



Edmund G. Brown Jr., Governor
 State of California
 Health and Human Services Agency
DEPARTMENT OF MANAGED HEALTH CARE
 980 9th Street, Suite 500, Sacramento, CA 95814
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October 11, 2016

SENT VIA FACSIMILE ONLY TO: (916) 447-0911

Mr. Terry German
 Blue Cross of California
 1121 L Street, Suite 500
 Sacramento, CA 95814

**RE: ENFORCEMENT MATTER NUMBERS: 15-340 plus 57 additional matters
 Third Blue Cross Bulk Grievance Case**

LETTER OF AGREEMENT

Dear Mr. German:

The Office of Enforcement within the Department of Managed Health Care (the Department) has concluded its investigation of Blue Cross of California (the Plan) concerning the above matter. This investigation concerned the Plan's violations of the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene Act) and regulations promulgated thereunder.

A summary of the violations and penalty assessed for each matter is contained in Appendix A attached hereto. The table below represents the grievance system violations (GSV) cited in these matters.

Section/Rule	Description	Violations
Section 1367.01(h)(4) ¹	Failure to clearly explain basis for denial in treatment denial letter.	2
Section 1368(a)(1) and Rule 1300.68(a)(1)	Failure to adequately consider and rectify the enrollee's grievance.	10

¹ All references to "Section" are to the Health and Safety Code unless otherwise indicated. All references to "Rule" are to Title 28 of the California Code of Regulations unless otherwise indicated.

Blue Cross of California
 October 11, 2016
 Page 2 of 4

Section/Rule	Description	Violations
Section 1368(a)(5)	Failure to describe the clinical reasons for the plan's medical necessity determination.	2
Section 1368(a)(4)(A) and Rule 1300.68(d)(1)	Failure to timely provide written acknowledgment of a grievance and failure to include date of receipt of the Enrollee's grievance in the Plan's grievance acknowledgment letter.	25
Section 1368.01(a) and Rule 1300.68(d)(3)	Failure to resolve grievance in 30 days.	37
Section 1368.01(b) and Rule 1300.68.01(a)	Failure to timely provide written statement on status of expedited grievance.	2
Rule 1300.68(g)	Failure to provide initial response to the Department within 5 days.	10
Rule 1300.68(g)(1-5)	Failure to provide all required information in initial response to the Department.	14
Rule 1300.68(g)(6)	Failure to timely respond to Department request for additional information.	7
Total		109

The nature of the Plan's violations fall into two grievance system categories: (1) failure to identify, timely process and resolve grievances at the Plan level (78 violations); and, (2) after Department involvement, the Plan's failure to fully and timely provide information to the Department (31 violations). The gravity of the Plan's violations is measured by the fact that even one grievance violation deprives an enrollee of Knox-Keene Act consumer protections that ensures an enrollee's right to quality medical care. In addition, repeated grievance violations result in an unnecessary use of Department resources.

The Plan is obligated to maintain a compliant, reliable and accurate grievance and appeal system. This includes procedural protections that notify an enrollee when a grievance is received and has been identified as such, that the grievance is timely and thoroughly considered, the plan's decision is comprehensible and fairly communicated and the plan fully and timely responds to the Department's requests for information. The Plan failed to do so in these matters.

As an aggravating factor, each violation caused a delay in resolving the enrollees' grievances and therefore deprived the enrollees of significant consumer protections. Thirty-three² of the 58 cases resulted in a determination of aggravating factors. In all but

² See Appendix A

Blue Cross of California
 October 11, 2016
 Page 3 of 4

one of the 33 cases, the significant length of the delay to acknowledge, resolve or provide information to the Department was determined to be an aggravating factor. Historically, the Plan's most consistent violation involved the failure to timely resolve enrollees' grievances and has resulted in 524 violations. This violation occurred in 34 of the current 58 cases. Twenty-eight of the 34 cases involved significant delays that resulted in a determination of aggravating factors.

The Plan implemented a Corrective Action Plan (CAP) in November 2014³ in an effort to ensure compliance with the resolution of grievances and appeals. Despite the corrective action taken by the Plan and assurances to the Department that processes were in place that would reduce the amount of grievance-related violations, the Plan's GSVs continue. The GSVs occurred in 36 cases *after* the Plan provided additional training and implemented the new tracking system.

The following summarizes the significant length of delay in the 58 cases that resulted in a determination of aggravating factors in cases that occurred *prior* to the implementation of the Plan's grievance system initiative⁴.

Cases	Shortest Delay	Longest Delay	Average Delay
18	16 days	179 days	88 days

The following summarizes the length of delay that resulted in a determination of aggravating factors in cases that occurred *after* the implementation of the Plan's grievance system initiative.

Cases	Shortest Delay	Longest Delay	Average Delay
14	30 days	196 days	76 days

The Plan's violations have continued even after the additional staff training and new tracking system. The Plan appears to have a pattern and practice of not timely resolving grievances.

The Plan has acknowledged its failure to comply with the Knox-Keene Act and title 28 of the California Code of Regulations in this enforcement matter. The Department determined that an administrative penalty of \$650,000 is warranted.

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³ This CAP was implemented in 2014 as a result of the findings of deficiencies by the Division of Plan Surveys after a 2013 routine survey.

⁴ See Appendix B

Blue Cross of California
October 11, 2016
Page 4 of 4

The Department agrees that payment of the penalty will settle all issues, accusations, and claims pertaining to these enforcement matters. This Letter of Agreement may not be used as an admission by the Plan in any other civil or criminal proceedings; however, it may be used by the Department in future administrative proceedings.

Sincerely,

Dated: November 7, 2016

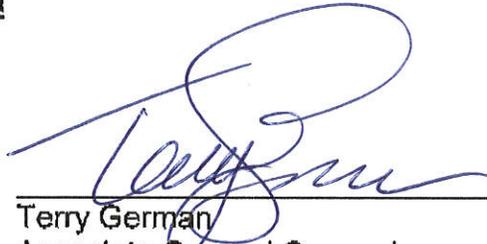


Drew Brereton
Interim Deputy Director | Chief Counsel
Office of Enforcement

LMK:lmk

Accepted by Blue Cross of California

Dated: 10/11/16



Terry German
Associate General Counsel
Blue Cross of California

Appendix A

Shaded entries denote cases involving aggravating factors

* Cases occurred prior to/overlaps Plan's 11/14 initiative

efforts to ensure compliance with timely resolution of grievances

Matter	1367.01(h)(4)	1368(a)(1) 1300.68(a)(1)	1368(a)(5)	1368(a)(4)(A) 1300.68(d)(1)	1368.01(a) 1300.68(d)(3)	1368.01(b) 1300.68.01(a)(2)	1300.68(g)	1300.68(e)(1-5)	1300.68(e)(6)	Penalty
1	15-441*								xx	\$ 15,000.00
2	15-442*				x					\$ 7,500.00
3	15-443*			x	xx					\$ 17,500.00
4	15-444*	x		x						\$ 12,500.00
5	15-445*							x (1)		\$ 5,000.00
6	15-446*	x		x		x				\$ 20,000.00
7	15-447*				x					\$ 7,500.00
8	15-448*			xx	x		x			\$ 17,500.00
9	15-449*				x					\$ 7,500.00
10	15-452*				x					\$ 7,500.00
11	15-453*				x		x			\$ 12,500.00
12	15-454			x	x					\$ 12,500.00
13	15-455*		x	x	x					\$ 17,500.00
14	16-102				x					\$ 12,500.00
15	16-103	x					x			\$ 10,000.00
16	16-104						x			\$ 5,000.00
17	16-105						x	x (5)		\$ 10,000.00
18	16-106				x					\$ 12,500.00
19	16-275				x					\$ 12,500.00
20	16-276			x						\$ 5,000.00
21	16-277								xx	\$ 10,000.00
22	16-278	x								\$ 5,000.00
23	16-279			x	x	x		x (1)		\$ 20,000.00
24	16-280							x (5)		\$ 5,000.00
25	16-281			x	x					\$ 12,500.00
26	16-282			x	x		x			\$ 17,500.00
27	16-283			x				x (1)		\$ 10,000.00
28	16-284			x			x	x (1)		\$ 15,000.00
29	16-285			x	x					\$ 10,000.00
30	16-286							x (1)		\$ 5,000.00
31	16-287				x					\$ 5,000.00
32	16-288				x					\$ 12,500.00
33	16-289	x			x					\$ 17,500.00
34	16-292							x (1)		\$ 5,000.00
35	16-293				x					\$ 12,500.00
36	16-294				x			x (1)		\$ 17,500.00
37	16-295	x							x	\$ 10,000.00
38	16-296				x					\$ 12,500.00
39	16-297				x					\$ 12,500.00
40	16-298				x					\$ 12,500.00
41	16-299						x			\$ 5,000.00
42	16-300							xx (1) (4)		\$ 10,000.00
43	16-301				x					\$ 12,500.00
44	16-302			xx						\$ 7,500.00
45	16-303							x (1)	x	\$ 10,000.00
46	16-304						x			\$ 5,000.00
47	16-585*			x					x	\$ 10,000.00
48	16-587*							x (5)		\$ 5,000.00
49	16-588			xx	x					\$ 17,500.00
50	16-589*	x		x				x (1)		\$ 15,000.00
51	16-590				x					\$ 10,000.00
52	16-591*				x					\$ 7,500.00
53	16-592*				x					\$ 7,500.00

Appendix A

Shaded entries denote cases involving aggravating factors

* Cases occurred prior to/overlaps Plan's 11/14 initiative

efforts to ensure compliance with timely resolution of grievances

	Matter	1367.01(b)(4)	1368(a)(1) 1300.68(a)(1)	1368(a)(3)	1368(a)(4)(A) 1300.68(d)(1)	1368.01(a) 1300.68(d)(3)	1368.01(b) 1300.68.01(a)(3)	1300.68(g)	1300.68(g)(1-5)	1300.68(g)(6)	Penalty
54	16-593*	x	x			x		x			\$ 15,000.00
55	16-594*		xxx		xxx	xxx					\$ 20,000.00
56	16-595*				x	x					\$ 15,000.00
57	16-596*				x	x					\$ 15,000.00
58	16-597*					x					\$ 7,500.00
										Total	\$ 650,000.00

APPENDIX B
Length of Delay Determined Aggravating Factor

Matter No.	Failure to timely acknowledge grievance	Failure to timely resolve grievance	Failure to timely provide Department information	Days late
15-441			xx	65, 21
15-442		x		41
15-443		x		80
15-444	x			16
15-446	x			30
15-447		x		20
15-448		x		38
15-449		x		41
15-452		x		73
15-453		x		107
15-454		x		26
15-455		x		179
16-102		x		71
16-106		x		39
16-275		x		58
16-281		x		33
16-282		x		80
16-288		x		149
16-289		x		50
16-293		x		141
16-294		x		67
16-296		x		77
16-297		x		47
16-298		x		196
16-301		x		30
16-588		x		32
16-591		x		59
16-592		x		114
16-593		x		101
16-595		x		118
16-596	x	xx		25, 227, 58
16-597		x		173

Shaded entries represent cases that occurred prior to or overlaps the Plan's implementation of a CAP initiated in November 2014 in an effort to ensure compliance with timely resolution of grievances and appeals