



California Medical Association
Physicians dedicated to the health of Californians

August 27, 2012

VIA U.S. MAIL AND ELECTRONIC MAIL

Mark Bertolini, CEO
Aetna Life Insurance Co.
151 Farmington Avenue
Hartford, Connecticut 06156

Dear Mr. Bertolini,

The California Medical Association (CMA) is a plaintiff in *Los Angeles County Medical Ass'n et al. v. Aetna Health of California, Inc. et al.* (hereinafter, "LACMA"), pending in the Los Angeles County Superior Court. CMA and a broad coalition of plaintiffs – including three county medical societies, an Aetna beneficiary, 60 individual physicians and four ambulatory surgical centers (ASCs) – are challenging Aetna's unlawful policies and practices that improperly restrict PPO and POS beneficiaries' access to out-of-network benefits by, among other things, harassing, punishing and terminating Aetna's network physicians for referring such beneficiaries to out-of-network ASCs to receive covered medical care.

The lawsuit contends that Aetna's policies and practices amount to unfair business practices, false advertising, breach of contract, business torts and illegal retaliation. CMA's primary objective in the lawsuit is to compel Aetna to conform its business practices to state and federal laws, which prohibit health insurers from directly or indirectly denying access to out-of-network covered services under policies with out-of-network benefits. We are very confident in the merits of our claims, and understand that Aetna will wish to vigorously defend itself. However, CMA demands that Aetna immediately refrain from retaliating outside of the litigation against CMA, the other county medical association plaintiffs in the case, or any of our individual physician members. Such a vindictive response to a lawsuit is unprecedented in the industry and wholly unacceptable.

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A. Refusing to Negotiate or Contract with Any of CMA's 35,000 Physician Members

Aetna is categorically refusing to negotiate or contract with any physician to join Aetna's provider network if the physician is a member of CMA or one of the local county medical associations who are also plaintiffs in the *LACMA* case (Los Angeles, Santa Clara and Ventura counties).

This exclusionary policy came to our attention when a group of CMA members reported that Aetna had abruptly terminated a contract negotiation with them that had been ongoing for months. An Aetna network account manager informed the group that Aetna would no longer negotiate because of the *LACMA* lawsuit. CMA inquired directly with Aetna and received written confirmation that Aetna is refusing to negotiate or contract with any physician who is a member of CMA or the county medical society plaintiffs due to our involvement as plaintiffs in the *LACMA* lawsuit.

Aetna apparently believes that, because CMA is a plaintiff in the *LACMA* case, all CMA members are plaintiffs as well. Such a rationale is seriously flawed. CMA is an incorporated not-for-profit association with the legal standing to serve as a plaintiff in its own right due to the significant time and resources that have been devoted to combat Aetna's unlawful business practices. CMA additionally has associational standing to represent the interests of our members. However, it simply is untrue that individual CMA members not actually named as plaintiffs in the lawsuit automatically become plaintiffs by virtue of CMA's participation in the lawsuit. Although CMA believes, on advice of counsel, that Aetna's retaliatory actions are creating claims on behalf of additional plaintiffs to be named by an amendment, the only CMA members currently participating in the lawsuit are the ones specifically named in the complaint. It is improper for Aetna to retaliate against CMA members simply because CMA is representing the rights of its members.

Like all other health insurers, Aetna needs to expand its provider network in order to meet the growing demands of California's health care needs and the mandates of health care reform. Ensuring access to medical care through a robust physician network should be one of Aetna's top priorities in California, indeed, given the recent announcement of Aetna's desire to greatly expand its Medicare and Medicaid managed care businesses through a \$5.7 billion acquisition of Coventry Health Care. There are approximately 35,000 physicians practicing throughout California who are members of

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CMA. By refusing to negotiate or contract with CMA members, Aetna is potentially excluding all of these physicians – 35,000 CMA members – from joining the Aetna provider network.

B. Terminating Provider Contracts

Aetna is abruptly escalating the exact unlawful practice that is the subject of the *LACMA* litigation, by increasing terminations of provider contracts with physicians who have referred PPO beneficiaries to out-of-network ASCs. Physicians who are named plaintiffs in the lawsuit, as well as those who have no involvement in the lawsuit, have been subject to such terminations. Physicians who have only sporadically made out-of-network referrals over a period of many years have also been terminated.

Regardless if a physician has made one or one hundred referrals for out-of-network services, it is not a breach of the provider contract for any physician to refer their patients for out-of-network services that are covered benefits under the patients' insurance policy. Instead, it is improper for Aetna to market and sell such policies to consumers featuring out-of-network benefits and then create roadblocks to the consumers' attempts to exercise the rights in their policies.

There are serious collateral consequences to Aetna's terminations of physicians from its network. Many of these physicians likely are the primary care providers for thousands of Aetna beneficiaries or are in the midst of treating patients with Aetna policies. Terminating them from Aetna's network without lawful cause will disrupt the medical care of thousands of patients and interfere with, or possibly destroy, the doctor-patient relationship Aetna beneficiaries have with their physicians. Aetna must withdraw all termination notices to physicians due to a referral to an out-of-network ASC for covered services under a health insurance policy with out-of-network benefits.

CONCLUSION

It is appalling that, in retaliation over the *LACMA* lawsuit, Aetna is terminating physicians from its network for illegitimate reasons while refusing to deal with any CMA member – all 35,000 of them – who may wish to come into the Aetna provider network. These actions are undoubtedly shrinking Aetna's network in California at a critical time when Aetna should be building and expanding its relationships with physicians.

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For more than 150 years, CMA has advocated in the courts and before legislative bodies and regulatory agencies to protect the professional interests of our physician members and the medical profession. In this respect, the *LACMA* litigation is no different from any other litigation effort in which CMA advocated for its members. Until now, however, no health insurer has retaliated against CMA and its physician members over a lawsuit against that health insurer. Although CMA values its liaison relationships with health insurers, including Aetna, retaliation against CMA, our affiliated county medical societies or, most importantly, our physician members over our advocacy efforts will not be tolerated. We demand that Aetna immediately cease its campaign of retaliation as described herein, and we encourage Aetna to work with CMA to restore our relationship.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dustin Corcoran', with a large, stylized initial 'D'.

Dustin Corcoran
CEO, California Medical Association