



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
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In the Matter of

Aetna Health, Inc., Aetna Health Insurance Company of New York and Aetna Life Insurance Company No. 2018-0152-S

Respondents.

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CONSENT ORDER

WHEREAS, the Department of Financial Services (the “Department”) conducted a **MARKET CONDUCT EXAMINATION** (the “Examination”) of the affairs of Aetna Health, Inc., Aetna Health Insurance Company of New York and Aetna Life Insurance Company (hereinafter “Respondents”) for the period from January 1, 2012 through December 31, 2015, and issued its Report on the Examination dated January 29, 2018.

WHEREAS, this Consent Order contains the Department’s findings and the relief agreed to by the Department and Respondents.

WHEREAS, the Department and Respondents are willing to resolve the matters cited herein in lieu of proceeding by notice and hearing.

NOW, THEREFORE, this Consent Order contains the Department’s findings and the relief agreed to by the Department and Respondents.

BACKGROUND

1. Respondents are a domestic insurance company licensed pursuant to Article 42 of the New York Insurance Law, a domestic health maintenance organization certified pursuant to Article 44 of the New York Public Health Law, and a foreign life insurer licensed pursuant to Article 42 of the New York Insurance Law.
2. The Department conducted a market conduct examination of the manner in which the Respondents conducted their business practices and fulfilled their obligations to policyholders and claimants, and uncovered the following findings.

FINDINGS

3. Respondents, for the time period January 1, 2012 through December 31, 2015, had the following violations:
 - a. Failure to make prospective determinations, including pre-authorizations, within three business days of receipt of all necessary information;
 - b. Failure to acknowledge and respond to members' complaints within the required time frames;
 - c. Failure to acknowledge receipt of a member's grievance within 15 days;
 - d. Failure to make a grievance determination within 30 days;
 - e. Failure to send initial adverse determination letters to the insured and providers within 30 days;
 - f. The initial adverse determination letters contain language that limited the timeframe for providers to request a peer-to-peer reconsideration to 14 days;
 - g. Failure to provide a written acknowledgement to an appealing party within 15 days;
 - h. Failure to make an appeal determination within 60 days of receipt of all necessary information to conduct an appeal;
 - i. Failure to reverse appeal cases when the determination was not timely;

- j. Failure to provide the insured, the insured's designee or health care provider in writing of the appeal determination within two business days;
 - k. Failure to include the insured's right to an external appeal and the timeframe for requesting such appeal in the final adverse determination letters;
 - l. Failure to include a statement that the decision constitutes the final adverse determination in the notice of appeal (adverse) determination;
 - m. Failure to include, a statement in bold text, indicating the required time frame for requesting an external appeal may expire if a second level internal appeal is chosen in the notice of final adverse or appeal determination;
 - n. Failure to include the fraud warning statement on pharmacy claim forms above the signature area;
 - o. Inappropriately applied cost sharing to certain preventive care services; and
 - p. Inappropriately denied claims related to certain preventive care services.
4. Respondents violations during the aforementioned time period contravened New York Insurance Law and Regulations, New York Public Health Law, and the Federal Patient Protection and Affordable Care Act.

VIOLATIONS

5. By reason of the foregoing, Respondents violated the following:
- a. Section 410.9 of Insurance Regulation 166;
 - b. Section 864 of Insurance Regulation 95;
 - c. New York Insurance Law Sections 3221(l)(8)(D) and (E);
 - d. New York Insurance Law Section 3216(i)(17);
 - e. New York Insurance Law Section 4303(j)(3);
 - f. New York Insurance Law Sections 4903(b), (d), and (f);

- g. New York Insurance Law Sections 4904(a), (c), and (e);
- h. New York Insurance Law Section 4802(i)(k)(2),
- i. New York Insurance Law Section 403(d); and
- j. Federal Statutes 42 U.S.C. §300gg-13 and 45 C.F.R. § 147.130.

AGREEMENT

IT IS HEREBY UNDERSTOOD AND AGREED by Respondents, and all of their subsidiaries, affiliates, successors, assigns, agents, representatives, and employees, that they shall comply with the following:

- 6. Respondents will correct the violations cited herein, including but not limited to:
 - a. Review and revise, where necessary, all procedures related to utilization review, appeals, grievances, and complaints to ensure that timely determinations and notifications are given to insureds, providers, and other recipients;
 - b. Review and revise all adverse determination letters for external appeal and timeframe information in compliance with New York Insurance Law and Federal Statutes; and
 - c. Monitor all vendors who may perform the services listed above for compliance with New York Insurance Law and Federal statutes;
 - d. Revise pharmacy claim forms for the proper placement of the fraud warning;
 - e. Reprocess all preventive care claims where cost sharing was inappropriately applied and make overdue payments, including interest; and
 - f. Reprocess all claims that were inappropriately denied, and make overdue payments, including interest.
- 7. Respondents will also take all necessary steps to comply with the New York Insurance Law and Regulations with respect to its insurance products in the future. Within **ninety (90) days** from the date of Respondents' execution of this Consent Order, Respondents shall provide an up-to-date detailed summary of the corrective actions taken, or proposed to be taken, in full compliance with this Consent Order.

MONETARY PENALTY

8. Within seven (7) days of the execution of this Consent Order, Respondents shall pay a civil penalty of one million nine hundred fifty thousand dollars (\$1,950,000). Respondents agree that they will not claim, assert, or apply for a tax deduction or tax credit with regard to any U.S. federal, state or local tax, directly or indirectly, for any portion of the civil monetary penalty paid pursuant to this Consent Order.
9. The above referenced payment shall be payable to the New York State Department of Financial Services account at JPMorgan Chase Bank, N.A. via electronic transfer in accordance with the Department's instructions.

BREACH OF THE CONSENT ORDER

10. In the event that the Department believes that Respondents have breached this Consent Order ("Breach"), the Department will provide written notice of such Breach to Respondents and Respondents must, within ten (10) business days from the date of receipt of said notice, or on a later date if so determined in the sole discretion of the Department, appear before the Department and have an opportunity to rebut the evidence, if any, on the issue of whether a Breach has occurred and, to the extent pertinent, to demonstrate that any such Breach is not material or has been cured.
11. The Department and Respondents understand and agree that Respondents' failure to appear before the Department to make the required demonstration within the period set forth herein is presumptive evidence of Respondents' Breach. Upon a finding of Breach, the Department has all the remedies available to it under New York or other applicable laws and may use any and all evidence available to the Department for all ensuing examinations, hearings, notices, orders, and other remedies that may be available under New York or other applicable laws.

OTHER PROVISIONS

12. If Respondents default on any of their obligations under this Consent Order, the Department may terminate the Consent Order at its sole discretion, upon ten (10) days' written notice to Respondent. In the event of such termination, Respondents expressly agree and acknowledge that this Consent Order shall in no way bar or otherwise preclude the Department from commencing, conducting, or prosecuting any investigation, action, or proceeding, however denominated, related to the Consent Order, against Respondents, or from using in any way the statements, documents, or other materials produced or provided by Respondents prior to or after the date of this Consent Order, including, without limitation, such statements, documents, or other materials, if any, provided for purposes of settlement negotiations.
13. The Department has agreed to the terms of this Consent Order based on, among other things, representations made to the Department by Respondents and the Department's own factual examination. To the extent that representations made by Respondents are later found to be materially incomplete or inaccurate, this Consent Order or certain provisions thereof are voidable by the Department in its sole discretion.
14. Upon request by the Department, Respondents shall provide all documentation and information reasonably necessary for the Department to verify compliance with this Consent Order.
15. All notices, reports, requests, certifications, and other communications to the Department regarding this Consent Order shall be in writing and shall be directed as follows:

If to the Department:


New York State Department of Financial Services
One State Street, 19th Floor
New York, NY 10004-1511
Attention: Laura Evangelista, Executive Deputy Superintendent for Insurance

If to the Respondent:


Aetna
1425 Union Meeting Road
Blue Bell, PA 19422
Attention: Gregory Martino, Vice President

16. This Consent Order and any dispute thereunder shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.
17. Respondents waive their right to further notice and hearing in this matter as to any allegations of past violations up to and including **December 31, 2015** and agrees that no provision of the Consent Order is subject to review in any court or tribunal outside the Department.
18. This Consent Order may not be amended except by an instrument in writing signed on behalf of all parties to this Consent Order.
19. This Consent Order constitutes the entire agreement between the Department and Respondents relating to the violations identified herein and supersedes any prior communication, understanding, or agreement, whether written or oral, concerning the subject matter of this Consent Order. No inducement, promise, understanding, condition, or warranty not set forth in this Consent Order has been relied upon by any party to this Consent Order.
20. In the event that one or more provisions contained in this Consent Order shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Consent Order.
21. Upon execution by the parties to this Consent Order, no further action will be taken by the Department against Respondents for the conduct set forth in this Consent Order, subject to the terms of this Consent Order.
22. This Consent Order may be executed in one or more counterparts, and shall become effective when such counterparts have been signed by each of the parties hereto and So Ordered by the Superintendent of Financial Services.

Aetna Health, Inc., Aetna Health Insurance Company of New York and Aetna Life Insurance Company

By:  Dated: 11/9/2018
Gregory Martino
Vice President

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

By:  Dated: 11/27/18
Laura Evangelista
Executive Deputy Superintendent for Insurance

THE FOREGOING CONSENT ORDER IS HEREBY APPROVED.

By:  Dated: 12/12/2018
Maria T. Vullo
Superintendent of Financial Services