COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS. SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO.

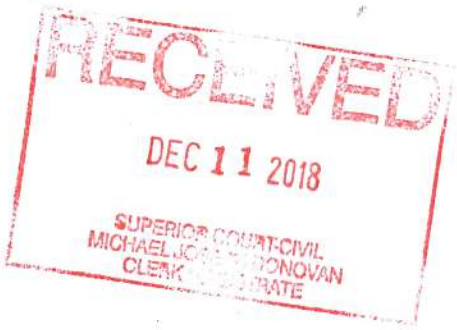
COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

AETNA HEALTH, INC.,
AETNA LIFE INSURANCE COMPANY, and
AETNA HEALTH INSURANCE COMPANY,

Defendants.



ASSURANCE OF DISCONTINUANCE
PURSUANT TO G.L. CHAPTER 93A, § 5

I. INTRODUCTION

1. The Commonwealth of Massachusetts, through the Office of the Attorney General ("AGO"), conducted an investigation into certain acts and practices of Aetna concerning its members' access to Behavioral Health care services.

2. In lieu of litigation, the AGO and Aetna agree to enter this Assurance of Discontinuance ("AOD") on the terms and conditions contained herein, pursuant to G.L c. 93A, § 5.

3. The AGO and Aetna voluntarily enter into this AOD.

II. DEFINITIONS

1. "Aetna" or "Defendants" shall mean collectively Aetna Health, Inc., Aetna Life Insurance Company, and Aetna Health Insurance Company.

2. "Aetna Member" shall mean an individual who is a Massachusetts resident or member of a group located in Massachusetts enrolled in (i) a commercial individual policy of accident and/or sickness insurance, (ii) a commercial group or blanket policy of accident and/or sickness insurance, or (iii) a commercial health maintenance contract pursuant to which Aetna provides health care coverage.

3. "Audit" shall mean the processes outlined in Section IV.C.3 of this AOD.

4. "Behavioral Health" shall mean the diagnosis, prevention, treatment, cure, or relief of a behavioral health, substance use disorder ("SUD"), or mental health condition, illness, injury, or disease.

5. "Behavioral Health Care Provider" shall mean a Facility or Health Care Professional that provides Behavioral Health services.

6. "Behavioral Health Care Provider Directory" shall mean any Provider Directory of Behavioral Health Care Providers.

7. "Chapter 258" shall mean Chapter 258 of the Acts of 2014: An Act to Increase Opportunities for Long-Term Substance Abuse Recovery.

8. "Clearly and Conspicuously" shall be defined as such term is defined in 940 C.M.R. 6.01.

9. "Closed Network Plan" shall mean a plan where covered services are generally available only through in-network providers and out-of-network benefits are available only in limited circumstances, such as an emergency or when a Member has obtained prior authorization

to go out of network because health care services are not available through an in-network provider. A PPO or POS plan is not a Closed Network Plan.

10. "Effective Date" shall mean 90 days from the execution of this AOD.

11. "Facility" shall mean any health care setting located in Massachusetts, including, but not limited to, hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory and imaging centers, and rehabilitation and other therapeutic health settings.

12. "Health Care Professional" shall mean any individual physician or other health care practitioner licensed, accredited, or certified in Massachusetts to perform services for the diagnosis, prevention, treatment, cure, or relief of a physical health or Behavioral Health condition, illness, or injury and who provides such services in Massachusetts.

13. "Practice Location" means the physical address(es) where a Health Care Professional regularly provides health care services.

14. "Provider" shall mean a Health Care Professional or Facility.

15. "Provider Directory" or "Directory" shall mean any grouping, compilation, or listing of Aetna's in-network Providers that Aetna provides or makes available to members, providers, or the public-at-large, electronically or in paper format.

16. "Utilization Management" shall mean any techniques or procedures designed to monitor the use of, or evaluate the clinical necessity, appropriateness, or efficiency of, health care services, including levels of care and settings.

III. ALLEGED VIOLATIONS

1. Aetna publishes online Provider Directories that purport to provide Aetna Members information to help them access health care services, including the phone numbers and

addresses of Providers; whether the Providers are available to see new patients; and whether the Providers are "in network" for an Aetna Member's plan.

2. Current and prospective plan members rely upon the accuracy of the information in the Directories when choosing health care coverage for themselves and their families and when seeking to obtain in-network Provider services.

3. The Commonwealth contends that Aetna violated and continues to violate M.G.L. c. 93A by publishing Provider Directories that are materially inaccurate and deceptive in a variety of ways that cause harm to consumers. The Commonwealth contends, for example, that these Directories in some instances:

a. do not accurately reflect certain Health Care Professionals' availability to see new patients for outpatient services;

b. contain inaccurate contact information for Providers, which may hinder Aetna Members' ability to access these Providers for services; and

c. list Providers at locations where they do not actually provide health care services, which may lead Aetna Members to believe they have more substantial geographic access to Providers than is actually the case.

4. The Commonwealth further contends that Aetna violated its obligations under Chapter 258 by unfairly denying or impeding certain Members' coverage for SUD treatment services.

IV. ASSURANCES

A. Generally

Aetna shall not engage in any unfair or deceptive acts or practices.

B. Provider Directories and Network Adequacy

1. Generally. Aetna shall comply with all Federal and Massachusetts laws and regulations pertaining to Provider Directories and Provider network adequacy now in effect or later enacted.

2. Provider Directory Contents. Aetna's Provider Directories shall:

a. Clearly and Conspicuously state the circumstances under which a Provider will be designated in the Provider Directories as "accepting new patients."

b. Clearly and Conspicuously disclose the date on which any electronic Directory was last updated, and the date of printing of any paper Directory.

c. Clearly and Conspicuously disclose the manner in which Aetna Members should report Provider Directory inaccuracies, including a customer service telephone number, and an electronic link that Members may use to notify Aetna via e-mail of inaccurate Provider Directory information.

d. Clearly and Conspicuously provide notice to Aetna Members that they may file complaints relating to Provider Directory inaccuracies or Provider network inadequacy to the Commonwealth's Division of Insurance ("DOI"), including the contact information and method for filing such a complaint with DOI.

e. For each Health Care Professional, (i) accurately list his or her Practice Location(s), and (ii) not list that Health Care Professional at other physical addresses of a group practice where he or she does not regularly provide health care services.

3. Provider Directory Updates and Corrections

a. Aetna shall update its online Provider Directories within 30 days of (i) it receiving notice via any source (including without limitation Provider responses, member

complaints, and Audits) of inaccurate information in its Provider Directory and validating such notice where appropriate, provided that Aetna shall undertake such validation within 14 days of receiving the notice, or (ii) the termination of a Provider's agreement with Aetna, by correcting the inaccurate information or removing information in accordance with the provisions of this AOD, including subparagraphs 3(b) – (e) below.

b. Aetna shall remove from its online Provider Directories incorrect information listed for a Provider when (i) Aetna becomes aware, from whatever source, that the telephone number to reach the Provider, the physical address(es) of the Provider's Practice Location, and/or the Aetna plans accepted by the Provider is inaccurate and Aetna is unable to obtain updated information to correct the Directory, or (ii) for Behavioral Health Care Providers, Aetna cannot verify the accuracy of the Provider's telephone number, physical address(es) of the Provider's Practice Location and/or the Aetna plans accepted by the Provider, or obtain updated information, during the course of an Audit.

c. Aetna shall remove from its online Provider Directories any designation that a Provider is "accepting new patients" (in accordance with its definition of that term) as applicable if (i) Aetna becomes aware, from whatever source, that such Provider is not accepting new patients, or (ii) for Behavioral Health Care Providers, Aetna cannot verify that the Provider is accepting new patients in the course of an Audit.

d. Aetna shall remove a Provider listing from its online Provider Directory when as applicable (i) Aetna becomes aware, from whatever source, that the Provider is no longer participating in Aetna's provider network, or (ii) for Behavioral Health Care Providers, Aetna cannot verify that the Provider is still participating in its network in the course of an Audit.

e. Within 3 months of the Effective Date, Aetna shall review its online Provider Directories, and for any Health Care Professional listed at more than one location, Aetna shall (i) identify that Provider's actual Practice Location(s), and (ii) update the Directory in accordance with the terms of this AOD, including removing any listing for a location where the Health Care Professional does not regularly provide health care services.

4. Provider Outreach

a. At least quarterly, Aetna shall contact each network Health Care Professional via a targeted communication that has the sole focus of verifying Provider Directory information. In this communication, Aetna shall (i) request that the Health Care Professional review the information listed in the Provider Directory for that individual, including his or her availability to see new patients, his or her telephone number, physical address for Practice Location(s), and network status; (ii) request that the Health Care Professional verify the accuracy of the information (including whether Practice Locations are accurate), or provide any necessary updates to correct the listings; and (iii) provide instructions as to how the Health Care Professional should verify Provider Directory information or communicate updates. With respect to the Provider outreach described in this Paragraph, it is insufficient for Aetna to determine whether a group practice is accepting new patients; Aetna must seek to verify and obtain updated information for each individual Health Care Professional identified in the Provider Directory.

b. Aetna shall require Provider group practices to promptly notify Aetna whenever a Health Care Professional leaves or joins the group practice or changes his or her Practice Location. Upon receiving notification, Aetna shall update the Provider Directory in accordance with the terms of this AOD.

c. Aetna shall remind Providers at least quarterly that Aetna is obligated to provide members with accurate Provider Directory information and that Providers are required to notify Aetna about any inaccurate information in the Provider Directory so that appropriate corrections may be made. Such reminder may be provided in conjunction with other communications to Providers.

5. Employee Training. Aetna shall train its customer service representatives and other relevant employees regarding how to route issues concerning Provider Directories and Provider network adequacy, including Member complaints, to the appropriate personnel for monitoring and correction of Directory inaccuracies. Within 30 days after the Effective Date, Aetna shall obtain a written or digital certification from all relevant employees that they completed the training, to be retained for four years. Thereafter, Aetna shall re-train each relevant employee at least every two years and conduct the same certification process.

C. Behavioral Health Care Provider Directories and Network Adequacy

1. Generally. Aetna shall maintain a Behavioral Health Care Provider network that is adequate in numbers and types of Behavioral Health Care Providers to assure that all covered Behavioral Health services will be accessible to Aetna Members without unreasonable delay.

2. Contents of Behavioral Health Care Provider Directory. Except where Aetna is required to remove information in accordance with the provisions of this AOD, Aetna shall accurately, Clearly and Conspicuously list, for each network plan, the following in its Behavioral Health Care Provider Directories:

a. For each Health Care Professional,

i. Name;

ii. Gender;

iii. Practice Location(s);

iv. Specialty, if applicable;

v. Whether he or she is accepting new patients;

vi. Medical group and/or facility affiliations, if applicable;

vii. Languages spoken other than English, if applicable;

viii. Only those categories of service that he or she actually provides to members;

ix. Whether he or she offers office visits or outpatient appointments at a Practice Location, or is only available through a hospital or inpatient facility;

x. Telephone contact information; and

xi. Board certification(s).

b. For hospitals:

i. Hospital name;

ii. Hospital type;

iii. Participating hospital location;

iv. Hospital accreditation status; and

v. Telephone contact information.

c. For Facilities other than hospitals:

i. Facility name;

ii. Facility type;

iii. Participating Facility location(s); and

iv. Telephone contact information.

d. For electronic Directories, items in (a)(i)-(vii); (b)(i)-(iv); and (c)(i)-(iii) must be made available in a searchable format.

3. Audits

a. Within 3 months of the Effective Date, Aetna shall contact each Health Care Professional in its Behavioral Health Care Provider Directory who has not submitted a claim to Aetna within one year of the Effective Date. In such communication, Aetna shall seek to (i) verify with the Health Care Professional the accuracy of his or her Provider Directory information (including all the information set forth in subparagraph 2(a)) and/or (ii) obtain from the Health Care Professional any updates to make the information in the Provider Directory accurate. If Aetna is unable to either verify the Health Care Professional's information or obtain updated information after reasonable attempts to do so, Aetna shall edit the Directory in accordance with Paragraph IV.B.3. Thereafter, Aetna shall complete this audit process on a quarterly basis for any Health Care Professional who has not submitted a claim to Aetna within one year of the audit date and who has not been audited at any time in the 12 months prior to the audit.

b. Aetna shall conduct a monthly audit of its Behavioral Health Care Provider Directory. The audit shall consist of a representative sample of at least 5% of Behavioral Health Care Providers listed in the Directory (and exclude Providers who have previously been audited at any time in the 12 months prior to the audit). Aetna shall contact each Provider in the audit group and seek to (i) verify with the Provider whether the Provider Directory information (including all the information set forth in subparagraph 2) is accurate; and/or (ii) obtain from the Provider any updates to make the information in the Provider

Directory accurate. If Aetna is unable to either verify the information or obtain updated information after reasonable attempts to do so, Aetna shall edit the Directory in accordance with Paragraph IV.B.3. If the monthly audit process described in this Paragraph finds that at least 98% of the Provider listings examined in the audit were completely accurate for three consecutive months, Aetna may perform the audit process on a quarterly basis thereafter; provided, however, if the results of the quarterly audit process at any time find that less than 98% of the Provider listings examined are completely accurate, Aetna shall immediately reinstate monthly audits.

c. For a period of five years after each Audit, Aetna shall maintain documentation that identifies the Providers who were selected for the Audit and the results of each Audit.

D. Member Complaints Regarding Provider Directory Accuracy and Provider Network Adequacy

1. Aetna shall track and monitor Member complaints, in whatever form, concerning the accuracy of its Provider Directories and/or the adequacy of is Provider networks, including without limitation, complaints concerning inadequate provider networks, timely access to care, and out of network ("OON") claim disputes. Such tracking and monitoring shall include the date such complaint was submitted, the date such complaint was closed, and a record of actions taken by Aetna in response to such complaint.

2. Aetna shall take appropriate and timely action to resolve Provider Directory and network adequacy issues as they arise, including but not limited to investigating complaints of Provider Directory inaccuracies and updating the Provider Directories in accordance with the terms of this AOD.

E. Utilization Management

1. Generally. Aetna shall comply with all laws and regulations now in effect or later enacted concerning its Utilization Management of Aetna Members' health care.

2. Transparency

a. Aetna shall clearly and accurately disclose its Utilization Management policies and procedures, including requirements relating to prior authorization, notice, and concurrent review, in Member documents, Provider manuals, internal policies, and on its website. These disclosures shall include (but are not limited to) the following:

i. Notification that prior authorization is not required for routine Behavioral Health therapy visits or Behavioral Health medical visits, such as psychopharmacology office visits.

ii. Identification of all Behavioral Health outpatient services that do require prior authorization.

iii. For Aetna plans and Members covered by Chapter 258, notification that Members' coverage for SUD is subject to the provisions of Chapter 258; that initial authorization for SUD treatment is not required; and that Acute Treatment Services ("ATS") and clinical stabilization services ("CSS") treatment will be covered for up to a total of 14 days without authorization or medical necessity review.

b. Aetna shall maintain data sufficient to monitor compliance with the Mental Health Parity and Addiction Equity Act of 2008 and its regulations, including, without limitation: denials and modifications of initial requests for authorization; outcomes resulting from concurrent reviews, including denials and modifications of requests for continued

treatment and days and/or visits authorized at each review; and frequency of concurrent reviews conducted.

F. Compliance with Chapter 258

1. Aetna shall comply with the provisions of Chapter 258.

2. For Aetna Members with plans covered by the statutory provisions of Chapter 258:

a. Aetna shall cover medically necessary ATS and CSS for up to a total of 14 days without preauthorization and not initiate utilization review procedures until day seven of the treatment. For Members who do not have Closed Network Plans, these obligations apply even when the ATS or CSS is obtained from an OON and/or out-of-state provider.

b. Aetna shall not require a Member to obtain a preauthorization for SUD treatment other than ATS and CSS if the provider is certified or licensed by the Massachusetts Department of Public Health. For Members who do not have Closed Network Plans, this obligation applies even when the treatment is obtained from an OON provider.

G. Payment to the Commonwealth

1. Within fourteen (14) days after filing this AOD with the Superior Court of Suffolk County, Aetna shall pay a total of $75,000 to the AGO, and such payment shall comprise: (i) $25,000 to the Commonwealth as civil penalties and (ii) $50,000 as attorneys' fees and costs. The payment shall be made by electronic funds transfer to the Commonwealth to an account identified by the AGO.

H. General Provisions

1. This AOD represents the entire agreement between the AGO and the Defendants concerning the matters addressed herein. It supersedes any prior agreement, understandings, or stipulations between the parties regarding the subject matter hereof.

2. This AOD shall be binding on the Defendants, as well as their agents, servants, employees, successors, and assigns.

3. This AOD shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts.

4. This AOD shall be filed in the Superior Court of Suffolk County. The Superior Court of Suffolk County has and shall retain jurisdiction over this AOD.

5. This AOD shall not relieve the Defendants of any obligation to comply with all applicable federal, state, and local laws and regulations.

6. If, after the date of execution of this AOD, the Commonwealth's General Court enacts legislation or amends existing legislation, or if DOI promulgates regulations, that would require Defendants to audit their Provider Directories and/or correct Provider Directory inaccuracies, then Sections IV(B)(2)-(4)("Provider Directory Contents", "Provider Directory Updates and Corrections", and "Provider Outreach"), and IV(C)(2)-(3) ("Contents of Behavioral Health Care Provider Directory" and "Audits") shall remain effective for five years following the effective date of such legislation or regulations.

7. By virtue of the provisions of G.L. c. 93A, § 5, any violation of the terms of this AOD by the Defendants, their agents, servants, employees, successors, and assigns after the date of this AOD shall constitute prima facie evidence of a violation of G.L. c. 93A, § 2, in any civil action or proceeding commenced by the AGO.

8. The Defendants shall comply with all reasonable inquiries and requests from the AGO regarding the implementation of the terms contained within this AOD.

9. The Defendants hereby accept the terms and conditions of this AOD and waive any right to challenge it in any action or proceeding.

10. Any notices or communications required to be transmitted between the AGO and the Defendants pursuant to this AOD shall be provided in writing by first-class mail, postage prepaid, and by electronic mail to the parties as follows, unless otherwise agreed in writing.

If to the Office of the Attorney General:

Lisa Gaulin, Esq.
Assistant Attorney General
Health Care Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
Lisa.gaulin@massmail.state.ma.us

If to Aetna:

Mark Santos
President, New England Market
151 Farmington Avenue, RS64
Hartford, CT 06156
Santosm1@Aetna.com

11. The undersigned, Mark Santos, represents that s/he is duly authorized to execute this AOD on behalf of Aetna and to bind Aetna to all applicable provisions of the AOD, and that on behalf of Aetna s/he voluntarily enters into this AOD.

By: _____
Mark Santos, President, New England Market

Date: 11/7/18

COMMONWEALTH OF MASSACHUSETTS
ATTORNEY GENERAL MAURA HEALEY

By: Lisa Gaulin
Lisa Gaulin, Assistant Attorney General (BBO# 654655)

Date: 11/16/18