

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
HEALTH CARE BUREAU

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In the Matter of

Assurance No. 18-001

**Investigation by ERIC T. SCHNEIDERMAN,  
Attorney General of the State of New York, of**

Aetna Inc.,

Respondent.

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**ASSURANCE OF DISCONTINUANCE**

The Office of the Attorney General of the State of New York (“OAG”) commenced an investigation pursuant to Executive Law Section 63(12) into certain privacy breaches by Aetna Inc. (“Aetna”), through its mailing of material which improperly disclosed member Protected Health Information (“PHI”). This Assurance of Discontinuance (“Assurance”) contains the findings of OAG’s investigation and the relief agreed to by OAG and Aetna, whether acting through its respective directors, officers, employees, representatives, agents, affiliates, or subsidiaries, etc. (collectively, the “Parties”).

**I. BACKGROUND**

1. Human Immunodeficiency Virus (“HIV”)-related stigma continues to be a barrier that must be overcome in supporting those living with HIV and stopping the spread of HIV and Acquired Immunodeficiency Syndrome (“AIDS”). In fact, 90% of Americans recognize that people living with HIV and AIDS face prejudice and discrimination. *See* Henry J. Kaiser Family Foundation, the Washington Post/Henry J. Kaiser Family Foundation 2012 Survey of Americans

on HIV/AIDS (July 2012). More than half of Americans say they feel some discomfort with people with HIV/AIDS. *Id.* And roughly one in eight people living with HIV is denied health services because of such stigma and discrimination associated with HIV and AIDS. *See HIV Stigma and Discrimination*, AVERT, <https://w.avert.org/professionals/hiv-social-issues/stigma-discrimination> (last visited Jan. 10, 2018).

2. Thus, an improper disclosure of a person's HIV or AIDS status can often result in the denial of proper health care, poor treatment in educational and work settings, and many other collateral consequences. *Activities Combating HIV Stigma and Discrimination*, HIV.gov, <https://www.hiv.gov/federal-response/federal-activities-agencies/activities-combating-hiv-stigma-and-discrimination> (last visited Jan. 10, 2018).<sup>1</sup> Moreover, for the roughly one million Americans living with HIV/AIDS, the “painful stigma and discrimination continue to permeate their daily lives.” *Eradicating Discrimination Against People Living With HIV/AIDS*, U.S. Dept. of Justice Archives, <https://www.justice.gov/archives/opa/blog/eradicating-discrimination-against-people-living-hivaids> (last visited Jan. 10, 2018).

3. To ensure that its residents feel safe to come forward to be tested and treated for HIV, the State of New York has enacted HIV-specific privacy provisions designed to protect the confidentiality of health information. *See, e.g.*, N.Y. Pub. Health Law §§ 18 and 2782.

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<sup>1</sup> “HIV stigma and discrimination can pose complex barriers to prevention, testing, treatment, and support for people living with or at risk for HIV. Some examples of stigma include being shunned by family, peers, and the wider community; receiving poor treatment in health care and education settings; and experiencing judgmental attitudes, insults, or harassment. Some individuals with HIV have been denied or lost employment, housing, and other services; prevented from receiving health care; denied access to educational and training programs; and have been victims of violence and hate crimes. HIV-related stigma and discrimination prevents individuals from learning their HIV status, disclosing their status even to family members and sexual partners, and/or accessing medical care and treatment, weakening their ability to protect themselves from getting or transmitting HIV, and to stay healthy.” *Activities Combating HIV Stigma and Discrimination*, HIV.gov, <https://www.hiv.gov/federal-response/federal-activities-agencies/activities-combating-hiv-stigma-and-discrimination> (last visited Jan. 10, 2018).

4. HIV-specific privacy laws and corresponding civil penalties are a valuable and effective policy measure, given the serious consequences resulting from an improper disclosure of a person's HIV or AIDS status. *Activities Combating HIV Stigma and Discrimination*, HIV.gov, <https://www.hiv.gov/federal-response/federal-activities-agencies/activities-combating-hiv-stigma-and-discrimination> (last visited Jan. 10, 2018).

5. Congress recognized the importance of protecting the privacy of all individually identifiable health information when it enacted the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), which established a Federal floor of safeguards to protect the confidentiality of medical information.

## II. OAG'S INVESTIGATION AND FINDINGS

As a result of the OAG's investigation, the OAG has made the following findings:

*a. Aetna's July 2017 Breach of Its Members' Privacy Rights*

6. Aetna is a covered entity within the meaning of HIPAA, and thus is required to comply with the HIPAA federal standards that govern the privacy of individually identifiable health information.

7. Prior to January 1, 2016, because some health plans administered by Aetna placed HIV Medications on the Specialty Drug List, some members were designated to obtain these medicines through mail order (and not a brick and mortar retail pharmacy) unless they were able to opt-out. Additionally, Aetna had alerted other members that there would be a 2015 plan change implementing the use of mail order for such medicines, although Aetna ultimately decided not to implement the change. Two separate class action lawsuits (*see Doe v. Aetna, Inc.*, No. 14-cv-2986 (S.D. Cal); *Doe v. Coventry Health Care, Inc.*, No 15-cv-62685 (S.D. Fla.) (collectively, the "*Doe* lawsuits")) were filed regarding the use of mail order to obtain HIV

Medications. The lawsuits claimed, among other things, that members were harmed by possible increased out-of-pocket financial responsibility and potential privacy concerns related to receiving medications by mail order.

8. The *Doe* lawsuits were ultimately resolved in 2017. As part of the settlement, the parties agreed that a letter would be sent to certain members to clarify their options for obtaining HIV Medications at brick and mortar retail pharmacies or by mail order.

9. Aetna then provided the personal health information of such members to its Outside Counsel, who in turn gave the information to a third party settlement administrator (“Settlement Administrator”), who then processed and carried out the mailing required by the settlement agreement.

10. At all times relevant, Outside Counsel was acting as Aetna’s business associate under a business associate agreement, performing services on Aetna’s behalf.

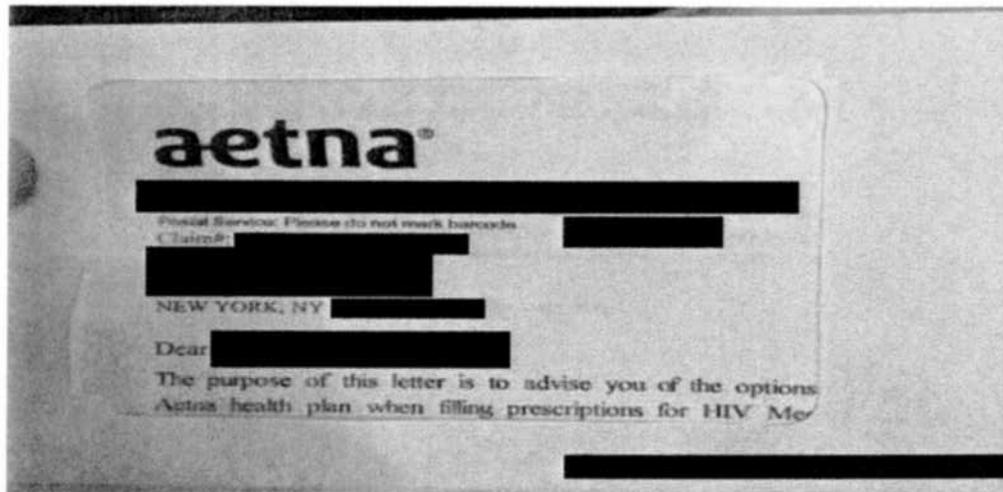
11. Neither Aetna nor counsel in the case, ensured that the Settlement Administrator entered into any business associate agreement with Aetna or its Outside Counsel.

12. Approximately 2,460 letters were sent to New Yorkers in envelopes with a large transparent glassine window on July 28, 2017.

13. On July 31, 2017, Aetna began receiving calls and emails from some members who had received the letter, claiming that the words “HIV Medications,” in whole or in part, could be seen through the envelope’s window.

14. As the following figure illustrates, due to the large-window envelope and the way in which the letters were folded and inserted in the envelope, individuals’ names, addresses, and claim numbers as well as the first several lines of letter containing instructions related to HIV

Medications were clearly visible from the outside of the envelope if the letter shifted in the envelope during delivery. Thus the mailing revealed the HIV status of some of the approximately 2,460 New Yorkers who received the letter to third parties.



15. On August 28, 2017, Plaintiff Andrew Beckett filed a putative class action complaint in the Eastern District of Pennsylvania, *Beckett v. Aetna, Inc. et al.* (Case No. 2:17-cv-03864 (JS)), which he amended in the First Amended Complaint (“FAC”) on December 5, 2017, to assert claims arising under New York State law on behalf of “[a]ll persons whose Aetna [July 28 mailing] was mailed to a New York address.” Specifically, pursuant to New York State law, the FAC asserts violations of N.Y. Gen. Bus. Law § 349(a) and N.Y. Pub. Health Law § 2780, et seq. The FAC seeks, *inter alia*, an “[a]ward[] of compensatory, statutory, exemplary, and punitive damage on behalf of Plaintiffs and the [New York] Class members[.]”<sup>2</sup>

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<sup>2</sup> The class action lawsuit is expected to resolve the damages question for members who received the mailing; therefore, this Assurance does not include or resolve those claims.

***b. Aetna's September 2017 AFib Mailing***

16. As part of a research study intended to improve anti-coagulant medication usage, Aetna identified 163 of its members residing in New York to receive educational materials based on their Atrial Fibrillation ("AFib") diagnosis with the intent to improve their medication adherence. On September 25, 2017 Aetna sent each of these members a mailing containing such educational materials.

17. Displayed on each envelope was the logo of the research study, "IMACT-AFIB," which could have been interpreted as indicating that the recipient member had an AFib diagnosis. No additional information about the member other than his/her name and address was included on the envelope. Aetna reported the mailing to the Office of Civil Rights. ("Impact AFib Notice").

***c. Additional Aetna Notifications to HHS***

18. In addition to the two mailing incidents described above, within 24 months, Aetna reported three other breaches to the Department of Health & Human Services ("HHS"), as it is required to do when such breaches affect 500 or more individuals. In total, these three incidents reported by Aetna affected over 25,000 individuals, some of whom are believed to reside within the State of New York. HHS, which is required to post a list of breaches of unsecured protected health information affecting 500 or more individuals, has posted information for these three privacy breaches by Aetna.

***d. Aetna's Representations with Regard to Member Privacy***

19. On Aetna's publically accessible website, the company acknowledges, *inter alia*, that HIPAA (in addition to other federal and state privacy laws) requires health care companies like Aetna to keep patient information confidential. *See Privacy FAQs*, Aetna,

<https://www.aetna.com/faqs-health-insurance/about-us-privacy-faqs.html> (last visited Jan. 10, 2018). The confidential information would include “[a]nything your doctors, nurses, and others put in your medical record.” *Id.* The website asserts that an Aetna member could “[d]ecide if you want to give your permission before your information can be used or shared,” as well as “[g]et a report on when and why your information was shared for certain purposes[.]” Aetna assures members that in service of privacy it would:

- Put safeguards in place to protect [such] information
- Limit the use and disclosure of your information to the minimum needed to accomplish our goals
- Enter into agreements with [Aetna’s] contractors and others to make sure they use and disclose your information properly and safeguard it appropriately
- Have procedures in place to limit who can see your information
- Hold training programs for employees to learn how to protect your information

*Id.* Indeed, Aetna also claims that it has “extensive operational and technical protections in place” to protect its members’ personal health information, and that it was “continually improving and updating as part of [Aetna’s] existing commitment to information privacy and compliance with legislation such as HIPAA and state privacy laws.” *Personal Health Record (PHR) FAQs*, Aetna, <https://www.aetna.com/faqs-health-insurance/personal-health-record-faqs.html> (last visited Jan. 10, 2018).

20. Plan documents that describe Aetna health plans of which New York residents are members represent that [i]nformation contained in the medical records of Members and information received from any Provider incident to the provider-patient relationship shall be kept

confidential in accordance with applicable law. Information may be used or disclosed by HMO when necessary for a Member's care or treatment, the operation of HMO and administration of this [Explanation of Coverage], or other activities, as permitted by applicable law.

21. Aetna's own policy, "Use and Disclosure of Member Protected Health Information ("PHI")," states that Aetna "will safeguard member PHI from impermissible and unauthorized use and disclosure in accordance with federal and state law, the Company's Code of Conduct, and industry standards."

*e. Aetna Privacy Practice Changes*

22. Aetna asserts that it has modified or is in the process of modifying its Standard Operating Procedure for Print/Mailing Quality-Prevention of PHI/unwanted disclosure(s) ("Standard Operating Procedure # PRINT MAILING") and Use of Protected Health Information in Litigation – Best Practices Policy ("Standard Operating Procedure # LITIGATION"), (collectively referred to herein as "New Operating Procedures"), in the following manner:

- a. Standard Operating Procedure # PRINT MAILING applies to all Aetna business units.
- b. To use only the minimum necessary member PHI and/or Personally Identifiable Information ("PII"), Aetna now requires that a production attestation be used throughout all Aetna business areas to document instances in which use of Aetna member PHI or PII is contemplated in a member-facing mailing. This procedure requires that each business area and its privacy manager approve whether including PHI or PII is absolutely necessary in any new or changed printed member mailing. This procedure also requires approval of anything printed on the envelope itself. In addition, this procedure prohibits print vendors from processing any member-facing print material containing PHI/PII without an attestation form.
- c. When, as a result of their review of the production attestation a business area manager and privacy manager determine that the use of PHI and/or PII is absolutely necessary, the new Standard Operating Procedure # PRINT MAILING requires that:

- i. All print projects be performed through Aetna's Print Procurement Team for print sourcing. It also prohibits business areas from contracting directly with third party print vendors.
  - ii. The Print Procurement Team maintains a procedure to ensure that no information is positioned anywhere near an envelope's window, and requires a cover sheet, in certain situations, such that only the member's name and address will appear on the first page of any mailing.
- d. Aetna shall require employees to be trained on Standard Operating Procedure # PRINT MAILING as part of Aetna's annual code of conduct training process, and no less frequently than annually thereafter. Aetna shall also require new Aetna employees to be trained on Standard Operating Procedure # PRINT MAILING within thirty days of his or her date of hire, and no less frequently than annually thereafter.
- e. In 2018, Aetna will conduct an internal audit of the process and controls implemented in Standard Operating Procedure # PRINT MAILING.
- f. Standard Operating Procedure # LITIGATION applies to the litigation business area.
- g. Standard Operating Procedure # LITIGATION shall adopt comprehensive, best practices policies and procedures for the use of PHI in litigation in which Aetna is a party, and shall establish specialized processes for litigation involving heightened privacy concerns, including health plan members' HIV-related and behavioral health and substance use disorder information. Standard Operating Procedure # LITIGATION shall set forth policies and procedures for the disclosure of PHI when Aetna is not a party to an action. Standard Operating Procedure # LITIGATION is designed to provide best practices in addition to satisfying any existing legal requirements.
- h. Standard Operating Procedure # LITIGATION requires that Aetna implement initial and annual training of the best practices in handling PHI in litigation for Aetna's litigation staff and retained litigation counsel on Aetna matters. Relevant litigation staff includes all personnel who may receive or transmit PHI, or who are responsible for the maintenance of records containing PHI, and may include non-lawyers.
- i. In 2018, Aetna will conduct a review of the process and controls implemented in Standard Operating Procedure # LITIGATION.

### III. RELEVANT NEW YORK STATE AND FEDERAL LAW

23. The New York State Executive Law prohibits “repeated fraudulent or illegal acts” in conduct of any business, trade or commerce, and allows the OAG to institute a special proceeding for restitution, damages, and/or injunctive relief against any party which has committed such acts. N.Y. Exec. Law § 63(12).

24. Section 18 of the Public Health Law describes the process that health care providers must follow when making disclosures of patient information to third parties:

Whenever a health care provider, as otherwise authorized by law, discloses patient information to a person or entity other than the subject of such information or to other qualified persons, either a copy of the subject’s written authorization shall be added to the patient information or the name and address of such third party and a notation of the purpose for the disclosure shall be indicated on the file or record of such subject’s patient information maintained by the provider[.]

N.Y. Pub. Health Law § 18(6). The statute further provides that “[a]ny disclosure made pursuant to this section shall be limited to that information necessary in light of the reason for disclosure. Information so disclosed should be kept confidential by the party receiving such information and the limitations on such disclosure in this section shall apply to such party.” *Id.*

25. New York General Business Law (“GBL”) § 349 provides that “[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in [New York] are ... unlawful.”

26. The OAG finds that Aetna’s July 28, 2017 mailing and its September 25, 2017 mailing are in violation of HIPAA (45 C.F.R. § 164.502; 42 U.S.C. § 1320d-5), N.Y. Gen. Bus. Law § 349, N.Y. Pub. Health Law § 18(6), and N.Y. Exec. Law § 63(12).

27. Aetna neither admits nor denies the OAG's assertions, allegations and findings set forth in Paragraphs 1 through 21, 24 and 26 above.

28. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. Aetna agrees to this Assurance in settlement of claims asserted herein and intending that this Assurance will promote further and ongoing cooperation between Aetna and the OAG concerning Aetna's compliance with the laws referenced herein. THEREFORE, the OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of Executive Law based on the conduct described above.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

**RELIEF**

29. Programmatic Relief:
- a. Aetna shall maintain the modifications already made to its New Operating Procedures described in paragraph 22, and complete the remainder within 120 days of the Effective Date of this Assurance. For a period of two (2) years following the Effective Date of this Assurance, Aetna shall notify the OAG of **any** proposed material changes to its New Operating Procedures at least 30 days in advance of implementing proposed changes.
  - b. Aetna shall provide to the OAG a copy of all audit reports produced pursuant to paragraph 22 of this Assurance, within thirty (30) days of completion.
  - c. Acceptance of this Assurance by OAG is not an approval or endorsement by OAG of any of Aetna's practices or procedures, and Aetna shall make no representation to the contrary.

d. *Compliance with Other Obligations.* In the event that Aetna reasonably believes that the performance of its obligations under any provision of this Assurance would conflict with any federal or state law or regulation that may be enacted or adopted after the Effective Date of this Assurance such that compliance with both this Assurance and such provision of law or regulation is not possible, Aetna shall notify the OAG promptly and the Parties shall meet and confer at their earliest convenience to attempt to resolve such conflict.

30. Oversight:

a. *Independent Consultant:* Within sixty (60) days of the Effective Date of this Assurance, Aetna shall submit to the OAG (i) the names and addresses of three (3) independent consultants with appropriate experience and expertise in privacy matters in the healthcare industry to conduct the monitoring and reporting set forth in this paragraph, and (ii) their respective monitoring proposals for OAG approval. Within ninety (90) days of the Effective Date of this Assurance, Aetna shall engage, for a period of two (2) years, the services of an independent consultant whose proposal is among those approved by the OAG (“Consultant”). The Consultant shall review all Aetna’s policies and standard operating procedures related to member privacy, confidential information, PHI and/or PII, including plans to disseminate the policies and employee training on the privacy policies, to insure compliance with all applicable federal and New York State laws and shall monitor Aetna’s compliance with its obligations under paragraph 29 of this Assurance.

- i. Within sixty (60) days of engagement, the Consultant shall provide an initial report to the OAG regarding his/her findings.
  - ii. Following the initial report, the Consultant shall, at twelve months and again at twenty-four (24) months from the Effective Date of this Assurance, submit additional reports on the status of Aetna's compliance with this Assurance and on its compliance with applicable federal and state law.
  - iii. These reports will also include recommendations for enhancement of privacy policies in an effort to maintain best practices in the privacy area.
  - iv. At the discretion of the OAG, the Consultant shall be extended for a one year period if Aetna is not in substantial compliance with this Assurance or if the Consultant identifies significant material recommendations for enhancement of privacy policies in his or her final report.
- b. *Periodic Compliance Reports:* Aetna shall provide the OAG with a report detailing its compliance with the requirements set forth in this Assurance, paragraph 29 (Programmatic Relief), to be submitted to the OAG within one hundred twenty (120) days of the Date of this Assurance. This report shall be in writing and shall set forth in detail the manner and form of compliance with this Assurance, and shall be signed by Aetna. Thereafter, a report of compliance shall be submitted to OAG on an annual basis for the following two (2) years. In any case where the circumstances warrant, the OAG may require Aetna to file an interim report of compliance upon thirty (30) days' notice.

- c. *Compliance Report or Certificate on Demand:* At any time through two years from the Effective Date of this Assurance, and upon thirty (30) days written notice from the OAG, Aetna shall provide the OAG with a report detailing and a certification affirming its compliance with the requirements set forth in this Assurance, paragraph 29 (Programmatic Relief).
  - d. *Record Keeping Requirements:* Aetna shall retain all records relating to its obligations hereunder, including outreach, training, special programs, and other activities as set forth herein, until at least three years from the Effective Date of this Assurance. During that time, Aetna shall, upon thirty (30) days written notice from the OAG, provide all documentation and information necessary for the OAG to verify compliance with this Assurance.
31. Monetary Relief
- a. Aetna shall pay to the State \$1,150,000 in penalties. Payment shall be made in full within ten (10) business days of the Effective Date of this Assurance and receipt of wiring instructions from OAG, whichever is later.
  - b. Payments shall be made by wire transfer to the “State of New York”, and shall reference Assurance No. 18-001. Notice of wire transfer payment shall be sent to Susan J. Cameron, Deputy Bureau Chief; State of New York, Office of the Attorney General, Health Care Bureau, 120 Broadway, New York, NY 10271-0332 and via e-mail at [susan.cameron@ag.ny.gov](mailto:susan.cameron@ag.ny.gov).

32. Enforcement

- a. Aetna expressly agrees and acknowledges that a default in the performance of any obligation under this Assurance, after written notice of the default is provided to Aetna by the OAG and Aetna does not cure such default within ten (10) days of receipt of such notice (or such longer time as necessary to remedy the default as agreed to by the OAG, which agreement shall not to be unreasonably withheld), is a violation of the Assurance. Aetna further agrees and acknowledges that the OAG thereafter may commence the civil action or proceeding consistent with Executive Law § 63(15).

**MISCELLANEOUS**

Subsequent Proceedings.

33. In any subsequent investigation, civil action, or proceeding by the OAG to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 40, Aetna expressly agrees and acknowledges:

- a. that any statute of limitations or other time-related defenses are tolled from and after the Effective Date of this Assurance;
- b. that the OAG may use statements, documents or other materials produced or provided by Aetna prior to or after the Effective Date of this Assurance;
- c. that any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Aetna irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue.

34. If a court of competent jurisdiction determines that Aetna has violated the Assurance, Aetna shall pay to the OAG the reasonable cost, if any, of obtaining such

determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

Effects of Assurance:

35. This Assurance is not intended for use by any third party in any other proceeding.

36. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of Aetna's applicable business operations with respect to such operations as of the Effective Date of this Assurance, regardless of how such applicable business operations are structured within the successor, assignee or transferee. For an avoidance of doubt, this Assurance shall not apply to any pre-existing business operations of any successor, assignee or transferee of Aetna's applicable business operations. Aetna will provide notice of the obligations under this Assurance to any acquiring entity of Aetna's applicable business operations during the term of this Assurance.

37. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

38. Any failure by the Attorney General to insist upon the strict performance by Aetna of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the Attorney General, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by Aetna.

Communications:

39. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 18-001, and shall be in writing and shall, unless

expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to Aetna, to: Ed Neugebauer, or in his/her absence, to the person holding the title of Chief Litigation Officer.

If to the OAG, to: Susan J. Cameron, Deputy Bureau Chief, Health Care Bureau, or in his/her absence, to the person holding the title of Bureau Chief, Health Care Bureau.

Representations and Warranties:

40. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by Aetna and its counsel and the OAG's own factual investigation as set forth in paragraphs (1)-(22) above. Aetna represents and warrants that neither it nor its counsel has made any material representations to the OAG that are inaccurate or misleading. If any material representations by Aetna or its counsel are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

41. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Aetna in agreeing to this Assurance.

42. Aetna represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized.

General Principles:

43. Unless a term limit for compliance is otherwise specified within this Assurance, Aetna's obligations under this Assurance are enduring. Nothing in this Agreement shall relieve Aetna of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

44. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that Aetna violates the Assurance after its Effective Date.

45. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

46. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

47. Aetna acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel as a compromise of disputed claims.

48. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

49. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

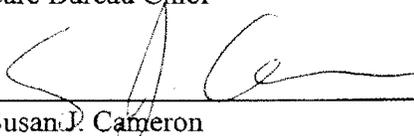
50. This Assurance may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

51. The effective date of this Assurance shall be the date this Assurance is signed by all parties ("Effective Date").

ERIC T. SCHNEIDERMAN  
Attorney General of the State of New York  
120 Broadway  
New York, NY 10271

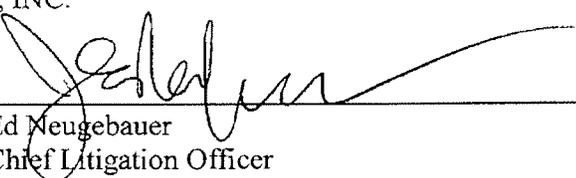
LISA LANDAU  
Health Care Bureau Chief

By:

 1/23/18  
\_\_\_\_\_  
Susan J. Cameron  
Deputy Bureau Chief  
Health Care Bureau

AETNA, INC.

By:

  
\_\_\_\_\_  
Ed Neugebauer  
Chief Litigation Officer

STATE OF PA )

COUNTY OF Montgomery )

ss.:

On this 19<sup>th</sup> day of January, 2018, Ed Neugebauer, known personally to me to be the Chief Litigation Officer of Aetna Inc., appeared before the undersigned and acknowledged to me that he, as such officer and being authorized so to do, executed the within instrument for the purposes therein set forth, on behalf of the RESPONDENT, by his signature on the instrument as such officer.

Sworn to before me this

19<sup>th</sup> day of January, 2018

Gail Christiansen

