

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

**MDL NO.: 1334**

**MASTER FILE NO.: 00-1334-MD-MORENO**

IN RE:  
HUMANA, INC., MANAGED CARE LITIGATION

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**THIS DOCUMENT RELATES ONLY  
TO PROVIDER TRACK CASES**

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CHARLES B. SHANE, M.D.; JEFFREY BOOK, D.O.;  
MICHAEL BURGESS, M.D.; EDWARD L. DAVIS, D.O.;  
LANCE R. GOODMAN, M.D.; H. ROBERT HARRISON, M.D.;  
GLENN L. KELLY, M.D.; LEONARD J. KLAY, M.D.;  
EUGENE MANGIERE, M.D.; KEVIN MOLK, M.D.;  
MARTIN MORGAN, M.D.; MANUEL PORTH, M.D.;  
THOMAS BACKER, M.D.; DAVID BOXSTEIN, M.D.;  
SUSAN HANSEN, M.D.; ANDRES TALEISNIK, M.D.;  
JULIO TALEISNIK, M.D.; ROGER WILSON, M.D.;  
NAVID GHALAMBOR, M.D.; CALIFORNIA MEDICAL  
ASSOCIATION; TEXAS MEDICAL ASSOCIATION;  
MEDICAL ASSOCIATION OF GEORGIA;  
FLORIDA MEDICAL ASSOCIATION; LOUISIANA  
STATE MEDICAL SOCIETY; and DENTON  
COUNTY MEDICAL SOCIETY,

**Plaintiffs,**

vs.

HUMANA, INC.; AETNA, INC.; AETNA-USHC, INC.;  
CIGNA; COVENTRY HEALTH CARE, INC.; HEALTH  
NET, INC.; HUMANA HEALTH PLAN, INC.; PACIFICARE  
HEALTH SYSTEMS, INC.; PRUDENTIAL INSURANCE  
COMPANY OF AMERICA; UNITED HEALTH GROUP;  
UNITED HEALTH CARE; WELLPOINT HEALTH  
NETWORKS, INC.; and ANTHEM, INC.,

**Defendants.**

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**MEDIATION CONSENT ORDER**

Compliance Disputes have been brought by certain physicians, physician groups and state medical societies (“Petitioners”) against AETNA INC. (“Aetna”) who shall collectively be referred to as the “Parties”;

**WHEREAS**, Aetna, the Representative Plaintiffs and Signatory Medical Societies entered into a Settlement Agreement on or about May 21, 2003, in the matter of In re Managed Care Litigation, Case No. 00-1334-MD-Moreno (hereinafter referred to as the “Settlement Agreement”); and

**WHEREAS**, there are now pending some compliance disputes relating to Aetna’s alleged systemic failure to pay for certain non-evaluation and management service procedure codes when billed with an evaluation and management code appended with a Modifier 25 as required by Section 7.20(b)(iii) of the Settlement Agreement (the “Modifier 25 Dispute”); and

**WHEREAS**, the Parties have resolved the Modifier 25 Dispute pursuant to the mediation process set forth in Section 12 of the Settlement Agreement before the Compliance Dispute Review Officer appointed by the Court; and

**NOW, THEREFORE**, it is Ordered, Adjudged, and Decreed, as follows:

1. **PETITIONERS’ COMPLIANCE DISPUTES**

Aetna will pay those Petitioners with Modifier 25 Disputes pending as of May 1, 2006, for all codes listed in Appendix A to this Mediation Consent Order billed in conjunction with an evaluation and management code appended with a 25 Modifier back to and including May 21, 2003 and will do so no later than 90 days after the execution of this Order. All payments will be made at rates consistent with contracts between Aetna

and Petitioners or at Aetna market fee schedule rates, as applicable, and consistent with applicable terms of Member benefit plans, including deductible and co-insurance. Aetna will issue an Explanation of Benefits to each Petitioner detailing the payments and the rationale for each determination.

To the extent it is determined by the Compliance Dispute Facilitator (“Facilitator”) that any of the Petitioners raised compliance disputes in addition to the Modifier 25 Dispute in their original submissions, these additional disputes will be handled in accordance with the provisions of section 12 of the Settlement Agreement and will not be dismissed by this Order. The Facilitator shall provide Aetna a list of all such issues within 30 days of execution of this Order.

2. REWORK OF AFFECTED CLAIMS

Aetna agrees to rework all claims for physicians submitting the codes contained in Appendix A to this Mediation Consent Order when billed in conjunction with an evaluation and management code appended with a 25 Modifier with dates of service of July 1, 2004 through April 30, 2006 (hereinafter referred to as “Back Claims”) and will do so no later than October 1, 2006. Aetna will issue an Explanation of Benefits for each such claim detailing the payments and the rationale for each determination. Physicians entitled to such payments will retain all their rights to appeal Aetna’s payment determination as set forth in Aetna’s provider contract, related documents and the Settlement Agreement. To the extent that Aetna does not timely make the payments required by this paragraph 2, Aetna will be required to pay a penalty of 6% of the amount of Back Claims remaining unpaid as of October 1, 2006. This amount shall be added to

the minimum \$1.7 million in payment policy changes to be made by Aetna pursuant to the provisions of paragraph 3 below.

3. STRIKE FORCE AND PROSPECTIVE PAYMENT POLICY CHANGES

The Parties will establish a Strike Force within thirty (30) days to review Aetna payment policies resulting in non-payment of certain codes, including codes appearing on Aetna's incidental list, experimental and investigational list , and other lists of codes for which Aetna has established policies not to pay. The Strike Force will review codes selected by Petitioners and to the extent possible will review them in the order of priority suggested by Petitioners. Aetna will pay for expenses of the Strike Force incurred prior to July 1, 2006 up to \$200,000. The names of the individuals selected to serve on the Strike Force are set forth in Appendix B, and will include representatives from the Signatory Medical Societies to the Settlement Agreement, representatives from Aetna and at least one representative from the Physicians Advisory Board. The Strike Force will be led by an individual selected by Aetna.

Upon the recommendation of the Strike Force, Aetna agrees to make changes to its payment policies which based on historical billing patterns would cause annual payments by Aetna to physicians to increase by at least \$1.7 million and to publish any such payment policy changes on its Provider website. Except to the extent expressly provided in the preceding sentence, Aetna retains the sole discretion to accept, amend, or reject the recommendations of the Strike Force. In addition, Aetna agrees to rework physician claims containing any of those codes on the "Minor Procedure Code" list for which it establishes policies to pay as a result of this paragraph 3 for dates of service back to and including May 1, 2006.

4. TASK FORCE TO SUGGEST CHANGES TO WEBSITE

The Parties will establish a Task Force to recommend changes to Aetna's Provider website to make the website more user-friendly for physicians and to assure that Aetna's payment policies are as transparent to physician practices as reasonably possible. In particular, the Task Force will make recommendations on how Aetna can more clearly post exceptions to the payment rules set forth in the Settlement Agreement as required by section 7.8(c)(iii). Petitioners and Aetna will each name individuals to serve on the Task Force, which will include at least one representative from an Aetna participating physician practice. The Task Force will endeavor to make its recommendations to Aetna on or before July 1, 2006. Aetna retains the sole discretion to accept, amend or reject the recommendations of the Task Force.

5. PROSPECTIVE CHANGE IN SOFTWARE

Aetna has committed to make changes to its claims payment software to allow payment of the codes listed in Appendix A when billed with an evaluation and management code appended with a modifier 25 as soon as practicable. In the interim, Aetna will work with the Facilitator and representatives of the Signatory Medical Societies to identify a process by which Aetna will pay physicians who submit claims containing codes listed on Appendix A when billed with an evaluation and management code appended with a 25 Modifier from May 1, 2006 until such time as the systems changes have been implemented.

6. EXPERTS

Aetna agrees to pay all expert fees incurred by Petitioners prior to May 1, 2006 in conjunction with this Modifier 25 Dispute.

7. INTEREST

At the conclusion of the mediation process, there was one issue which the Parties were unable to resolve: whether Aetna should be required to pay any interest beyond the 6% penalty specified in paragraph 2. After considering the arguments of the Parties, I hereby order, adjudge and decree that Aetna should be required to pay the interest specified in section 7.18 of the Settlement Agreement and/or by any applicable prompt pay law only with respect to those individual physicians who filed Modifier 25 Disputes that were pending as of May 1, 2006. I further order, adjudge and decree that Aetna should not be required to pay any interest beyond the penalty specified in paragraph 2 on Back Claims.

8. RETENTION OF JURISDICTION AND DISMISSAL

The undersigned retains jurisdiction of this Modifier 25 Dispute until Aetna has complied with all its commitments enumerated herein. After all payments required in paragraph 1 and 2 have been made and after Aetna has implemented the payment policy changes required by paragraph 3, Aetna will so certify to the Compliance Dispute Review Officer. This certification shall state the total amount of all payments and the value of the payment policy changes. In its certification, Aetna will also state the method it is using to pay physicians for the codes subject to this Modifier 25 Dispute until the changes to its claims payment software have been implemented.

Because of the amicable resolution reached between the Parties, the undersigned will order that all pending Modifier 25 Disputes filed by Petitioners will be dismissed with prejudice after Aetna has filed the certification required by this paragraph and Aetna

and the Facilitator have notified the undersigned that Aetna has fulfilled its commitments enumerated in this Order.

9. ORDER OF THE COURT

The undersigned finds the commitments set forth in this Order to be a fair and reasonable resolution of the Modifier 25 Dispute. This Order shall have the full force and effect of an order of the court. This Order will not bar other Class Members who may hereafter submit a Compliance Dispute claim not addressed by this Order from obtaining relief pursuant to the compliance dispute resolution process set forth in the Settlement Agreement. This Order does bar all Class Members from submitting a Modifier 25 Dispute for any time period up to and including May 1, 2006.

Done this \_\_\_ day of May, 2006.

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RODNEY A. MAX  
Compliance Dispute Resolution Officer