether the Plan's conduct described in the Final Report constitutes violations of the respective sections of the Health and Safety Code references for each of the deficiencies.

ACKNOWLEDGEMENTS

10. Although the Plan contests Deficiencies 1 through 3 in the Final Report, the Plan acknowledges the following:

- a. Anthem's contracted providers are required, under the express terms of their contracts with Anthem, to promptly notify Anthem in writing of any change in their demographic information including any change in a provider's principal place of business, within thirty (30) days of such change.
- b. Prior to 2014, and during parts of 2014, some providers contracted with Anthem failed to report or provide accurate or updated demographic data (changes in their status, their address or their ability to see new patients, among other items) to Anthem as required by their contracts.
- c. In 2014, there were inaccuracies in Anthem's provider network directories, as a result of a variety of factors, including, but not limited to, provider failure to report changes or provide accurate information to the Plan.
- d. As a result of inaccuracies in Anthem's provider network directories, some members sought health care services from providers listed in the Plan's directory that were not, in fact, in the network, and which providers did not make their status known to members. As a result, members received services which were reimbursed by Anthem at the out of network benefit levels.
- e. In 2014, Anthem received complaints from consumers and providers regarding inaccuracies in the Provider Directory.

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- f. The Plan's investigation into the Department's non-routine audit of provider directories revealed that of the approximately 1,300 providers who advised the Department that they were not accepting Covered California products, five did not have network contracts with Anthem.
- g. During the last quarter of 2013 and during parts of 2014, there was confusion among Anthem's contracted providers for its individual health plan products as to whether the providers and their staff were fully aware of the Anthem products the providers accepted.
- h. Beginning in November 2013, Anthem identified a number of providers with incorrect network affiliations noted on the Provider Directory.
- i. During the last quarter of 2013 and during parts of 2014, there was consumer confusion regarding the information listed in Anthem's Provider Network Directory.
- j. In January 2014, Anthem identified a system issue which resulted in HMO providers participating in its Pathway Network to be identified as participating in the Pathway PPO network as well, even if they were not.
- k. By April 2014, Anthem fixed the Pathway Network mis-identification issue.
- l. Anthem's Provider Network Directory for the 2014 Benefit Year was maintained by Anthem, based upon information obtained from contracted providers.
- m. During parts of 2014, Anthem's Provider Network Directory erroneously displayed a number of providers as accepting Covered California products when they did not.
- n. Provider data is fluid and subject to change, in part due to providers not advising health plans of changes in information and status in a timely manner. In response, Anthem set up a process to update and increase the integrity of provider information and provider outreach.
- o. The Plan's EOC for Covered California products offered in the 2014 Benefit Year stated that enrollees should refer to the Provider Finder for a list of providers accepting Covered California products. When a search is performed, a message is displayed that includes the statement: "To avoid higher fees we recommend that you confirm your doctor is in network and that the desired service is covered when scheduling your appointment."
- p. Throughout 2013, and through May 2014, the Plan continued to negotiate contracts with providers for its individual market products for 2014, offered through and outside of the Covered California exchange.

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1 q. Anthem represented in its bid to Covered California that the Plan met the provider
2 network adequacy standards established by the Department and that the Department
3 approved Anthem's networks.

4 11. The Department also acknowledges that since the latter half of 2014, the Plan has
5 taken corrective action to address Deficiencies 1 through 3 in the Non-Routine Survey and made
6 improvements and modifications to its online Provider Directory as well as its policies, procedures,
7 processes and technology used to produce the Provider Directory.

8 12. Both Anthem and the Department acknowledge that the Department considers the
9 Plan's conduct to be violations of the Knox-Keene Act and accompanying regulations, as cited in
10 the Non-Routine Survey final report, and that, if proven at a hearing, would constitute cause for
11 imposing discipline upon the Plan.

12 13. Both Anthem and the Department acknowledge that it is in their best interest to enter
13 into this Agreement to settle these Enforcement Matters and all issues, accusations, and claims that
14 the Department has against the Plan related to or arising from this matter, as set forth in detail in this
15 Agreement.

16 14. Both Anthem and the Department acknowledge their mutual willingness to enter into
17 this Agreement in order to evaluate and validate the Plan's corrective action to address Deficiencies
18 1 through 3 to avoid litigation between them over the issues relating to and arising from these
19 Enforcement Matters without the need for an Accusation, hearing, or further administrative action.

20 **ADVISEMENTS AND WAIVERS**

21 15. The Plan has carefully read, fully discussed with its counsel, and understands the
22 effects of this Agreement.

23 16. The Plan is fully aware of its rights in this matter, including the right to a hearing on
24 any Accusation related to these Enforcement Matters; the right to be represented by counsel at its
25 expense; the right to confront and cross-examine witnesses against it; the right to present evidence
26 and to testify on its behalf; the right to the issuance of subpoenas to compel the attendance of
27 witnesses and the production of documents; the right to require the Department to meet its burden of
28 proof to establish violations; the right to reconsideration and court review of an adverse decision;

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1 and, all other rights accorded by the California Administrative Procedure Act and other applicable
2 laws.

3 17. By entering into this Agreement, Anthem voluntarily, knowingly, and intelligently
4 waives and gives up each and every right set forth above.

5 **RESERVATION**

6 18. The Plan and Department's acknowledgements herein may not be used as an
7 admission against the Plan in any other civil or criminal proceedings; but, may be used by the
8 Department in future administrative proceedings and in considering penalties against the Plan
9 should inaccuracies with its Provider Directory continue in the future.

10 **AGREEMENT**

11 19. To resolve these Enforcement Matters and the dispute described above, and to avoid
12 litigation, the Department and the Plan have agreed to enter into this Agreement on the terms set
13 forth herein.

14 20. This Agreement is entered into based on the Recitals, Acknowledgements,
15 Advisements and Waivers and Reservation set forth above, which are incorporated herein by
16 reference.

17 21. By entering into this Agreement, the parties hereby settle all pending Enforcement
18 Matters described herein, including cases identified by Office of Enforcement as Actions 15-003,
19 15-138, and 15-176, and all issues, accusations, and claims that the Department may have against
20 Anthem as it relates to the accuracy of its Provider Directory. However, nothing in this Agreement
21 is intended to affect or limit an enrollee's right to file, consistent with the timeframes in the Act, a
22 grievance with Anthem, or a complaint or request for reprocessing of claims as it relates to the
23 accuracy of its Provider Directory.

24 22. As noted in paragraphs 16 and 17 above, by entering into this Agreement, the Plan
25 voluntarily, knowingly, and intelligently waives and gives up the rights specified, and further agrees
26 that the Plan's acknowledged conduct as set forth in section 10(a)-(q) may be considered by the
27 Department in assessing administrative or other penalties should the Plan engage in future similar
28 conduct regarding inaccuracies in its Provider Directory.

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1 23. By entering into this Agreement, Anthem does not admit any liability or violation of
2 the Knox-Keene Act or any other law or regulation. However, the Plan acknowledges certain facts
3 related to its Provider Directory as stated in section 10(a)-(q).

4 24. Anthem also acknowledges its obligation to maintain accurate provider lists, as set
5 forth in Health and Safety Code section 1367.26, including its obligation to ensure that the
6 requirements of this section are met notwithstanding the Plans delegation of responsibility for
7 compliance to its contracting providers, contracting provider groups, or contracting specialized
8 health care plans. (Health & Saf. Code, § 1367.26(f).)

9 **WHEREFORE THE DEPARTMENT AND PLAN AGREE TO THE FOLLOWING:**

10 **PENALTY**

11 25. The Department, through its Director, has determined (in accordance with the factors
12 set forth in California Code of Regulations, title 28, section 1300.86, *et seq*) that an administrative
13 penalty in the amount of \$250,000.00 shall be assessed against Anthem. Anthem shall pay the
14 penalty as detailed in paragraph 40 below.

15 **FOLLOW-UP SURVEY BY INDEPENDENT AUDITOR**

16 26. In addition, pursuant to Health and Safety Code section 1380(i)(2), the Department
17 shall conduct a Follow-Up Survey ("Follow-Up Survey") to the Non-Routine Survey. The Follow-
18 Up Survey shall be performed by an independent Auditor and will begin in or about October 2015.
19 The Department and Auditor will develop a reasonable methodology and approach of the Follow-Up
20 Survey. All reasonable expenses for conducting the survey shall be paid by the Plan, as set forth in
21 Health and Safety Code section 1382(b).

22 27. The Department in its sole discretion may assess penalties and require additional
23 corrective action and restitution based on the results of the Follow-Up Survey, and nothing in this
24 Agreement shall be construed to bar or limit such action.

25 28. The Settlement shall not affect or limit the Department's disciplinary authority or
26 discretion regarding the Follow-Up Survey and any associated results, conclusions, investigations,
27 findings, disciplinary and administrative action.

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PAYMENT OF DAMAGES

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2 29. In addition to the administrative penalty noted in paragraph 25, Anthem agrees that it

3 shall provide "payment of damages, based on claims reimbursement," (hereinafter "payments") to

4 those consumers or enrollees negatively impacted by inaccuracies in the Provider Directory

5 ("Claimant Enrollees"). The Department anticipates payment will be made pursuant to the

6 anticipated resolution of the pending lawsuits consolidated under the Felser et al. v. Blue Cross of

7 California class action lawsuit filed in the Superior Court of Los Angeles, Case number L.A. BC

8 550739 ("Felser matter"), by the date by which the Court orders payments to be made under said

9 anticipated settlement, but no later than December 31, 2016. The Plan agrees to provide the

10 Department with copies of the executed and approved settlement in the Felser matter. Assuming

11 there is a settlement in the Felser matter, Anthem agrees to provide quarterly updates to the

12 Department beginning January 1, 2016, until payments of all claims are complete. Anthem agrees

13 that if monetary payments are not made through the Felser matter, the Department reserves the right

14 to assess further penalties or require claims reprocessing to the Plan's members.

15 Should reimbursement not be made through the Felser matter, Anthem agrees, no later than

16 December 1, 2015, to provide to the Department, for approval, its method for identifying the pool of

17 impacted individuals and a template for the notice to the Claimant Enrollees for processing the

18 claims. The notices shall commence no later than January 1, 2016. Payments will be made to

19 Claimant Enrollees no later than October 1, 2016.

20 If, in reprocessing claims according to the Felser matter, the Plan determines that any

21 Claimant Enrollee was not entitled to damages, the Claimant Enrollee shall be allowed to file a

22 notice of dispute within the class action lawsuit, as provided for in the anticipated Felser matter

23 Settlement Agreement, so that the dispute can be heard and decided by the Judge who is

24 designated by the Court to oversee any such disputes. If reimbursement is not through the Felser

25 matter, then the Claimant Enrollee shall have the right to file a grievance and appeal with Anthem

26 and the Department.

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1 30. Upon completion of all appropriate claims reprocessing and payment of damages to
2 enrollees pursuant to this Agreement and/or the Felser matter, Anthem shall report to the
3 Department the number of enrollees reimbursed and the total amount reimbursed.

4 **CORRECTIVE ACTION PLAN**

5 31. In addition to the administrative penalty noted in paragraph 25, and the payment of
6 damages as outlined in paragraphs 29-30, the Plan shall implement by December 31, 2015, a
7 Corrective Action Plan (CAP) comprised of several components described below, including provider
8 outreach, education and training on Covered California affiliation status and the mandate to provide
9 correct and timely updates to the Plan regarding demographic changes, consumer assistance with
10 Provider Directory concerns, data management and process improvements, and other aspects, which
11 are all subject to the prior approval of the Department.

- 12 a. Anthem shall conduct outreach, either directly or through the use of external
- 13 vendors, at least semi-annually, to verify the participation status and Participating
- 14 Provider Information of each of the providers listed in its online Provider Directory
- 15 (the "Verification Processes"). Outreach under the Verification Processes shall be
- 16 conducted by electronic or written communications and/or by telephone. Anthem
- 17 shall document all efforts undertaken in its Verification Processes for each provider
- 18 listed on its online Provider Directory. Anthem shall maintain documentation that
- 19 accurately reflects the dates on which each provider's Participating Provider status
- 20 and Participating Provider Information are verified. Outreach shall not be required
- 21 for providers with whom Anthem has a direct or indirect contractual relationship and
- 22 who have been credentialed or re-credentialed within the past 12 months. The Plan
- 23 shall update its database to reflect any changes based on information obtained
- 24 through the Verification Process.

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b. Anthem's Participating Provider Verification Processes must include an affirmative response from each of the listed providers, except when the following are satisfied:

- i. An individual provider who is not part of a group practice shall be deemed to have his or her Participating Provider status and Participating Provider Information confirmed if: (1) the provider has a direct or indirect contractual relationship with Anthem; (2) Anthem determines by reliable means that the provider's Participating Provider Information is unchanged in the past 12 months; and, (3) the provider has submitted claims as a Participating Provider or accepted capitation payments in the past 12 months or Anthem has other reliable indicia (e.g., semi-annual data mining) that the provider does not dispute his or her status as a participating provider.
- ii. Individual members of a provider group practice or hospital staff shall be deemed to have their Participating Provider status and Participating Provider Information confirmed if the practice or hospital is participating pursuant to a direct or indirect contractual relationship with the Plan and has submitted a roster within the past 12 months which lists such individual members as Participating Providers and includes their practice address(es), telephone number(s), specialty area, hospital affiliations, and any applicable board certification.
- iii. Anthem shall devise reasonable processes to ensure that: (1) providers who cannot be located through its Verification Processes are removed from the online Provider Directory in a timely manner; and, (2) all practice groups provide it timely notice whenever group members leave or join the practice.

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- 1 c. Plan shall maintain information on its provider website that explains to providers how
2 they can determine with what networks they are contracted. The website shall
3 include information about the networks used for products offered through Covered
4 California. The website shall also remind providers of their contractual obligation to
5 provide Anthem with updated demographic information. The Plan shall notify
6 providers of the website and the content described in this subsection through the use
7 of quarterly newsletters, notices in the semi-annual outreach, a permanent notice on
8 the Provider Portal of the existence of the information, and a link to a "toolkit" that
9 provides information to office managers on how to update information.
- 10 d. Anthem shall conduct a provider verification based on complaint data received
11 through member or provider complaints on a quarterly basis. Associated updates to
12 its online Provider Directory shall be made within 20 days of Anthem receiving said
13 information.
- 14 e. The Plan shall conduct ongoing updates to provider information when a request is
15 received by email, fax or a ticket by the provider, returned mail from a provider with
16 an address change that has been confirmed, online change form and manual and
17 automatic updates by a provider data vendor. Associated updates to its online
18 Provider Directory shall be made within 21 days of Anthem receiving said
19 information.
- 20 f. Plan will conduct data mining (cross-checking internal data) on a semi-annual basis
21 and document the process.
- 22 g. Every quarter, Anthem will compare its Provider Directory with the list last filed with
23 the Department for each network. When analysis indicates a greater than 10% change
24 in names contained in the list, the Plan will file an amendment consistent with
25 California Code of Regulations, title 28, section 1300.52(f).
- 26 h. The Plan will conduct 25 educational webinars/seminars over a 12 month period from
27 the date of the execution of this Agreement and will make accessible provider office-
28 manager toolkits for all contracting providers that include explanations of changes to

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1 Covered California for applicable Benefit Year and how to confirm network
2 participation. These "toolkits" will be continually available on the Provider Portal,
3 and notice that they are available will be given in the semi-annual provider outreach
4 outlined above.

5 i. On a semi-annual basis, Anthem shall:

- 6 1. take a random sampling of the providers who were subject to its
7 Verification Processes (the "Verified Providers"); and,
- 8 2. compare the Participating Provider Information of the Verified Providers
9 that is contained on its online Provider Directory with the current source
10 documentation obtained through its Verification Processes to determine
11 the percentage of those Verified Providers who are accurately listed
12 therein with regard to Participating Provider status and Participating
13 Provider Information. The Plan shall notify the Department of results
14 within 60 days of sampling. The Plan shall use this information to update
15 its Provider Directory.

16 j. Anthem shall appropriately train all personnel or vendors who administer or maintain
17 the online Provider Directory about the policies and procedures required by this
18 Settlement Agreement.

19 k. Anthem shall have a dedicated phone line to address current and prospective
20 enrollees' questions regarding provider network status and other Provider Directory
21 issues, and shall maintain such phone line for a minimum of three years.

22 l. Anthem shall continue to execute and implement any and all remediation
23 processes identified in its response to the Department's Non-Routine Survey
24 published in November 2014 and other filings with the Department to the extent
25 they are consistent with the CAP set forth in this Settlement Agreement.

26 32. The Plan shall revise all relevant health plan documents including, but not limited to,
27 any and all policies and procedures applicable to ensure compliance with the terms of this
28 Agreement and the Act. Those revised documents shall be eFiled with the Department's Office

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1 of Plan Licensing within thirty (30) calendar days after execution of this Agreement, and the
2 filing shall highlight as well as underline the changes to the text, if applicable, as required by
3 California Code of Regulations, title 28, and section 1300.52(d).

4 33. In the event of any future administrative proceedings and/or litigation resulting from
5 those proceedings, the Department may, in its sole discretion, introduce evidence of any and all
6 corrective actions taken by the Plan to improve and or correct its Provider Directory accuracy as
7 evidence to establish violations by the Plan. The Plan agrees it will not object to the admissibility
8 of such evidence under California Evidence Code section 1151 (subsequent remedial measures).

9 34. The parties agree that the terms of this Agreement are not only a contract but they are
10 additionally an Order of the Director, and the Department may exercise any and all aspects of its
11 enforcement authority to enforce Anthem's compliance with any and/or all of its obligations under
12 this Agreement, and that any remedy available to the Director is not exclusive, and may be sought
13 and employed in any combination with civil, criminal, and other administrative remedies deemed
14 warranted by the Director to enforce this Agreement.

15 35. If the Department contends that Anthem has breached this Agreement, the
16 Department will notify Anthem of the breach and will afford the Plan a reasonable opportunity to
17 cure the alleged breach prior to commencement of an enforcement action. Anthem agrees that the
18 terms of this Agreement do not prevent the Department from exercising any and all other aspects of
19 its disciplinary authority to ensure that Anthem's Provider Directory accuracy is consistent with this
20 Agreement.

21 36. This Agreement is the entire agreement between the parties and supersedes any prior
22 negotiations, representations, or agreements, whether written or oral, which relate to the subject
23 matter of this Agreement.

24 37. This Agreement may not be altered, amended or otherwise changed or modified,
25 except in writing signed by both of the parties.

26 38. This Agreement may be executed in counterparts and each counterpart or facsimile
27 copy thereof will have the same force and effect as the original.

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39. Each signatory below warrants and represents that he or she has authority to sign on behalf of, and to bind, his or her respective entity.

PAYMENT

40. Upon execution by Anthem of this Agreement, Anthem shall, within ten days, pay to the Department an administrative penalty of Two Hundred and Fifty Thousand dollars (\$250,000.00).

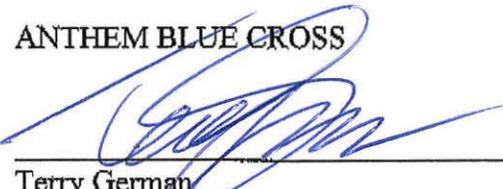
DURATION

41. All Corrective Actions required under this agreement shall remain in effect for a period of two years from the effective date of this Agreement except that any federal or state legislation or regulation enacted after the date of this Agreement that imposes any requirements on a health care service plan as it relates to establishing and maintaining a Provider Directory shall supersede any Corrective Actions required under this Agreement.

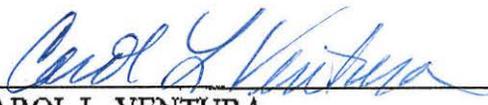
IT IS SO AGREED

IN WITNESS WHEREOF, the parties hereby execute this Agreement by the signatures of their respective duly authorized officials.

Dated: October 27, 2015

ANTHEM BLUE CROSS

By: _____
Terry German
Associate General Counsel
Blue Cross of California dba Anthem Blue Cross

Dated: October 29, 2015

DEPARTMENT OF MANAGED HEALTH CARE

By: _____
CAROL L. VENTURA
Deputy Director | Chief Counsel
Office of Enforcement
Department of Managed Health Care