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DEPARTMENT OF MANAGED HEALTH CARE
By Anita Burmas
Filing Clerk

BEFORE THE DEPARTMENT OF MANAGED HEALTH CARE

OF THE STATE OF CALIFORNIA

IN THE MATTER OF: **Santa Barbara Select IPA Medical Group, Inc.,** **Blue Cross of California, Inc. dba Anthem Blue Cross,** Respondents.	Enforcement Matter No.: 06-257 **CEASE AND DESIST ORDER** **(Health & Saf. Code, §§ 1341, 1344, 1341.8, 1371, 1371.39, 1391 and Cal. Code Regs., tit. 28, §§ 1300.71, 1300.71.38)**

To: Santa Barbara Select Medical Group IPA, Inc.
c/o Jerome Kay, M.D.
200 N. La Cumbre Road, Suite E
Santa Barbara, CA 93110

Blue Cross of California, Inc., dba Anthem Blue Cross
c/o Karen Francolini
Managing Assoc. General Counsel
21555 Oxnard Street
Woodland Hills, CA 91367

The Director of the Department of Managed Health Care, by and through her designee, Assistant Deputy Director Amy L. Dobberteen, 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, Health and Safety Code section 1340 et seq. (the Knox-Keene Act).

2. Santa Barbara Select Medical Group IPA, Inc., (Santa Barbara Select) is a California Corporation with its principal place of business believed to be at 6450 Via Real Suite 9, Carpenteria, California, 93013.

3. Blue Cross of California is a health care service plan licensed under the Knox-Keene Act, license number 933 0303, and is regulated by the Department. Blue Cross of California also does business as Anthem Blue Cross (hereafter, the Plan).

II. STATUTORY AUTHORITY

4. The Knox-Keene Act requires a health care service plan to reimburse providers for emergency services and care provided to its enrollees, until the care results in stabilization of the enrollee. (Health & Saf. Code, §§ 1367.1, 1345(b)(6), 1371.4(b).)

5. The Director may issue an order directing a plan, solicitor firm, or any representative thereof, a solicitor, or any other 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.)

6. A health plan or its delegate shall reimburse contracted providers without a written contract and non-contracted providers in an amount equal to the reasonable and customary value for the health care services rendered based upon statistically credible information that is updated at least annually and takes into consideration: (i) the provider's training, qualifications, and length of time in practice; (ii) the nature of the services provided; (iii) the fees usually charged by the provider; (iv) prevailing provider rates charged in the general geographic area in which the services were rendered; (v) other aspects of the economics of the medical provider's practice that are relevant; and (vi) any unusual circumstances in the case. (Health & Saf. Code, §§ 1371, 1371.4 and Cal. Code Regs., tit. 28, § 1300.71.)

7. A health plan is prohibited from engaging in unfair payment patterns. (Health & Saf. Code, § 1371.39.)

8. All health care service plans and their capitated providers that pay claims (plan's capitated provider) shall establish a fast, fair and cost-effective dispute resolution mechanism to process and resolve contracted and non-contracted provider disputes. (Cal. Code Regs., tit. 28, § 1300.71.38

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

III. FACTUAL BACKGROUND

9. Blue Cross is a California licensed health plan providing basic health care services to enrollees.

10. Santa Barbara Select is a plan delegate for, among others, Blue Cross.

11. Santa Barbara Select is a delegated medical group contracted with Blue Cross to provide health care services to Blue Cross enrollees.

12. Blue Cross enrollees assigned to Santa Barbara Select have received health care services, specifically emergency care services, from providers who have not negotiated an express written contract with Santa Barbara Select. These emergency care providers are called non-network providers.

13. Non-network providers, including, but not limited to, South Coast Emergency Medical Group, have rendered pre-stabilization emergency health care services to Blue Cross enrollees assigned to Santa Barbara Select as their primary medical group. These non-network providers sought reimbursement from Santa Barbara Select for those emergency services rendered.

14. In reimbursing non-network providers who are not expressly contracted with Santa Barbara Select, Santa Barbara Select has reimbursed those providers in an amount equal to 100 percent of the Medicare Fee Schedule (MFS).

15. In reimbursing non-network providers who are not expressly contracted with Santa Barbara Select, Santa Barbara Select has not considered consistently for each claim: (i) the provider's training, qualifications, and length of time in practice; (ii) the nature of the services provided; (iii) the fees usually charged by the provider; (iv) prevailing provider rates charged in the general geographic

area in which the services were rendered; (v) other aspects of the economics of the medical provider's practice that are relevant; and (vi) any unusual circumstances in the case.

16. In reimbursing non-network providers who are not expressly contracted with Santa Barbara Select, Santa Barbara Select has not paid the reasonable and customary value for the health care services rendered based upon statistically credible information that is updated at least annually.

17. Blue Cross knew, or reasonably should have known, that Santa Barbara Select was reimbursing non-network providers at a rate of 100 percent of the MFS.

18. Blue Cross knew, or reasonably should have known, that Santa Barbara Select had not considered consistently for each claim: (i) the provider's training, qualifications, and length of time in practice; (ii) the nature of the services provided; (iii) the fees usually charged by the provider; (iv) prevailing provider rates charged in the general geographic area in which the services were rendered; (v) other aspects of the economics of the medical provider's practice that are relevant; and (vi) any unusual circumstances in the case.

IV. FINDINGS

19. Santa Barbara Select is a person within the meaning of Health and Safety Code sections 1345(j) and 1391.

20. Santa Barbara Select's methodology for reimbursing non-network emergency services providers at an amount equal to 100 percent of the MFS is not a reasonable and customary value for the health care services rendered based upon statistically credible information that is updated at least annually, in violation of Health and Safety Code sections 1371, 1371.4 and California Code of Regulations, title 28, section 1300.71.

21. Santa Barbara Select's methodology for reimbursing emergency services providers without consideration of: (i) the provider's training, qualifications, and length of time in practice; (ii) the nature of the services provided; (iii) the fees usually charged by the provider; (iv) prevailing provider rates charged in the general geographic area in which the services were rendered; (v) other aspects of the economics of the medical provider's practice that are relevant; and (vi) any unusual circumstances in the

case, violates Health and Safety Code sections 1371, 1371.4 and California Code of Regulations, title 28, section 1300.71.

22. Blue Cross knew, or reasonably should have known, that Santa Barbara Select was reimbursing non-network providers at a rate of 100 percent of the MFS, in violation of Health and Safety Code sections 1371, 1371.4 and California Code of Regulations, title 28, section 1300.71.

23. Blue Cross knew, or reasonably should have known, that Santa Barbara Select had not considered consistently for each claim: (i) the provider's training, qualifications, and length of time in practice; (ii) the nature of the services provided; (iii) the fees usually charged by the provider; (iv) prevailing provider rates charged in the general geographic area in which the services were rendered; (v) other aspects of the economics of the medical provider's practice that are relevant; and (vi) any unusual circumstances in the case, in violation of Health and Safety Code sections 1371, 1371.4 and California Code of Regulations, title 28, section 1300.71.

24. Santa Barbara Select has institutionalized its payment practices and reimbursement methodology in a manner which consistently results in a demonstrable and unjust pattern of reducing the amount of payment of claims in violation of Health and Safety Code section 1371.37.

25. Blue Cross permits Santa Barbara Select to institutionalize its payment practices and reimbursement methodology in a manner which consistently results in a demonstrable and unjust pattern of reducing the amount of payment of claims in violation of Health and Safety Code Section 1371.37.

26. Santa Barbara Select has not provided non-network providers a fast, fair and cost-effective dispute resolution mechanism to process and resolve contracted and non-contracted provider disputes.

ORDER

THEREFORE, the Director of the Department of Managed Health Care, by and through her designee, Assistant Deputy Director Amy L. Dobberteen, pursuant to Health and Safety Code section 1391, **ORDERS AS FOLLOWS:**

1. Santa Barbara Select Medical Group IPA, Inc., and its agents shall cease and desist from using 100 percent of the Medicare Fee Schedule as the basis for reimbursing providers without a written contract;

2. Santa Barbara Select Medical Group IPA, Inc., and its agents shall, within 30 days of the receipt of this Order, file with the Department of Managed Health Care a new payment methodology for reimbursing providers without a written contract, and said methodology shall comply with the requirements of California Code of Regulations, title 28, section 1300.71(a)(3)(B);

3. Santa Barbara Select Medical Group IPA, Inc., and its agents shall, within 30 days of the receipt of this Order, file with Blue Cross of California a new payment methodology for reimbursing providers without a written contract, and said methodology shall comply with the requirements of California Code of Regulations, title 28, section 1300.71(a)(3)(B);

4. Blue Cross of California shall, within 30 days from the date of this Order, conduct an audit of each of its delegated medical groups to determine what methodology each group uses to reimburse non-network emergency services providers, and shall report the results of those audits to the Director of the Department of Managed Health Care within a reasonable time;

5. Blue Cross of California shall not assign any further enrollees to Santa Barbara Select Medical Group IPA, Inc., from the date of this Order until such time as Santa Barbara Select has demonstrated compliance with California Code of Regulations, title 28, section 1300.71 to the Department of Managed Health Care and to Blue Cross; and

6. For each claim Santa Barbara Select Medical Group IPA, Inc., has underpaid at the non-compliant rate, Santa Barbara Select Medical Group IPA, Inc shall reprocess and pay the claim at the rate set forth in its compliant methodology as required by No. 3 of this Order, within 60 days of the date of this Order.

7. Santa Barbara Select Medical Group IPA, Inc., and its agents shall, within 30 days of the receipt of this Order, implement a fast, fair and cost-effective dispute resolution mechanism to process and resolve contracted and non-contracted provider disputes; and said methodology shall comply with the requirements of California Code of Regulations, title 28, section 1300.71.38.

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

Dated: October 6, 2009

DEPARTMENT OF MANAGED HEALTH CARE

By: _____

AMY L. DOBBERTEEN
Assistant Deputy Director
Office of Enforcement