

**STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE**

IN RE:

Aetna Life Insurance Company
NAIC Co. Code: 60054
ME License No. LHF621

Aetna Health Inc. (a Maine Corporation)
NAIC Co. Code: 95517
ME License No. HMD45749

Docket No. INS-24-222

**CONSENT AGREEMENT
AND ORDER**

Aetna Life Insurance Company and Aetna Health Inc. (a Maine Corporation) (collectively "Aetna" or "the Company"), the Superintendent of the Maine Bureau of Insurance ("the Superintendent"), and the Office of the Maine Attorney General ("the Attorney General") hereby enter into this Consent Agreement pursuant to 10 M.R.S. § 8003(5)(B) to resolve, without resort to an adjudicatory proceeding, violations of the Maine Insurance Code. As set forth in more detail below, a market conduct examination identified violations of provisions of the Maine Insurance Code and Bureau of Insurance Rule Chapter 850 ("Bureau Rule Ch. 850" or "Rule 850") relating to requests for prior authorization of medical services and prescriptions.

APPLICABLE LAW

1. Under 24-A M.R.S. § 12-A, the Superintendent may assess civil penalties, issue a cease and desist order, or take any combination of these and other actions listed within this section against any person who violates any law enforced by the Superintendent; any rule lawfully adopted by the Superintendent; or any lawful order of the Superintendent.
2. Pursuant to 10 M.R.S. § 8003(5)(B), the Superintendent may resolve an investigation without further proceedings by entering into a consent agreement with a licensee and with the consent of the Attorney General.
3. 24-A M.R.S. § 4304(2) sets forth the requirements for health plans regarding prior authorization of nonemergency services.
4. Bureau Rule Ch. 850, generally, sets forth standards for health plan accountability.

5. Bureau Rule Ch. 850 § 8(E) sets forth the procedures health plans must follow utilization review, including the handling of standard prior authorization requests and prior authorization requests in exigent circumstances.
6. Bureau Rule Ch. 850 § 5(Q-1) explains exigent circumstances “exist when a covered person is suffering from a health condition that may seriously jeopardize the covered person’s life, health or ability to regain maximum function or when a covered person is undergoing a current course of treatment using a nonformulary drug.”
7. Bureau Rule Ch. 850 § 8(E)(6) sets forth written notice requirements for adverse determinations involving health care treatment decisions.
8. Bureau Rule Ch. 850 § 9(A) sets forth written notice requirements for adverse determinations that do not involve health care treatment decisions.
9. Pursuant to 24-A M.R.S. § 2412(1), “[a]n insurance policy or annuity contract form may not be delivered or issued for delivery in this State unless the form has been filed with and approved by the superintendent...”

STATEMENT OF FACTS

10. The Superintendent has jurisdiction over this matter pursuant to the powers set forth in the Insurance Code generally, as well as the specific provisions of 24-A M.R.S. §§ 12-A and 211 and 10 M.R.S. § 8003.
11. Aetna Life Insurance Company has been licensed in Maine as a foreign life and health insurance company since 1990, holding Maine Certificate of Authority number LHF621. Its NAIC Code is 60054, and it is domiciled in Connecticut.
12. Aetna Health Inc. (a Maine Corporation) has been licensed in Maine as a domestic health maintenance organization since 1996, holding Maine Certificate of Authority number HMD45749. Its NAIC Code is 95517, and it is domiciled in Maine.
13. 24-A M.R.S. § 221(5) requires the Superintendent to examine, no less frequently than once every five years, each domestic health carrier and each foreign health carrier with at least 1,000 covered lives in Maine that offer health plans. A targeted market conduct exam of Aetna, the results of which serve as the basis for this Consent Agreement, was accordingly called and conducted pursuant to 24-A M.R.S. §§ 211 and 221.
14. The examiners reviewed prior authorization requests and notices of adverse benefit determinations during a review period of July 1, 2023, through September 30, 2023.
15. The examiners tested the Company’s compliance with timing and notice requirements and reviewed their utilization review procedures and the utilization review sections of the plan documents associated with sample files.

16. The examiners found several instances of noncompliance with Rule 850 and related provisions of 24-A M.R.S. § 4304(2), which are set forth in more detail below and in the examiners' Market Conduct Examination Report ("Examination Report"), which is herein incorporated by reference.
17. Where Rule 850, in part, is testing the presence of certain items in a form letter, a failure to include one item within a form letter may lead to a failure for other files being tested as all files use the same form.
18. Aetna cooperated with the examiners throughout this exam and proactively addressed many areas of noncompliance in advance of receiving the Examination Report.
19. Aetna agreed with the examiners' findings of noncompliance set forth in the Examination Report.

Bureau Rule Ch. 850 § 8(E) and 24-A M.R.S. § 4304(2) Compliance

20. In a review of Aetna's utilization review guidelines, the examiners noted that the guidelines did not reflect the 2020 updates to Rule 850 and the 2021 updates to 24-A M.R.S. § 4304(2). This constitutes a violation of Rule 850 § 8(E)(1)'s requirement to maintain written procedures.
21. In one hundred four (104) sample files, Aetna utilized forms that listed incorrect timing requirements for standard and exigent prior authorization requests in violation of Rule 850 § 8(E)(2) and (3).
22. In thirty-five (35) sample files, Aetna failed to identify the plan provision on which the determination was based in violation of Rule 850 § 8(E)(6)(b). In those thirty-five (35) files, plus three (3) additional files, Aetna's description of the expedited appeal process in its notices failed to identify situations where enrollees were undergoing a current course of treatment with a nonformulary drug as a situation for which expedited review is available in violation of Rule 850 § 8(E)(6)(i).
23. In eighteen (18) sample files, Aetna failed to complete the prior authorization process within the timeframes required by Rule 850 § 8(E)(2)(a).
24. Within the eighteen (18) sample files identified in paragraph 23, there were eight (8) sample files where the request for prior authorization was denied even though Aetna had failed to meet the timing requirements. These requests should have been granted as required by 24-A M.R.S. § 4304(2) and Bureau Rule Ch. 850 § 8(E)(2).

Bureau Rule Ch. 850 § 9(A)

25. Rule 850 § 9(A) states that "[f]or any adverse benefit determination that does not involve medical issues, the carrier shall provide written notice that includes the information required [by § 9(A)(1) through § 9(A)(11)]."

26. Aetna failed to comply with this provision of Rule Ch. 850 because eight (8) of its notices of adverse benefit determinations based upon plan exclusions failed to include a phone number that the covered person could call to initiate an appeal or reconsideration or to request review criteria as required by Rule 850 § 9(A)(8) and three (3) of these notices did not include notice of the right to file a complaint with the Bureau as required by Rule 850 § 9(A)(6).

Failure to Use Approved Forms

27. On September 23, 2022, the Bureau approved Aetna's SERFF filing of Form AL HCOC 11 for use in Plan Year 2023.
28. Form AL HCOC 11, which is a Certificate of Coverage, was filed as a replacement for Form AL HCOC 10.
29. Forty (40) sample files included Certificates of Coverage issued after January 1, 2023, that used Form AL HCOC 10 instead of Form AL HCOC 11.
30. This constitutes the use of an unapproved form for Plan Year 2023 that was not contemplated by Aetna's September 2022 SERFF filing (SERFF #AETN-133311274).

VIOLATIONS OF LAW

31. As set forth in paragraphs 20 through 24, Aetna failed to comply with all requirements set forth in Bureau Rule Ch. 850 §§ 8(E) and related provisions of 24-A M.R.S. § 4304(2).
32. As set forth in paragraphs 25 through 26, Aetna failed to include all required items from Bureau Rule Ch. 850 § 9(A) in its notice of adverse benefit determinations not involving health care treatment decisions.
33. As set forth in paragraphs 27 through 30, Aetna violated 24-A M.R.S. § 2412 by issuing policies with January 1, 2023, effective dates on forms that had been replaced by updated plan year 2023 forms as of September 23, 2022.

COVENANTS

34. Aetna agrees to the Statement of Facts and Violations of Law and agrees that it is subject to disciplinary action.
35. Aetna accepts as disciplinary action the imposition of a civil penalty in the amount of thirty-three thousand, six-hundred dollars (\$33,600) on behalf of Aetna Life Insurance Company and one-thousand, four-hundred dollars (\$1,400) on behalf of Aetna Health Inc. (a Maine Corporation) for a total penalty of thirty-five thousand dollars (\$35,000). No later than thirty (30) days after executing this Consent Agreement, Aetna will remit to

the Maine Bureau of Insurance a company check in the amount of thirty-five thousand dollars (\$35,000) payable to the Treasurer of the State of Maine.

36. No later than thirty (30) days after the date of its signature, Aetna shall submit a proposed Corrective Action Plan (CAP) to the Superintendent for his review and approval specifying the actions that Aetna intends to implement to correct the procedural deficiencies found during the Examination and set forth in Examination Report. The CAP should also include, as attachments, all form letters and notices that have been revised by Aetna based on the examiners' findings.
37. This Consent Agreement is not subject to appeal. Aetna waives any right it might have to appeal any matter that is a subject of this Consent Agreement.
38. This Consent Agreement constitutes an Order of the Superintendent. A violation of its terms is enforceable by the Superintendent pursuant to 24-A M.R.S. §§ 12-A and 211.
39. This Consent Agreement is also enforceable by an action in Maine Superior Court pursuant to 24-A M.R.S. § 214, 10 M.R.S. § 8003(5)(B), and 14 M.R.S. § 3138.
40. The effective date of this Consent Agreement is the date of the Superintendent's signature hereto.
41. This Consent Agreement may be modified only by a written agreement executed by all the parties hereto. Any decision to modify, continue or terminate any provision of this Consent Agreement rests in the discretion of the Superintendent and the Attorney General.
42. This Consent Agreement is a public record as that term is defined by 1 M.R.S. § 402(3). It is subject to the provisions of the Maine Freedom of Access Act, 1 M.R.S. § § 401 through 410, and it will be available for public inspection and copying as provided for by 1 M.R.S. § 408-A.
43. This Consent Agreement is also an adverse action and will be reported to the Regulatory Information Retrieval System ("RIRS") database at the National Association of Insurance Commissioners ("NAIC").
44. Nothing in this Consent Agreement shall be construed to affect any right or interest of any person not a party hereto.
45. Terms of this Consent Agreement constitute the entire agreement between and among the parties.
46. If any provision of this Consent Agreement is for any reason determined to be invalid, the effectiveness and enforceability of all other provisions of the Consent Agreement shall not be affected by such determination.

47. By the duly-authorized signature of its representative on this Consent Agreement, Aetna warrants that it has consulted with counsel before signing the Consent Agreement or has knowingly and voluntarily decided to proceed in this matter without consulting counsel, that it understands this Consent Agreement, and that it enters into the Consent Agreement voluntarily and without coercion of any kind from any person.
48. As consideration for Aetna's execution of and compliance with the terms of this Consent Agreement, the Superintendent and the Attorney General agree to forego pursuing further disciplinary measures or other civil or administrative sanctions for the specific conduct described above in this Consent Agreement. However, should Aetna fail to comply with any term or condition of this Consent Agreement, it may be subject to any available remedy under the law for such a failure or violation.

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**AETNA LIFE INSURANCE COMPANY
AETNA HEALTH INC. (A MAINE CORPORATION)**

Dated: 12/5/2024, 2024



Name: Edward Chung-I Lee
Title: Vice President & Secretary

FOR THE OFFICE OF THE ATTORNEY GENERAL

Dated: Dec. 11,, 2024



Name: Thomas C. Sturtevant, Jr.
Assistant Attorney General

THE SUPERINTENDENT OF THE MAINE BUREAU OF INSURANCE

Dated: December 12, 2024



Robert L. Carey
Superintendent