

No. **2022-7623**

**Official Order
of the
Texas Commissioner of Insurance**

Date: 11/18/2022

Subject Considered:

Aetna Health Inc.
980 Jolly Rd #U11S
Blue Bell, Pennsylvania 19422-1904

Consent Order
TDI Enforcement File No. 27956

General remarks and official action taken:

This is a consent order with Aetna Health Inc. (Aetna Health). The Texas Department of Insurance (TDI) conducted a triennial quality of care examination, and found multiple violations, including repeat violations found in three previous triennial quality of care examinations. Aetna Health has agreed to pay a \$325,000 administrative penalty.

Waiver

Aetna Health acknowledges that the Texas Insurance Code and other applicable law provide certain rights. Aetna Health waives all of these rights, and any other applicable procedural rights, in consideration of the entry of this consent order.

Findings of Fact

Licensure

1. TDI issued Aetna Health a certificate of authority to operate as a basic health maintenance organization (HMO), effective August 20, 1987.

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Prior Triennial Quality of Care Examinations

2. On January 5, 2017, the commissioner entered Order No. 2017-4888 against Aetna Health. The order imposed a \$150,000 administrative penalty for violations found during the 2012 and 2015 triennial quality of care examinations.
3. On July 13, 2020, the commissioner entered Order No. 2020-6391 against Aetna Health. The order imposed a \$250,000 administrative penalty for violations found during a 2017 triennial quality of care examination.

Current Triennial Quality of Care Examination

4. TDI conducted a triennial quality of care examination of Aetna Health, for the period of January 1, 2018, through December 31, 2019.
5. On April 6, 2021, TDI held an exit conference with Aetna Health to discuss the examination findings. Aetna Health did not provide comments on the draft report.
6. The findings of the examination, including violations of the Texas Insurance Code and the Texas Administrative Code, are in the Final Examination Report dated April 26, 2021.
7. On May 25, 2021, Aetna Health sent TDI a corrective action plan (CAP). On November 11, 2021, Aetna Health notified TDI that it had fully implemented the CAP.

Initial Adverse Determinations

8. TDI reviewed 35 initial adverse determinations for statutory compliance.
9. In 11 percent (4 of 35) of initial adverse determinations reviewed, Aetna Health's utilization review agent (URA) failed to afford the provider of record a reasonable opportunity to discuss treatment no less than one working day prior to issuing prospective initial adverse determinations. This conduct is repeated from prior examinations but decreased in percentage since the prior examination.
10. In 11 percent (4 of 35) of initial adverse determinations reviewed, Aetna Health's URA failed to issue written adverse determinations to the enrollees or individuals acting on behalf of the enrollees and the provider of record within three calendar

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days of receiving requests that involved post-stabilization or life-threatening conditions. This conduct is repeated from prior examinations and increased in percentage since the prior examination.

Adverse Determination Appeals

11. TDI reviewed 25 adverse determination appeals for statutory compliance.
12. In 12 percent (3 of 25) of adverse determination appeals reviewed, Aetna Health's URA failed to send appeal acknowledgement letters.
13. In 16 percent (4 of 25) of adverse determination appeals reviewed, Aetna Health's URA failed to send appeal acknowledgement letters within five business days after receipt of the appeal.
14. In 64 percent (16 of 25) of adverse determination appeals reviewed, Aetna Health's URA physician failed to afford the requesting health care provider a reasonable opportunity to discuss treatment during working hours and no less than one working day prior to issuing appeal resolution letters that involved preauthorization. This conduct is repeated from prior examinations and increased in percentage since the prior examination.
15. In 16 percent (4 of 25) of adverse determination appeals reviewed, the appeal resolution letter was issued under the name of a team of staff at "Aetna," which is not a URA registered with TDI. Those letters also failed to disclose that the actual determinations were made by registered URAs, and further failed to identify those registered URAs.
16. In eight percent (2 of 25) of adverse determination appeals reviewed, Aetna Health's URA failed to send appeal resolution letters to the enrollee, the person acting on behalf of the enrollee, or to the enrollee's provider of record.
17. In four percent (1 of 25) of adverse determination appeals reviewed, Aetna Health's URA failed to: send appeal resolution letters within 30 calendar days after receipt of the appeal.
18. In four percent (1 of 25) of adverse determination appeals reviewed, Aetna Health's URA failed to: include the professional specialty of the physician who made the determination; and, include the right to seek review by an independent review

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organization (IRO) and procedures for obtaining that review in the appeal resolution letter.

Complaint File Review

19. TDI reviewed 19 initial complaint files and three complaint appeal files for statutory compliance.
20. In 16 percent (3 of 19) of initial complaints reviewed, Aetna Health failed to send a complaint acknowledgement letter within five business days after receipt of the complaint. This conduct is repeated from prior examinations but has decreased in percentage since the prior examination.
21. In 11 percent (2 of 19) of initial complaints reviewed, Aetna Health failed to notify complainants of their appeal rights.
22. In 33 percent (1 of 3) of the complaint appeals reviewed, Aetna Health failed to send an appeal acknowledgement letter within five business days after receipt of the appeal.
23. In 66 percent (2 of 3) of the complaint appeals reviewed, Aetna Health failed to send the complainant information about the complaint appeal panel no later than five business days before the date the complaint appeal panel was scheduled to meet.
24. In 33 percent (1 of 3) of the complaint appeals reviewed, Aetna Health failed to acknowledge, investigate, and resolve the complaint within 30 calendar days after receipt of the appeal. This conduct is repeated from prior examinations but has decreased in percentage since the prior examination.

Provider Directories

25. TDI reviewed Aetna Health's provider lists and directories for statutory compliance.
26. Aetna Health's provider directory included out-of-state physicians and providers, who are located outside of its Texas-approved service area network.

Experimental and Investigational Claim Review

27. Aetna Health self-reported an issue with the retrospective clinical claim review process for certain experimental and investigational claims, specifically those that were denied, but received neither a clinical review nor an adverse determination notice.
28. Aetna Health denied 2,484 claims for experimental and investigational services without giving the physician who ordered, requested, or provided the services notice or a reasonable opportunity to discuss treatment.
29. Aetna Health represents that it has voluntarily taken the following actions to address the issue both retrospectively and prospectively:
 - a. Aetna Health implemented a new routing system for experimental and investigation claims requiring clinical review and hired and trained new staff to implement that system. The new system ensures that claims will receive required review and appeal opportunities. The new system was implemented on March 1, 2021.
 - b. Aetna Health implemented a retrospective clinical review process for the identified claims and on July 25, 2021, notified affected providers of their appeal rights through that process.

Conclusions of Law

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.051–82.055, 84.021–84.044, 401.055, 843.071, and 4201.057, and TEX. GOV'T CODE §§ 2001.051–2001.178.
2. The commissioner has the authority to informally dispose of this matter as set forth in TEX. GOV'T CODE § 2001.056, TEX. INS. CODE §§ 36.104 and 82.055, and 28 TEX. ADMIN. CODE § 1.47.
3. Aetna Health has knowingly and voluntarily waived all procedural rights to which it may have been entitled regarding the entry of this order, including, but not limited to, issuance and service of notice of intention to institute disciplinary action, notice of hearing, a public hearing, a proposal for decision, rehearing by the commissioner, and judicial review.

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4. Aetna Health violated TEX. INS. CODE § 4201.206 and 28 TEX. ADMIN. CODE §§ 19.1710 and 19.1711(a)(5), as contemplated by TEX. INS. CODE § 4201.002(16) and 28 TEX. ADMIN. CODE § 19.1703(b)(26)(A), because its URA or its delegate failed to afford the provider of record a reasonable opportunity to discuss treatment during normal business hours, no less than one working day prior to issuing prospective adverse determinations, and adverse determination appeal resolution letters that involved preauthorization.
5. Aetna Health violated TEX. INS. CODE § 843.348(d) and 28 TEX. ADMIN. CODE § 19.1718(e) because its URA or its delegate failed to issue written adverse determinations to the enrollees or individuals acting on behalf of the enrollees and the provider of record within three calendar days of receiving requests that involved post-stabilization or life-threatening conditions.
6. Aetna Health violated TEX. INS. CODE § 4201.355(a) and 28 TEX. ADMIN. CODE § 19.1711(a)(3) because its URA or its delegate failed to send appeal acknowledgement letters in some adverse determination appeals, and in others failed to timely send appeal acknowledgement letters within five business days after receipt of the appeal.
7. Aetna Health violated TEX. INS. CODE § 4201.101 and 28 TEX. ADMIN. CODE § 19.1704(a) because "Aetna," which is not registered as a URA with TDI, issued appeal resolution letters.
8. Aetna Health violated TEX. INS. CODE § 4201.358(1)–(2) and 28 TEX. ADMIN. CODE § 19.1711(a)(8) because its URA or its delegate failed to send appeal resolution letters.
9. Aetna Health violated TEX. INS. CODE § 4201.359 and 28 TEX. ADMIN. CODE §§ 19.1711(a)(8)(D)–(H), (a)(9), and (b) because its URA or its delegate failed to send appeal resolution letters within 30 calendar days after receipt of the appeal and failed to include the following information in the appeal resolution letter:
 - a. the professional specialty of the physician who made the determination; and
 - b. notice of the right to seek review of the adverse determination by an IRO and procedures for filing a complaint.

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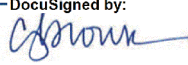
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10. Aetna Health violated TEX. INS. CODE § 843.252(a) because it failed to send complaint acknowledgement letters within five business days after receipt.
11. Aetna Health violated TEX. INS. CODE § 843.254 because it failed to:
 - a. notify complainants of their appeal rights;
 - b. send an appeal acknowledgement letter within five business days after receipt of the complaint appeal; and
 - c. acknowledge, investigate, and resolve complaint appeals within 30 calendar days after receipt.
12. Aetna Health violated TEX. INS. CODE § 843.256 because it failed to send the complainant information about the complaint appeal panel no later than five business days before the date the complaint appeal panel was scheduled to meet.
13. Aetna Health violated TEX. INS. CODE §§ 843.078, 843.201, and 843.2015, and 28 TEX. ADMIN. CODE § 11.1607(f) and (h), and 11.1600(b)(12)–(13) because its provider directory lists physicians and providers located outside of its approved service area network.
14. Aetna Health violated TEX. INS. CODE § 4201.206 and 28 TEX. ADMIN. CODE § 19.1703(b) because it denied claims for experimental and investigational services without giving the physician who ordered, requested, or provided the services notice or a reasonable opportunity to discuss treatment.

Order

It is ordered that Aetna Health Inc. pay an administrative penalty of \$325,000 within 30 days from the date of this order. The administrative penalty must be paid as instructed in the invoice, which the department will send after entry of this order.

DocuSigned by:

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Cassie Brown
Commissioner of Insurance

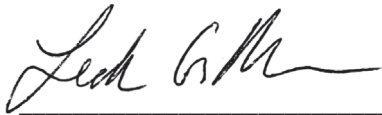
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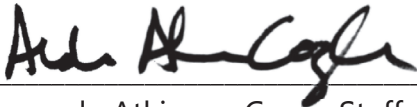
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Recommended and reviewed by:



Leah Gillum, Deputy Commissioner
Fraud and Enforcement Division



Amanda Atkinson Cagle, Staff Attorney
Enforcement

Affidavit

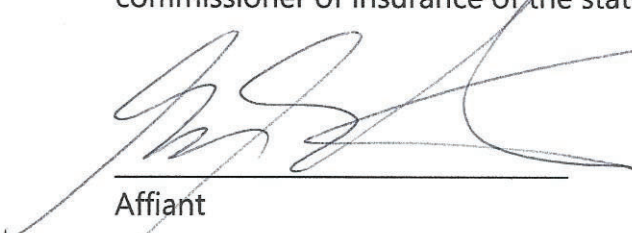
STATE OF PA §
§
COUNTY OF Dauphin §

Before me, the undersigned authority, personally appeared Gregory S. Martino, who being by me duly sworn, deposed as follows:

"My name is Gregory S. Martino. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

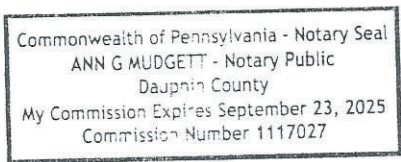
I hold the office of Vice President and am the authorized representative of Aetna Health Inc. I am duly authorized by said organization to execute this statement.

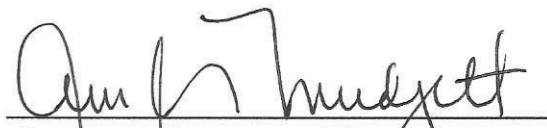
Aetna Health Inc. has knowingly and voluntarily entered into the foregoing consent order and agrees with and consents to the issuance and service of the same by the commissioner of insurance of the state of Texas."


Affiant

SWORN TO AND SUBSCRIBED before me on Nov 8, 2022.

(NOTARY SEAL)




Signature of Notary Public
Ann G Mudgett
Printed Name of Notary Public