

IN RE: AETNA US HEALTHCARE

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**CONSENT AGREEMENT**  
**Docket No. INS 01-2551**

This document is a Consent Agreement, authorized by 10 M.R.S.A. § 8003(5)(B), entered into by and among Aetna US Healthcare (hereafter "Aetna"), the Superintendent of the Maine Bureau of Insurance (hereafter "the Superintendent"), and the Department of the Attorney General. Its purpose is to resolve, without resort to an adjudicatory proceeding, violations of the Maine Insurance Code as set forth below.

**FACTS**

1. The Superintendent is the official charged with administering and enforcing Maine's insurance laws and regulations.
2. Aetna U.S. Healthcare has been a Maine licensed HMO, license number HMD45749.
3. On July 11, 2001, Consumer filed a complaint with the Bureau, complaint # 2001514153 stating, in part:

*In February 2001, as part of the treatment... suggested by my primary care physician, [name of physician omitted], I was referred to an Occupational Therapist, [name of physician and company omitted]. Aetna USHC accepted this referral and authorized 30 visits to be applied within a 60-day period.*

*When it was apparent that I would be unable to use all of the authorized visits during the 60-day timeframe, [my PCP] requested an extension. About a week later, I received an "Envoy Response Message" from Aetna indicating that the "Referral Add was successful" and that the expiration date had been extended to 7/11/2001 for 30 visits. There was nothing indicating that Aetna would not cover appointments during the extension.*

*Although I was aware that the insurance policy normally only covers a 60-day lifetime period, I continued with the appointments based upon the messages showing that the extension had been granted. It wasn't until July 2 when [consumer's physical therapist] received a declination of benefits statement from Aetna that both she and I were aware that there was any problem with the extension. I went through all of the proper steps in getting the extension request from my PCP, and based upon the "envoy Messages," it had been approved.*

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*I also feel that Aetna's wording of their notifications to us as policyholders regarding the acceptance or rejection of my doctor's referrals, was very ambiguous and misleading,*

*and at no time did they notify me in writing or in any other way that the referrals had been refused.*

4. Aetna accepted a referral from Consumer's PCP dated February 13, 2001 for 12 physical therapy visits beginning on February 22, 2001. Consumer's Certificate of Coverage required the approved physical therapy visits to be used within 60 days, by April 22, 2001. By April of 2001, the 60-day time period was about to end and the consumer wanted to have additional visits. On April 6, 2001, the PCP provided Consumer's physical therapist with a consultation/referral request for 30 more visits, stating, in part:

*"Patient will have to use beyond 60-day allowance due to multiple periods of inclement weather impairing ability to get to PT office. Thus far, number of visits have been helpful but not enough. Please renew X60 more days."*

5. On April 13, 2001, Consumer's PCP sent Aetna an electronic referral requesting 30 visits and Aetna sent an electronic response acknowledging receipt of the referral.
6. On May 10, 2001, Consumer's PCP sent Aetna another electronic referral for 30 visits and Aetna again sent an electronic response acknowledging receipt of the referral.
7. Aetna's July 26, 2001 response to Consumer's appeal stated, in part:

*"The envoy response messages "form" received by your primary care physician was a response to the office to show that it had successfully electronically transmitted a referral to Aetna. The "form" only contained information that was submitted by the primary care physician. The message "referral add successful" only indicates that the referral and the submitted information had been received. A primary care physician can submit a referral as many times as they want and as long [as] they input the appropriate information they will receive a message "referral add successful." This message, however, does not mean that Aetna U.S. Healthcare has authorized the services on the referral or that additional visits to a previous submitted referral have been approved."*

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8. Aetna's October 3, 2001 response to Consumer's complaint to the Bureau again explained Aetna's position, stating, in part:

*"As the member stated in her letter to the Bureau, she was aware that her plan only covered physical therapy services for 60 - consecutive days, but continued physical therapy services because of information on the ENVOY response that stated an extension had been granted. As stated above, and as specified in the ENVOY message, the sole purpose of the Envoy response is to acknowledge successful transmission of a referral*

*and the contents of the referral back to the PCP. It is not a method by which coverage is initially approved, or by which extensions of coverage are granted. Therefore, because the ENVOY response sent to the provider clearly indicates that submission of a referral does not guarantee payment for the services requested, Aetna does not agree that the ENVOY message transmitted to the provider, (and subsequently given by the provider to the member) is ambiguous or could have caused the member to believe that the requested services were covered by way of the ENVOY message."*

### **APPLICABLE LAW**

9. Rule 850(7)(F)(1) provides: If the HMO requires referrals to specialty physicians and ancillary services, the enrollee's primary care provider or the HMO shall initiate the referrals. Enrollees on whose behalf referrals have been made shall receive timely written notification of the referral including all relevant information.
10. Rule 850(7)(F)(2) provides: HMOs are responsible for the coordination, continuity of care and appropriate discharge planning for enrollees given a referral to specialty physicians, and for enrollees using ancillary services.

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### **CONCLUSIONS OF LAW**

11. As described in paragraphs 1-10 above, Aetna US HealthCare violated Rule 850(7)(F)(1 and 2) by failing to meet the obligations of an HMO to coordinate the referral process and to provide Consumer with notification of the referral and all relevant information. The ENVOY message provided to Consumer by the PCP was a direct response by Aetna to the PCP with respect to a specific request submitted by Aetna's contracted PCP for an extension of benefits for 30 physical therapy visits. The ENVOY response did not provide notification to the consumer or the PCP, Aetna's contracted provider, that the extension of benefits requested in the referral, and reflected in consultation/referral provided to the physical therapist, had been approved or disapproved. A consumer receiving the ENVOY response message acknowledging the contracted PCP's referral request could reasonably come to the conclusion that the request for benefits had been approved.

### **COVENANTS**

12. A formal hearing in this matter is waived and no appeal will be made.
13. At the time of executing this Agreement, Aetna US Healthcare shall pay to the Bureau of Insurance a penalty in the amount of Two Thousand Dollars and No Cents (\$2,000.00), payable to the Treasurer of the State of Maine.

14. In consideration of Aetna US HealthCare's execution of, and compliance with, the terms of this Consent Agreement, the Superintendent agrees to forgo pursuing any disciplinary measures or other civil sanction for the specific violations described above, other than those agreed to in this Consent Agreement.
15. Aetna will reimburse Consumer or her provider for services referenced in the ENVOY responses provided to consumer by her PCP. Interest will be paid pursuant to Title 24-A M.R.S.A. § 2436.

**MISCELLANEOUS**

16. This Consent Agreement may only be modified by the written consent of the parties.

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17. It is understood by the parties to this Agreement that nothing herein shall affect any rights or interests of any person not a party to this Agreement.
18. Aetna US Healthcare acknowledges that this Consent Agreement is a public record within the meaning of 1 M.R.S.A. § 402 and will be available for public inspection and copying as provided for by 1 M.R.S.A. § 408.
19. Aetna US Healthcare has been advised of its right to consult with counsel and has, in fact, consulted with counsel before executing this Agreement.
20. Nothing herein shall prohibit the Superintendent from seeking an order to enforce this Agreement, or from seeking additional sanctions in the event that Aetna does not does not comply with the above terms.

Dated: \_\_\_\_\_, 2002

AETNA US HEALTHCARE

By: \_\_\_\_\_

\_\_\_\_\_  
 Printed Name and Title

Subscribed and sworn to before me  
 this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
 Notary Public

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Printed name

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Dated: \_\_\_\_\_, 2002

MAINE BUREAU OF INSURANCE

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Alessandro A. Iuppa  
Superintendent of Insurance

STATE OF MAINE  
KENNEBEC, SS.

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2002

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Notary Public

Dated: \_\_\_\_\_, 2002

MAINE DEPARTMENT OF THE  
ATTORNEY GENERAL

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Thomas C. Sturtevant, Jr.  
Assistant Attorney General