

## BEFORE THE DIVISION OF INSURANCE

### STATE OF COLORADO

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#### FINAL AGENCY ORDER O-00-293

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#### IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF AETNA U.S. HEALTHCARE, INC.,

#### Respondent

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**THIS MATTER** comes before the Colorado Commissioner of Insurance (the "Commissioner") as a result of a market conduct examination conducted by the Colorado Division of Insurance (the "Division") of Aetna U.S. Healthcare, Inc. (the "Respondent"), pursuant to §§ 10-1-201 to 207, C.R.S. The Commissioner has considered and reviewed the market conduct examination report, dated March 3, 2000, (the "Report") relevant examiner work papers, all written submissions and rebuttals, and the recommendations of staff. The Commissioner finds and orders as follows:

#### **FINDINGS OF FACT**

1. At all relevant times, the Respondent was a corporation licensed by the Division and authorized to conduct the business of health insurance in Colorado. The Respondent is authorized to do business in twelve Colorado counties: Adams, Arapahoe, Boulder, Denver, Douglas, Elbert, El Paso, Fremont, Larimer, Jefferson, Pueblo and Teller.
2. In accordance with §§ 10-1-201 to 207, C.R.S., on or about March 3, 2000, the Division completed a market conduct examination of the Respondent. The period of examination was January 1, 1998 to December 31, 1998.
3. In scheduling the market conduct examination and in determining its nature and scope, the Commissioner considered such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, complaint analyses, underwriting and claims practices, pricing, product solicitation, policy form compliance, market share analyses, and other criteria as set forth in the most recent available edition of the examiners' handbook adopted by the National Association of Insurance Commissioners, as required by § 10-1-203(1), C.R.S.
4. In conducting the examination, the examiners observed those guidelines and procedures set forth in the most recent available edition of the examiners' handbook adopted by the National Association of Insurance Commissioners and the Colorado insurance examiners handbook. The commissioner also employed

other guidelines and procedures that he deemed appropriate, pursuant to § 10-1-204(1), C.R.S.

5. The market conduct examiners prepared a Report. The Report is comprised of only the facts appearing upon the books, records, or other documents of the Respondent, its agents or other persons examined, or as ascertained from the testimony of the Respondent's officers or agents or other persons examined concerning Respondent's affairs. The Report contains the conclusions and recommendations that the examiners find reasonably warranted based upon the facts.
6. Respondent delivered to the Division written submissions and rebuttals to the Report. In addition, the Division held meetings with Respondent to discuss and consider Respondent's rebuttals and to explain numerous issues regarding the examination and compliance with Colorado law.
7. The Commissioner has fully considered and reviewed the Report, all of Respondent's submissions and rebuttals, and all relevant portions of the examiner's work papers.

#### **CONCLUSIONS OF LAW AND ORDER**

8. Unless expressly modified in this Order, the Commissioner adopts the facts, conclusions and recommendations contained in the Report. A copy of the Report is attached to the Order and is incorporated by reference.
9. Issue A1 concerns the following violation: Failure to establish a mechanism that would afford enrollees the opportunity to participate in matters of policy and operation. Respondent shall provide evidence to the Division that the Member Advisory Committee is actively meeting, thus allowing enrollees participation as required by law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
10. Issue A2 concerns the following violation: Failure to provide enrollees with a statement of financial condition. Respondent shall provide evidence to the Division that it has established procedures to ensure that the required information is provided annually to its enrollees. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
11. Issue A3 concerns the following violation: Failure to specify in provider contracts that the provider is solely responsible for obtaining preauthorization. Respondent shall provide evidence to the Division that it has revised its forms to specify that preauthorization is the sole responsibility of the provider. The Division's records indicate that Respondent has complied with the corrective actions ordered

concerning this violation.

12. Issue A4 concerns the following violation: Failure to accurately reflect in provider contracts the required provisions for continuity of care. Respondent shall provide evidence to the Division that it has revised its provider contracts to accurately reflect the required provisions for continuity of care. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
13. Issue B1 concerns the following violation: Failure to correctly reflect on the Colorado Health Benefit Plan Description form, the benefits required to be provided under the Colorado Basic and Standard Plans. Respondent shall provide evidence to the Division that it has revised its Colorado Comprehensive Health Benefit Plan Description Forms for the Basic and Standard Plans to correctly reflect the requirements of law for those plans. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
14. Issue B2 concerns the following violation: Failure to timely file a Certificate of Compliance. Respondent shall provide evidence to the Division that it has established procedures to ensure that the Respondent's Certificate of Compliance is filed in a timely manner. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
15. Issue B3 concerns the following violation: Failure to disclose on all marketing materials, the existence, availability, and general nature of the Respondent's access plan. The Respondent shall provide evidence to the Division that it has revised all marketing materials to correctly disclose the existence, availability, and general nature of the Respondent's access plan. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
16. Issue B4 concerns the following violation: Failure to include the disclosure requirements of Regulation 4-6-8 on all marketing materials. Respondent shall provide evidence to the Division that it has revised all marketing materials to reflect the disclosure requirements of Regulation 4-6-8. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
17. Issue C1 concerns the following violation: Failure to record on the Respondent's master complaint log, all complaints received. Respondent shall provide evidence to the Division that it has revised its complaint handling procedures to ensure that all written complaints, appeals and grievances are recorded in the Respondent's complaint log. The Division's records indicate that Respondent has complied with

the corrective actions ordered concerning this violation.

18. Issue E1 concerns the following violation: Failure to provide correct information on enrollment materials concerning coverage of prescription drugs under a converted contract, and failure to provide for conversion of prescription drug coverage. Respondent shall provide evidence to the Division that it has revised all forms that incorrectly inform the member of and deny coverage of prescription benefits under a converted contract. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
19. Issue E2 concerns the following violation: Failure to provide correct information in contract materials concerning the eligibility of dependents. Respondent shall provide evidence to the Division that it has revised all contract materials to accurately reflect dependent eligibility. The Respondent shall work with the Division to ensure that no dependent was harmed because of this restriction. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
20. Issue E3 concerns the following violation: Failure to exclude actively-at-work status and non-confinement status as conditions for eligibility of enrollees. Respondent shall provide evidence to the Division that it has revised all contracts and solicitation materials that restrict the eligibility of enrollees based on actively-at-work status and non-confinement status requirements. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
21. Issue E4 concerns the following violation: Failure to correctly reflect the benefits required to be provided under the Colorado Basic and Standard Plans. Respondent shall provide evidence to the Division that it has revised its Basic and Standard Plan forms to comply with law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
22. Issue E5 concerns the following violation: Failure to provide for coverage of emergency services unless the Respondent retrospectively determines that an emergency existed. Respondent shall provide evidence to the Division that it has revised all forms to provide benefit information regarding the coverage of emergency services in an emergency situation as defined by law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
23. Issue E6 concerns the following violation: Failure to limit reasons for termination of state continuation coverage to those permitted by law. Respondent shall provide evidence to the Division that it has removed this termination provision from all forms. The Respondent shall work with the Division to ensure that no member was

harmed because of this limitation. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.

24. Issue E7 concerns the following violation: Failure to provide correct information concerning eligibility for conversion coverage. Respondent shall provide evidence to the Division that it has revised all forms to provide correct information concerning eligibility for conversion coverage. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
25. Issue E8 concerns the following violation: Failure to provide for continuation coverage for a Member who is an inpatient on the date of contract termination, until release from the facility. Respondent shall provide evidence to the Division that it has revised all forms to provide continuity of care as required by law. The Respondent shall work with the Division to ensure that no person was denied coverage or had coverage limited because of the contract wording. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
26. Issue E9 concerns the following violation: Failure to cover some services and supplies required to be covered under the Basic and Standard Plans. Respondent shall provide evidence to the Division that it has revised its Basic and Standard Plan Certificate of Coverage to correctly reflect all services and supplies to be covered as required by law. The Respondent shall work with the Division to ensure that no eligible person was denied coverage for dental injuries or diabetes supplies because of the contract wording. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
27. Issue E10 concerns the following violation: Failure to correctly cover complications resulting from non-covered services. Respondent shall provide evidence to the Division that it has revised its Certificates of Coverage, and all forms that contain the same or similar exclusions, to provide treatment of complications resulting from non-covered services. The Respondent shall work with the Division to ensure that no Member was denied coverage for surgical complications due to these restrictions. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
28. Issue E11 concerns the following violation: Failure to provide for coverage of biologically based mental illness on the same basis as physical illness, and to amend some plans to provide the mandated coverage for biologically based mental illness. Respondent shall provide evidence to the Division that it has revised these and all forms that contain similar language to provide mental illness coverage as specified by law. The Respondent shall work with the Division to ensure that no eligible person was denied coverage or had coverage for mental illness limited because of the contract wording. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.

29. Issue E12 concerns the following violation: Failure to provide notification to Members upon termination of their providers' contract with the HMO. Respondent shall provide evidence to the Division that it has revised all forms to accurately reflect the time frame required by law for notification to Members upon the termination of their providers' contract with the HMO. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
30. Issue E13 concerns the following violation: Failure to include the Mandatory Disclosure Statement on Small Group Application Forms. Respondent shall provide evidence to the Division that it has revised its Small Group Application Forms to include the mandatory disclosure statement. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
31. Issue E14 concerns the following violation: Failure to state correctly in Membership Certificates that the Open Enrollment Period is a period of at least one month. Respondent shall provide evidence to the Division that it has revised all forms to specify that the enrollment period shall be at least thirty (30) days. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
32. Issue E15 concerns the following violation: Failure to provide full and correct information concerning Special Enrollees. Respondent shall provide evidence to the Division that it has revised its forms to ensure coverage is provided for all special enrollees as specified by law. Respondent shall work with the Division to ensure that no eligible person was improperly denied enrollment. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
33. Issue E16 concerns the following violation: Failure to comply with the required procedures for utilization review. Respondent shall provide evidence to the Division that it has revised its utilization review procedures as described in the Certificates of Coverage to comply with Colorado law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
34. Issue E17 concerns the following violation: Failure to file forms in accordance with law and to maintain records of filings. Respondent shall provide evidence to the Division that it has revised its procedures to ensure timely filing of forms, including application forms. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.

35. Issue E18 concerns the following violation: Failure to uniformly provide for first level appeal decision notification within twenty (20) working days. Respondent shall provide evidence to the Division that it has removed from all forms the extended time frame wording for first level review appeals. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
36. Issue E19 concerns the following violation: Failure to conform Group Agreements and Service Agreements to the requirements of law concerning contract termination. Respondent shall provide evidence to the Division that it has revised its group agreements to conform to law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
37. Issue E20 concerns the following violation: Failure to conform Service Agreements to the requirements of law concerning dependent eligibility. Respondent shall provide evidence to the Division that it has revised its Service Agreements to conform to the requirements of law concerning dependent eligibility. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
38. Issue E21 concerns the following violation: Failure to provide for conversion coverage of all medically certified disabled dependents by restricting the conversion privilege to a developmentally disabled or physically handicapped dependent. Respondent shall provide evidence to the Division that it has revised its Basic and Standard Certificates of Coverage to provide for conversion coverage of a disabled dependent as required by law. The Respondent shall work with the Division to ensure that no disabled dependent was denied conversion coverage because of this contract wording. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
39. Issue E22 concerns the following violation: Failure to provide Coordination of Benefits as required by law. Respondent shall provide evidence to the Division that it has revised its forms to provide for Coordination of Benefits as required by law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
40. Issue E23 concerns the following violation: Failure to maintain records. Respondent shall provide evidence to the Division that it has established procedures to ensure that records are maintained in accordance with law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
41. Issue E24 concerns the following violation: Failure to provide for the mandated dental anesthesia benefits for dependent children. Respondent shall provide

evidence to the Division that it has revised all forms to provide the mandated dental anesthesia benefits for dependent children. The Respondent shall work with the Division to ensure that no Member was denied benefits for dental anesthesia. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.

42. Issue E25 concerns the following violation: Failure to provide for the mandated coverage of diabetes equipment, supplies, and self-management education. Respondent shall provide evidence to the Division that it has revised its forms to provide for the mandated diabetic coverage. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
43. Issue F1 concerns the following violation: Failure to charge rates as filed. Respondent shall provide evidence to the Division that it has established procedures to ensure that the rates being charged are the rates filed with the Division. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
44. Issue G1 concerns the following violation: Failure to state on application and renewal forms that the Employer is entitled to a choice of composite rates or four-tier family, age banded rates and to see what the premium would be quoted either way. Respondent shall provide evidence to the Division that it has revised its application and renewal forms to provide the required disclosure statement. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
45. Issue G2 concerns the following violation: Failure to state on application and renewal forms the required disclosure statement regarding rate setting and premium impact. Respondent shall provide evidence to the Division that it has revised its solicitation materials to include the required disclosure statement. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
46. Issue G3 concerns the following violation: Failure to obtain correct waivers of coverage. Respondent shall provide evidence to the Division that it has established procedures to ensure that waiver forms for declining coverage, as required by law, are received. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
47. Issue G4 concerns the following violation: Failure to obtain census data. Respondent shall provide evidence to the Division that it has established procedures to ensure that a complete list of eligible employees and dependents of eligible employees is obtained upon submission of a small group application. The

Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.

48. Issue G5 concerns the following violation: Failure to comply with law when using age-banded vs. composite rates for Small Employers. Respondent shall provide evidence to the Division that it has revised its applications to ensure that rates are offered and provided according to law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
49. Issue G6 concerns the following violation: Failure to observe the plan sponsor's right to choose the length of the waiting period. Respondent shall provide evidence to the Division that it has revised its Small Group Proposal forms to specify that the plan sponsor has the right to determine the employee waiting period. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
50. Issue G7 concerns the following violation: Failure to correctly state the age limit for dependent students. Respondent shall provide evidence to the Division that it has revised all forms to correctly define dependent. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
51. Issue G8 concerns the following violation: Failure to correctly define eligible employee. Respondent shall provide evidence to the Division that it has revised all application forms to correctly define the work requirement for an eligible employee.
52. Issue H1 concerns the following violation: Failure to offer the Basic and Standard plans upon termination of the group plan or upon termination of an enrollee's coverage under the group plan, and failure to maintain records of offers. Respondent shall provide evidence to the Division that it has revised its procedures to ensure that the Basic and Standard plans are offered upon termination from group coverage and that records of these offers are maintained. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
53. Issue H2 concerns the following violation: Failure to maintain cancellation/termination records. Respondent shall provide evidence to the Division that it has revised its procedures to ensure that records are maintained as required by law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
54. Issue H3 concerns the following violation: Failure to terminate small group coverage in a consistent manner and consistent with law. Respondent shall provide evidence to the Division that it has revised its procedures to ensure that

small group terminations are processed in a timely manner, and consistent with law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.

55. Issue J1 concerns the following violation: Failure to accurately process claims. Respondent shall provide evidence to the Division that it has established procedures to ensure accurate processing of claims.
56. Issue J2 concerns the following violation: Failure to pay eligible charges. Respondent shall provide evidence to the Division that it has reviewed and modified its quality controls to ensure that the processing staff is properly trained to make appropriate decisions and thus avoid denying eligible claims. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
57. Issue K1 concerns the following violation: Failure to provide the notification of decision on first level appeals within the required time frame. Respondent shall provide evidence to the Division that it has reviewed its procedures and implemented appropriate changes to ensure that the notification of decisions involving first level appeals are sent within the time frame specified by law.
58. Issue K2 concerns the following violation: Failure to advise in acknowledgement letters, the correct time frame as allowed by law to make a decision involving a first level appeal. Respondent shall provide evidence to the Division that it has reviewed its procedures and implemented appropriate changes to ensure that members are informed correctly of the time frame, as specified by law, in which their appeals will be resolved. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
59. Issue K3 concerns the following violation: Failure to include all of the information required by law in the notification of an adverse decision involving first level appeals. Respondent shall provide evidence to the Division that it has reviewed its procedures and implemented appropriate changes to ensure that all notifications of adverse decisions contain all of the information required by law to be provided to Members. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
60. Issue K4 concerns the following violation: Failure to inform Members of their rights as required by law in second level appeal letters. Respondent shall provide evidence to the Division that it has reviewed its procedures and implemented appropriate changes to ensure that members are informed of their rights at a second level appeal as provided by law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.

61. Pursuant to § 10-1-205(3)(d), C.R.S., Respondent shall pay a civil penalty to the Division in the amount of forty thousand and no/100 dollars (\$40,000). This fine represents a combined fine for the cited violations of Colorado law. This fine was calculated in accordance with Division guidelines for assessing penalties and fines, including Division bulletin No. 1-98, issued on January 1, 1998.
62. Unless otherwise specified in this Order, all requirements with this Order shall be completed within thirty (30) days of the date of this Order. Respondent shall submit written evidence of compliance with all requirements to the Division within the thirty (30) day time frame, except where Respondent has already complied, as specifically noted in the Order. Copies of any rate and form filings shall be provided to both the rate and forms section and the market conduct section. All audit reports must be received within ninety (90) days of the Order, with a summary of the findings, including an accounting of all monetary payments to covered persons.
63. This Order shall not prevent the Division from commencing future agency action relating to conduct of the Respondent not specifically addressed in the Report, not resolved according to the terms and conditions in this Order, or occurring before or after the examination period. Respondent's failure to comply with the terms of this Order may result in additional proceedings, penalties and sanctions as provided for by law.
64. Copies of the examination report, the Respondent's explanation, and this final Order will be made available to the public no earlier than thirty (30) days after the date of this Order, subject to the requirements of § 10-1-205, C.R.S.
65. **WHEREFORE:** It is hereby ordered that the findings and conclusions contained in the final Report dated December 31, 1998, are hereby adopted as may be modified by this Order, and are filed and made an official record of this office. The above Order is hereby approved this 26<sup>th</sup> day of July, 2000.



William J. Kirven III  
Commissioner of Insurance