



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ANDREW M. CUOMO
Attorney General

LINDA A. LACEWELL
Counsel for Economic and Social Justice

August 16, 2007

VIA FACSIMILE
AND FEDERAL EXPRESS

James E. Brown, Esq.
Regional General Counsel
Aetna
Law Department
151 Farmington Avenue, RS12
Hartford, CT 06156

Re: Aetna Aexcel

Dear Mr. Brown:

The Attorney General is informed that Aetna is currently operating a physician-ranking program within the State of New York. This program carries a significant risk of causing consumer confusion, if not deception. Some of our concerns are set forth below.

The Aetna Program

We understand that Aetna has created a network of specialists known as "Aetna Aexcel."¹ This network consists of specialists who meet standards of performance and efficiency, as determined by Aetna. According to your website, Aetna Aexcel is designed to "encourage members to select specialists who have demonstrated effectiveness in clinical performance and cost efficiency." Employers who have selected Aetna Aexcel may create financial incentives, such as reduced copayments or deductibles, to encourage their employees to use that network.²

¹ This network consists of physicians practicing in any of twelve medical specialty areas, as follows: cardiology, cardiothoracic surgery, gastroenterology, general surgery, neurology, neurosurgery, obstetrics and gynecology, orthopedic surgery, ENT or otolaryngology, plastic surgery (where medically necessary), urology and vascular surgery. It is our understanding that the Aetna Aexcel network of designated specialists is part of the Aetna Performance Network Option.

² On your website, on a page directed to consumers, Aetna states: "Your plan pays a higher benefit for Aexcel visits, which means you save money."

Because of this, consumers who select specialists outside Aetna Aexcel may pay more than consumers who select specialists within that network.

Problems With the Program

The Attorney General is committed to fostering transparency on behalf of consumers. Consumers are entitled to transparency when making the important decision of choosing their doctors, including specialists. The goal of transparency is defeated, however, if the information provided is itself inaccurate or misleading, or based on flawed data.

According to Aetna's website, you rely on "claims data" in ranking specialists.³ Claims data is well-known to carry several significant risks of error when used to rank individual physicians. Problems associated with claims data in this context include the following:

- Claims data does not include all relevant clinical information that would be contained in medical charts, for example. Therefore, it may be necessary to audit or validate claims data, even on a random sampling basis, before relying on such data.
- The claims database may be too small to generate reliable rankings. In this regard, an aggregated database, created and distributed by an independent data aggregator, may be preferable.
- The sample size (i.e., number of patients per physician) may be too small to yield meaningful results.
- Because several physicians may treat the same patient during the course of a single episode of care, it may be unfair to attribute to one of these several physicians all care rendered by those in the group.

Given these risks, we were surprised to learn that you initiated Aetna Aexcel without disclosing the data you used to rank the doctors, even to the doctors themselves. As a result, doctors and consumers have no ability to bring errors in the rankings to your attention so that they may be corrected. This unilateral approach heightens the risk that built-in errors will persist for the life of the ranking period.

³ Claims data is information provided to insurers by physicians seeking payment for claims.

Moreover, you do not disclose the accuracy rate of your rankings. It is incumbent upon you to disclose this information to consumers where, given the risks identified above, the risk of error may well be material.⁴

An ill-designed ranking program carries the following risks, among others:

- Consumers may be steered to doctors based on faulty and incomplete data and criteria, thereby undermining their ability to choose the best doctors.
- Consumers may be encouraged to choose doctors because they are cheap rather than because they are good. For example, a good doctor may sometimes use his or her best medical judgment to order an additional test, depending upon the circumstances. But the ordering of one additional test, depending on the design of your program, could then brand the doctor as expensive, and hence unworthy of inclusion in the Aetna Aexcel network. Absent review of relevant clinical data, you are unlikely to know why the additional test was ordered.
- Aetna's profit motive may affect the accuracy of its quality and cost-effectiveness rankings because high-quality doctors may cost Aetna more money. This is a conflict of interest and therefore demands greater scrutiny by us.

Request for Information

In light of the concerns raised in this letter, we require additional information from you. Attached to this letter is a detailed request for documents and information about the Aetna Aexcel program and any similar program you operate. We ask that you respond expeditiously so that we may appropriately evaluate your program and determine how best to protect consumers so that the goal of transparency does not provide a license to confuse or mislead the public.

⁴ "Consumer Tolerance for Inaccuracy in Physician Performance Ratings: One Size Fits None," Issue Brief: Findings from HSC, No. 110 (March 2007) (available at: <http://www.hschange.com/content/921/921.pdf>) (noting consumers' low levels of tolerance for error rate in physician ratings where consumer is asked to choose a doctor from among those ranked).

Please do not hesitate to call me if you have any questions. Thank you.

Very truly yours,

A handwritten signature in cursive script that reads "Linda A. Lacewell". The signature is written in black ink and is positioned above a horizontal line.

Linda A. Lacewell
Counsel for Economic and Social Justice

Attachment

ATTACHMENT

With respect to the Aetna Aexcel program, the Aetna Performance Network option and any other Aetna program, policy, procedure or protocol related to the ranking, rating, tiering, profiling, evaluating or placing in select networks of physicians in the State of New York (the "Program"):

1. Explain how Aetna has complied with New York Public Health Law §4406-d(4) and New York State Insurance Law §4803 (d), including, but not limited to:

(a) How Aetna has ensured that physicians participating in the in-network benefits portion of an insurer's network for a managed care product are regularly informed of information maintained by Aetna to evaluate the performance or practice of the physician.

(b) How Aetna has consulted with physicians in developing methodologies to collect and analyze provider profiling data; how Aetna has provided such information and profiling data and analysis to physicians; and how Aetna has provided such information, data or analysis on a periodic basis appropriate to the nature and amount of data and the volume and scope of services provided.

(c) How any profiling data Aetna has used to evaluate the performance or practice of a physician has been measured against stated criteria and an appropriate group of physicians using similar treatment modalities serving a comparable population and how, upon presentation of such information or data, each such physician has been given the opportunity to discuss the unique nature of the physician's patient population which may have a bearing on the physician's profile and to work cooperatively with Aetna to improve performance.

2. Explain how Aetna has presented or marketed the Program to physicians or other health care professionals, organizations representing physicians or other health care professionals, patients, employers, governmental agencies or other entities in New York State.

3. Explain how the Program has operated in New York State. Provide copies of relevant literature explaining the Program.

4. Explain how a physician's performance with respect to the Program has been measured.

5. Explain how a physician's cost-effectiveness with respect to the Program has been measured.

6. Explain the methodology for collecting and analyzing data or other information for the Program. Has Aetna used claims data rather than reviewing information contained in medical records or charts? If so, why? Describe any problems that Aetna is aware of with respect to the

use of claims data or medical records/charts. Explain how the use of claims data has provided accurate, reliable and complete information.

7. Describe the sample size for physician/patient data the Program has used. Explain how the sample size has been determined, and why Aetna believes it has been reliable and adequate. Explain any known problems with the sample size.

8. Describe any other databases that the Program could have used or could use to obtain physician/patient information. If such databases exist, explain why Aetna has not used those other databases.

9. Explain how the Program has ranked, rated, tiered, profiled, evaluated or placed in select networks physicians. Explain the criteria that has been used to perform such ranking, rating, tiering, profiling, evaluating or placing in select networks and how such criteria was selected. Explain whether and how physician "report cards" or similar reports have been created and used.

10. Explain how the Program has encouraged, induced, steered or otherwise incentivized patients to use or not use certain physicians. Explain how any incentives, inducements or penalties, such as lower or higher co-payments or higher or lower deductibles, are related to a patient's choice of a physician.

11. Produce copies of correspondence to or from physicians or other health care professionals, organizations representing physicians or other health care professionals, patients, employers, governmental agencies or other entities regarding the Program.

12. Describe and produce any disclaimers pertaining to the Program.

13. Describe the process by which a physician may challenge the physician's ranking or designation. What factors does Aetna consider in this review?

14. Provide copies of any complaints from consumers, providers or organizations concerning the Program.