BEFORE THE DEPARTMENT OF MANAGED HEALTH CARE
OF THE STATE OF CALIFORNIA

In the Matter of the Investigation and Examination of:

Anthem Blue Cross

Respondent.

Enforcement Matter Nos.: 10-578, 11-347, 11-348, 11-349, 11-350, and 11-351

SETTLEMENT AGREEMENT

1. Recitals

1. This Settlement Agreement (the “Agreement”) is made and entered into on this 15th day of July, 2011, by and between BLUE CROSS OF CALIFORNIA d/b/a ANTHEM BLUE CROSS (BLUE CROSS) and the DEPARTMENT OF MANAGED HEALTH CARE (the Department) solely for the purpose of resolving the dispute arising from the Department’s findings that BLUE CROSS delayed or failed to arrange for the provision of Applied Behavior Analysis (ABA) services for the treatment of pervasive developmental disorder (PDD) or autism spectrum disorder (ASD) to enrollees who are the subjects (“Subject Enrollees”) of Enforcement Matter numbers 10-578, 11-347, 11-348, 11-349, 11-350, and 11-351 (“Enforcement Matters”) and to establish an Agreement to cover ABA for other enrollees of BLUE CROSS who are in benefit plans regulated by the Department (“Enrollees”).

2. ABA therapy is defined as “the design, implementation, and evaluation of systematic instructional and environmental modifications to promote positive social behaviors and reduce or ameliorate behaviors which interfere with learning and social interaction.” Government Code section
3. A dispute exists between the Department and BLUE CROSS regarding BLUE CROSS' obligation to provide coverage for ABA, as described more fully below.

4. The Department asserts that under current California law, covered health care services must be rendered by a person licensed, registered, or otherwise approved by the California legislature to diagnose and/or treat health care conditions. [hereafter referred to as “Licensed Health Care Provider(s).”]

5. The Department further asserts that ABA is a covered health care service that health plans must arrange, in accordance with the Knox-Keene Act (Act) and regulations, for children diagnosed with ASD or PDD if a Licensed Health Care Provider (a) prescribes and/or orders ABA, and (b) opines that due to the severity of deficits, the condition must be treated by a clinician licensed by the State of California with training and experience in delivering ABA therapy.

6. The Department also contends that BLUE CROSS is obligated to identify and contract with a sufficient number of Licensed Health Care Providers qualified to render ABA therapy to ensure that BLUE CROSS has an adequate network to provide medically necessary services to Enrollees.

7. BLUE CROSS contests whether Applied Behavior Analysis (“ABA”) is a health care service or is medically necessary and must be covered by a health plan under the Knox-Keene Act as a treatment for PDD or ASD.

8. BLUE CROSS further asserts that there are no California licensure requirements applicable to the provision of ABA service such that ABA can be performed by unlicensed persons. BLUE CROSS asserts on this basis, among others, that ABA is not a health care service or a covered benefit under BLUE CROSS health plan contracts(s).

9. Notwithstanding the above, the Parties are willing to enter into this Agreement to resolve the pending dispute over coverage of ABA services for the Subject Enrollees and for all other Enrollees (“Enrollees”) in benefit plans regulated by the Department as set forth below.

In order to resolve this dispute:

A. It is understood and agreed that BLUE CROSS is not admitting any violation of the Knox-Keene Act with regards to requests for coverage of or claims for ABA services; and that BLUE CROSS
is not admitting that ABA services are health care services or are always medically necessary to treat
PDD or ASD, BLUE CROSS is not waiving its rights to argue that ABA is not a covered service in any
current or subsequent litigation between BLUE CROSS and any third parties; and BLUE CROSS is not
waiving its right to argue that BLUE CROSS is not obligated to cover services rendered by unlicensed
providers.

B. It is further understood and agreed, as indicated above, that the Department's position is that
ABA, when provided as a covered health care service to diagnose and/or treat ASD or PDD, must be
provided by persons who are Licensed Health Care Providers under California law, and nothing in this
Agreement should be construed to indicate otherwise.

C. The Parties further understand that, except for purposes of enforcing the terms of this
Agreement, this Agreement shall not be used for any purpose by either party in any current or future
litigation or dispute resolution in any form.

II. Agreement

WHEREAS, the Parties desire to enter into this Agreement based on the Recitals above, which
are incorporated by reference into this Agreement.

WHEREAS, the Parties desire to resolve the disputed issues raised in the pending Enforcement
Matters.

WHEREAS, by entering into this Agreement, BLUE CROSS does not admit any liability or
violation of the Act. However, the Parties agree that it is in the best interests of BLUE CROSS to enter
into this Agreement, and thereby settle and release the Enforcement Matters and all issues, accusations,
and claims that the Department now has or may have in the future against BLUE CROSS related to, or
arising from, the specific Enforcement Matters settled and released under this Agreement; and to agree
to cover ABA services for all other Enrollees as set forth in this Agreement.

WHEREFORE, the Department of Managed Health Care and BLUE CROSS mutually agree to
enter into this Agreement, as follows:

A. BLUE CROSS agrees to arrange for ABA services for each Subject Enrollee, as
described in more detail below, while the Subject Enrollee is still enrolled with BLUE CROSS.
Coverage for ABA services commenced no later than June 1, 2011, and shall be provided until
November 30, 2011, or for six months, whichever is sooner, at the number of hours per week/month as
specified by the Subject Enrollee’s provider who recommended the ABA services. Until November 30,
2011, BLUE CROSS will not dispute the medical necessity of the services or the frequency at which the
services were recommended. After November 30, 2011, BLUE CROSS shall have the right to conduct
periodic medical necessity reviews no more frequently than every six (6) months as set forth in
paragraph D. BLUE CROSS shall not be responsible for payment of services provided during any
period in which an Enrollee is not eligible for coverage under a BLUE CROSS plan. After the date this
Agreement is signed and once ABA services are commenced, the Department will take no further
administrative action against BLUE CROSS relative to the provision of ABA services for the Subject
Enrollees, as long as the services are provided consistent with this Agreement and applicable Knox-
Keene Act statutes and regulations. Nevertheless, the Department may fully investigate any further
complaint or grievance submitted to the Department by the Subject Enrollees and may process requests
for Independent Medical Review submitted to the Department by the Subject Enrollees.

B. For each Subject Enrollee who paid for ABA services for any dates of service between
the date of notification of coverage of the ABA services sent by the Department’s Help Center to the
given enrollee, BLUE CROSS will reimburse those Subject Enrollees for the costs of those services, less
the cost-sharing required under those Subject Enrollees’ benefit plans, within thirty (30) calendar days of
receipt of the minimum documentation reasonably necessary to verify the charges paid for those
services. When reimbursing Subject Enrollees who are enrolled in PPO benefit plans, BLUE CROSS
agrees to reimburse at the in-network benefit level for those dates of service.

C. BLUE CROSS agrees to arrange for the provision of all medically necessary ABA
services for the treatment of PDD or ASD for all current and future Enrollees and the Subject Enrollees,
in accordance with the terms of this Agreement, subject to any development or change in law or
regulation, as set forth in paragraph 1, that clarifies BLUE CROSS’ legal obligations with respect to
ABA services.

As part of this Agreement, BLUE CROSS agrees to arrange for the provision of ABA services
by either:
(i) Licensed Health Care Providers; or

(ii) by individuals who are not Licensed Health Care Providers, but who maintain a BCBA-certification¹ or who have similar training, experience and competence in rendering ABA services to individuals with ASD or PDD, and the services are supervised by a Licensed Health Care Provider ("Supervising Licensed Provider") who:

a. Supervises and bills for the services of the unlicensed provider;

b. Utilizes the billing codes provided by BLUE CROSS;

c. Maintains appropriate professional liability insurance covering the ABA services provided;

d. Retains appropriate treatment records, including the identity of the individual providing the ABA services, in accordance with professional standards of practice;

e. Agrees to provide copies of the Enrollees’ ABA treatment records to BLUE CROSS on reasonable request and at reasonable intervals; and

f. Provides BLUE CROSS with a treatment plan which incorporates behavioral strategies that address the Enrollee’s identified language, social and behavioral impairments in accordance with the treatment principles of ABA and which is updated at least every 6 months.

D. BLUE CROSS agrees to provide coverage for the ABA services described above at the number of hours per week/month as specified by the Enrollee’s Licensed Health Care Provider or Supervising Licensed Provider who recommended the ABA services. The services shall be covered for a duration equal to the length of time specified by the Enrollee’s provider, or for a period of six (6) months, whichever is shorter, so long as the Enrollee remains enrolled as a BLUE CROSS member. BLUE CROSS shall not be responsible for payment of services provided during any period in which an Enrollee is not eligible for coverage under a BLUE CROSS plan. BLUE CROSS may revisit the issue of whether the services remain medically necessary through periodic reviews, which shall not occur more frequently than every six (6) months. These periodic reviews shall not result in delays by BLUE CROSS in covering the provision of ABA services and shall be performed while services continue.

¹ Behavior Analyst Certification Board (BCAB) is a private entity that provides certification for behavior analyst practitioners, but this does not result in licensure or certification under current California law.
Except for denials on the basis that the Enrollee is no longer a BLUE CROSS member, has not complied with the requirements of this Agreement to utilize participating providers, or as otherwise permitted by this Agreement and while this Agreement is in effect, any denial of coverage for ABA services will be construed as a denial based on medical necessity and will be subject to review under the Department’s Independent Medical Review process following participation by the Enrollee in BLUE CROSS’ internal grievance process for thirty (30) days.

E. BLUE CROSS agrees to submit to the Department an Action Plan (AP) that establishes policies or procedures for handling Enrollee questions, concerns, and grievances regarding diagnoses and treatment of PDD or ASD, including but not limited to coverage of ABA. The policies or procedures will also describe BLUE CROSS’ program for educating and informing BLUE CROSS’ staff responsible for handling Enrollee questions, concerns, and grievances, including, but not limited to, the following:

- Answering Enrollees’ questions, concerns, and grievances on the subject of diagnoses and treatment of PDD or ASD in a prompt manner, with minimal re-direction or referral;
- Properly identifying and processing grievances on the subject of ABA in accordance with the Knox-Keene Act; and
- Assisting Enrollees in locating Licensed Health Care Providers and/or Supervising Licensed Providers that are contracted with BLUE CROSS, and are qualified and willing to render ABA services for ASD or PDD. If a BLUE CROSS in-network Licensed Health Care Provider or Supervising Licensed Provider cannot be located within a reasonable distance from the Enrollee’s geographic location, BLUE CROSS will arrange for coverage for ABA with a non-network Licensed Health Care Provider or Supervising Licensed Provider within a reasonable period of time, not to exceed thirty (30) days, which will be reimbursed at the in-network benefit level.
- HMO Enrollees may contact their medical groups or BLUE CROSS with questions, concerns, and grievances regarding ABA. PPO Enrollees’ requests for ABA services must be either authorized or be denied on the grounds of lack of medical necessity or failure to comply with requirements of this Agreement to utilize participating providers.

The AP must be submitted to the Department’s Office of Enforcement within sixty (60) calendar days from the date this Agreement is signed for the Department’s review and approval to ensure that the AP appropriately addresses the Department’s concerns. BLUE CROSS agrees that it must implement the AP no later than October 1, 2011.

F. BLUE CROSS agrees that it will adjudicate complete claims (as defined under the
California Code of Regulations, title 28, section 1300.71(a)(2)) without requests for additional
documentation or information from any provider of ABA services after such time as the claim is
complete. In adjudicating claims, BLUE CROSS will not request any information beyond that
information which is “reasonably relevant information” (as that phrase is defined in California Code of
Regulations, title 28, section 1300.71(a)(10)) and “information necessary to determine payer liability”
(as that phrase is defined in California Code of Regulations, title 28, section 1300.71(a)(11)). BLUE
CROSS will utilize its standard claims payment procedures and will not require submission of ABA-
related claims to a unique address different from the standard claims address. Recitation of these
obligations is not intended to waive any claims reimbursement laws not specifically referenced. BLUE
CROSS and its ABA providers may reach more specific agreements regarding claims reimbursement
and issues of documentation by contract. However, in no event shall BLUE CROSS request that an
ABA provider waive any of its rights under the Knox-Keene Act or related regulations, or require more
documentation of a claim than is permissible under the law.

G. When reimbursing PPO Enrollees for medically necessary ABA services, BLUE CROSS
agrees to reimburse at the preferred provider benefit level and not to apply an out-of-network deductible
or maximum unless BLUE CROSS can demonstrate that a qualified in-network provider of ABA
services with sufficient capacity to provide the full amount of medically necessary ABA services was
reasonably available to the Enrollee and that the Enrollee elected to utilize a non-network provider
instead.

H. Any examination, survey, or audit conducted by the Department relating to the provision of
ABA services to BLUE CROSS Enrollees will be reviewed in consideration of the terms of this
Agreement.

I. Should BLUE CROSS contend that a change in the law in the State of California relieves
it of its responsibility to continue to perform in accordance with any provision of this Agreement, BLUE
CROSS will give no less than sixty (60) calendar days notice to the Department of its intent to change
its practices pursuant to this Agreement, including specific reference to this Agreement. That notice
shall be sent to the attention of the Director with a copy to the head of the Department’s Office of
Enforcement. The Department will give BLUE CROSS written notice if the Department disagrees with
BLUE CROSS' assertion that a change in California law relieves BLUE CROSS of its compliance with this Agreement. BLUE CROSS may then suspend its performance under this Agreement and the Parties will meet in good faith to renegotiate this Agreement. If the disagreement cannot be resolved, this Agreement shall not limit or impede the Department's right to pursue enforcement against BLUE CROSS for failing to comply with the Knox-Keene Act requirements relating to the treatment of children with ASD or PDD, except to the extent that the Subject Enrollees' Enforcement Matters are settled and released under this Agreement.

J. BLUE CROSS waives any right to appeal, contest, dispute or otherwise bring a challenge in connection with the Enforcement Matters, be it by administrative, judicial or other proceeding. This Agreement shall be a complete defense to any such appeal, contest, dispute, or challenge, and shall entitle the Department to an immediate dismissal, with prejudice, of any such appeal, contest, dispute, or challenge.

K. This Agreement shall terminate on December 31, 2013, unless extended by mutual agreement of the Parties, or earlier as set forth in paragraph 1, above. BLUE CROSS agrees that if it breaches this Agreement, the Department is entitled to assess a separate monetary penalty as provided under the Knox-Keene Act. In the event of such breach, the terms of this Agreement do not prevent the Department from exercising any and all other aspects of its disciplinary authority to ensure BLUE CROSS' compliance with all of its obligations under this Agreement.

L. It is understood and agreed that, by executing this Agreement BLUE CROSS does not admit any liability or violation of the Knox-Keene Act or associated regulations. This Agreement pertains to disputed matters and does not constitute a concession and/or admission and shall not be used as evidence of liability or wrongdoing for any purpose whatsoever.
IN WITNESS WHEREOF, the parties hereby execute this Agreement by the signatures of their respective duly authorized officials.

Dated: 7/15/11

Edward G. Heidig II
Interim Director
Department of Managed Health Care

Dated: 7/15/11

Pam Kehaly
President
Anthem Blue Cross