

1 CAROL L. VENTURA
Deputy Director | Chief Counsel, Bar No. 99570
2 DEBRA L. DENTON
Assistant Chief Counsel, Bar No. 164482
3 JAMES A. WILLIS
Staff Counsel III, Bar No. 207477
4 CALIFORNIA DEPARTMENT OF
MANAGED HEALTH CARE
5 980 9th Street, Suite 500
Sacramento, CA 95814-2725
6 916-323-0435 - Phone
916-323-0438 - Fax
7
8

9 BEFORE THE DEPARTMENT OF MANAGED HEALTH CARE
10 OF THE STATE OF CALIFORNIA
11

12 In the Matter of the Investigation of:
13
14 UHC OF CALIFORNIA, and U.S.
BEHAVIORAL HEALTH PLAN,
15 CALIFORNIA,
16 Respondents.

ENFORCEMENT MATTER NO. 12-153
AGREEMENT AND ORDER

17
18
19 **I.**
20 **Recitals**

21 1. This Agreement (Agreement) is made and entered into on this 12th day of August
22 2013, by and between the following parties: UHC OF CALIFORNIA dba UNITEDHEALTHCARE
23 CALIFORNIA (“UHC” or the “Plan”) and U.S. BEHAVIORAL HEALTH PLAN, CALIFORNIA
24 (“USBHPC”) and the DEPARTMENT OF MANAGED HEALTH CARE (the “Department”).

25 2. Medically necessary Speech Therapy services (hereinafter “ST”) are basic health care
26 services under the Knox-Keene Health Care Service Plan Act of 1975, as amended, (“the Act”) that
27 health plans must arrange and cover for their enrollees when medically necessary.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. UHC asserts that it provides basic health care service coverage to its enrollees for medically necessary ST for treatment of an illness, including Severe Mental Illness and Serious Emotional Disturbances of a Child, or injury in accord with UHC's interpretation of coverage for ST in its Combined Evidence of Coverage and Disclosure Form ("Combined EOC/DF"). In addition, UHC and USBHPC assert that their interpretation of their coverage requirements for ST was made in reliance upon UHC's Combined EOC/DF which was previously approved by the Department. However, the Department does not agree with UHC's and USBHPC's interpretation and application of the Combined EOC/DF.

4. UHC asserts that it has denied medically necessary ST based upon interpretations of its Combined EOC/DF and Policies, including but not limited to the UHC Signature Value™ Benefit Interpretation Policy, T-003 Rehabilitation. As noted above, the Department does not agree with UHC's interpretation and application of the Combined EOC/DF.

a. UHC has denied medically necessary ST by citing the exclusion and limitation of benefits section in its EOC described as "Educational Services for Developmental Delays and Learning Disabilities." This section states in relevant part that educational services to treat developmental delays or learning disabilities are not covered services. The section also states that educational services include language and speech training.

b. UHC has denied medically necessary ST by citing the exclusion and limitation of benefits section in its Combined EOC/DF described as "Rehabilitation Services and Therapy." This section states in relevant part that ST "is limited to medically necessary therapy to treat speech disorders caused by an illness, including Severe Mental Illness and Serious Emotional Disturbances of a Child, injury or surgery (for example, cleft palate repair)".

5. UHC asserts that UHC relied upon the approval by the Department of UHC's Combined EOC/DF to update UHC's Signature Value™ Benefit Interpretation Policy and T-003 Rehabilitation to define the medically necessary basic health care service for ST as disorders caused by a defined illness, disease, injury, congenital anatomic anomaly, or surgery (e.g. cleft palate repair, macroglossia or

1 velo-pharyngeal incompetence).

2 6. The Department, UHC and USBHPC are willing to enter into this Agreement to address
3 the needs of UHC enrollees and USBHPC enrollees that have medical and/or mental health coverage
4 through UHC (collectively, the "enrollees"), in order to resolve the issues which are the subject of this
5 Agreement and to avoid litigation between the parties over the extent of coverage for medically
6 necessary ST for current and future enrollees.

7
8 **II.**
9 **Agreement**

10 WHEREAS, this Agreement is entered into based on the Recitals set forth above, which are
11 incorporated into this Agreement by this reference.

12 WHEREAS, the parties desire to enter into this Agreement and thereby resolve the issues
13 raised in the pending Enforcement Matter.

14 WHEREAS, the parties desire to enter into this Agreement to address the needs for all current
15 and future UHC and USBHPC enrollees regarding coverage for medically necessary ST.

16 WHEREAS, by entering into this Agreement, UHC and USBHPC do not admit any liability or
17 violation of the Act or any other law or regulation. However, the parties agree that it is in the best
18 interests of the enrollees to enter into this Agreement, and

19 WHEREAS, by entering into this Agreement, UHC agrees to cover medically necessary ST for
20 all current and future enrollees as described in this Agreement and the law.

21 WHEREFORE, the Department, UHC and USBHPC mutually agree to enter into this
22 Agreement, as follows:

23 A. UHC agrees to cover medically necessary ST for all current and future enrollees as a
24 basic health care service as provided under the Act using the clinical criteria as identified by UHC.

25 B. UHC agrees to provide written notice to its contracted provider groups explaining that
26 with regard to medically necessary ST, UHC has clarified its internal policy and its Combined EOC/DF.
27 UHC shall submit a draft of that written notice to the Department for its approval within ten (10)
28

1 calendar days after the date of execution of this Agreement. UHC shall send the written notice to its
2 contracted provider groups within thirty (30) calendar days after approval by the Department.

3 C. UHC and USBHPC agree to revise their Combined EOC/DF and any and all other
4 relevant health plan documents, including but not limited to any and all applicable medical policies to
5 ensure compliance with the terms of this Agreement and the Act. Those revised documents shall be
6 filed with the Department within thirty (30) calendar days after execution of this Agreement, and the
7 filing shall highlight as well as underline the changes to the text as required by California Code of
8 Regulations, title 28, section 1300.52(d).

9 D. UHC and USBHPC agree to reimburse enrollees for out-of-pocket expenses that were
10 incurred by the enrollees for payments to providers for medically necessary ST evaluations and/or
11 services provided, for treatment beginning from May 1, 2011 to the effective date of this Agreement,
12 under all of the following conditions:

- 13
- 14 (i) the enrollee was a UHC member when medically necessary ST evaluations
15 and/or services were received;
 - 16 (ii) the medically necessary ST evaluations and/or services were performed by
17 appropriately licensed providers;
 - 18 (iii) the medically necessary ST evaluations and/or services were denied by the
19 Participating Medical Group or UHC;
 - 20 (iv) the enrollee submits documentation as reasonably necessary to UHC by July 30,
21 2014 verifying the enrollee's out-of-pocket expenses for the ST services.

22 E. UHC will reimburse the enrollee the out-of-pocket expenses, less the cost-sharing
23 required under that enrollee's benefit plan, within (30) calendar days of when UHC receives the
24 documentation described in subparagraph D. (iv) above.

25 F. UHC agrees to provide written notice to all subscribers as part of its November, 2013
26 mailing to all subscribers. UHC shall submit the content of the notice, for express Department
27 approval. Concerning written notice to prior enrollees, within sixty (60) calendar days after the date of
28

1 execution of this Agreement, and after the express approval of the content by the Department, UHC
2 agrees to provide written notice via a letter to all terminated UHC Subscribers and terminated
3 custodial parents under a qualified medical child support order describing how they may be entitled to
4 receive medically necessary ST and receive reimbursement of out-of-pocket expenses as provided for
5 under this Agreement. Within ten (10) calendar days after the date of execution of this Agreement,
6 UHC shall submit a draft of that written notice to the Department for its approval. Consistent with the
7 terms of this Agreement, this notice will explain how enrollees can contact UHC and submit a claim
8 for reimbursement. This notice will inform UHC enrollees that they have until July 30, 2014 to submit
9 a claim for reimbursement and the notice will include information required by Health and Safety Code
10 section 1368.02(b).

11 G. In addition to providing written notice to its enrollees pursuant to paragraph F. above,
12 UHC and USBHPC shall, within sixty (60) calendar days after the date of execution of this Agreement
13 and after the express approval of the content by the Department, publish a notice on its websites to all
14 enrollees explaining the substance of the terms of this Agreement. Within ten (10) calendar days after
15 the date of execution of this Agreement, UHC shall submit a draft of the notice to be published on its
16 website to the Department for its approval. UHC agrees the intent of this section is to provide
17 enrollees notice of all terms of this Agreement, including that they may be entitled to receive
18 reimbursement of out-of-pocket expenses and to receive medically necessary ST. This notice will
19 inform UHC enrollees that they have until July 30, 2014 to submit a claim for reimbursement and the
20 notice will include information required by Health and Safety Code section 1368.02(b).

21 H. UHC and USBHPC may periodically reassess an enrollee's clinical condition and the
22 enrollee's progress in order to evaluate the medical necessity of continued ST consistent with
23 appropriate professional standards of care as permitted under the enrollee's plan contracts and
24 applicable provision of the Act. Any such review(s) shall be performed while the services continue.
25 There shall be no interruption or cessation of services during the review process.

26 I. As to any reassessment as outlined in paragraph H. for an enrollee diagnosed with
27
28

1 autism and/or pervasive developmental disorder, the reassessment may not take place more frequently
2 than every six (6) months. Any such review(s) shall be performed while the services continue. There
3 shall be no interruption or cessation of services during the review process.

4 J. Nothing in this Agreement is intended to affect or limit an enrollee's right to file,
5 consistent with the timeframes in the Act, a grievance with UHC and/or USBHPC, or a complaint with
6 the Department disputing any of the following:

- 7
- 8 (i) UHC's and/or USBHPC's transition plan proposing to transfer an enrollee's ST
9 services from an out-of-network provider(s) to an in-network provider(s), and/or
 - 10 (ii) UHC's and/or USBHPC's past delay, modification, and/or denial of a request
11 for ST services, and/or
 - 12 (iii) UHC's and/or USBHPC's denial of or improper reimbursement for past ST
13 service claims.

14 K. Any future examination, survey, or audit conducted by the Department relating to the
15 provision of ST to UHC and USBHPC enrollees will be reviewed in consideration of the terms of this
16 Agreement.

17 L. UHC and USBHPC agree that if either breaches this Agreement, the Department will
18 notify UHC and USBHPC of the breach, with the intent to rectify the breach prior to commencement
19 of an enforcement action. UHC and USBHPC agree that the terms of this Agreement do not prevent
20 the Department from exercising any and all other aspects of its disciplinary authority to ensure that
21 UHC and USBHPC provide enrollees with medically necessary ST consistent with this Agreement.

22 M. The PARTIES agree that the terms of this Agreement are not only a contract but they
23 are additionally an Order of the Director, and the Department may exercise any and all aspects of its
24 enforcement authority to enforce UHC's and USBHPC's compliance with any and/or all of UHC's
25 and USBHPC's obligations under this Agreement, and that any remedy available to the Director is not
26 exclusive, and may be sought and employed in any combination with civil, criminal, and other
27 administrative remedies deemed warranted by the Director to enforce this Agreement.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

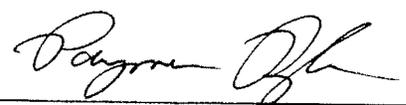
O. This Agreement may not be altered, amended or otherwise changed or modified, except in writing signed by both of the parties.

IT IS SO AGREED

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

Dated: August 12, 2013

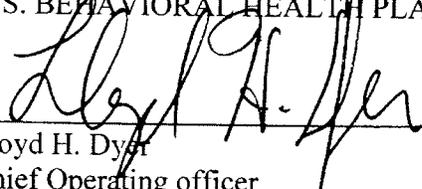
UNITED HEALTHCARE OF CALIFORNIA



Payman Pezhman
West Region General Counsel | VP Regulatory Affairs
UnitedHealthcare of California

Dated: August 12, 2013

U.S. BEHAVIORAL HEALTH PLAN, CALIFORNIA



Lloyd H. Dyer
Chief Operating officer
U.S. Behavioral Health Plan, California

Dated: August 23, 2013

DEPARTMENT OF MANAGED HEALTH CARE



Carol L. Ventura
Deputy Director | Chief Counsel
Department of Managed Health Care
Office of Enforcement