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3 STATE OF OREGON  
4 DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
5 DIVISION OF FINANCIAL REGULATION

6 In the Matter of  
7 MODA HEALTH PLAN,  
8 Respondent.

Case No. INS-17-0022

ORDER TO CEASE AND DESIST,  
FINAL ORDER ASSESSING CIVIL  
PENALTY AND CONSENT TO ENTRY  
OF ORDER

9  
10 The Director of the Department of Consumer and Business Services for the State  
11 of Oregon (“Director”), acting in accordance with Oregon Revised Statutes (“ORS”)  
12 chapters 731, 732, 733, 734, 735, 737, 742, 743, 743A, 743B, 744, 746, 748 and 750  
13 (“Insurance Code”) has commenced this administrative proceeding, pursuant to ORS  
14 731.296, to take enforcement action against Moda Health Plan (“Respondent”); and

15 WHEREAS Respondent wishes to resolve and settle this matter with the Director,  
16 NOW THEREFORE, as evidenced by the authorized signatures subscribed on  
17 this order, Respondent hereby CONSENTS to entry of this order upon the Director’s  
18 Findings of Fact and Conclusions of Law as stated hereinafter.

19  
20 FINDINGS OF FACT

21 The Director FINDS that:

22 1. Respondent has been licensed in Oregon as a domestic insurer since January  
23 1, 1999. Respondent’s principal place of business is 601 SW Second Avenue, Portland,  
24 OR 97204. Respondent’s National Association of Insurance Commissioners number is  
25 47098.

26 2. On October 27, 2016, the Division of Financial Regulation (“Division”) sent a

Division of Financial Regulation  
Labor and Industries Building  
350 Winter Street NE, Suite 410  
Salem, OR 97301-3881  
Telephone: (503) 378-4387



1 request for information to Respondent requesting data related to Applied Behavior  
2 Analysis (“ABA”) Therapy as a treatment for Autism Spectrum Disorder (“ASD”) for the  
3 period from November 1, 2014 to October 1, 2016.

4 3. Respondent provided the data (“Original Data”) on November 28, 2016 and  
5 December 6, 2016, which included the following:

- 6 A. One hundred and thirty seven (137) claims records that did not relate to an  
7 ASD diagnosis.
- 8 B. The aggregate number of ABA claims to be 5,419.
- 9 C. The aggregate number of denials of ABA claims to be 586.
- 10 D. No data regarding appeals of any prior authorization denials.
- 11 E. No appeal or external review data regarding ABA claim denials and no  
12 explanation for the missing information.

13 4. On December 6, 2016, the Division requested clarification and explanation  
14 about the Original Data.

15 5. Respondent provided clarification and explanation about the Original Data on  
16 December 13, 2016 and a provided a revised claim response on December 16, 2016  
17 (collectively the “Revised Data”). The Revised Data included the following:

- 18 A. An explanation that the 137 claims records that did not relate to an ASD  
19 diagnosis were included in error.
- 20 B. The aggregate number of ABA claims corrected to reflect 2,376.
- 21 C. The aggregate number of denials of ABA claims corrected to reflect ten.
- 22 D. Inclusion of one prior authorization denial that was appealed.
- 23 E. Explanation that the ten ABA claim denials were not appealed.

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1 CONCLUSIONS OF LAW

2 The Director CONCLUDES that:

3 6. Pursuant to ORS 731.252(1), whenever the Director has reason to believe that  
4 any person has been engaged or is engaging or is about to engage in any violation of the  
5 Insurance Code, the Director may issue an order, directed to such person, to discontinue  
6 or desist from such violation or threatened violation.

7 7. Pursuant to ORS 731.296, the Director may address any proper inquiries to  
8 any insurer, licensee or its officers in relation to its activities or condition or any other  
9 matter connected with its transactions. Any such person so addressed shall promptly and  
10 truthfully reply to such inquiries using the form of communication requested by the  
11 director. A reply is subject to the provisions of ORS 731.260.

12 8. Respondent violated ORS 731.296 by filing five separate false statements as  
13 described in Paragraphs 3A through 3E above.

14 9. Pursuant to ORS 731.988(1) the Director may impose a civil penalty of up to  
15 \$10,000 per violation upon any person that violates any provision of the Insurance Code  
16 or any lawful rule or final order of the Director.

17 ORDERS

18 Now, therefore, the Director issues the following ORDERS:

19 10. As authorized by ORS 731.252(1), the Director ORDERS Respondent to  
20 CEASE AND DESIST from violating any provision of the Insurance Code or the  
21 administrative rules promulgated thereunder.

22 11. Based upon the foregoing and as authorized by ORS 731.988(1), the Director  
23 ORDERS that Respondent pay A CIVIL PENALTY of \$2,000 for each violation of ORS  
24 731.296 for a total CIVIL PENALTY of \$10,000.

25 12. The \$10,000 CIVIL PENALTY assessed above is due and payable at the time  
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1 this Order is returned to the Division.

2 SO ORDERED this 11<sup>th</sup> day of April, 2017.

3 PATRICK M. ALLEN, Director  
4 Department of Consumer and Business Services

5 /s/ David Tatman

6 David C. Tatman, Chief of Enforcement  
7 Division of Financial Regulation

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CONSENT TO ENTRY OF ORDER

I, Thomas Bikales, state that I am an officer of Moda Health Plan, Inc. and I am authorized to act on its behalf. I have read the foregoing order, and I know and fully understand the contents hereof. I have been advised of the right to a hearing and of the right to be represented by counsel in this matter. Moda Health Plan, Inc. voluntarily and without any force or duress consents to the entry of this order expressly waiving any right to a hearing in this matter. Moda Health Plan, Inc. understands that the Director reserves the right to take further actions to enforce this order or to take appropriate action upon discovery of other violations of the Insurance Code. Moda Health Plan, Inc. will fully comply with the terms and conditions stated herein.

Moda Health Plan, Inc. understands that this order is a public document.

/s/ Thomas J. Bikales  
Signature

Thomas J. Bikales  
Printed name

Secretary  
Office held

ACKNOWLEDGMENT

There appeared before me this 3 day of April, 2017, Thomas Bikales, who was first duly sworn on oath, and stated that she/he was and is an officer of Moda Health Plan, Inc. and that she/he is authorized and empowered to sign this Consent to Entry of Order on behalf of Moda Health Plan, Inc. and to bind Moda Health Plan, Inc. to the terms hereof.

/s/ Rozalyn Larson  
Signature of Notary Public

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