

1 CALIFORNIA DEPARTMENT OF INSURANCE
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CALIFORNIA DEPARTMENT OF INSURANCE
6

7 **BEFORE THE INSURANCE COMMISSIONER**
8 **OF THE STATE OF CALIFORNIA**
9

10 In the Matter of
11 Health Net Life Insurance Company
12 Respondent.

File No. OSC-2012-00012
STIPULATION AND WAIVER
(California Insurance Code §§ 790.03,
700(c), and 790.035)

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16 Respondent, Health Net Life Insurance Company ("Respondent"), and the California
17 Department of Insurance ("Department"), agree as follows:

18 1. Respondent holds a Certificate of Authority to transact the business of life and
19 disability insurance in the State of California, pursuant to §§ 700 *et seq.* of the California
20 Insurance Code.¹

21 2. Respondent is a California corporation.

22 3. A number of Respondent's insureds who have been diagnosed with pervasive
23 development disorder ("PDD") and/or autism have made requests for coverage of Applied
24 Behavior Analysis (ABA).

25 4. On or about February 27, 2012, the Department served Respondent with an Order to
26 Show Cause and Statement of Charges (hereinafter "OSC") in the proceeding entitled In the
27 Matter of the Certificate of Authority of Health Net Life Insurance Company. Among other
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¹ Unless otherwise stated, all references are to the California Insurance Code.

1 things, the OSC seeks an order requiring Respondent to provide coverage for ABA when
2 medically necessary for all of its insureds with PDD or autism.

3 5. On October 9, 2011, the Legislature enacted SB 946, which adds Sections 10144.51 and
4 10144.52 to the California Insurance Code. These provisions require coverage for ABA for PDD
5 or autism, and establishment of an ABA network, effective July 1, 2012.

6 6. In January 2012 the Respondent notified the Department that Respondent would cover
7 ABA treatment for all of its insureds diagnosed with PDD or autism, when medically necessary,
8 and has sufficient provider network capacity that enables it to do so, under the terms and
9 conditions set forth in paragraph 9 below. Under those terms and conditions, Respondent agrees
10 that it will not reject any claims for ABA, will not conduct utilization review, and will continue to
11 provide such coverage to all of its insureds with PDD or autism through June 30, 2012, after
12 which time Respondent will be subject to the requirements of SB 946.

13 7. This Agreement is premised on the facts that Respondent has agreed to cover ABA for
14 its insureds with PDD or autism, and has sufficient capacity to do so under the terms described in
15 paragraph 9 of this Agreement, whenever ABA is medically necessary, and the parties are
16 resolving this matter solely as a result of those circumstances. In view of these facts, Respondent
17 and the Department now wish to resolve all disputes and issues relating to or arising from the
18 OSC without the need for a hearing or further administrative action. The parties mutually agree to
19 enter into this settlement agreement ("Agreement"), and agree that the resolution embodied in this
20 Agreement is made in good faith and resolves all charges, claims, requests for penalties and
21 requests for orders set forth in the OSC.

22 8. By this Agreement, Respondent waives any and all rights to a hearing in this matter,
23 and any and all other rights related to this proceeding which may be accorded pursuant to Chapter
24 5, Part 1, Division 3, Title 2 (commencing with § 11500) of the California Government Code and
25 by the California Insurance Code.

26 9. Respondent agrees to cover ABA for all individuals diagnosed with PDD or autism
27 insured under policies regulated by the Department of Insurance from the date of this Agreement
28 through June 30, 2012, and further agrees that it has sufficient capacity and an adequate network,

1 or will enter into single case agreements with geographically accessible providers, to enable it to
2 provide coverage for such treatment on the following terms and conditions:

3 (a) ABA is prescribed by a physician and surgeon licensed pursuant to Chapter 5
4 (commencing with Section 2000) of, or is developed by a psychologist licensed pursuant to
5 Chapter 6.6 (commencing with Section 2900) of, Division 2 of the Business and Professions
6 Code, is provided under a treatment plan prescribed by a qualified autism service provider and is
7 administered by the qualified autism service provider, or either a qualified autism service
8 professional or a qualified autism service paraprofessional who is employed by and acting under
9 the supervision of the qualified autism service provider. The three types of autism providers shall
10 hold the applicable qualifications set forth in Section 10144.51 (c) (3)-(5). The qualified autism
11 service provider shall:

12 (1) Bill for ABA using the billing codes supplied by Respondent;

13 (2) Maintain appropriate professional liability insurance covering ABA provided
14 to the insured;

15 (3) Retain appropriate treatment records, including the identity of the individuals
16 providing ABA, in accordance with professional standards of practice; and,

17 (4) Provide copies of the insured's ABA treatment records to Respondent on
18 reasonable request and at reasonable intervals.

19 (b) In the event that the insured's first-choice provider for ABA is not a qualified autism
20 service provider or is not employed and supervised by a qualified autism service provider
21 Respondent is now locating and will continue to assist in locating providers who are known to
22 Respondent and who will agree to the conditions set forth in this Paragraph 9.

23 10. Respondent has established an ABA Support Team that responds to inquiries
24 regarding coverage of, requests for authorization for, and requests for payment for ABA.

25 11. Through June 30, 2012, Respondent agrees to provide coverage for all medically
26 necessary ABA for the treatment of PDD or autism for all current and future insureds, and is able
27 to do so in accordance with the terms of this Agreement. ABA shall be covered for a duration
28 equal to the length of time specified by the insured's qualified autism service provider, or through

1 June 30, 2012, whichever is shorter, at the number of hours per week/month as specified by the
2 qualified autism service provider. From the date of this Agreement through June 30, 2012,
3 Respondent will not dispute the medical necessity of the services or the frequency at which the
4 ABA is recommended or rendered. Whether or not prior authorization is sought or obtained from
5 a qualified autism service provider, coverage will not be denied during this initial period to
6 insureds diagnosed with autism, under the terms of this agreement.

7 12. Through June 30, 2012, when reimbursing claims for ABA that was rendered,
8 Respondent agrees that it will not place any unique conditions on qualified autism service
9 providers of ABA for the treatment of PDD or autism other than those set forth in this
10 Agreement, and except as otherwise required of other providers. Respondent additionally agrees
11 that it will adjudicate complete claims in accordance with the provisions of the Insurance Code
12 and related regulations. Respondent and its ABA providers may reach more specific agreements
13 regarding claims reimbursement and issues of documentation by contract. However, in no event
14 shall Respondent request that an ABA provider operating under the terms of this Agreement
15 waive any of its rights under the Insurance Code and related regulations, or require more
16 documentation of a claim than is permissible under the law.

17 13. Through June 30, 2012, when paying claims from ABA providers or reimbursing
18 insureds for medically necessary ABA in accordance with the conditions set forth herein,
19 Respondent agrees to reimburse at the preferred provider level of benefits.

20 14. Respondent is currently working to establish a network of ABA providers as defined
21 in Insurance Code section 10144.51.

22 15. Notwithstanding anything set forth in this Agreement, the parties agree that
23 alternatively, Respondent may choose to cover ABA consistent with Section 10144.51 at any time
24 prior to July 1, 2012.

25 16. This Agreement has no force or effect on and after July 1, 2012.

26 17. This Agreement does not constitute an admission by Respondent of liability, violation,
27 wrongdoing or improper conduct.

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1 8. By entering into this Agreement, the parties hereby settle the OSC and all issues, accusations,
2 and claims that the Department has or may have against Respondent, including, without
3 limitation, any alleged violation of the Insurance Code, relating to or arising from Respondent's
4 actions regarding coverage or claims for ABA that occurred on or before the Effective Date of
5 this Agreement, as defined below.

6 19. The Parties further understand and agree that, except for purposes of enforcing the
7 terms of this Agreement, this Agreement shall not be used for any purpose by either party in any
8 current or future litigation or dispute resolution in any form. It is understood and agreed that, by
9 entering into this Agreement, Respondent is not waiving and specifically reserves all rights and
10 defenses in any such actions brought by the Department or by any third party.

11 20. Respondent and the Department represent and warrant that the persons executing this
12 Agreement on their behalf are authorized to enter into and execute this Agreement.

13 21. Respondent acknowledges that Section 12921 requires the Insurance Commissioner to
14 approve the final settlement of this matter. Both the settlement terms and conditions contained
15 herein and the acceptance of those terms and conditions are contingent upon the Commissioner's
16 approval and Order, and entry of such Order shall constitute the effective date of this Agreement
17 ("the Effective Date").

18 22. This Agreement represents a compromise within the meaning of California Evidence
19 Code §§ 1152 and 1154.

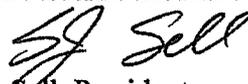
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21 Dated: February 27, 2012

Health Net Life Insurance Company.

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By



Steve Sell, President

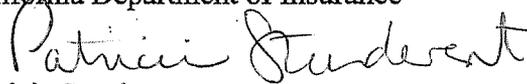
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24 Dated: February 27, 2012

California Department of Insurance

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By



Patricia Sturdevant

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Deputy Commissioner for Policy and Planning

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