

No. **3910**

**OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF INSURANCE**

Date: APR 15 2015

Subject Considered:

AETNA LIFE INSURANCE COMPANY
151 Farmington Avenue
Hartford, Connecticut 06156

and

AETNA HEALTH INC.
980 Jolly Road
Blue Bell, Pennsylvania 19422

CONSENT ORDER

TDI ENFORCEMENT FILE NOS. 4329 and 9020

General remarks and official action taken:

The commissioner of insurance considers disciplinary action against Aetna Life Insurance Company, a foreign insurance company authorized to write accident and health insurance in Texas, and Aetna Health Inc., a domestic health maintenance organization operating under Chapter 843 of the Texas Insurance Code. Aetna Life Insurance Company and Aetna Health Inc. are collectively referred to as the Aetna Companies in this consent order.

Waiver

The Aetna Companies each acknowledge that the Texas Insurance Code and other applicable law provide certain rights. The Aetna Companies waive all those rights in consideration of the entry of this consent order.

Pursuant to TEX. INS. CODE § 82.055(b), the Aetna Companies agree to the sanction provided in this consent order with the express reservation that they do not admit to a violation of the Texas Insurance Code or any TDI rule, and maintain that the existence of a violation is in dispute.

Findings of Fact

1. The Aetna Companies are authorized under the Texas Insurance Code to provide health insurance or health benefits in Texas.
2. The Aetna Companies use a designation system called Aexcel to evaluate and classify the performance of particular physicians and physician groups in Texas against certain standards and measures. The Aetna Companies publish the Aexcel designation results for each of those particular physicians and physician groups.

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3. TDI received a complaint against the Aetna Companies in connection with the evaluation of a particular physician group for Aexcel designation. Among other things, the complaint alleged that the Aetna Companies failed to comply with certain notice and reconsideration procedures required under Texas law.
4. The Aetna Companies sent the physician group an initial letter which explained that the group's cost efficiency results fell below the threshold for receiving Aexcel designation and stated that the group had 30 days to request reconsideration. The letter also invited the group to refer to a physician guide document available online through the Aetna website for explanation of Aexcel measurements, standards, and methodologies. The guide document provided an overview of measurements, standards, and methodologies used in Aexcel and noted that more detailed descriptions could be found elsewhere on the website.
5. The letter did not provide any of the data used in the evaluation.
6. The physician group promptly requested reconsideration of the non-designation and asked for more information.
7. The Aetna Companies subsequently provided the physician group some performance analysis data and sent more detailed information about Aexcel measurements, standards, and methodologies. The performance analysis data was limited in category and scope and did not present underlying cost data attributed to the physician group.
8. Despite providing no data with the initial letter and only limited data thereafter, the Aetna Companies asserted that the reconsideration process must be completed within 45 days of the physician group's reconsideration request. The Aetna Companies also set an earlier deadline for the group to provide information for consideration in the process.
9. At the end of the 45 day period, the Aetna Companies sent an email and a letter stating the outcome of the reconsideration process. Both communications simply noted that the physician group's cost efficiency results still fell below the threshold required for Aexcel designation. The communications did not explain how or why the cost efficiency results did not meet the required threshold.
10. The Aetna Companies have agreed to implement changes to their protocols for written notice and reconsideration of Aexcel designations. The changes will address non-compliant aspects of the written notice and reconsideration protocols previously used by the Aetna Companies, which were at issue in the physician group complaint. The Aetna Companies developed the changes after discussions with TDI staff.

Conclusions of Law

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.001-82.055, 843.071, 1460.003, and 1460.007; and TEX. GOV'T CODE §§ 2001.051-2001.178.
2. TEX. GOV'T CODE § 2001.056; TEX. INS. CODE §§ 36.104 and 82.055; and 28 TEX. ADMIN. CODE § 1.47 give the commissioner authority to informally dispose of this case.
3. The Aetna Companies are health benefit plan issuers as that term is defined in TEX. INS. CODE § 1460.001.
4. As contemplated by TEX. INS. CODE § 1460.003, the Aetna Companies classify physician performance and publish ratings of physician performance through their Aexcel designation program.
5. TEX. INS. CODE § 1460.003 requires health benefit plan issuers to give physicians at least 45 days' written notice of a proposed classification or rating, including the "methodologies, data, and all other information utilized by the health benefit plan issuer in its rating... decision."
6. While the Aetna Companies gave the physician group written notice of the proposed Aexcel classification or rating, they failed to include the methodologies, data, and all other information utilized in the decision as required by TEX. INS. CODE § 1460.003.
7. TEX. INS. CODE § 1460.003 requires health benefit plan issuers to give the required written notice at least 30 days before the physician's deadline to request a reconsideration proceeding.
8. The Aetna Companies failed to give the required written notice to the physician group at least 30 days prior to the deadline the Aetna Companies set for the physician group to request a reconsideration proceeding.
9. TEX. INS. CODE § 1460.003 requires health benefit plan issuers to provide a written communication of the outcome of a reconsideration proceeding. The written communication must include the specific reasons for the final decision.
10. The Aetna Companies gave the physician group a written communication of the outcome of the reconsideration proceeding, but the written communication did not include the specific reasons for the final decision as required by TEX. INS. CODE § 1460.003.

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The commissioner orders the Aetna Companies to cease and desist from failing to comply with the following requirements of TEX. INS. CODE § 1460.003:

- The Aetna Companies must give physicians written notice of a proposed classification or rating at least 45 days prior to the publication or other public dissemination of that classification or rating. The written notice must include the methodologies, data, and all other information utilized by the health benefit plan issuer in the rating decision;
- The Aetna Companies must give the required written notice at least 30 days before a physician's deadline to request a reconsideration proceeding; and
- The Aetna Companies must include specific reasons for the final decision when communicating the outcome of a reconsideration proceeding.



David C. Mattax
Commissioner of Insurance

Approved as to Form and Content:



David Muckerheide
Staff Attorney, Compliance Division
Texas Department of Insurance

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Affidavit

State of Pennsylvania §
County of Dauphin §

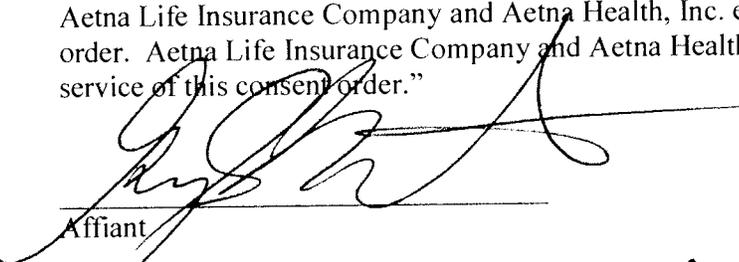
Before me, the undersigned authority, personally appeared the affiant, who being by me duly sworn, deposed as follows:

"My name is Gregory Martin 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 both Aetna Life Insurance Company and Aetna Health, Inc. I am duly authorized by said organizations to execute this statement.

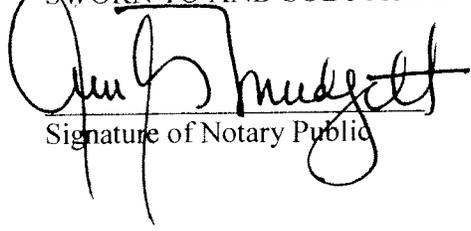
Aetna Life Insurance Company and Aetna Health, Inc. each waive rights provided by the Texas Insurance Code and other applicable law and acknowledge the jurisdiction of the commissioner.

Aetna Life Insurance Company and Aetna Health, Inc. each voluntarily enter into this consent order. Aetna Life Insurance Company and Aetna Health, Inc. each consent to the issuance and service of this consent order."



Affiant

SWORN TO AND SUBSCRIBED before me on April 4, 2015.



Signature of Notary Public

