



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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In the Matter of

Aetna Life Insurance Company

No. 2021-0133-S

Respondent.

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CONSENT ORDER

WHEREAS, the Department of Financial Services (hereinafter "Department") conducted a review of submissions by Aetna Life Insurance Company (hereinafter "Respondent") required by section 343 of the New York State Insurance Law reporting Respondent's compliance with federal and state mental health and substance use disorder parity laws ("parity laws") for health insurance policies issued in New York; and

WHEREAS, the Department concluded that Respondent's report for the calendar year 2018 show instances of non-compliance with parity laws and that Respondent's submissions required by section 343 of the New York State Insurance Law contained numerous errors; and

WHEREAS, the Department and Respondent are willing to resolve the matters cited herein in lieu of proceeding by notice and hearing.

NOW, THEREFORE, this Consent Order contains the Department's findings and the relief agreed to by the Department and Respondent.

BACKGROUND

1. Respondent is a life and accident and health insurance company licensed under the laws of the State of New York. Respondent sold comprehensive health insurance policies in New York State in 2017 and 2018.
2. The federal Mental Health Parity and Addiction Equity Act and its implementing regulations (“MHPAEA”) and New York Insurance Law § 3221(l) require insurers to provide mental health and substance use disorder (“MH/SUD”) benefits in parity with medical and surgical (“med/surg”) benefits. An insurer may not apply any quantitative treatment limitation (“QTL”) to MH/SUD benefits in any benefit classification that is more restrictive than the predominant financial requirement or treatment limitation of that type applied to substantially all med/surg benefits in the same classification per 42 U.S.C §§ 300gg-26, 45 C.F.R § 146.136(c)(2)(i), 45 C.F.R. § 146.136(h) and New York Insurance Law § 3221(l).
3. New York Insurance Law § 343 requires insurers to submit information (“343 Reports”), in a form and manner prescribed by the superintendent, about the cost-sharing requirements for policies offered in the individual, small and large group markets, including but not limited to copayments and coinsurance, for med/surg benefits, and MH/SUD benefits.
4. Respondent submitted 343 Reports for calendar years 2017 and 2018. Based on the information provided by Respondent for calendar year 2018, the Department, pursuant to Insurance Law § 308, required Respondent to complete worksheets for identified policies demonstrating that the financial requirements imposed on MH/SUD benefits complied with MHPAEA and New York Insurance Law. The completed worksheets demonstrated that in calendar year 2018 Respondent sold certain policies that imposed financial requirements on MH/SUD benefits that violated MHPAEA and New York Insurance Law.
5. In February and March 2021, the Department and Respondent participated in a series of meetings to discuss the findings from the 343 Reports and completed worksheets. During the

course of those meetings, Respondent disclosed to the Department that it had made several errors related to erroneous data input on the 343 Reports and completed worksheets. The Department directed the Respondent to determine the extent of the errors made and to submit new 343 Reports and worksheets pursuant to Insurance Law § 308.

6. On March 26, 2021, Respondent submitted new 343 Reports for calendar years 2017 and 2018 as well as associated worksheets. The newly completed worksheets demonstrated that in calendar year 2018, Respondent sold certain policies that imposed cost-sharing on a portion of MH/SUD benefits in the outpatient out-of-network classification that was more restrictive than the predominant level imposed on med/surg benefits. Further, Respondent sold certain policies that imposed a type of cost-sharing on MH/SUD benefits in the outpatient in-network classification that was not imposed on substantially all of the med/surg benefits. In total, eight hundred seventy-four (874) violations were found on five (5) separate policies, covering five hundred sixty-four (564) insureds, in contravention to 45 CFR § 146.136(h) and New York Insurance Law § 3221(l).
7. In addition, Respondent admitted that sufficient and properly trained resources were not allocated to producing responses to the original data requests by the Department in the New York specific format which resulted in sixty nine thousand eighty-eight (69,088) errors (out of one million four hundred eighty-nine thousand four hundred twenty-four (1,489,425) total data cells) for 2017 and sixty three thousand three hundred twenty-four (63,324) errors (out of one million two hundred sixty-three thousand six hundred ninety-six (1,263,696) total data cells) for 2018.

FINDINGS

8. Respondent, for calendar year 2018, violated the New York State Insurance Law and MHPAEA by selling certain policies that required insureds to either pay a type of cost share for certain outpatient MH/SUD benefits that was not applied to substantially all medical/surgical benefits, or pay an amount of cost share for those MH/SUD benefits that

was not the predominant level of cost share applied to medical/surgical benefits in the same classification.

9. Respondent failed to allocate sufficient and properly trained resources to producing the 343 data requests by the Department in the New York specific format which resulted in erroneous data presented to the Department.

VIOLATIONS

10. By reason of the foregoing, Respondent violated New York Insurance Law §§ 343 and 3221(l) and 45 CFR § 146.136(c)(2) and (h).

AGREEMENT

IT IS HEREBY UNDERSTOOD AND AGREED by Respondent, its successors, and assigns (on behalf of its agents, representatives, employees, parent company, holding company, and any corporation, subsidiary, or division through which Respondent operates) that:

11. Respondent shall take all necessary steps to comply with parity laws in the future.
12. As of the date of this Order, Respondent has issued restitution in the amount of \$439.20, plus late claim interest, to the one (1) member impacted by the impermissible cost-shares in 2018. No later than thirty (30) days from the date of this Order, Respondent shall provide the Department with a report detailing completion of this remediation.

MONETARY PENALTY

13. Within seven (7) days of the execution of this Consent Order, Respondent shall pay a civil penalty of eight hundred seventy-four thousand dollars (\$874,000) for the violations of 45 CFR § 146.136(h) and New York Insurance Law § 3221(l) and three hundred and seventy-six thousand dollars (\$376,000) for the violations of New York Insurance Law § 343 for a total of one million two hundred fifty (\$1,250,000). Respondent agrees that it will not claim,

assert, or apply for a tax deduction or tax credit with regard to any U.S. federal, state or local tax, directly or indirectly, for any portion of the civil monetary penalty paid pursuant to this Consent Order.

14. The above referenced payment shall be payable to the New York State Department of Financial Services account at JP Morgan Chase Bank, N.A. via electronic transfer in accordance with the Department's instructions.

BREACH OF THE CONSENT ORDER

15. In the event that the Department believes Respondent to be materially in breach of this Consent Order ("Breach"), the Department will provide written notice of such Breach to Respondent and Respondent must, within ten (10) business days from the date of receipt of said notice, or on a later date if so determined in the sole discretion of the Department, appear before the Department and have an opportunity to rebut the Department's contention that a Breach has occurred and, to the extent pertinent, to demonstrate that any such Breach is not material or has been cured.
16. Respondent understands and agrees that Respondent's failure to appear before the Department to make the required demonstration within the specified period as set forth herein is presumptive evidence of Respondent's Breach. Upon a finding of Breach, the Department has all the remedies available to it under New York or other applicable laws and may use any and all evidence available to the Department for all ensuing examinations, hearings, notices, orders, and other remedies that may be available under New York or other applicable laws.

OTHER PROVISIONS

17. If Respondent defaults on any of its obligations under this Consent Order, the Department may terminate this Consent Order, at its sole discretion, upon ten (10) days' written notice to Respondent. In the event of such termination, Respondent expressly agrees and acknowledges that this Consent Order shall in no way bar or otherwise preclude the Department from

commencing, conducting, or prosecuting any investigation, action, or proceeding, however denominated, related to the Consent Order, against Respondent or from using in any way the statements, documents, or other materials produced or provided by Respondent prior to or after the date of this Consent Order, including, without limitation, such statements, documents, or other materials, if any, provided for purposes of settlement negotiations.

18. The Department has agreed to the terms of this Consent Order based on, among other things, representations made to the Department by Respondent and the Department's own factual examination. To the extent that representations made by Respondent are later found to be materially incomplete or inaccurate, this Consent Order or certain provisions thereof are voidable by the Department in its sole discretion.
19. Upon the request of the Department, Respondent shall provide all documentation and information necessary for the Department to verify compliance with this Consent Order.
20. All notices, reports, requests, certifications, and other communications to the Department regarding this Consent Order shall be in writing and shall be directed as follows:

If to the Department:

New York State Department of Financial Services
One State Street, 19th Floor
New York, NY 10004-1511
Attention: My Chi To, Executive Deputy Superintendent for Insurance

If to the Company:

Aetna Life Insurance Company
1425 Union Meeting Road
Blue Bell, PA 19422
Attention: Gregory Martino, Assistant Vice President
MartinoG@aetna.com
215-510-1286

21. This Consent Order and any dispute thereunder shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.

22. Respondent waives its right to further notice and hearing in this matter as to any allegations of past violations up to and including the Effective Date and agrees that no provision of the Consent Order is subject to review in any court or tribunal outside the Department.
23. This Consent Order may not be amended except by an instrument in writing signed on behalf of all parties to this Consent Order.
24. This Consent Order constitutes the entire agreement between the Department and Respondent relating to the violations identified herein and supersedes any prior communication, understanding, or agreement, whether written or oral, concerning the subject matter of this Consent Order. No inducement, promise, understanding, condition, or warranty not set forth in this Consent Order has been relied upon by any party to this Consent Order.
25. In the event that one or more provisions contained in this Consent Order shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Consent Order.
26. Upon execution by the parties to this Consent Order, no further action will be taken by the Department against Respondent for the conduct set forth in this Consent Order, subject to the terms of this Consent Order.
27. This Consent Order may be executed in one or more counterparts and shall become effective when such counterparts have been signed by each of the parties hereto and So Ordered by the Superintendent of Financial Services.

Aetna Life Insurance Company

By: _____

Gregory Martino
Assistant Vice President

Dated: _____

10/1/21

State of Pennsylvania, County of Dauphin
Sworn and Subscribed before me this
day of November 2021

[Signature]

Commonwealth of Pennsylvania - Notary Seal
ANN G MUDGETT - Notary Public
Dauphin County
My Commission Expires September 23, 2025
Commission Number 1117027

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

By: _____

[Redacted Signature]

Dated: _____

12/7/21

My Chi To
Executive Deputy Superintendent for Insurance

THE FOREGOING CONSENT ORDER IS HEREBY APPROVED.

By: _____

[Redacted Signature]

Dated: _____

12/7/21

Adrienne A. Harris
Acting Superintendent of Financial Services