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

IN THE MATTER OF:

KAISER FOUNDATION HEALTH PLAN, INC.

Respondent.

I. Recitals

1. This Settlement Agreement (Agreement) is made and entered into on this 14th day of May 2012, by and between KAISER FOUNDATION HEALTH PLAN, INC. (KAISER or the Plan) and the DEPARTMENT OF MANAGED HEALTH CARE (the Department).

2. KAISER asserts that it currently provides coverage to its enrollees for medically necessary Physical Therapy (PT), Speech Therapy (ST), and Occupational Therapy (OT) for health care needs, but not for non-health care purposes such as educational or social purposes.

-- 1 --
3. A dispute exists between the Department and KAISER regarding the extent of KAISER’S obligation to arrange and cover PT, ST, and OT services for its enrollees.

4. The Department asserts that PT, ST, and OT services are basic health care services under the Knox-Keene Health Care Service Plan Act of 1975, as amended, (Act) that health plans must arrange and cover for their enrollees when medically necessary.

5. KAISER asserts that not all modalities of PT, ST, and OT services are medically necessary health care services, and that not all modalities of PT, ST, and OT are covered benefits that must be provided by health plans.

6. The Department filed a Cease and Desist Order against KAISER on February 27, 2012, asserting that KAISER categorically denies coverage for PT, ST and/or OT on the basis that an enrollee does not have a sufficient physical ailment to trigger coverage under the provider group’s clinical guidelines. KAISER disputes this assertion. However, KAISER agrees that it will cover and arrange PT, ST and/or OT in accordance with the terms of this Agreement.

7. The Department and KAISER are willing to enter into this Agreement to address the needs of KAISER enrollees in order to resolve this dispute and to avoid litigation between the parties over the extent of coverage of PT, ST, and/or OT services for current and future enrollees of the Plan, including but not limited to those enrollees who are the subject of pending Enforcement Matter 11-369 (SUBJECT ENROLLEES). The SUBJECT ENROLLEES are listed in Confidential Attachment A.

8. KAISER asserts it has qualified PT, ST, and OT providers in its provider network with sufficient capacity for its California service areas, and has instituted appropriate quality oversight of such providers to serve its enrollees, and will communicate the availability of these services as covered benefits as set forth in this Agreement to its provider network.

9. The parties are willing to enter into this Agreement to address the provision of coverage of PT, ST, and/or OT services for all current and future enrollees of the Plan, including without limitation, the SUBJECT ENROLLEES, as set forth below.
In order to address the needs of KAISER enrollees:

A. It is understood and agreed that neither party is waiving its right to assert in any other dispute, enforcement matter, litigation, mediation, arbitration or in any other forum, any contention that may or may not be consistent with this Agreement.

B. The parties further understand and agree that, except for purposes of enforcing the terms of this Agreement, this Agreement shall not be admitted into evidence or used for any other purpose in any current or future litigation or dispute resolution forum.

II. Agreement

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

WHEREAS, the parties desire to enter into this Agreement and thereby resolve the disputed issues raised in the pending Enforcement Matters.

WHEREAS, the parties desire to enter into this Agreement to address the needs for all current and future KAISER enrollees regarding coverage for PT, ST, and OT.

WHEREAS, by entering into this Agreement, KAISER does not admit any liability or violation of the Act or any other law or regulation. However, the parties agree that it is in the best interests of KAISER enrollees to enter into this Agreement, and thereby, with the exception of Paragraph P below, settle the Cease and Desist Order filed February 27, 2012, Enforcement Matter 11-369, as to the issues relating to coverage of PT, ST, and/or OT, and all issues, accusations, and claims that the Department has or may have against KAISER, including any alleged violation of the Act relating to or arising from KAISER’S actions regarding coverage or claims for PT, ST, and OT that occurred on or before the date this Agreement is executed.

WHEREAS, by entering into this Agreement, KAISER agrees to cover PT, ST, and/or OT for all current and future KAISER enrollees as described in this Agreement and the law.
WHEREFORE, the Department and KAISER mutually agree to enter into this Agreement, as follows:

A. KAISER agrees to arrange and provide coverage of medically necessary PT, ST, and/or OT services for each of the SUBJECT ENROLLEES. KAISER shall not be responsible for payment of services provided during any period in which a SUBJECT ENROLLEE is not eligible for coverage under a KAISER plan.

B. KAISER agrees to reimburse each SUBJECT ENROLLEE for out-of-pocket expenses that the SUBJECT ENROLLEE/Subscriber incurred for payments to providers for PT, ST, and/or OT evaluations and/or services provided for treatment from the dates of January 1, 2009 to the effective date of this Agreement, under the following conditions:

   (i) the SUBJECT ENROLLEE was a KAISER member during the time services were received by the SUBJECT ENROLLEE;

   (ii) the SUBJECT ENROLLEE/Subscriber submits to KAISER documentation reasonably necessary to verify the out-of-pocket expenses paid by the SUBJECT ENROLLEE/Subscriber for PT, ST, and/or OT evaluations and/or services and that such evaluations and/or services were performed/delivered by appropriately licensed providers;

   (iii) KAISER will reimburse those SUBJECT ENROLLEES/Subscriber(s) the out-of-pocket costs incurred by the SUBJECT ENROLLEE, less the cost-sharing required under those SUBJECT ENROLLEES’ benefit plans, within thirty (30) calendar days of when KAISER receives the documentation described in subparagraph (ii) above; and

   (iv) No reimbursement is payable to any SUBJECT ENROLLEE under this Agreement unless the SUBJECT ENROLLEE/Subscriber incurred out-of-pocket expenses to pay for PT, ST, and/or OT evaluations and/or services.

---

Kaiser PTSTOT SA – DMHC (11-369)
5/11/12
(v) In providing reimbursement for the out-of-pocket expenses, KAISER will not consider the medical necessity of the underlying service, except to the extent that the SUBJECT ENROLLEE is requesting reimbursement of a service that has not been reviewed in KAISER’s grievance process or in the Department’s complaint processes.

(vi) The SUBJECT ENROLLEE’s/Subscriber’s submission of information pursuant to paragraph B.(ii) above, including the SUBJECT ENROLLEE’s/Subscriber’s failure to provide adequate documentation shall be treated by KAISER as a grievance under Health and Safety Code section 1368, and the Plan will respond to the SUBJECT ENROLLEE/Subscriber as set forth in Health and Safety Code section 1368.

C. KAISER agrees to reimburse all other KAISER enrollees who were not provided PT, ST, and/or OT evaluation and/or services by KAISER and who meet the following conditions:

(i) The enrollee previously either requested PT, ST, and/or OT evaluations and/or services from KAISER, or was evaluated for PT, ST, and/or OT between January 1, 2009 and the effective date of this Agreement by KAISER and/or a KAISER provider, and the evaluation and/or services were not provided or covered by KAISER; and

(ii) After the Plan did not provide or cover the PT, ST, and/or OT evaluation and/or services, the enrollee secured those services from an appropriately licensed out-of-network provider, and a licensed provider documents in writing that the services were medically necessary; and

(iii) The enrollee:
   a. Previously filed a grievance with the Plan, and the Plan’s grievance determination found that the PT, ST, and/or OT evaluation and/or services were not a covered benefit; or

-- 5 --
b. Has a pending grievance with the Plan relating to the denial of coverage of PT, ST, and/or OT evaluations and/or services; or

c. As of the effective date of this Agreement, has a pending complaint or Independent Medical Review application with the Department relating to the Plan’s failure to cover or provide PT, ST, and/or OT evaluations and/or services; or

d. Files a grievance with the Plan, seeking reimbursement for such services by January 31, 2013 as set forth in the notice provided in paragraph E of this Agreement.

(iv) KAISER shall reimburse the enrollees who meet the conditions referenced in Subparagraphs (i) – (iii) of Paragraph C above, in the same manner and upon the submission of the same documentation identified in Subparagraphs (i) – (v) of Paragraph B above; provided that enrollees seeking reimbursement under Section II(C)(iii)(d) must also submit documentation reasonably identifying the circumstances under which the services were requested from KAISER and/or a KAISER provider or the enrollee was advised by KAISER or a KAISER provider to seek the PT, OT or ST outside KAISER.

(v) No reimbursement is payable to any enrollee under this Agreement unless the enrollee/subscriber incurred out-of-pocket expenses to pay for PT, ST, and/or OT evaluation or services.

D. Within 60 days from the date of this Agreement, KAISER shall provide written notice to the SUBJECT ENROLLEES identified in Attachment A of this Settlement Agreement, and to those enrollees who, as of the effective date of this Agreement, had filed a grievance with the Plan regarding the denial of OT, ST, or PT services. The notice shall inform the SUBJECT ENROLLEES and those enrollees who, as of the effective date of this Agreement, had filed a grievance with the Plan regarding the denial of OT, ST, or PT services, that they may be entitled to receive reimbursement of out-of-pocket expenses as set forth in this Agreement, and how to contact KAISER.
E. After the date of this Agreement, KAISER shall also publish a notice in its bulletin Partners in Health. The print version will be mailed to enrollees between July 16 and July 25, 2012 and the electronic version will be published and delivered to enrollees between July 8 and July 12, 2012. Enrollees will receive the notice in the manner previously selected by the enrollee for receipt of the bulletin. Should any notice not be mailed or published within the above timeframes, the January 31, 2013 date for KAISER enrollees to submit a claim for reimbursement shall be extended by a number of days equal to the number of days past the required date for publication and/or mailing that the notice was actually mailed or published (should the extended date fall on a weekend or holiday, the date for KAISER enrollees to submit a claim for reimbursement shall be the next regular business day). However, in no event shall the notice be mailed and/or published later than September 1, 2012. The notice in the bulletin shall inform all other KAISER enrollees that they may be entitled to receive reimbursement of out-of-pocket expenses as set forth in this Agreement, and how to contact KAISER. The notice in the bulletin will inform KAISER enrollees that they have until January 31, 2013 to submit a claim for reimbursement and will include a length-modified version of information required by Health and Safety Code section 1368.02(b), as agreed to in writing by KAISER and the Department.

F. Any reimbursement referenced in Paragraphs B or C above will be contingent upon the enrollee’s agreement that acceptance of the reimbursement under this Agreement will result in a full and complete resolution only regarding the amount of reimbursement for the expense of out-of-network PT, ST, and/or OT services the enrollee incurred from January 1, 2009 through January 31, 2013. This Agreement shall not act as a bar to any third party who claims a legal right to subrogation or reimbursement for the cost of any services provided to the enrollee.

G. To the extent that KAISER has available in-network providers, enrollees remain contractually required to obtain PT, ST, and/or OT services from providers within KAISER’S provider network. If KAISER enrollees are currently receiving PT, ST, and/or OT services from out-of-network providers, KAISER, upon a minimum of thirty (30) calendar days written notice to the enrollee, may develop and implement a transition plan to safely transfer the enrollee’s care to
appropriately experienced in-network provider(s) so long as the in-network provider(s) can provide continuity of care and ensure that the PT, ST, and/or OT services are continued in a manner that is consistent with professional standards of treatment consistent with requirements of the Act.

H. Pursuant to the terms of KAISER’s plan contracts, beginning on the effective date of this Agreement, enrollees will be required to seek care within KAISER’s provider network and KAISER and its providers will arrange for and cover enrollees for PT, ST, and/or OT services from providers within KAISER’s provider network in a manner that complies with timely access and geographic accessibility requirements as set forth in the Act and regulations. Where KAISER does not or cannot offer an appointment with a qualified in-network provider to occur in compliance with the access requirements of the Act and regulations for an in-plan evaluation for PT, OT and/or ST services or an enrollee’s request for those services, KAISER agrees that it will arrange for and cover services from an out-of-network provider in a manner that complies with the timely access and geographic accessibility requirements as set forth in the Act and regulations, and the enrollee will not be required to transition to in-network care pursuant to section G above any sooner than six (6) months of services. Enrollees seeking or receiving these PT, ST and/or OT services are entitled to all rights under their plan contracts and the Act.

I. As part of this Agreement, the Department will lift the Cease and Desist Order the Department issued against KAISER on February 27, 2012. However, KAISER will nevertheless continue to abide by the terms of that Cease and Desist Order, which by this reference, are hereby incorporated into and made a part of this Agreement. While KAISER may direct an enrollee to an in-network provider as discussed above, the only basis upon which the Plan or its providers may deny an initial request for authorization or a request for additional PT, ST, and/or OT evaluations and/or services or fail to arrange and cover such services where an enrollee has presented for care, are that the services are not medically necessary or are not covered pursuant to express exclusions in the enrollee’s

--- 8 ---
Evidence of Coverage (EOC) as permitted by law. Such denials will be subject to review under the Department’s applicable review process, which includes the IMR process. KAISER shall not be responsible for payment of services provided during any period in which an enrollee was not covered under a KAISER plan.

J. KAISER or KAISER providers may periodically reassess an enrollee’s clinical condition and the enrollee’s progress in order to evaluate the medical necessity of services consistent with appropriate professional standards of care as permitted under the enrollee's plan contracts and applicable provisions of the Act, but not more frequently than every six (6) months for an enrollee diagnosed with any Autism Spectrum Disorder and /or Pervasive Developmental Disorder. Any such review(s) shall be performed while the services continue. There shall be no interruption or cessation of services during the review process.

K. When reimbursing claims for PT, ST and/or OT services rendered, KAISER agrees that it will not place any unique conditions on providers of PT, ST, and OT services other than those set forth in this Agreement, and except as otherwise required with respect to other providers. KAISER additionally agrees that it will adjudicate complete claims in accordance with the provisions of the Act and regulations. KAISER and its PT, ST, and OT providers may reach more specific agreements regarding claims reimbursement and issues of documentation by contract. However, in no event, shall KAISER request that a provider(s) waive any of its rights under the Act or regulations, and that includes requiring more documentation of a claim than is permissible under the law.

L. Any examination, survey, or audit conducted by the Department relating to the provision of PT, ST and OT services to KAISER enrollees will be reviewed in consideration of the terms of this Agreement.

M. In the event that KAISER contends that it is relieved of its responsibility to continue to perform under the Agreement based on (1) legislation enacted or regulations adopted by the State of California or federal government which have not been superseded, or (2) a final judgment has been entered by a court of competent jurisdiction that is binding precedent from which no appeal or other judicial review has been taken, or, if appealed, the final judgment has been affirmed by the court of
last resort and is no longer subject to further appeal or review, the process described below shall be
followed.

KAISER will give written notice to the Department of its contention that there has been a
change in the law and shall indicate that such notice is being provided pursuant to this Paragraph M of
the Agreement. Such notice shall be sent to the attention of the Director, with a copy to the Chief
Counsel of the Department’s Office of Enforcement. The parties shall meet and confer in good faith,
and if the parties do not reach agreement within sixty (60) days after the Department’s receipt of
KAISER’s written notice referenced above, KAISER may file a declaratory relief action in Superior
Court on the question of whether the alleged change in the law relieves KAISER of its responsibility
to continue to perform in accordance with this Agreement. Any legal action taken by KAISER shall
be venued in Sacramento County Superior Court, and may not be filed by KAISER any sooner than
the sixty-first day after the Department receives KAISER’s 60-day written notice. KAISER shall
continue to perform in strict compliance with this Agreement (1) while the parties are going through
the meet and confer process, and (2) during the pendency of any such legal action and/or proceeding,
and (3) until a final and enforceable judgment is entered in favor of KAISER (i.e. a final judgment has
been entered from which no appeal or other judicial review has been taken, or if appealed, the final
judgment has been affirmed by the court of last resort and is no longer subject to further appeal or
review). The Department shall retain its full enforcement authority regarding the terms of this
Agreement during the pendency of litigation regarding KAISER’s contention that a change in the law
relieves it of its responsibility to continue to perform in accordance with this Agreement.

N. Except for actions for the purpose of enforcing this Agreement, neither the existence of
this Agreement nor any of the terms thereof shall be admissible in any legal proceeding of any kind
whether against KAISER or against the Department or with any third party relating to the legal
obligations of a health care service plan to provide coverage for medically necessary PT, ST and OT.
It is understood and agreed that, by entering into this Agreement, neither party is waiving, and each
party specifically reserves, any and all rights and defenses in any such actions brought by either party
or by any third party. It is also understood and agreed that, by entering into this Agreement, the

-- 10 --
Department specifically reserves its right to assert in any such actions, that medically necessary PT, ST and OT, must be covered by health plans and KAISER reserves its right to assert that certain services or treatment plans are for educational or other non-health care purposes and therefore are not covered.

O. By entering into this Agreement, the parties hereby, with the exception of Paragraph P below, settle the Cease and Desist Order filed February 27, 2012, Enforcement Matter 11-369, and all issues, accusations, and claims that the Department has or may have against KAISER, including, without limitation, any alleged violation of the Act, relating to or arising from KAISER’s actions regarding coverage or claims for PT, ST and OT that occurred on or before the date this Agreement is executed arising from KAISER’s alleged reliance on KAISER’s providers’ clinical guidelines referred to in the Cease and Desist Order.

P. Nothing in this Agreement is intended to affect or limit a KAISER enrollee’s right to file, consistent with the timeframes in the Act, a grievance with KAISER, or a complaint with the Department disputing any of the following:

(i) KAISER’S transition plan proposing to transfer an enrollee’s PT, ST and/or OT services from an out-of-network provider(s) to an in-network provider(s), and/or
(ii) KAISER’S past delay, modification, and/or denial of a request for PT, ST and/or OT services, and/or
(iii) KAISER’S denial of or improper reimbursement for past PT, ST, and/or OT service claims provided that the enrollee chooses to not avail himself or herself of the benefits of Paragraphs (B) or (C) above.

Q. KAISER agrees that if it breaches this Agreement, the terms of this Agreement do not prevent the Department from exercising any and all other aspects of its disciplinary authority to ensure KAISER’s compliance with all of its obligations under this Agreement.

R. The PARTIES agree that the terms of this Agreement are more than a mere contract and that they are additionally an order of the Director, and the Department may exercise any and all aspects of its enforcement authority to enforce KAISER’s compliance with any and/or all of
KAISER'S obligations under this Agreement, and that any remedy available to the Director is not
exclusive, and may be sought and employed in any combination with civil, criminal, and other
administrative remedies deemed warranted by the Director to enforce this Agreement.

IT IS SO AGREED

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

Dated: 6/17/2012

DEPARTMENT OF MANAGED
HEALTH CARE

ANTHONY MANZANETTI
Deputy Director | Chief Counsel
Office of Enforcement

Dated: 5/14/12

KAISER FOUNDATION HEALTH PLAN, INC.

JERRY FLEMING
Senior Vice President
Health Care Reform Implementation and Policy

ATTACHMENT A

[List of SUBJECT ENROLLEES]