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CALIFORNIA DEPARTMENT OF INSURANCE  
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8 **BEFORE THE INSURANCE COMMISSIONER**  
9 **OF THE STATE OF CALIFORNIA**  
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11  
12 In the Matter of the Certificate of Authority  
of:

13 HEALTH NET LIFE INSURANCE  
14 COMPANY,

15 Respondent.  
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CDI File No. UPA-2016-00005

ORDER TO SHOW CAUSE  
(Insurance Code §§ 790.03 and 790.05); and

NOTICE OF NONCOMPLIANCE AND  
HEARING

(Insurance Code §§ 790.02, 790.03, and  
790.05); and

DEMAND

(Insurance Code § 790.035.).  
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20 The California Department of Insurance alleges:  
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22 **JURISDICTION, PARTIES, AND APPLICABLE STATUTES**

23 1. Respondent, HEALTH NET LIFE INSURANCE COMPANY (“Health Net”),  
24 domiciled in California, holds a Certificate of Authority to transact the business of life and  
25 disability insurance in the State of California, pursuant to § 700 et seq. of the California Insurance  
26 Code<sup>1</sup>.  
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<sup>1</sup> Unless otherwise stated, all references are to the California Insurance Code.

1           2.       California Insurance Code § 700(c) provides that, after the issuance of a certificate  
2 of authority, the holder must continue to comply with all requirements set forth in the Insurance  
3 Code and all other applicable laws of this State.

4           3.       California Insurance Code §§ 730, 733, 734, and 790.04 authorize the  
5 Commissioner to access all records of an insurer and grant the power to examine the affairs of  
6 every person engaged in the business of insurance to determine if such person violated provisions  
7 of the Insurance Code.

8           4.       California Insurance Code § 790.02 prohibits any insurer from engaging in this  
9 State “in any trade practice which is ... an unfair method of competition or an unfair or deceptive  
10 act or practice in the business of insurance.”

11          5.       California Insurance Code § 790.03 defines unfair methods of competition and  
12 unfair and deceptive acts or practices in the business of insurance.

13          6.       California Insurance Code § 790.035 provides that any person who engages in any  
14 unfair method of competition or any unfair or deceptive act or practice defined in § 790.03 is  
15 liable to the state for a civil penalty not to exceed five thousand dollars (\$5,000) for each act, or,  
16 if the act or practice was willful, a civil penalty not to exceed ten thousand dollars (\$10,000) for  
17 each act. The commissioner shall have the discretion to establish what constitutes an act.

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### **FACTUAL ALLEGATIONS**

20          7.       The Department has received hundreds of complaints from out-of-network  
21 residential treatment centers (“Complainants”) pertaining to Health Net’s handling of claims for  
22 substance use disorder treatment received in 2015 and 2016 by Health Net insureds.

23          8.       The services at issue were provided by the complainants to insureds covered by  
24 Health Net’s 2015 and/or 2016 individual market PPO policy.

25          9.       For non-emergent services, the 2016 policy provides that the “Maximum  
26 Allowable Amount” is determined as follows:

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- Maximum Allowable Amount for Physician services is determined by applying the 85th percentile from the database of Physician charges from the

- 1 FAIR Health RV Benchmarks or a similar type of database of Physician  
2 charges.
- 3 • For all other types of services, Maximum Allowable Amount is determined  
4 by applying a percentage of what Medicare would allow (known as the  
5 Medicare allowable amount). The Maximum Allowable Amount for such  
6 services is 190% of the Medicare allowable amount.
  - 7 • In the event the applicable service or database does not include an amount for  
8 the service or supply provided, Maximum Allowable Amount shall be  
9 deemed to be 75% of the covered charges billed by the provider.

10 10. Complainants also provided services to insureds covered by 2015 individual  
11 market PPO policies. The methodologies for determining the maximum allowable amount in the  
12 2015 and 2016 individual market PPO policies for non-emergent services are identical except for  
13 the “Physician services” provision. The 2015 policy provides that “Maximum Allowable Amount  
14 for Physician services is determined by applying a designated percentile from the database of  
15 Physician charges from the FAIR Health RV Benchmarks or a similar type of database of  
16 Physician charges.”

17 11. Medicare does not provide a rate for inpatient or outpatient residential treatment  
18 center facility charges because such facilities are not eligible to participate in Medicare.  
19 Consequently, pursuant to the terms of the policy, Health Net should pay facility claims for  
20 inpatient and outpatient care billed by residential treatment centers based on 75% of the charges  
21 billed by the facility.

22 12. Health Net paid claims for inpatient and outpatient substance use disorder services  
23 billed by residential treatment centers by substituting a bundled per diem Medicare rate for an  
24 entirely different service furnished by an entirely different type of facility.

25 13. The policy language does not support Health Net’s substitution methodology and  
26 Health Net’s payment under this methodology is a misrepresentation of the policy terms and  
27 resulted in the underpayment and unfair settlement of claims.

28 14. The complainants provided services to insureds covered by the 2015 and 2016  
individual market PPO policies expecting to be paid pursuant to the express terms of those  
policies. However, Health Net did not pay their claims pursuant to the terms of the policy,  
instead using an improper methodology not supported by the terms of the policy.



1 the resolution of a claim dispute, in violation of Cal. Code Regs., tit.10, § 2695.7(d) and  
2 California Insurance Code § 790.03(h)(3) and (h)(5).

3 21. The Department alleges that the facts alleged in paragraphs 7 through 16 herein  
4 demonstrate that Health Net has engaged in acts which constitute an unfair method of competition  
5 and/or unfair or deceptive acts or practices in this State, in violation of California Insurance Code  
6 § 790.03. Therefore, Health Net's conduct constitutes grounds for the Commissioner to assess a  
7 monetary penalty, pursuant to California Insurance Code § 790.035.

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9 **MENTAL HEALTH PARITY ACT**

10 22. The Department further alleges that the acts described in paragraphs 7 through 14  
11 evidence Health Net's failure to comply with the federal Mental Health Parity and Addiction  
12 Equity Act of 2008 because it improperly applied the substitution methodology and audit  
13 practices described in paragraphs 7 through 16 to claims for mental health and substance use  
14 disorder services, in violation of California Insurance Code §§ 10112.27(a)(2)(D) and 10144.4.

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16 **OTHER INSURANCE CODE VIOLATIONS**

17 23. The Department hereby notifies Health Net that, based upon the facts alleged  
18 herein, Health Net is in violation of California Insurance Code §§ 700(c) and 790.02.

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20 **NOTICE AND DEMAND PURSUANT TO**  
21 **CALIFORNIA INSURANCE CODE §§ 790.035 and 790.05**

- 22 1. PLEASE TAKE NOTICE that the Commissioner may, as a result of the actions set  
23 forth above, and pursuant to California Insurance Code § 790.035, seek monetary penalties up to:
- 24 a. Five thousand dollars (\$5,000.00) for each act of unfair competition or  
25 unfair or deceptive practice alleged above that is proved non-willful; and
  - 26 b. Ten thousand dollars (\$10,000) for each act of unfair competition or unfair  
27 or deceptive practice alleged above that is proved willful.

1 **ORDER TO SHOW CAUSE**

2 **PURSUANT TO CALIFORNIA INSURANCE CODE §§ 790.03 and 790.05**

3 2. WHEREAS, the Commissioner has reason to believe, based upon the facts set forth  
4 herein, that Health Net has engaged in or is engaging in unfair methods of competition and/or  
5 unfair or deceptive acts or practices in this State as defined in California Insurance Code  
6 790.03(h);

7 3. WHEREAS, the Commissioner has reason to believe that a proceeding by the  
8 Commissioner would be in the public interest, he hereby issues the herein Order to Show Cause,  
9 pursuant to California Insurance Code § 790.05, containing a statement of the charges and Health  
10 Net's potential liability; and,

11 4. THEREFORE, the Department hereby notifies Health Net that a hearing shall be held  
12 at a time and place to be determined which shall not be less than 30 days after service of the  
13 herein Order to Show Cause to determine whether the Commissioner should issue an Order to pay  
14 the penalties imposed by California Insurance Code §§ 790.035, and cease and desist from such  
15 acts or practices.

16  
17 WHEREFORE, the Department prays for the following:

18 1. An Order to Cease and Desist against Health Net from engaging in unfair methods  
19 of competition and unfair and deceptive acts or practices in the business of life and disability  
20 insurance in violation of California Insurance Code § 790.03; and,

21 2. The imposition of monetary penalties against Health Net as provided by law,  
22 pursuant to California Insurance Code § 790.035, of up to five thousand dollars (\$5,000) for each  
23 of the acts of unfair competition or unfair or deceptive acts or practices alleged above that are  
24 non-willful; or up to ten thousand dollars (\$10,000) for each act of unfair competition or unfair or  
25 deceptive practices alleged above that are willful; and,


26 3. The imposition of such other equitable relief, including restitution, as may be  
27 necessary to redress the violations set forth above; and,

28 4. The imposition of such further relief as may be just and proper.

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Dated: July 23, 2017

CALIFORNIA DEPARTMENT OF INSURANCE

By:   
TERESA R. CAMPBELL  
Assistant Chief Counsel

In the Matter of the Certificate of Authority of:	)	DECLARATION OF SERVICE BY MAIL
	)	
HEALTH NET LIFE INSURANCE	)	CDI File No. UPA-2016-00005
COMPANY	)	
	)	
Respondent.	)	
	)	
	)	
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I am over the age of 18 years, and not a party to this cause.

I am an employee at the Department of Insurance, State of California, employed at 45 Fremont Street, 21st Floor, San Francisco, CA 94105.

On July 24, 2018, at San Francisco, California, I sealed into an envelope and deposited in the United States mail, postage there upon fully prepaid, true copies of the following documents in the above entitled matter; the original, or a true copy, of each document served is attached hereto; said copies were addressed as follows:


C ORDER TO SHOW CAUSE AND DECLARATION OF SERVICE were mailed to:

Greg Pimstone  
 Manatt, Phelps, & Phillips, LLC  
 11355 W. Olympic Blvd.  
 Los Angeles, CA 90064  
[gpimstone@manatt.com](mailto:gpimstone@manatt.com)

BY CERTIFIED & US MAIL  
 7018 0360 0000 1629 6753

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 24, 2018, at San Francisco, California.

  
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 Roanne Bolanos, Declarant