

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

RECEIVED
INSURANCE DEPARTMENT
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ADMIN HEARINGS OFFICE

IN RE: : VIOLATIONS:
: :
AETNA HEALTH, INC. : Section 2166(A) of the Act of June
980 Jolly Road : 17, 1998, P.L. 464, No. 68 (40 P.S.
P.O. Box 1109 : §§ 991.2166)
Blue Bell, PA 19422 :
: Title 31, Pennsylvania Code,
: Section 154.18
: :
Respondent. : Docket No. CO06-02-016

CONSENT ORDER

AND NOW, this *28th* day of *April*, 2006, this Order is hereby issued by the Deputy Insurance Commissioner of the Commonwealth of Pennsylvania pursuant to the statutes cited above and in disposition of the matter captioned above.

1. Respondent hereby admits and acknowledges that it has received proper notice of its rights to a formal administrative hearing pursuant to the Administrative Agency Law, 2 Pa.S. §101, et seq., or other applicable law.

2. Respondent hereby waives all rights to a formal administrative hearing in this matter, and agrees that this Consent Order, and the Findings of Fact and Conclusions of Law contained herein, shall have the full force and effect of an Order duly entered in accordance with the adjudicatory procedures set forth in the Administrative Agency Law, supra, or other applicable law.

3. Without admitting the allegations of fact and conclusions of law contained herein, Respondent neither admits nor denies that it violated any law or regulation of the Commonwealth.

FINDINGS OF FACT

4. The Deputy Insurance Commissioner finds true and correct each of the following Findings of Fact:

- (a) Respondent is Aetna Health Inc., and maintains its statutory home office at 980 Jolly Road, Post Office Box 1109, Blue Bell, Pennsylvania 19422.
- (b) During all times herein, Respondent has been a licensed Health Maintenance Organization with a Certificate of Authority, which was effective on March 4, 1976.

(c) During 2005, Respondent, through its third party administrator, Magellan Behavioral Health Systems, LLC, did not process payment of provider claims related to certain drug and alcohol treatments for forty nine (49) insureds under their Aetna coverage by applying, as pre-requisites, pre-certification of such services by Respondent or its third party administrator in accordance with the terms of the insureds' health benefit plans.

(d) The above-referenced 49 claims were originally denied or partially denied by indicating they did not meet the necessary clinical or medical necessity/severity pre-requisites for mandated benefits.

(e) There has been no finding or determination that additional reasons may have existed for denial or partial denial of the above reference forty nine (49) insureds' claims, including for example exhaustion of benefit limits, coordination of benefits, and/or eligibility definitions under the insureds' health benefit plan.

(f) The insureds had the right under Pennsylvania law, PA statute and within the terms of their health benefit plans, to appeal any decisions of the Respondent (or its third party administrator), and had other avenues available to them, including filing a complaint with the PA Insurance Department's Bureau of Consumer Services, to exercise a formal review of their claim and any denial or partial denial of such claim.

(g) The Commissioner, in Notice 2003-06, Drug and Alcohol Use and Dependency Coverage, 33 Pa.B. 4041 (“Notice”), provided guidance and advice in connection with certain pre-requisites to coverage, to wit, “This notice is issued to advise all entities subject to Act 106 of 1989 (act) (40 P. S. §§ 908-1--908-8) of their obligations under Commonwealth law in the provision of coverage for alcohol or other drug abuse and dependency benefits.” Id. The Notice provided that the Department viewed the “only lawful pre-requisite” under the act was “before an insured obtains nonhospital residential and outpatient coverage for alcohol and drug dependency treatment is a certification and referral from a licensed physician or licensed psychologist.” Id.

(h) Respondent, during the time period covered by the claims observed herein, had asserted its and its third party administrator’s, ability to apply certain clinical, medical or other evaluative criteria to claims relating to certain drug and alcohol treatments, including a request for an administrative hearing, and through a legal challenge to the Notice, in the Commonwealth Court of Pennsylvania, captioned, The Insurance Federation of Pennsylvania, Inc. et al. v. Commonwealth of Pennsylvania, Insurance Department, No. 10 M.D. 2004, which legal action is, to date, still pending.

(i) Notwithstanding the foregoing, Respondent asserts that, for the period covered by this Order, it intended to voluntarily comply with the Department’s guidance in the Notice, and Respondent asserts that it has complied with the appropriate Pennsylvania statutes and regulations relative to its behavioral health

claims until final resolution of this matter by the Commonwealth Court of Pennsylvania or any successor court; and, during the period of time covered by this Order, Respondent intended to voluntarily process applicable drug and alcohol claims for covered services in connection with the Notice.

(j) Respondent further asserts that, for the relevant time herein, due to difficulties with its third party administrator, Magellan Behavioral Health Systems, LLC, certain behavioral health claims for drug and alcohol substance abuse treatment services appeared to not have been processed according to Respondent's directions.

CONCLUSIONS OF LAW

5. In accord with the above Findings of Fact and applicable provisions of law, the Deputy Insurance Commissioner concludes and finds the following Conclusions of Law:

- (a) Respondent is subject to the jurisdiction of the Pennsylvania Insurance Department.
- (b) Section 2166(A) of Act 68 (40 P.S. § 991.2166(a)), requires a licensed insurer or managed care plan to pay a clean claim submitted by a health care provider within 45 days of receipt of the clean claim.

- (c) Respondent's activities described in paragraphs 4.(c) and (d), to the extent that a claim or a portion of a legitimate claim was denied, constitute a violation of Section 2166(A) of Act 68 (40 P.S. § 991.2166(a)).

- (d) Respondent's violations of Section 2166(A) of Act 68 (40 P.S. § 991.2166(a)) are punishable by the following, under Section 2013 of the Act (40 P.S. § 991.2013): Any individual or insurer who violates any of the provisions of this article may be sentenced to pay a fine not to exceed five thousand dollars (\$5,000.00).

- (e) Title 31, Pennsylvania Code, Section 154.18 provides that licensed insurers and managed care plans shall pay clean claims and the uncontested portions of a contested claim under subsection (d) submitted by a health care provider for services provided on or after January 1, 1999, within 45 days of the licensed insurer's or managed care plan's receipt of the claim from the health care provider. The prompt payment provision applies only to claims submitted under health insurance policies, excluding areas such as automobile and worker's compensation policies.

- (f) Respondent's activities described in paragraphs 4.(c) and (d), to the extent that a claim or a portion of a legitimate claim was denied, constitute a violations of Title 31, Pennsylvania Code, Section 154.18.

ORDER

6. In accord with the above Findings of Fact and Conclusions of Law, the Deputy Insurance Commissioner orders and Respondent consents to the following:

(a) Respondent shall cease and desist from engaging in the activities described herein in the Findings of Fact and Conclusions of Law.

(b) Respondent shall pay a civil penalty of Forty-Five Thousand Dollars (\$45,000) to the Commonwealth of Pennsylvania. This penalty shall be made payable to the Commonwealth of Pennsylvania, and directed to Sharon L. Harbert, Administrative Assistant, Bureau of Enforcement, 1227 Strawberry Square, Harrisburg, Pennsylvania 17120. Payment may be enclosed with the Consent Order, but must be paid in any event no later than thirty (30) days after the date of the Consent Order.

7. In the event the Deputy Insurance Commissioner finds that there has been a breach of any of the provisions of this Order, based upon the Findings of Fact and Conclusions of Law contained herein, the Department may pursue any and all legal remedies available, including but not limited to the following: The Department may enforce the provisions of this Order in an administrative action pursuant to the Administrative Agency Law, supra, or other relevant provision of law; or, if

applicable, the Department may enforce the provisions of this Order in any other court of law or equity having jurisdiction.

8. Alternatively, in the event the Deputy Commissioner finds that there has been a breach of any of the provisions of this Order, the Deputy Commissioner may declare this Order to be null and void and, thereupon, reopen the entire matter for appropriate action pursuant to the Administrative Agency Law, supra, or other relevant provision of law.

9. In any such enforcement proceeding, Respondent may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

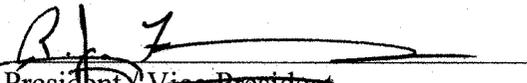
10. Respondent hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

11. This Order constitutes the entire agreement of the parties with respect to the matters referred to herein, and it may not be amended or modified except by an amended order signed by all the parties hereto.

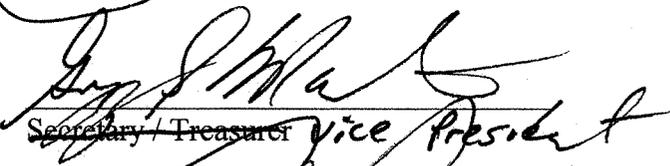
12. This Order shall be final upon execution by the Deputy Insurance Commissioner. Only the Insurance Commissioner or the duly authorized Deputy

Insurance Commissioner is authorized to bind the Insurance Department with respect to the settlement of the alleged violation of law contained herein, and this Consent Order is not effective until executed by the Insurance Commissioner or the duly authorized Deputy Insurance Commissioner.

BY: AETNA HEALTH, INCORPORATED,
Respondent



President Vice President



Secretary / Treasurer Vice President



RANDOLPH L. ROHRBAUGH
Deputy Insurance Commissioner
Commonwealth of Pennsylvania