



PRESIDENT
George D. Santos, MD

October 24, 2018

Texas Department of Insurance
Attn: Associate Commissioner Melissa Hield, JD
PO Box 149104
Austin, Texas 78714-9104

Dear Associate Commissioner Hield:

On behalf of our more than 11,500 physician and medical school members, the Harris County Medical Society (HCMS) has deemed it necessary to file a formal complaint against Aetna with the Texas Department of Insurance (TDI) regarding the de-selection of physicians from its networks and potential noncompliance with state law and regulation.

Enclosed you will find a copy of a letter from Aetna being sent to certain physicians in Harris County, Texas. The letter informs the physician he/she is no longer going to participate in the Aetna networks mentioned in the letter as of Jan. 1, 2019 by stating "We are de-designating you from this network [i.e., Choice POS II, Managed Choice, and Managed Choice Open Access] because you frequently refer to providers who do not participate in it." HCMS has the following issues:

1) The only (i.e., *sole*) reason that Aetna provides for termination in the attached termination-without-cause notice letter is "because you frequently refer to providers who do not participate in it." According to Texas Insurance Code §1301.0058(b):

"An insurer may not terminate the contract of or otherwise penalize a preferred provider **solely** because the provider's patients use out-of-network providers for medical or health care services." (emphasis added). Also, under subsection (a), "an insurer may not in any manner prohibit, attempt to prohibit, penalize, terminate, or otherwise restrict a preferred provider from communicating with an insured about the availability of out-of-network providers for the provision of the insured's medical or health care services."

2) Aetna's network termination notice letter does not contain any language informing physicians regarding their right to request a standard review prior to termination (much less an expedited review). Under 28 Texas Administrative Code §3.3706(d):

Before terminating a contract with a preferred provider, the insurer must provide written notice of termination, which includes:

- (1) The specific reason(s) for the termination; and
- (2) In the case of physicians or practitioners, **notice of the right to request a review** prior to termination that is conducted in the same manner as the review mechanism set forth in subsection (b)(2) of this section and that complies with the timelines set forth in subsections (e) – (h) of this section for requesting review, except in cases involving:
 - (A) Imminent harm to patient health;

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(B) An action by a state medical or other physician licensing board or other government agency which impairs the physicians' or practitioner's ability to practice medicine or to provide services;
or

(C) Fraud or malfeasance. (emphasis added).

3) Based upon information contained on Aetna's website in the broker section, TDI appears to have regulatory authority over some (*if not all*) of these network products (e.g., Aetna Open Access® Managed Choice appears to be offered as a fully-insured preferred provider benefit (PPO) network product).¹ TDI's website also lists Managed Choice POS as being subject to TDI oversight as it is listed as having an "approved PPBP network access plan."²

HCMS is requesting the following actions from TDI with regard to Aetna's de-selection of physicians:

- Investigate this matter to assess Aetna's compliance (or lack thereof) with state laws and regulations;
- Assess: (1) the scope of Aetna's terminations for referring to out-of-network providers and (2) any impact Aetna's network terminations have on Aetna's network adequacy compliance;
- Enforce all applicable state laws and regulations on Aetna regarding physicians' rights when de-selected from a plan network; and

Take any steps within its authority to prevent and remediate any terminations found to be in violation of state law or regulations, as well as impose any penalties and other sanction authorized under state law for any such violations.

If you have any questions, please contact Pat Harris, SVP at 713-524-4267 or email her at pat_harris@hcms.org.

Thank you for your time and consideration into this matter. I look forward to your response.

Sincerely,



George D. Santos, MD
President

CC: Commissioner Kent Sullivan, JD, Texas Dept. of Insurance
Deputy Commissioner Mark Einfalt, JD, Compliance, Texas Dept. of Insurance
Deputy Commissioner Michael Nored, JD, Legal and Enforcement Division, Texas Dept. of Insurance
Anthony Chapple, Senior Associate VP, Division of Medical Economics, Texas Medical Association
Genevieve Davis, Associate VP, Payment Advocacy, Texas Medical Association

¹ See <https://www.aetna.com/insurance-producer/health-plans-insurance/network-option-plans.html>
<https://www.aetna.com/individuals-families/member-rights-resources/rights/disclosure-information.html>

² See: <https://www.tdi.texas.gov/hmo/mcqa/aetnaopchppowvr.html>

Sen. Kelly Hancock, Ch. Senate Business & Commerce committee
Sen. Brandon Creighton, V-Ch, Senate Business & Commerce committee
Rep. Larry Phillips, Ch. House Insurance committee
Rep. Sergio Munoz, Jr., V-Ch, House Insurance committee

Enclosures