

**BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA**

In the Matter of

BLUE SHIELD OF CALIFORNIA LIFE
AND HEALTH INSURANCE CO.,

Respondent.

File No. UPA-2011-00001

OAH No. 2011080142

SETTLEMENT AGREEMENT

Respondent, Blue Shield of California Life and Health Insurance Company (“Respondent”), and the California Department of Insurance (“Department”), agree as follows:

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 California corporation.
3. During the past four years, a number of Respondent’s insureds who have been diagnosed with pervasive development disorder (“PDD”) and/or autism have made requests for coverage of Applied Behavior Analysis services (“ABA Services”).
4. On or about July 12, 2011, the Department served Respondent with an Order to Show Cause and Statement of Charges; Notice of Monetary Penalty; Notice of Filing with Agency in the proceeding entitled In the Matter of the Certificate of Authority of Blue Shield of California Life and Health Agency, File No. UPA-2011-00001 (“OSC”). Among other things, the OSC seeks an order requiring Respondent to provide coverage for ABA Services when medically necessary.

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

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

6. In 2011, Respondent extended coverage for ABA Services to the individuals named in the OSC. In addition, since the filing of the OSC, the Department was made aware through discovery in this proceeding, that Respondent commenced covering ABA Services in late July 2011 for other insureds diagnosed with PDD or autism, when medically necessary, subject to certain terms and conditions. Respondent agrees to continue to provide such coverage through June 30, 2012, after which time Respondent will be subject to the requirements of SB 946.

7. This Agreement arises from a unique set of facts and the parties are resolving this matter solely as a result of those circumstances. In view of these facts, Respondent and the Department now wish to resolve all disputes and issues relating to or arising from the OSC without the need for a hearing or further administrative action. The parties mutually agree to enter into this settlement agreement (“Agreement”), and agree that the resolution embodied in this Agreement is made in good faith and resolves all charges, claims, requests for penalties and requests for orders set forth in the OSC.

8. By this Agreement, 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.

9. Respondent agrees to cover ABA Services for all individuals diagnosed with PDD or autism insured under policies regulated by the Department of Insurance from the date of this Agreement through June 30, 2012 provided the following terms and conditions are met:

(a) The ABA Services are ordered by and deemed medically necessary by a health care provider(s) licensed under California law or by the state in which the ABA Services are rendered, and the following conditions exist:

(i) The ABA Services are rendered by a health care provider licensed under California law or by the state in which the ABA Services are 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

(ii) The ABA Services are rendered by individuals who are not State-Licensed Providers but who maintain a BCBA-certification or who have ABA Services training and experience in serving children with autism or PDD, and the services are overseen by a State-Licensed Provider either affiliated with the ABA Services provider or not affiliated with the ABA Services provider, and who comply with Respondent's Letter of Agreement and, in particular, ^{have} ~~has~~ agreed to the following:

(1) Bill for the ABA Services utilizing the billing codes supplied by Respondent

(2) Maintain appropriate professional liability insurance covering the ABA Services provided;

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

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

(iii) In the event that the insured's first-choice ABA Services provider refuses to agree to oversight by a state-licensed provider, Respondent is now and will continue to assist in locating providers who are known to Respondent and who will agree to the conditions set forth in this Paragraph 9.

10. Respondent has established an ABA Services Support Team (“Support Team”) that responds to inquiries regarding coverage of ABA Services, requests for authorization for ABA Services, and requests for payment for ABA Services.

11. Until July 1, 2012, Respondent agrees to provide coverage for all medically necessary ABA Services for the treatment of PDD or autism for all current and future insureds in accordance with the terms of this Agreement. The services shall be covered for a duration 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 Services. From the date of this Agreement through June 30, 2012, Respondent will not dispute the medical necessity of the services or the frequency at which the services were recommended (whether or not prior authorization is sought or obtained, coverage will not be denied during this initial period based on medical necessity). 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 Services shall be construed as a denial based on medical necessity and will be subject to review under the Department’s Independent Medical Review process.

12. Until July 1, 2012, when reimbursing claims for ABA Services rendered, Respondent agrees that it will not place any unique conditions on providers of ABA Services for the treatment of PDD or autism other than those set forth in this Agreement, and except as otherwise required of other providers. Respondent additionally agrees that it will adjudicate complete claims in accordance with the provisions of the Insurance Code and related regulations. Respondent and its ABA Services providers may reach more specific agreements regarding claims reimbursement and issues of documentation by contract. However, in no event shall Respondent request that an ABA Services provider waive any of its rights under the Insurance Code and related regulations, and that includes requiring more documentation of a claim than is permissible under the law.

13. Until July 1, 2012, when paying claims of ABA Services providers or reimbursing insureds for medically necessary ABA Services in accordance with the conditions set forth herein, Respondent agrees to reimburse at the preferred provider level of benefits.

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

15. Notwithstanding anything set forth in this Agreement, the parties agree that alternatively, Respondent may choose to cover ABA Services consistent with Insurance Code section 10144.51 at any time prior to July 1, 2012.

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

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

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

19. The Parties further understand and agree 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. It is understood and agreed that, by entering into this Agreement, Respondent is not waiving and specifically reserves all rights and defenses in any such actions brought by the Department or by any third party.

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


21. Respondent acknowledges that Section 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, and entry of such Order shall constitute the effective date of this Agreement ("the Effective Date").

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

Dated: January ~~27~~, 2012

BLUE SHIELD OF CALIFORNIA LIFE AND
HEALTH INSURANCE COMPANY

Signed:  _____

Name:

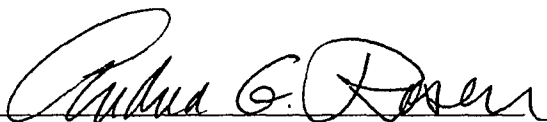
Duncan Ross

Title:

President/CEO

Dated: January 26, 2012

CALIFORNIA DEPARTMENT OF INSURANCE

By  _____
Andrea G. Rosen
Staff Counsel