

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 78590 / August 16, 2016

ADMINISTRATIVE PROCEEDING

File No. 3-17396

In the Matter of

Health Net, Inc.,

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Health Net, Inc. (“Health Net” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds¹ that:

Respondent

1. Health Net, Inc. is a Delaware corporation headquartered in Woodland Hills, California. Until April 4, 2016, Health Net’s common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and, until March 24, 2016, traded on the New York

¹ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Stock Exchange. While registered with the Commission, Health Net filed periodic reports, including reports on Forms 10-K and 10-Q, with the Commission pursuant to Section 13(a) of the Exchange Act and related rules thereunder. As of December 31, 2015, Health Net and its subsidiaries had approximately 8,541 employees.

Facts

A. Statutory and Regulatory Framework Protecting Whistleblowers

2. The Dodd-Frank Wall Street Reform and Consumer Protection Act, enacted on July 21, 2010, amended the Exchange Act by adding Section 21F, “Whistleblower Incentives and Protection.” The purpose of these provisions was to encourage whistleblowers to report possible securities law violations by providing, among other things, financial incentives and various confidentiality guarantees.

3. Congress explicitly noted the critical importance of providing financial incentives to promote whistleblowing to the SEC as it determined that “a critical component of the Whistleblower Program is the minimum payout that any individual could look towards in determining whether to take the enormous risk of blowing the whistle in calling attention to fraud.” See “The Restoring American Financial Stability Act of 2010” report from the Committee on Banking, Housing, and Urban Affairs (April 30, 2010).

4. To fulfill this Congressional purpose, the Commission adopted Rule 21F-17, which provides in relevant part:

- (a) No person may take any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement . . . with respect to such communications.

Rule 21F-17 became effective on August 12, 2011.

B. Health Net’s Severance Agreements

5. Beginning prior to August 12, 2011, and continuing through October 22, 2015, Respondent entered into voluntary severance agreements with employees who were leaving the company. A severance agreement is a contract between an employer and a former employee documenting the rights and responsibilities of both parties incidental to the employee’s departure. Respondent continues to enter into voluntary severance agreements with departing employees, but on October 22, 2015, it amended those agreements to strike the language at issue below.

6. Respondent’s severance agreements included a Waiver and Release of Claims that listed various potential claims against Respondent that a departing employee waived as a condition of being paid monetary severance payments and receiving other voluntarily provided consideration from Respondent.

7. In August 2011 – after the Commission adopted Rule 21F-17 – and as part of a regular periodic review and update of its agreements, Respondent amended the Waiver and

Release of Claims. Among other things, Respondent amended the Waiver and Release of Claims to specify that, while not prohibited by the severance agreement from participating in a government investigation, the former employee who executed the Waiver and Release of Claims was prohibited from filing an application for, or accepting, a whistleblower award from the Commission.

8. In particular, Paragraph 4 of Respondent's Waiver and Release of Claims expressly required an employee to waive:

the right to file an application for award for original information submitted pursuant to Section 21F of the Securities Exchange Act of 1934.

9. While Paragraph 8 of the Waiver and Release of Claims stated that nothing in the Release precludes an employee from participating in any investigation before any federal agency, that same Paragraph required the employee to waive his or her right to any monetary recovery related to any such investigation.

10. In particular, Paragraph 8 provided that "nothing in this Release precludes Employee from participating in any investigation or proceeding before any federal or state agency, or governmental body . . . however, while Employee may file a charge and participate in any such proceeding, by signing this Release, Employee waives any right to bring a lawsuit against the Company, and waives any right to any individual monetary recovery in any such proceeding or lawsuit or in any proceeding brought based on any communication by Employee to any federal, state, or local government agency or department."

11. Approximately 600 employees signed agreements that contained the above language, which was used by Respondent from approximately August 2011 to June 2013.

12. In June 2013, again as part of a regular periodic review and update of its agreements, Respondent further amended the Waiver and Release of Claims. Respondent removed the language expressly prohibiting employees from applying for whistleblower awards pursuant to Exchange Act Section 21F. Respondent also added Paragraph 4.a. which provided that "[n]othing herein shall be construed to impede the employee from communicating directly with, cooperating with or providing information to any government regulator." However, Respondent retained restrictions in the Waiver and Release of Claims that removed the financial incentive for its former employees who executed that agreement to communicate with Commission staff concerning possible securities law violations at Health Net. Paragraph 5 of the revised Waiver and Release of Claims stated that: "nothing in this Release precludes Employee from participating in any investigation or proceeding before any federal or state agency or governmental body . . . however, while Employee may file a charge, provide information, or participate in any investigation or proceeding, by signing this Release, Employee, to the maximum extent permitted by law . . . waives any right to any individual monetary recovery . . . in any proceeding brought based on any communication by Employee to any federal, state or local government agency or department."

13. Though the Commission is unaware of any instances in which (i) a former employee of Respondent who executed the above noted agreements did not communicate directly with Commission staff about potential securities law violations or (ii) Respondent took action to enforce those provisions or otherwise prevent such communications, Respondent – by use of both

the 2011 and 2013 agreements – directly targeted the SEC’s whistleblower program by removing the critically important financial incentives that are intended to encourage persons to communicate directly with the Commission staff about possible securities law violations. Such restrictions on accepting financial awards for providing information regarding possible securities law violations to the Commission undermine the purpose of Section 21F and Rule 21F-17(a), which is to “encourag[e] individuals to report to the Commission,” [Adopting Release at p. 201], and violate Rule 21F-17(a) by impeding individuals from communicating directly with the Commission staff about possible securities law violations.

Violation

14. Through its conduct described above, Health Net violated Rule 21F-17 under the Exchange Act.

Undertaking

15. Health Net has agreed that, within 60 days from the date the Commission enters this Order, it will make reasonable efforts to contact Health Net former employees who signed the Waiver and Release of Claims from August 12, 2011 to October 22, 2015, and provide them with an Internet link to the order² and a statement that Health Net does not prohibit former employees from seeking and obtaining a whistleblower award from the Securities and Exchange Commission pursuant to Section 21F of the Exchange Act. In determining whether to accept the Offer, the Commission has considered this undertaking.

16. Health Net has agreed to certify, in writing, compliance with the undertaking set forth above. The certification shall identify the undertaking, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Antonia Chion, Associate Director, with a copy to the Office of the Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of completion of the undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Health Net’s Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Health Net cease and desist from committing or causing any violations and any future violations of Rule 21F-17 of the Exchange Act;

B. Respondent shall, within thirty (30) days of the entry of this Order, pay a civil money penalty in the amount of \$340,000 to the Securities and Exchange Commission for

² Health Net further agrees to provide a paper copy of the Order to any former employee who requests it.

transfer to the general fund of the United States Treasury in accordance with Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Health Net as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Antonia Chion, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549.

By the Commission.

Brent J. Fields
Secretary