

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
HEALTH CARE BUREAU

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In the Matter of

AETNA HEALTH INC.;  
AETNA HEALTH INSURANCE COMPANY OF NEW YORK;  
AETNA LIFE INSURANCE COMPANY

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**ASSURANCE OF DISCONTINUANCE  
PURSUANT TO EXECUTIVE LAW  
SECTION 63, SUBDIVISION 15**

Pursuant to the provisions of Executive Law § 63(12), Eliot Spitzer, Attorney General of the State of New York, caused an inquiry to be made into the manner in which Aetna Health Inc., Aetna Health Insurance Company of New York and Aetna Life Insurance Company adjudicate health insurance claims for coverage of enteral formulas. Based upon his inquiry, the Attorney General has made the following findings:

1. Aetna Health Inc. is authorized as an HMO pursuant to Article 44 of the Public Health Law, and its principal place of business is at 99 Park Avenue, New York, NY. Aetna Health Insurance Company of New York (“AHIC”) is licensed to write accident and life insurance as defined in Insurance Law § 1113(a)(3), and its principal place of business is at 980 Jolly Road, U14C, PO Box 1109, Blue Bell, PA. AHIC’s business is composed solely of out-of-network Point of Service (“POS”) business generated on products issued by its HMO affiliate, Aetna Health Inc. Aetna Life Insurance Company (“Aetna Life”) is licensed to write accident and life insurance as defined in Insurance Law § 1113(a)(3), and its principal place of business is 151 Farmington Avenue, Hartford, CT. For the purposes of this Assurance of Discontinuance, Aetna Health Inc., AHIC and Aetna Life are referred to collectively as “Aetna.”

2. In November 2005, the Attorney General received a complaint from an individual covered under an Aetna POS health plan (“Complainant”). The Complainant alleged that Aetna improperly denied payment of health insurance claims submitted on behalf of his infant son for Neocate enteral formula prescribed by his son’s pediatric gastroenterologist.

3. Complainant’s certificate of coverage states the following:

Coverage shall include enteral formulas for home use when prescribed by a Provider licensed to prescribe federal legend prescription drugs or medicines. The written order shall state that the enteral formula is clearly Medically Necessary and has been proven effective as a disease-specific treatment regimen for Members who are or will become malnourished or suffer from disorders, which if left untreated, cause chronic physical disability, mental retardation or death. Specific diseases for which enteral formulas have been proven effective shall include, but are not limited to, inherited diseases of amino-acid or organic acid metabolism, Crohn’s disease, gastroesophageal reflux with failure to thrive, disorders of gastrointestinal motility such as chronic intestinal pseudo-obstruction, and multiple, severe food allergies which if left untreated will cause malnourishment, chronic physical disability, mental retardation or death.

4. Aetna sent the Complainant a notice of claims denial in October 2005 stating that the enteral formula “is a non-covered service.”

5. On an initial appeal, Aetna upheld the denial stating, “‘enteral’ means tube-fed. As we interpret the legislation requiring the coverage of enteral formulas, Neocate does not qualify, as it is a bottle fed formula and not an enteral formula.”

6. The Attorney General investigated whether this interpretation conformed with New York State statutes mandating coverage of enteral formulas.

#### **APPLICABLE LAW**

7. In three separate statutory provisions, New York State law mandates that health plans provide coverage

for the cost of enteral formulas for home use for which a physician or other licensed health care provider legally authorized to prescribe under title eight of

the education law has issued a written order. Such written order shall state that the enteral formula is clearly medically necessary and has been proven effective as a disease-specific treatment regimen for those individuals who are or will become malnourished or suffer from disorders, which if left untreated, cause chronic physical disability, mental retardation or death. Specific diseases for which enteral formulas have been proven effective shall include, but are not limited to, inherited diseases of amino-acid or organic acid metabolism; Crohn's Disease; gastroesophageal reflux with failure to thrive; disorders of gastrointestinal motility such as chronic intestinal pseudo-obstruction; and multiple, severe food allergies which if left untreated will cause malnourishment, chronic physical disability, mental retardation or death.

(Insurance Law §§ 3216[i][21], 3221[k][11], 4303[y])

8. Neither these statutes nor their legislative histories define "enteral" or specify whether "enteral" as used in the statute means formulas taken orally or those that are tube-fed.

9. Common definitions of the term "enteral" do not exclude formulas taken orally. For instance, "enteral" is defined as "of, relating to, or being within the intestine" (American Heritage Dictionary of the English Language [4<sup>th</sup> ed 2000]). This definition is not limited to nutrition taken either orally or by tube feeding but, on its face, includes both.

10. New York State and Federal law indicate that, as used in other situations, "enteral" includes both oral and tube-fed nutrition.

### **ATTORNEY GENERAL'S INQUIRY AND FINDINGS**

11. Aetna did not process Complainant's Neocate claims in compliance with the Insurance Law provisions mandating coverage of enteral formulas. Instead, Aetna limited coverage of enteral formulas to only those formulas that were tube-fed, excluding coverage for orally administered enteral formulas. Therefore, the Attorney General finds that Aetna's denial of enteral formula claims, on grounds that the particular enteral formula is not a covered benefit because it is orally administered and not tube fed, violates Insurance Law §§ 3216(i)(21), 3221(k)(11) and 4303(y), and Executive Law § 63(12).

12. The Office of the Attorney General (“OAG”) recognizes that Aetna has been responsive to its inquiries regarding this matter.

IT NOW APPEARS that Aetna is willing to enter into this Assurance and the OAG is willing to accept this Assurance pursuant to Executive Law § 63(15) in lieu of commencing a statutory or other proceeding against Aetna pursuant to Executive Law § 63(12):

**I. INJUNCTIVE RELIEF**

13. Aetna shall comply with the New York State statutes mandating coverage of enteral formula and all other applicable laws and regulations, and specifically Aetna shall cease denying enteral formula claims on grounds that the particular enteral formula is not tube fed.

**II. RESTITUTION**

**A. Review of Denied Claims**

14. Complainant’s Claims. Aetna represents that the denials of Complainant’s enteral formula claims described above have now been reversed and appropriately resolved in compliance with New York State statutes mandating coverage of enteral formulas, this Assurance of Discontinuance and all other applicable laws.

15. Claims Pending Appeal. Aetna agrees that members’ claims for enteral formula that were denied on grounds that the formula was not tube fed and are pending appeal as of the Effective Date of this Assurance of Discontinuance will be processed or reprocessed, as appropriate, in accordance with the member’s Certificate of Coverage, this Assurance of Discontinuance, and applicable New York State laws.

16. Past Claims. Aetna agrees to re-adjudicate all enteral formula claims that were submitted within five years of the Effective Date of this Assurance of Discontinuance and denied solely on the basis that the formula was not a covered benefit because the formula was not tube

fed. Aetna shall re-adjudicate such claims in accordance with the member's Certificate of Coverage (except for filing deadline requirements), this Assurance of Discontinuance, and applicable New York State laws. If, after re-adjudicating a member's enteral formula claim, Aetna determines that such claim should have been covered, Aetna shall reimburse that member any amounts due in accordance with his or her Certificate of Coverage.

**B. Identifying Members Who Were Dissuaded From Submitting Claims**

17. Some Aetna members may have never submitted requests for coverage of orally administered enteral formulas as a result of receiving inaccurate and misleading information from Aetna or its agents and therefore would not appear in Aetna's records. In order to identify such members, Aetna shall invite all members who mistakenly believed that orally administered enteral formulas would not be covered under their Certificates of Coverage to submit requests for reimbursement of any out-of-pocket costs they incurred within five years of the Effective Date of this Assurance of Discontinuance, in purchasing orally administered enteral formulas for themselves or other individuals covered under their Certificates of Coverage.

18. Aetna shall make such an invitation, within 60 days of the Effective Date of this Assurance of Discontinuance, by: (a) posting a notice on its website homepage with the appropriate hyperlink to its "Members and Consumers" section and (b) placing said invitation in at least one newspaper published in each county in New York State, once per week for two weeks. Aetna shall send copies of the invitation and/or notice to the Office of Attorney General at least two weeks prior to their publication.

19. Members, whether they are notified by the website or the newspaper, shall have 120 days from date of the last newspaper notice to submit a request for reimbursement, plus

documentation evidencing the out-of-pocket expenses and such other documentation as agreed to by the OAG. Aetna shall review requests for reimbursement in accordance with the member's Certificate of Coverage, this Assurance of Discontinuance, and applicable New York State laws and issue any reimbursements that may be owed to those Members within 60 days of receipt of such requests for reimbursement.

20. All reimbursements made by Aetna pursuant to this section shall include interest in the amount of six percent per annum, calculated from the date the member or former member incurred liability.

21. Members shall have all rights to file an appeal of Aetna's denial (in whole or in part) of a request for reimbursement in accordance with the member's Certificate of Coverage and applicable New York State laws.

### **III. REPORT TO ATTORNEY GENERAL**

22. Within 180 days from the Effective Date of this Assurance of Discontinuance, Aetna shall report to the OAG on all claims and requests for reimbursement, if any, which were reviewed pursuant to this Assurance of Discontinuance. This report shall include the following:

- (a) a copy of the notification on Aetna's website and in newspapers;
- (b) a list of the appeals, claims and requests for reimbursement that were received and/or reviewed by Aetna, including each member's name, address and ID number, the amount of each claim, the amount Aetna reimbursed the member, if any, and if no reimbursement was made, the reason for not doing so.

23. Any notices or reports sent to the Attorney General pursuant to this Assurance of Discontinuance shall be mailed to:

John D. Powell  
Office of Attorney General  
Health Care Bureau  
The Capitol  
Albany, NY 12224

#### **IV. COSTS**

24. Aetna shall pay a total of \$25,000 to the OAG pursuant to Executive Law § 63(15) for costs incurred during the investigation of this matter by the OAG. This payment shall be made within 30 days of the Effective Date of this Assurance of Discontinuance.

#### **V. MISCELLANEOUS**

25. Aetna hereby accepts the terms and conditions of this Assurance of Discontinuance and waives any right to challenge it in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules or in any other action or proceeding.

26. Nothing in this Assurance of Discontinuance shall limit in any way the ability of the OAG to investigate or take other action with respect to any non-compliance at any time by Aetna with respect to any other applicable law.

27. Nothing herein shall be construed to deprive any consumer or other person or entity of any private right under the law.

28. This Assurance of Discontinuance shall be binding on and enforceable against Aetna and any successors or assigns of Aetna, including but not limited to any future owner or operator of Aetna.

**VI. EFFECTIVE DATE**

29. This Assurance of Discontinuance is effective on May 15, 2006.

IN WITNESS THEREOF, the undersigned subscribe their names:

Dated: Hartford, CT  
May \_\_\_\_, 2006

**AETNA HEALTH INC;  
AETNA HEALTH INSURANCE COMPANY  
OF NEW YORK;  
AETNA LIFE INSURANCE COMPANY**

By: \_\_\_\_\_  
\_\_\_\_\_  
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CONSENTED TO:

Dated: Albany, New York  
May \_\_\_\_, 2006

**ELIOT SPITZER**  
Attorney General of the State of New York

JOE BAKER  
Bureau Chief, Health Care Bureau

TROY OECHSNER  
Deputy Bureau Chief, Health Care Bureau

By: \_\_\_\_\_  
JOHN D. POWELL  
Assistant Attorney General, Health Care Bureau