

**SPECIAL MARKET CONDUCT REPORT ON EXAMINATION**

**OF**

**AETNA HEALTH INC.**

**AETNA HEALTH INSURANCE COMPANY OF NEW YORK**

**AETNA LIFE INSURANCE COMPANY**

**DATE OF REPORT**

**JUNE 21, 2007**

**EXAMINER**

**ROBERT W. MCLAUGHLIN, CFE, CIE**

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STATE OF NEW YORK  
INSURANCE DEPARTMENT  
25 BEAVER STREET  
NEW YORK, NEW YORK 10004

Eliot Spitzer  
Governor

Eric R. Dinallo  
Superintendent of Insurance

June 21, 2007

Honorable Eric R. Dinallo  
Superintendent of Insurance  
Albany, New York 12257

Sir:

Pursuant to the provisions of the New York Insurance Law and acting in accordance with the directions contained in Appointment Numbers dated March 13, 2003, annexed hereto, I have made an examination into the condition and affairs of Aetna Health Inc., a for-profit health maintenance organization licensed pursuant to the provisions of Article 44 of the New York Public Health Law, Aetna Health Insurance Company of New York, a health insurance corporation licensed pursuant to the provisions of Article 42 of the New York Insurance Law, and Aetna Life Insurance Company, a life and accident and health insurance corporation licensed under the laws of the State of New York . The following report, as respectfully submitted, deals with the findings concerning the manner in which Aetna Health Inc., Aetna Health Insurance Company of New York and Aetna Life Insurance Company conduct their business practices and fulfill their contractual obligations to policyholders and claimants.

Whenever the designation, the "HMO" appears in this report without qualification, it should be understood to refer to Aetna Health Inc. (A New York Corporation). Whenever the designations, "AHIC" or "Company", appear in this report without qualification, they should be understood to refer to Aetna Health Insurance Company of New York. Whenever the designation, "ALIC" appears herein without qualification, it should be understood to mean Aetna Life Insurance Company.

Whenever the designations, "Aetna" or "Aetna companies" appear within this report, they should refer to the operations of Aetna Health Inc., Aetna Health Insurance Company of New York and Aetna Life Insurance Company.

## **1. SCOPE OF EXAMINATION**

This special market conduct examination was conducted in order to review compliance with Sections 4235 and 4308(b) of the New York Insurance Law and Department Regulation 62 (11 NYCRR 52). The examination targeted Aetna's rating practices for its large group experience rated business. The examination covered the period, January 1, 2003 through September 30, 2004, however transactions subsequent to this period were reviewed where deemed appropriate. This report on examination is confined to comments on those matters that depart from New York laws, regulations or rules, or those which are deemed to require an explanation or description.

## **2. EXECUTIVE SUMMARY**

The results of this examination revealed certain operational deficiencies which impacted Aetna's compliance with ,New York Insurance Law, New York Public Health Law and/or related Regulations. Significant findings of this examination include the following:

- The respective Aetna boards of directors' did not approve the experience rating formulas used by the Aetna companies during the examination period.
- Aetna implemented internal guidelines for the use of underwriting judgment relative to its experience rating methodologies.
- Aetna made adjustments to its experience rating formulas which had not been filed with or approved by this Department.
- Aetna Health Inc., in certain instances, made commission payments to agents and brokers in excess of the four percent limitation prescribed by Part 52.42(e) of New York Insurance Department Regulation 62 (11 NYCRR 52.42(e)).

The examination findings are described in greater detail in the remainder of this report.

### **3. DESCRIPTION OF AETNA COMPANIES**

Aetna Health Inc., Aetna Health Insurance Company of New York and Aetna Life Insurance Company are all subsidiaries of Aetna Inc., a for-profit, publicly traded company.

Aetna Health Inc. was incorporated in New York on June 24, 1985 to operate as a health maintenance organization under the name, US Healthcare, Inc. The HMO was certified by the New York Department of Health on February 3, 1986. The HMO is licensed as a for-profit independent practice association (IPA) model HMO pursuant to the provisions of Article 44 of the New York Public Health Law. In 2001, the HMO changed its name to its present name, Aetna Health, Inc.

Aetna Health Inc.'s primary lines of business, at the time of examination were wrote Group HMO and Point of Service (POS) business.

Aetna Health Insurance Company of New York was incorporated under the laws of the State of New York on April 19, 1985 as Adirondack Life Insurance Company and was licensed to transact insurance business in the State of New York on August 29, 1986. On October 26, 1990, the Company amended its charter and removed its life and annuity powers.

The Company was licensed, effective October 26, 1990, to write accident and health insurance as defined within Section 1113(a)(3) of the New York Insurance Law. The Company's name was changed to its current name, Aetna Health Insurance Company of New York effective May 8, 2002. All business conducted by the Company, as of the time of this examination represented the out-of-network portion of point of service products issued by Aetna Health Inc.

Aetna Life Insurance Company is a Connecticut domestic insurer that was admitted within New York State on March 13, 1865, ALIC is licensed to conduct life, annuities, accident & health, personal injury liability and workers' compensation and employers' liability insurance within New York State pursuant to Section 1113(a) of the New York Insurance Law. As of the time of this examination, ALIC wrote PPO and POS business within New York State.

#### **4. BOARD APPROVAL OF EXPERIENCE RATING FORMULAS**

Relative to the its Point-of-Service (POS) business, Aetna Health Inc. (A New York Corporation) entered into an inter-company transfer agreement, effective January 1, 2000 with its affiliate AHIC. Under the agreement, the HMO underwrites the in-network portion of the POS business while AHIC underwrites the out-of-network portion. As noted above, Aetna Life Insurance Company also underwrites PPO and POS business within New York. Such underwritten business includes experience rating of large groups.

It was noted that Aetna was not able to provide support for respective board approval of the large group experience rating formulas used during the examination period.

Part 52.40(f)(1) of the New York Insurance Department Regulation 62 (11 NYCRR 52.40(f)(1)) states in part,

*"Policies may be experience-rated in accordance with a written plan or formula approved by the board of directors of the insurer or designee thereof"...*



It is recommended that the respective boards of directors of Aetna approve the experience rating formulas in use by such companies in compliance with Part 52.40(f)(1) of New York Insurance Department Regulation 62 (11 NYCRR 52.40(f)(1)).

## **5. IMPLEMENTATION OF EXPERIENCE RATING FORMULAS**

It was noted that a review of thirty two (32) sample group underwriting files revealed that underwriting judgment adjustments were used in nineteen (19) of the files reviewed. Such underwriting judgment adjustments included:

- Changes in margin factor
- Change in credibility factor
- Change in claims experience period
- Change in manual rates
- Change in large claims pooling
- Change in claim trend factor
- Use of new business discount
- Use of competitive adjustment factor
- Use of underwriting judgment factor
- Specific rate concession (noted in approximately 80% of the underwriting files reviewed)

In addition, it was noted that performance guarantees, claim trend guarantees and loss ratio guarantees were offered to New York policyholders with New York situs relative to certain ALIC experience rated groups. Such guarantees were not incorporated in the ALIC experience rating formulas on file with this Department.

Section 4235(h)(1) of the New York Insurance Law states in pertinent part:

*“Each domestic insurer and each foreign or alien insurer doing business in this state shall file with the superintendent its schedules of premium rates, rules and classification of risks for use in connection with the issuance of its policies of group accident, group health or group accident and health insurance, and of its rates of commissions, compensation or other fees or allowances to agents and brokers...”*

Section 4308(b) of the New York Insurance Law states in pertinent part:

*“No corporation subject to the provisions of this article shall enter into any contract unless and until it shall have filed with the superintendent a schedule of the premiums or, if appropriate, rating formula from which premiums are determined, to be paid under the contracts and shall have obtained the superintendent’s approval thereof...”*

It is recommended that Aetna submit its internal guidelines used for the underwriting judgment process to this Department.

It is recommended that Aetna use its experience rating formula as filed and approved by this Department pursuant to Sections 4235(h)(1) and 4308(b) of the New York Insurance Law.

## **6. COMMISSIONS**

During the examination period, Aetna Health Inc. made several commission payments to agents and brokers which exceeded the four percent limitation for HMOs prescribed by Part 52.42(e) of New York Insurance Department Regulation 62 (11 NYCRR 52.42(e)).

Part.52.42(e) of New York Insurance Department Regulation 62 (11 NYCRR 52.42(e)) states in part,

*"Commissions or fees payable by health maintenance organizations to an insurance broker as authorized by 10 NYCRR Part 98....The actual rate per annum may not exceed four percent of the HMO's approved premium for the contract sold.*

It is recommended that the HMO comply with the four per cent commission rate payment limitation of Part 52.42(e) of New York Insurance Department Regulation 62 (11 NYCRR 52.42(e)).

## **7. SUMMARY OF COMMENTS AND RECOMMENDATIONS**

The following is a summary of the comments and recommendations made in the body of this report:

<b><u>ITEM NO.</u></b>	<b><u>PAGE NO.</u></b>	
A.	<p><b><u>Board Approval of Experience Rating Formulas</u></b></p> <p>It is recommended that the respective boards of directors of Aetna approve the experience rating formulas in use by such companies in compliance with Part 52.40(f)(1) of New York Insurance Department Regulation 62 (11 NYCRR 52.40(f)(1)).</p>	7
B.	<p><b><u>Implementation of Experience Rating Formulas</u></b></p> <p>It is recommended that Aetna submit its internal guidelines used for its underwriting judgment process to this Department.</p> <p>It is recommended that Aetna use its experience rating formula as filed and approved by this Department pursuant to Sections 4235(h)(1) and 4308(b) of the New York Insurance Law.</p> <p>.</p> <p><b><u>Commissions</u></b></p>	8 8
C.	<p>It is recommended that the HMO comply with the four per cent commission rate payment limitation of Part 52.42(e) of New York Regulation 62 (11 NYCRR 52.42(e)).</p>	9

Appointment No. 22271

**STATE OF NEW YORK  
INSURANCE DEPARTMENT**

I, **GREGORY V. SERIO**, Superintendent of Insurance of the State of New York,  
pursuant to the provisions of the Insurance Law, do hereby appoint:

**Robert McLaughlin**

*as a proper person to examine into the affairs of the*

**Aetna Health Inc.**

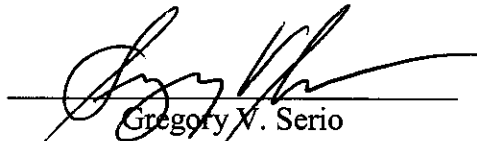
*and to make a report to me in writing of the said*

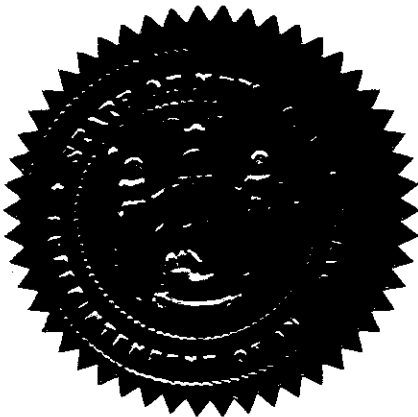
**Company**

with such information as he shall deem requisite.

In Witness Whereof, I have hereunto subscribed by the name and affixed the official Seal  
of this Department, at the City of New York.

this 14 day of December 2004

  
\_\_\_\_\_  
Gregory V. Serio  
Superintendent of Insurance



Appointment No. 22272

**STATE OF NEW YORK  
INSURANCE DEPARTMENT**

I, **GREGORY V. SERIO**, Superintendent of Insurance of the State of New York,  
pursuant to the provisions of the Insurance Law, do hereby appoint:

**Robert McLaughlin**

*as a proper person to examine into the affairs of the*

**Aetna Health Insurance Company of New York**

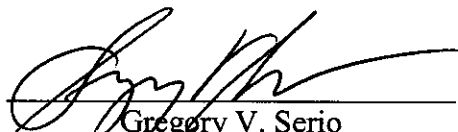
*and to make a report to me in writing of the said*

**Company**

with such information as he shall deem requisite.

In Witness Whereof, I have hereunto subscribed by the name and affixed the official Seal  
of this Department, at the City of New York.

this 14 day of December 2004

  
\_\_\_\_\_  
Gregory V. Serio  
Superintendent of Insurance



Appointment No. 22273

**STATE OF NEW YORK  
INSURANCE DEPARTMENT**

I, GREGORY V. SERIO, Superintendent of Insurance of the State of New York,  
pursuant to the provisions of the Insurance Law, do hereby appoint:

**Robert McLaughlin**

*as a proper person to examine into the affairs of the*

**Aetna Life Insurance Company**

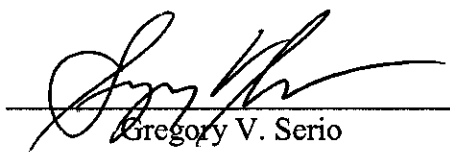
*and to make a report to me in writing of the said*

**Company**

with such information as he shall deem requisite.

In Witness Whereof, I have hereunto subscribed by the name and affixed the official Seal  
of this Department, at the City of New York.

this 14 day of December 2004

  
\_\_\_\_\_  
Gregory V. Serio  
Superintendent of Insurance

