

No. 2022-7625

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

Date: 11/21/2022

Subject Considered:

Aetna Life Insurance Company
151 Farmington Ave. # RT
Hartford, Connecticut 06156-0001

Consent Order
TDI Enforcement File No. 27958

General remarks and official action taken:

This is a consent order with Aetna Life Insurance Company (Aetna Life). The Texas Department of Insurance (TDI) conducted a triennial quality of care examination and found multiple violations, including violations found previously in a market conduct examination. Aetna Life has agreed to pay a \$500,000 administrative penalty.

Waiver

Aetna Life acknowledges that the Texas Insurance Code and other applicable law provide certain rights. Aetna Life 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. Aetna Life is a foreign insurer holding certificates of authority in Texas to act as a life, accident, and health insurer and as a third-party administrator (TPA).

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Prior Market Conduct Exam

2. On May 9, 2017, the commissioner entered Order No. 2017-5069 against Aetna Life for violations found in a 2014 market conduct examination. The order imposed a \$100,000 administrative penalty and required Aetna Life to pay providers penalties and statutory interest because it paid certain claims late.

Current Triennial Quality of Care Examination

3. TDI conducted its first quality of care examination of Aetna Life's exclusive provider organization (EPO) and preferred provider organization (PPO) health line of business for the period of January 1, 2017, through December 31, 2019.
4. On April 6, 2021, TDI held an exit conference with Aetna Life to discuss the examination findings. Aetna Life did not provide comments on the draft report.
5. The findings of the examination, which included violations of the Texas Insurance Code and the Texas Administrative Code, are in the Final Examination Report dated April 26, 2021.
6. On May 25, 2021, Aetna Life sent TDI a corrective action plan (CAP), and on November 11, 2021, Aetna Life notified TDI that it had fully implemented the CAP.
7. After the examination, TDI requested and reviewed additional information to clarify findings in the examination related to compliance with the law on prompt handling of clean claims.

Initial Adverse Determinations

8. TDI reviewed 40 initial adverse determinations for statutory compliance.
9. In five percent (2 of 40) of initial adverse determinations reviewed, Aetna Life's URA or its delegate made adverse determinations regarding medical necessity without referring those determinations to an appropriate physician, doctor, or other health care provider.
10. In 25 percent (10 of 40) of initial adverse determinations reviewed, Aetna Life's URA or its delegate failed to afford the provider of record a reasonable opportunity to discuss treatment:

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- a. for seven prospective requests, during normal business hours no less than one working day prior to issuing the adverse determination;
 - b. for two retrospective requests, within five working days prior to issuing the adverse determination; and
 - c. for one concurrent request, within 24 hours of receipt of the request, or followed by a letter within three working days.
11. In five percent (2 of 40) of initial adverse determinations reviewed, Aetna Life's URA or its delegate failed to provide its telephone number, so the provider of record was unable to contact the URA or delegate to discuss the pending adverse determination.
 12. In eight percent (3 of 40) of initial adverse determinations reviewed, Aetna Life's URA or its delegate failed to issue adverse determinations within three calendar days of receiving the requests.
 13. In five percent (2 of 40) of initial adverse determinations reviewed, Aetna Life's URA or its delegate failed to include a description of the clinical basis or source of screening criteria for the adverse determination.
 14. In 12 percent (5 of 40) of initial adverse determinations reviewed, Aetna Life's URA or its delegate failed to include the professional specialty of the physician, doctor, or other health care provider that made the adverse determination.
 15. In two percent (1 of 40) of initial adverse determinations reviewed, Aetna Life's URA or its delegate failed to include a description of the procedure for the complaint and appeal process, including notice of the enrollee's right to appeal an adverse determination to an independent review organization (IRO), and the procedures to obtain that review.

Adverse Determination Appeals

16. TDI reviewed 34 adverse determination appeals for statutory compliance.
17. In three percent (1 of 34) of adverse determination appeals reviewed, Aetna Life's URA failed to send an appeal acknowledgment letter.

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18. In nine percent (3 of 34) of adverse determination appeals reviewed, Aetna Life's URA sent appeal acknowledgment letters later than five working days after receipt of the appeal.
19. In 56 percent (19 of 34) of adverse determination appeals reviewed, Aetna Life's URA failed to afford the provider of record a reasonable opportunity to discuss treatment during normal business hours and no less than one working day prior to issuing the appeal resolution letter.
20. In three percent (1 of 34) 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. The letter also failed to disclose that the actual determination was made by a registered URA, and further failed to identify that registered URA.
21. In three percent (1 of 34) of adverse determination appeals reviewed, Aetna Life's URA failed to send the appeal resolution letter to the enrollee, the person acting on behalf of the enrollee, or to the enrollee's provider of record.
22. In six percent (2 of 34) of adverse determination appeals reviewed, Aetna Life's URA failed to include the screening criteria utilized in making the determination and failed to send the appeal resolution letter within 30 calendar days after receipt of the appeal.
23. In three percent (1 of 34) of adverse determination appeals reviewed, Aetna Life's URA failed to include in the appeal resolution letter the clinical basis of the determination, the professional specialty of the physician who made the determination, and the right to seek review by an IRO.

Claim File Review

24. TDI reviewed 80 claim files for statutory compliance.
25. In 21 percent (17 of 80) of the claims reviewed, the claims were paid late.
26. In 47 percent (8 of 17) of the late-paid claims reviewed, Aetna Life failed to pay penalties and interest for late-paid claims. Although this was a repeat finding from

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the previous market conduct examination, the number of claims with unpaid penalties and interest decreased.

27. Aetna Life also failed to timely pay interest and penalties on an additional 116 late-paid claims not included in the 80 claims reviewed. Aetna Life represents that this non-payment was due to its failure to timely implement eligibility updates, and that as of September 23, 2020, it had paid penalties of \$20,128.25 to providers and interest of \$11,239.44 to TDI.
28. In one percent (1 of 80) of all claims reviewed, Aetna Life failed to include notice of balance billing prohibitions in an explanation of benefits.
29. In one percent (1 of 80) of all claims reviewed, Aetna Life failed to pay the out-of-network facility-based provider within 30 days after receipt of the electronic claim.

Provider Directories

30. TDI reviewed Aetna Life's health care provider lists and directories for statutory compliance.
31. In one percent (27 of 3,637) of the monthly directory updates for 2019, Aetna Life failed to correct directory information within seven days of receipt of reports of inaccuracies.
32. Aetna Life'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

33. Aetna Life self-reported an issue with its 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.
34. Aetna Life denied 34,895 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.
35. Aetna Life represents that it has voluntarily taken the following actions to address the issue both retrospectively and prospectively:

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- a. Aetna Life 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 Life 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, 801.151–801.152, 841.002, 841.101, 841.701–841.702, and 1301.0056, 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 Life 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.
4. Aetna Life violated TEX. INS. CODE § 4201.206 and 28 TEX. ADMIN. CODE §§ 19.1710 and 19.1718(d)(2), as contemplated by 28 TEX. ADMIN. CODE § 19.1703(b)(26), because prior to issuing adverse determinations, its URA or its delegate failed to provide its telephone number, so the provider of record was unable to contact the URA or delegate to discuss the pending adverse determination, or otherwise failed to afford the provider of record a reasonable opportunity to discuss treatment:
 - a. for prospective requests, during normal business hours no less than one working day;
 - b. for retrospective requests, within five working days; and
 - c. for concurrent requests, within 24 hours of receipt of the request, or by sending a letter within three working days.

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5. Aetna Life violated TEX. INS. CODE § 4201.153 and 28 TEX. ADMIN. CODE § 19.1705(d) because its URA or its delegate made adverse determinations regarding medical necessity without referring those determinations to an appropriate physician, doctor, or other health care provider.
6. Aetna Life violated TEX. INS. CODE § 1301.135(c) and 28 TEX. ADMIN. CODE § 19.1718(d)(1) because its URA or its delegate failed to issue adverse determinations within three calendar days of receiving the requests.
7. Aetna Life violated TEX. INS. CODE § 4201.303(a)(2)–(4) and 28 TEX. ADMIN. CODE § 19.1709(c)(2)–(4) because its URA or its delegate failed to include the following information in adverse determinations:
 - a. the clinical basis for the determination;
 - b. the source of screening criteria used for the determination;
 - c. the professional specialty of the physician, doctor, or other health care provider that made the determination; or
 - d. notice of the right to appeal the determination to an IRO and procedures to obtain that review.
8. Aetna Life 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.
9. Aetna Life 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.
10. Aetna Life 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.
11. Aetna Life violated TEX. INS. CODE § 4201.359 and 28 TEX. ADMIN. CODE § 19.1711(a)(8)(B)–(E) and (a)(9) because its URA or its delegate failed to timely send appeal resolution letters within 30 calendar days after receipt of the appeal and failed to include the following information in appeal resolution letters:

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- a. the clinical basis for the determination;
 - b. the professional specialty of the physician who made the determination;
 - c. the screening criteria utilized in making the determination; and
 - d. notice of the right to seek review of the adverse determination.
12. Aetna Life violated TEX. INS. CODE §§ 1301.103 and 1301.137 and 28 TEX. ADMIN. CODE § 21.2815(a)(1)–(2), and (a)(4) because it failed to pay penalties for some late-paid claims and because it failed to timely pay penalties and interest for some late-paid claims.
13. Aetna Life violated TEX. INS. CODE § 1301.010 because it failed to include a notice of balance billing prohibitions in an explanation of benefits.
14. Aetna Life violated TEX. INS. CODE § 1301.164(b) because it failed to pay an out-of-network facility-based provider within 30 days after receipt of the claim.
15. Aetna Life violated TEX. INS. CODE §§ 1301.001(10), 1301.005, 1451.504(a) and 1451.505(d)-(e) because its provider directory listed physicians and providers located outside of its approved service area network and because it failed to correct directory information within seven days of receipt of reports of inaccuracies.
16. Aetna Life violated TEX. INS. CODE § 4201.206 as contemplated by 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.

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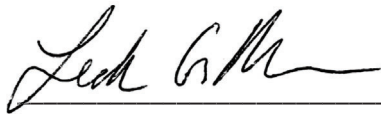
Order

It is ordered that Aetna Life Insurance Company pay an administrative penalty of \$500,000 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.

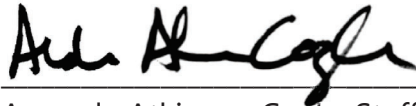
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Cassie Brown
Commissioner of Insurance

Recommended and reviewed by:



Leah Gillum, Deputy Commissioner
Fraud and Enforcement Division



Amanda Atkinson Cagle, Staff Attorney
Enforcement

