STATE OF CALIFORNIA

DEPARTMENT OF INSURANCE

SAN FRANCISCO

In the Matter of UNITED HEALTHCARE INSURANCE COMPANY, Respondent	File No. UPA 2012-00017 **ORDER**

WHEREAS, the Insurance Commissioner and the above-named Respondent have executed the Stipulation and Waiver attached hereto, the provisions of which are hereby incorporated by reference; and

WHEREAS, Respondent has waived the right to a hearing and has stipulated to the entry of this Order.

IT IS HEREBY ORDERED that Respondent execute all of the terms of the Stipulation and Waiver without delay and in good faith.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 16th day of April, 2012.

DAVE JONES
Insurance Commissioner

By Teresa R. Campbell
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Assistant Chief Counsel

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BEFORE THE INSURANCE COMMISSIONER

OF THE STATE OF CALIFORNIA

In the Matter of UNITEDHEALTHCARE INSURANCE COMPANY, Respondent.	File No. UPA-2011-00017 **STIPULATION AND WAIVER** **(California Insurance Code §§ 790.03, 700(c),790.035 and Government Code § 11505)**

Respondent, UnitedHealthcare Insurance Company ("Respondent"), and the California Department of Insurance ("Department"), stipulate as set forth herein:

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

2. Respondent is a Connecticut corporation.

3. Between 2009 and 2011, on four separate occasions, five of Respondent's insureds who had been diagnosed with or screened for pervasive developmental disorder or autism (collectively, "autism") made requests for coverage of Behavioral Health Treatment as defined in California Insurance Code § 10144.51(c)(1), and in particular, for Applied Behavior Analysis

[1] Unless otherwise stated, all references are to the California Insurance Code.

therapy ("ABA therapy"). Respondent denied coverage for ABA therapy, asserting that ABA therapy was experimental and/or investigational.

4. The families appealed these denials through an Independent Medical Review (IMR) process, and in every case the denial was reversed. In each case, the doctors found that the prescribed ABA therapy was neither experimental nor investigational and was medically necessary. As required by law, the Commissioner immediately adopted the IMR Decisions and notified Respondent. As a result of these IMR decisions, the Department ordered that Respondent provide coverage for and pay for medically necessary ABA therapy for these insureds.

5. The Department contends that coverage of medically necessary ABA therapy is mandated by California Insurance Code § 10144.5 *et seq.,* the California Mental Health Parity Act, without any limit other than medical necessity. The Department contends that ABA therapy is the standard of care for autism and that delays in providing medically necessary ABA therapy are unlawful and potentially catastrophic to the health of a patient.

6. The Department further contends that Respondent engaged in conduct in violation of the California Mental Health Parity Act, § 10144.5, by failing to arrange and delaying in arranging for provision of behavioral health treatment of pervasive developmental disorder or autism for its insureds as required by §10144.5, and in so doing was acting in violation of § 790 *et seq.,* by engaging in unfair or deceptive acts and in violation of § 790.03(h)(1) by misrepresenting to claimants pertinent facts or insurance policy provisions relating to any coverage at issue. Specific allegations are set forth in the Order to Show Cause and Statement of Charges; Notice of Monetary Penalty; in the proceeding entitled In the Matter of the Certificate of Authority of UnitedHealthcare Insurance Company, File No., UPA-2011-00017, served on March 10, 2012.

Among other things, the OSC seeks an Order requiring Respondent to provide coverage for ABA therapy whenever medically necessary for all of its insured with autism.

7. Respondent denies the Department's allegations. Specifically, Respondent does not believe it violated Cal. Ins. Code § 10144.5. Respondent further denies that it was in violation of Cal. Ins. Code § 790.03 *et seq.*

8. Despite these denials, Respondent and the Department have discussed resolution of the issues in this proceeding and now wish to resolve those issues, without the need for a hearing or further administrative action, by Respondent agreeing to cover ABA therapy for all of its insureds with autism, when medically necessary; and representing that it has sufficient provider network capacity that enables it to do so, under the terms and conditions set forth herein. Respondent further agrees that it will not reject any claims for medically necessary ABA therapy and will continue to provide such medically necessary coverage to all of its insureds with autism through June 30, 2012.

9. The parties mutually agree to enter into this Stipulation and Waiver and agree that the resolution embodied in this Stipulation and Waiver is made in good faith. Therefore, by this Stipulation and Waiver, Respondent waives any and all rights to a hearing in this matter, and any and all other rights related to this proceeding which may be accorded pursuant to Chapter 5, Part 1, Division 3, Title 2 (commencing with § 11500) of the California Government Code and by the California Insurance Code.

10. Respondent agrees to perform the obligations as stated in this Stipulation and Waiver.

11. This Stipulation and Waiver does not constitute an admission by Respondent of liability, violation, wrongdoing or improper conduct.

COVERAGE FOR BEHAVIORAL HEALTH TREATMENT

12. Effective March 1, 2012 and continuing until July 1, 2012, Respondent agrees to

provide coverage for Behavioral Health Treatments, including ABA therapy, for its eligible insureds who may have autism, consistent with California Insurance Code § 10144.51, and further agrees that it has sufficient capacity and an adequate network or will enter into single case agreements with geographically accessible providers, to enable it to provide coverage for such treatment on the following terms and conditions:

(a) ABA therapy is ordered by and deemed medically necessary by a health care provider(s) licensed under California law or by the state in which the ABA therapy is rendered, under one of the following alternatives:

(1) If ABA therapy is rendered by a health care provider licensed under California law or by the state in which the ABA therapy is rendered ("State - Licensed Provider"), the State-Licensed Provider certifies that he or she personally provided the services , and utilizes the billing codes supplied by Respondent; or

(2) If ABA therapy is rendered by individuals who are not State-Licensed Providers but who maintain a BCBA-certification or who have ABA therapy training and experience in serving children with autism, and the services are overseen by a State-Licensed Provider either affiliated with the ABA therapy provider or not affiliated with the ABA therapy provider, and has agreed to the following:

(i) Bill for the ABA therapy utilizing the billing codes supplied by Respondent

(ii) Maintain appropriate professional liability insurance covering the ABA therapy provided;

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

(iv) Provide copies of the insured's ABA therapy records to Respondent on reasonable request and at reasonable intervals.

(b) In the event that the insured's first-choice ABA therapy provider refuses to agree to oversight by a state-licensed provider under these alternatives, Respondent is now and will continue to locate providers who are known to Respondent and who will agree to the conditions set forth in this Paragraph 11.

13. Until July 1, 2012, Respondent agrees to provide coverage for all medically necessary ABA therapy for the treatment of autism for all current and future insureds in accordance with the terms of this Agreement. The services shall be covered for a period equal to the length of time specified by the insured's provider, or through June 30, 2012, whichever is shorter, at the number of hours per week/month as specified by the insured's provider who ordered the ABA therapy. Except for denials based upon the insured no longer being a covered insured or as otherwise permitted by this Agreement and while this Agreement is in effect, any denial of coverage for ABA therapy shall be construed as a denial based on medical necessity and will be subject to review under the Department's Independent Medical Review process.

CLAIMS PAYMENT AND REIMBURSEMENT

14. All claims for payment to behavioral health treatment providers for authorized care shall be paid timely and accurately in accordance with statutory requirements of the Insurance Code and applicable regulations.

15. Respondent agrees to negotiate reasonable reimbursement rates and terms with qualified autism service providers (as defined in California Insurance Code § 10144.51).

16. Claims for medically necessary Behavioral Health Treatment including ABA therapy shall be adjudicated in the regular course without imposition of any unique or onerous conditions on providers and complete claims shall be adjudicated and processed in accordance with the provisions of the Insurance Code and applicable regulations.

17. Claims submitted by behavioral health treatment providers who have entered into a contractual agreement with Respondent shall be reimbursed timely and accurately in accordance with the terms of such contractual agreement and applicable statutes and regulations.

BEHAVIORAL HEALTH TREATMENT PROVIDER NETWORK

18. Respondent is currently working and will continue its efforts to establish a network of ABA therapy providers, as defined in California Insurance Code §10144.51.

CUSTOMER SERVICE OBLIGATIONS

19. Respondent shall establish a dedicated customer service unit staffed by appropriately trained individuals who will handle intake of questions or requests for verification of coverage or eligibility, or prior authorization, if required, from Respondent's insureds seeking information about their benefits for medically necessary behavioral health treatment or screening or diagnosis of pervasive developmental disorder or autism.

GENERAL PROVISIONS

20. Respondent will make written changes in all of its relevant internal reference materials, computer systems, provider manuals, instruction guides, coverage documents, medical underwriting guidelines, medical management guidelines and similar materials to reflect the changes in practices and policies consistent with the obligations stated in this Stipulation and Waiver.

21. Respondent and the Department agree that this Stipulation and Waiver is intended to be a complete and final resolution of the issues and allegations referenced in Paragraph 6 above

and that no further action will be brought against Respondent upon the matters referenced therein; provided , however, that neither this Stipulation and Waiver nor the Order approving this Stipulation and Waiver are in any way intended to limit or waive the Commissioner's authority to bring disciplinary action against Respondent for alleged violations of California law arising from improper denials of Behavioral Health Treatments occurring in the future or any other acts or failures to act not referred to in Paragraphs 3 and 4. Similarly, nothing in this Stipulation and Waiver shall be construed, in any way, as intent to limit Respondents right to challenge any disciplinary or legal action.

22. Nothing contained in this Stipulation and Waiver or the Order approving this Stipulation and Waiver shall prevent the Department from taking action to enforce this Stipulation and Waiver or the Order approving this Stipulation and Waiver if Respondent is not in compliance with the terms and conditions of this Stipulation and Waiver or the Order approving this Stipulation and Waiver.

23. In the event that the parties agree, in writing, that an act of the California legislature or the United States Congress, or applicable regulations issued by a federal agency, changes the law governing the coverage of Behavioral Health Treatment, including ABA therapy, or other provision of this Stipulation and Waiver, the law shall govern and no contrary provision shall be binding on Respondent.

24. This Agreement shall have no force or effect after July 1, 2012.

25. Respondent represents and warrants that the persons executing this Stipulation and Waiver on its behalf are authorized to enter into and execute this Stipulation and Waiver.

26. Respondent acknowledges that Cal. Ins. Code § 12921 requires the Insurance Commissioner to approve the final settlement of this matter. Both the settlement terms and conditions contained herein and the acceptance of those terms and conditions are contingent upon

the Commissioner's approval and Order.

27. This Stipulation and Waiver is a compromise within the meaning of California Evidence Code §§ 1152 and 1154.

Dated: April 10, 2012

UNITEDHEALTHCARE INSURANCE COMPANY

Signed: _____
Name: Payman Pezhman
Title: Deputy General Counsel

Dated: April ~~10~~ 12, 2012

CALIFORNIA DEPARTMENT OF INSURANCE

By _____
Patricia Sturdevant
Deputy Commissioner for Policy and Planning