

**ATTORNEY GENERAL OF THE STATE OF NEW YORK
HEALTH CARE BUREAU**

In the Matter of

AETNA HEALTH INC.

AND

AETNA HEALTH INSURANCE COMPANY OF NEW YORK

AND

AETNA LIFE INSURANCE COMPANY

AOD # 10-086

**ASSURANCE OF DISCONTINUANCE
PURSUANT TO EXECUTIVE LAW
SECTION 63, SUBDIVISION 15**

Pursuant to the provisions of Executive Law ("EL") § 63(12) and Article 22-A of the General Business Law ("GBL"), Andrew M. Cuomo, Attorney General of the State of New York, caused an inquiry to be made into certain business practices of Aetna Health Inc., Aetna Health Insurance Company of New York and Aetna Life Insurance Company relating to the accuracy of their participating provider directories.

1. Aetna Health Inc. is a New York State for-profit health maintenance organization licensed under Article 44 of the New York State Public Health Law ("PHL").
2. Aetna Health Insurance Company of New York is a for-profit health and accident insurer licensed under Article 43 of the New York State Insurance Law.
3. Aetna Life Insurance Company is a for-profit life, accident and health insurance company domiciled in Connecticut and licensed pursuant to Section 1113(a) of the New York

Insurance Law.

4. Aetna Health Inc., Aetna Health Insurance Company of New York and Aetna Life Insurance Company are wholly-owned subsidiaries of Aetna Inc. Unless otherwise indicated, Aetna Health Inc., Aetna Health Insurance Company of New York and Aetna Life Insurance Company are hereinafter referred to collectively as “Aetna.”

5. Aetna’s principal offices are located at 151 Farmington Avenue, Hartford, CT 06105.

I. FINDINGS

6. The Office of the New York State Attorney General’s (“OAG”) Health Care Bureau investigated (the “Investigation”) the accuracy of Aetna’s online provider directories.

7. The Investigation included (i) a telephone survey of information contained within Aetna’s online provider directories for anesthesiologists within a 50 mile radius of zip codes 10304 and 11230; and (ii) an examination of certain documents and information provided by Aetna that pertained to outreach by Aetna to verify information in its provider directory.

8. The surveyed sample of anesthesiologists revealed a number of erroneous listings for providers, some of whom could not be located, as well as inaccurate addresses and telephone numbers.

9. In the regular course of business, Aetna administers preferred provider organization (“PPO”) plans, and health maintenance organization (“HMO”) plans. These plans include a network of physicians, specialists, hospitals, out-patient facilities and laboratories.

10. Aetna contracts with various providers (“Participating Providers”) throughout New York and elsewhere in the United States to accept negotiated rates plus the applicable subscriber deductibles, co-payments and/or coinsurance as payment in full for covered services

rendered to the subscribers of its plans (“Subscribers”).

11. Under the PPO and HMO plans, Subscribers who receive covered services from Participating Providers are only responsible for the applicable deductibles, coinsurance and co-payments.

12. Aetna is required by law to publish its listing of Participating Providers in a directory (“Published Directory”). Aetna prints a Published Directory annually. In addition to the Published Directory, Aetna maintains its listing of Participating Providers in an electronic format through the “Find a Doctor” or “Doc Find” link on its website. (Unless otherwise specified, the electronic provider directories for the PPO and HMO plans are collectively referred to herein as the “Online Provider Directory.”)

13. The Online Provider Directory includes a listing of each Participating Provider’s (including facilities) name, address(es), telephone number(s), and in the case of physicians, specialty area, hospital affiliations and any applicable board certification (“Participating Provider Information”).

14. The Online Provider Directory is not only available to Subscribers, but is also accessible to those consumers who desire information about Aetna’s Participating Provider network before subscribing to Aetna.

15. New York’s PHL § 4405(10) permits health maintenance organizations to advertise its health care services provided that:

all information disseminated to the public shall be strictly factual in nature and accurate in all respects and shall not in any way be misleading to the public.

16. The OAG finds that Aetna failed to maintain an accurate Online Provider Directory in violation of EL § 63(12), and GBL §§ 349(a) and 350 and Aetna Health Inc.

also violated PHL § 4405(10).

WHEREAS, Aetna neither admits nor denies OAG's Findings (6 - 16) above;

WHEREAS, OAG is willing to accept the terms of this Assurance of Discontinuance pursuant to EL § 63(15) and to discontinue its investigation; and

WHEREAS, the parties each believe that the obligations imposed by this Assurance of Discontinuance are prudent and appropriate;

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the parties that:

II. PROSPECTIVE RELIEF

17. Aetna shall furnish Participating Provider Information in its Online Provider and Published Directories in accordance with all applicable law, including PHL § 4408(1)(r) and IL § 3217-a(a)(17), its policies and this Assurance of Discontinuance. Aetna must verify the participation status and Participation Provider Information of all of its Participating Providers, correct or remove inaccurate listings from its Online Provider Directory, and take other corrective actions within 12 months of the Effective Date (as defined below in paragraph 59) of this Assurance of Discontinuance as set forth in paragraphs 18 to 24 below.

18. Aetna shall, as of the Effective Date of this Assurance of Discontinuance:

- a. update its Online Provider Directory within 15 days of receiving any verified Participating Provider Information or termination of a provider's Participating Provider status;
- b. document those providers who are removed from and added to the Online Provider Directory by name, office address and dates upon which their participation in Aetna's network ended;
- c. require the lessors of any and all of its leased networks to update the

Participating Provider Information and Participating Provider status for their respective networks in accordance with New York law;

- d. confirm, at least once annually, that every provider listed as a Participating Provider on its Online Provider Directory and Published Provider Directory has a direct or indirect contractual relationship with Aetna;¹ and
- e. conduct outreach on a phased roll-out basis over the 12 month period after the Effective Date of this Assurance of Discontinuance and annually thereafter to verify the participation status and Participating Provider Information of each of the providers listed in its Online Provider Directory (the “Verification Processes”). Outreach under the Verification Processes shall be conducted by written communications and/or telephone. Aetna shall document all efforts undertaken in its Verification Processes for each provider listed on its Online Provider Directory. Aetna shall record any and all telephone calls made to verify Participating Provider status and Participating Provider Information beginning 90 days after the Effective Date of this Assurance of Discontinuance. Aetna shall maintain documentation that accurately reflects the dates on which each provider’s Participating Provider status and Participating Provider Information are verified. Outreach shall not be required for providers with whom Aetna has a direct or indirect contractual relationship and who have been

¹ A direct contractual relationship means an agreement directly between Aetna and a provider. An indirect contractual relationship means a circumstance whereby a provider participates with Aetna’s network not by means of a direct contractual relationship but through successive relationships. For example, a provider works for a hospital and the hospital has a direct contractual relationship with Aetna; or a provider has a direct contractual relationship with a network other than Aetna’s and Aetna has a direct contractual relationship with the lessor of that network.

credentialed or re-credentialed² within the past 12 months; or for providers who are affiliated with Aetna through any of its leased networks.

19. Aetna's Participating Provider Verification Processes must include an affirmative response from each of the listed providers, except when the following safeguards are satisfied:

- a. An individual provider who is not part of a group practice shall be deemed to have his or her Participating Provider status and Participating Provider Information confirmed if (i) the provider has a direct or indirect contractual relationship with Aetna, (ii) Aetna determines by reliable means that the provider's Participating Provider Information is unchanged in past 12 months, and (iii) the provider has submitted claims as a Participating Provider or accepted capitation payments in the past 12 months or Aetna has other reliable indicia that the provider does not dispute his or her status as a participating provider.
- b. Individual members of a provider group practice or hospital staff shall be deemed to have their Participating Provider status and Participating Provider Information confirmed if the practice or hospital is participating pursuant to a direct or indirect contractual relationship with Aetna and has submitted a roster within the past 12 months which lists such individual members as Participating Providers and includes their practice address(es), telephone number(s), specialty area, hospital affiliations, and any applicable board certification.

² Credentialing means the process whereby Aetna, or a delegate of Aetna, verifies that the provider is qualified to be a part of its network. This process includes, amount other things, verification of current professional license(s), certifications, hospital staff privileges and practice information.

For a safeguard to be satisfied, Aetna must first perform the outreach required by paragraph 18 e. Aetna shall maintain documentation evidencing satisfaction of a safeguard.

20. Aetna shall devise reasonable processes to ensure that: (i) providers who cannot be located through its Verification Processes are no longer listed in the Online Provider Directory in a timely manner; and (ii) all practice groups provide it timely notice whenever group members leave or join the practice.

21. Aetna agrees to revise its Online Provider Directory as follows: (1) insert a statement on top of every page in fifteen point (or larger) boldface type, "See Important Notice About Participating Providers Below;" and (2) insert the following statement ("Statement") on the bottom of every page in fifteen pixel (or larger) boldface type:

Provider information contained in this Directory is updated on a weekly basis and may have changed. Therefore, please check with your provider before scheduling your appointment or receiving services to confirm whether he or she is participating.

22. The Statement set forth in paragraph 21 above shall be included in the Online Provider Directory within 10 days of the Effective Date of this Assurance of Discontinuance. The Statement does not release Aetna from its responsibility to maintain its Online Provider and Published Directories as required by law and this Assurance of Discontinuance.

23. Aetna shall appropriately train all personnel who administer or maintain the Online Provider Directory about the policies and procedures required by this Assurance of Discontinuance.

24. Aetna's Published Directory shall contain the information that is in the Online Directory as of the date the information is transferred for purposes of printing the Published Directory.

III. RESTITUTION

25. For the time period described below, Aetna shall identify all such Subscribers who paid amounts in excess of any applicable in-network deductible, coinsurance, or co-payment for services rendered by non-participating providers who were listed in the Online Provider Directory at the time they received services. Once identified through good faith efforts, Aetna will provide those Subscribers with restitution for amounts paid in excess of any applicable in-network deductible, coinsurance or co-payment plus interest in the amount of 12% from the date of payment until the date restitution is issued. Subscribers who were notified by Aetna that their providers were no longer participating in Aetna's network will not be eligible for restitution for services obtained subsequent to that notification, beyond Aetna's continuing care obligations that are set forth in PHL § 4403(6)(e) & (f) & Insurance Law § 4804(e) & (f).

26. Within 18 months from the Effective Date of this Assurance of Discontinuance, and for the period beginning January 1, 2006 and ending 12 months after the Effective Date of this Assurance of Discontinuance (the "Restitution Period"), Aetna shall:

- a. identify Subscribers who may be eligible for restitution ("Eligible Subscribers") because they received services from providers who were inaccurately listed as participating on the Online Provider Directory ("Listed Non-Par Providers"). Listed Non-Par Providers shall include, but not be limited to, those providers who: (i) indicate in the Verification Processes that they had previously terminated their participation status or otherwise disputed their participation status; (ii) did not provide an affirmative response to Aetna's Verification Processes or satisfy a safeguard provision in paragraph 19; or (iii) submitted notice of

termination since January 1, 2006; and

- b. provide applicable notices and pay restitution to such Eligible Subscribers as set forth in paragraphs 27 to 30 below.

27. Eligible Subscribers shall be entitled to submit additional restitution claims for services rendered prior to and during the Restitution Period by the Listed Non-Par Providers.

28. Within 30 days of the Effective Date of this Assurance of Discontinuance, Aetna shall submit to the OAG a form of notice (“Notice”) to all Eligible Subscribers that they may be eligible for a refund. The Notice’s content, form and delivery mechanism shall be subject to OAG approval and the Notice shall include:

- a. a statement that Eligible Subscribers are entitled to submit restitution claims for services rendered prior to and during the Restitution Period by the Listed Non-Par Providers identified in the Notice;
- b. the procedures and time-frames for submitting reasonable proof of a claim for restitution. Such reasonable proof may include, but not be limited to, canceled checks, receipts, provider letters, paid invoices or other credible indicia of payment of all or part of the claim (“Proof of Payment”); and
- c. a statement that Subscriber may file a complaint with the OAG and including the OAG’s website address and toll-free Helpline telephone number.

29. Aetna shall send the Notice to Eligible Subscribers within 45 days of its identification of the Eligible Subscribers in paragraph 26 a.

30. Aetna shall make restitution to Eligible Subscribers within 30 business days of receiving the Proof of Payment.

IV. MONITORING

A. Monitoring by Aetna

31. Aetna shall monitor its adherence to the requirements of this Assurance of Discontinuance, all applicable laws and its own corporate policies over three reporting periods (“Reporting Period(s)”). The first Reporting Period shall begin 6 months after the Effective Date and end 3 months thereafter. The second and third Reporting Periods shall begin at the close of the prior Reporting Period and end 3 months thereafter.

32. At the end of each Reporting Period, Aetna shall:

- a. take a statistically valid random sampling of the providers who were subject to its Verification Processes (the “Verified Providers”); and
- b. compare the Participating Provider Information of the Verified Providers that is contained on its Online Provider Directory with the current source documentation obtained through its Verification Processes to determine the percentage of those Verified Providers who are accurately listed therein with regard to Participating Provider status and Participating Provider Information.

33. If the percentage of Participating Provider listings in the Online Provider Directory falls below the accuracy rate of 95% (with +/- 2% confidence interval), Aetna shall develop and implement an appropriate remedial strategy, including additional monitoring and/or retraining.

Aetna Complaint Report

34. Aetna shall:

- a. log and track by date all disputes and complaints received from any

Subscribers that arise out of the subject matter of this Assurance of Discontinuance including, but not limited to, inaccurate Participating Provider listings and alleged balance billing by providers listed in the Online Provider and Published Directories; and

- b. document how it handled each dispute or complaint and how each was resolved (the "Complaint Report").

B. Monitoring by Independent Auditor

35. Aetna shall engage the services of an independent auditor with the necessary experience and approved by the OAG ("Auditor"). The Auditor shall be required to review procedures used by Aetna to identify Eligible Subscribers and Aetna's Verification Processes including, but not limited to, any applicable scripts, email notices, other correspondences and telephonic recordings. Aetna's contract with the Auditor shall require that the Auditor issue a report of its audit, covering the items required by this paragraph and paragraph 36, to the OAG within 22 months of the Effective Date of this Assurance of Discontinuance.

36. Aetna shall, at 19 months following the Effective Date of this Assurance of Discontinuance, undergo an audit by the Auditor. The Auditor shall:

- a. examine Aetna's compliance with regard to all of the elements set forth in Sections II and III of this Assurance of Discontinuance. Such examination may include a review of any applicable telephonic recordings; and
- b. take a statistically valid random sampling of the provider listings in the Online Provider Directory to determine the percentage of providers who are accurately listed therein, with regard to Participating Provider status and Participating Provider Information. In determining the accuracy of

the Online Provider Directory, the Auditor shall rely on Aetna's internal documentation and any independent sources and activities that are deemed reasonably necessary.

37. The monitoring may be extended for an additional time period(s) if the OAG finds non-compliance by Aetna with this Assurance of Discontinuance.

V. REPORTS TO OAG

38. Aetna shall, at 9 and 15 months following the Effective Date of this Assurance of Discontinuance, submit to the OAG the "Provider Directory Deletion/Addition Report" which shall include the names and office listings of those providers who are removed or added from the Online Provider Directory, as set forth in paragraph 18 b. above.

39. Within 20 months of the Effective Date of this Assurance of Discontinuance, Aetna shall submit to the OAG a report documenting all of the Eligible Subscribers who submitted claims for restitution, those to whom restitution was paid, and those whose claims were denied, including a unique identifier for each such Subscriber, provider's name and office address, dates services rendered, restitution amount and date paid, and reason for denial.

40. Within 2 months after the end of each Reporting Period, Aetna shall submit a report to the OAG which will include:

- a. the percentage described in paragraph 32 b. of this Assurance of Discontinuance;
- b. a description and schedule of any corrective measures taken by Aetna, or planned to be taken by Aetna, pursuant to the obligation set forth in paragraph 33 of this Assurance of Discontinuance; and
- c. a copy of the Complaint Report described in paragraph 34 of this

Assurance of Discontinuance.

41. Aetna shall require the Auditor to file its report and recommendations with Aetna and the OAG within 30 business days of completing its audit.

VI. AFFIDAVITS OF COMPLIANCE

42. Aetna shall submit to the OAG, within 12 months after the execution of this Assurance of Discontinuance, and subsequently 24 months after execution of this Assurance of Discontinuance, an affidavit, subscribed to by an officer of Aetna authorized to bind Aetna, setting forth Aetna's compliance with the provisions of this Assurance of Discontinuance.

VII. PAYMENT

43. Aetna agrees to pay \$30,000 to the New York State Department of Law, within 30 days of the Effective Date of this Assurance of Discontinuance.

44. The OAG may assess penalties and require additional restitution based on the audits described in paragraphs 35 to 37 above.

VIII. MISCELLANEOUS

45. OAG has agreed to the terms of this Assurance of Discontinuance based on, among other things, the representations made to OAG by Aetna and their counsel and OAG's own factual investigation as set forth in Findings (6) - (16) above. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance of Discontinuance is voidable by the OAG in its sole discretion.

46. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance of Discontinuance has been made to or relied upon by Aetna in agreeing to this Assurance of Discontinuance.

47. Notwithstanding any provision of this Assurance of Discontinuance to the

contrary, the OAG may, in its sole discretion, grant written extensions of time for Aetna to comply with any provision of this Assurance of Discontinuance.

48. Aetna represents and warrants, through the signatures below, that the terms and conditions of this Assurance of Discontinuance are duly approved, and execution of this Assurance of Discontinuance is duly authorized. Aetna shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance of Discontinuance or expressing the view that this Assurance of Discontinuance is without factual basis. Nothing in this paragraph affects Aetna's (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which OAG is not a party. This Assurance of Discontinuance is not intended for use by any third party in any other proceeding and is not intended, and should not be construed, as an admission of liability by Aetna.

49. This Assurance of Discontinuance may not be amended except by an instrument in writing signed on behalf of all the parties to this Assurance of Discontinuance.

50. This Assurance of Discontinuance shall be binding on and inure to the benefit of the parties to this Assurance of Discontinuance and their respective successors and assigns, provided that no party, other than OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance of Discontinuance without the prior written consent of OAG.

51. In the event that any one or more of the provisions contained in this Assurance of Discontinuance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance of Discontinuance.

52. To the extent not already provided under this Assurance of Discontinuance, Aetna

shall, upon request by OAG, provide all documentation and information necessary for OAG to verify compliance with this Assurance of Discontinuance.

53. All notices, reports, requests, and other communications to any party pursuant to this Assurance of Discontinuance must reference "AOD # 10-086", shall be in writing and shall be directed as follows:

If to Aetna to: Steven Logan
New York Market Head
Aetna Health Insurance Company
c/o Barbara Hennessy
151 Farmington Ave., RE6A
Hartford, Connecticut. 06156

If to the OAG to: Dorothea Caldwell-Brown, Assistant Attorney General
Office of the Attorney General
Health Care Bureau
120 Broadway
New York, New York 10271

54. Acceptance of this Assurance of Discontinuance by OAG shall not be deemed approval by OAG of any of the practices or procedures referenced herein, and Aetna shall make no representation to the contrary.

55. Pursuant to EL § 63(15), evidence of a violation of this Assurance of Discontinuance shall constitute prima facie proof of violation of the applicable law in any action or proceeding thereafter commenced by OAG.

56. If a court of competent jurisdiction determines that Aetna has breached this Assurance of Discontinuance, Aetna shall pay to OAG the cost, if any, of such determination and of enforcing this Assurance of Discontinuance, including without limitation legal fees, expenses, and court costs.

57. The OAG finds the relief and agreements contained in this Assurance of

Discontinuance appropriate and in the public interest. The OAG is willing to accept this Assurance of Discontinuance pursuant to EL § 63(15), in lieu of commencing a statutory proceeding. This Assurance of Discontinuance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

58. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

59. This Assurance of Discontinuance shall be effective on the date that it is signed by an authorized representative of the OAG ("Effective Date").

60. Any failure by the OAG to enforce this entire Assurance of Discontinuance or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of the OAG's right to enforce other deadlines and provisions of this Assurance of Discontinuance.

