

No. **2021-6868**

**Official Order
of the
Texas Commissioner of Insurance**

Date: 06/15/2021

Subject Considered:

Aetna Better Health of Texas Inc.
2777 Stemmons Freeway, Suite 400
Dallas, Texas 75207-2265

Consent Order
TDI Enforcement File No. 26419

General remarks and official action taken:

This is a consent order with Aetna Better Health of Texas Inc. (Aetna) for multiple violations, including many repeat violations found in a previous triennial quality of care examination. Aetna was the subject of a previous consent order for violations found during a 2016 quality of care examination and paid an administrative penalty of \$175,000. Aetna's current triennial quality of care examination found similar violations. Aetna has agreed to pay a \$250,000 administrative penalty.

Waiver

Aetna acknowledges that the Texas Insurance Code and other applicable law provide certain rights. Aetna waives all of these rights, and any other applicable procedural rights, in consideration of the entry of this consent order.

Findings of Fact

Licensure

1. The Texas Department of Insurance (TDI) issued to Aetna a basic health maintenance organization (HMO) license number 68775, effective July 7, 2015.

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Prior Disciplinary History Related to the 2016 Triennial Quality of Care Examination

2. On November 5, 2018, the commissioner entered Official Order No. 2018-5696 against Aetna. That order imposed a \$175,000 administrative penalty for violations found during TDI's 2016 triennial quality of care examination of Aetna, for the period beginning July 7, 2015, and ending December 31, 2016. This examination included two of Aetna's lines of business, both commercial health plans and children's health plans (CHIP).

2019 Triennial Quality of Care Examination

3. TDI conducted a triennial quality of care examination of Aetna's CHIP line of business, for the period of January 1, 2017, through December 31, 2019. Aetna did not have commercial health business during the scope of the examination.
4. On July 29, 2020, TDI held an exit conference with Aetna to discuss the examination findings. Aetna provided comments to the draft report on August 11, 2020.
5. On August 31, 2020, TDI sent a certified copy of the final Quality of Care Examination Report to Aetna. The company sent a corrective action plan on September 30, 2020.
6. The findings of the examination are in the Final Examination Report dated September 1, 2020, and included violations of the Texas Insurance Code and the Texas Administrative Code.

Initial Adverse Determinations

7. TDI reviewed 29 adverse determinations for statutory compliance.
8. The following findings were repeated from the 2016 examination, but had decreased in quantity:
 - a. In 17 percent of initial adverse determinations reviewed, Aetna's utilization review agent (URA) failed to afford the provider of record a reasonable opportunity to discuss treatment no less than one working day prior to issuing prospective initial adverse determinations.

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- b. In three percent of initial adverse determinations reviewed, Aetna's URA failed to afford the provider of record a reasonable opportunity to discuss the services within one working day prior to issuing concurrent initial adverse determinations.
 - c. In 21 percent of initial adverse determinations reviewed, Aetna's entity that issued the initial adverse determinations, Aetna Better Health, was not a registered or certified URA.
9. In 21 percent of initial adverse determinations reviewed in 2019, Aetna's URA failed to include the professional specialty of the reviewing physician, doctor, or other health care provider in adverse determinations. This was a new finding, not found in the 2016 examination.

Adverse Determination Appeals

10. TDI reviewed 18 adverse determination appeals for statutory compliance.
11. The following findings were repeated from the 2016 examination, but had decreased in quantity:
 - a. In 44 percent of adverse determination appeals reviewed, Aetna's URA failed to include a list of relevant documents the appealing party must submit for review in the appeal acknowledgement letters.
 - b. In 56 percent of adverse determination appeals reviewed, Aetna's URA reviewing physician failed to afford the requesting health care provider a reasonable opportunity to discuss treatment during working hours and no less than one working day prior to issuing prospective appeal adverse determinations.
 - c. In 11 percent of adverse determination appeals reviewed, the determination was issued by Aetna, which is not a registered or certified URA. In those determinations, Aetna failed to indicate that the actual determinations were made by a certified or registered URA, and further failed to identify the URA that made the determination.

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- d. In five percent of adverse determination appeals reviewed, Aetna's URA failed to include the professional specialty of the reviewing physician, doctor, or other health care provider in the adverse determination notice.

Complaint File Review

12. TDI reviewed 25 complaint files for statutory compliance.
13. In 20 percent of the complaints reviewed, Aetna failed to include the date the complaints were received by the company in the complaint acknowledgment letters. This was the same percentage of complaints found with this issue in the 2016 examination.
14. These findings were new and not found in the 2016 examination:
 - a. In 12 percent of the complaints reviewed, Aetna failed to send a complaint acknowledgement letter within the applicable statutory period of five business days after receipt of the complaint.
 - b. In four percent of the complaints reviewed, Aetna failed to send a complaint acknowledgement letter.

Conclusions of Law

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.051 – 82.055, 84.021 – 84.044, 401.055, 843.071, 4201.057, and 4201.101; 28 TEX. ADMIN. CODE §19.1704; and TEX. GOV'T CODE §§ 2001.051-2001.178.
2. The commissioner has the authority to informally dispose of this matter as set forth in TEX. GOV'T CODE § 2001.056; TEX. INS. CODE §§ 36.104 and 82.055; and 28 TEX. ADMIN. CODE § 1.47.
3. Aetna has knowingly and voluntarily waived all procedural rights to which it may have been entitled regarding the entry of this order, including, but not limited to, issuance and service of notice of intention to institute disciplinary action, notice of hearing, a public hearing, a proposal for decision, rehearing by the commissioner, and judicial review.

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15. Aetna violated TEX. INS. CODE § 4201.206 and 28 TEX. ADMIN. CODE §§ 19.1703(b)(26)(A), 19.1703(b)(26)(C), and 19.1710 because its URA failed to afford the provider of record a reasonable opportunity to discuss treatment or services with a physician during normal business hours, no less than one working day and prior to issuing prospective or concurrent initial adverse determinations and adverse determination appeals.
16. Aetna violated TEX. INS. CODE § 4201.101 and 28 TEX. ADMIN. CODE §§ 19.1704 and 19.1718 because the entity, Aetna, that issued the adverse determination was not a registered or certified URA.
17. Aetna violated 28 TEX. ADMIN. CODE § 19.1709(b)(4) because its URA failed to include the professional specialty of the reviewing physician, doctor, or other health care provider in the determination notice.
18. Aetna violated TEX. INS. CODE § 4201.355(b)(2) and 28 TEX. ADMIN. CODE § 19.1711(a)(3)(C) because its URA failed to include a list of relevant documents the appealing party must submit for review in appeal acknowledgement letters.
19. Aetna violated TEX. INS. CODE § 843.252(a) by failing to include the date the complaints were received by the company in the complaint acknowledgment letters.
20. Aetna violated TEX. INS. CODE § 843.252(a) by failing to send complaint acknowledgment letters within the applicable statutory period of five business days after receipt of the complaint.
21. Aetna violated TEX. INS. CODE § 843.252(a) and (b) by failing to send complaint acknowledgment letters.

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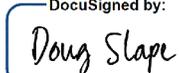
Order

It is ordered that Aetna Better Health of Texas Inc. pay an administrative penalty of \$250,000 within 30 days from the date of this order. The administrative penalty must be paid by cashier's check or money order made payable to the "State of Texas" and transmitted to the Texas Department of Insurance, Attn: Enforcement, Division 60851, AO-9999, P.O. Box 12030, Austin, Texas 78711-2030.

It is further ordered that Aetna Better Health of Texas, Inc. must cease and desist from issuing any adverse determination appeals which do not identify the registered or certified URA, unless Aetna Better Health of Texas, Inc. obtains from TDI its own certificate of registration to operate as a URA in Texas.

It is also ordered that Aetna Better Health of Texas Inc. report to TDI on or before 30 days from the date of this order. The report will affirm that Aetna Better Health of Texas Inc. has fully implemented its post-exam corrective action plan. If Aetna Better Health of Texas Inc. has not yet fully implemented its post-exam corrective action plan, the report will detail how it intends to fully implement its corrective action plan, resources dedicated to implementation, timelines, and a process for independent verification of objective progress to comply with Texas Law. The report must be sent to EnforcementReports@tdi.texas.gov.

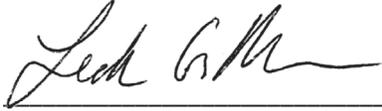
Commissioner of Insurance

DocuSigned by:

By: C77A87C8C21B435...
Doug Slape
Chief Deputy Commissioner
TEX. GOV'T CODE § 601.002
Commissioner's Order No. 2018-5528

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Recommended and reviewed by:



Leah Gillum, Deputy Commissioner
Enforcement Division



Amanda Atkinson Cagle, Staff Attorney
Enforcement Division

Affidavit

STATE OF TEXAS §
§
COUNTY OF HAYS §

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

"My name is Stephanie Rogers. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

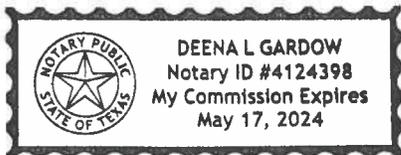
I hold the office of CEO and am the authorized representative of Aetna Better Health of Texas Inc. I am duly authorized by said organization to execute this statement.

Aetna Better Health of Texas Inc. has knowingly and voluntarily entered into the foregoing consent order and agrees with and consents to the issuance and service of the same by the commissioner of insurance of the state of Texas."

Stephanie Rogers
Affiant

SWORN TO AND SUBSCRIBED before me on May 28, 2021.

(NOTARY SEAL)



Deena L. Gardow
Signature of Notary Public

DEENA L GARDOW
Printed Name of Notary Public