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OFFICE OF
INSURANCE REGULATION
Docketed by: PJS

OFFICE OF INSURANCE REGULATION

KEVIN M. MCCARTY
COMMISSIONER

IN THE MATTER OF:

Case No.: 162231-14-CO

COVENTRY HEALTH CARE OF FLORIDA, INC.
_____ /

CONSENT ORDER

THIS CAUSE came on for consideration as the result of an agreement between COVENTRY HEALTH CARE OF FLORIDA, INC. (hereinafter referred to as "COVENTRY"), AETNA, INC. (hereinafter referred to as "AETNA"), and the OFFICE OF INSURANCE REGULATION (hereinafter referred to as the "OFFICE"), regarding an alleged violation of Section 641.3007, Florida Statutes. Following a complete review of the entire record, and upon consideration thereof, and being otherwise fully advised in the premises, the OFFICE hereby finds as follows:

1. The OFFICE has jurisdiction over the subject matter and parties to this proceeding.
2. COVENTRY is a Health Maintenance Organization (hereinafter referred to as an "HMO") that is licensed as an HMO provider in Florida and is subject to the jurisdiction and regulation of the OFFICE in accordance with the Florida Insurance Code.

3. COVENTRY is a wholly-owned subsidiary of Florida Health Plans Administrator, LLC, which is, in turn, a wholly-owned subsidiary of Coventry Healthcare, Inc. Coventry Healthcare, Inc. is wholly-owned by AETNA, making AETNA the ultimate parent company of COVENTRY.
4. Pursuant to Florida Statute Section 624.26, the OFFICE has jurisdiction to examine health maintenance organizations for compliance with the federal Patient Protection and Affordable Care Act when examining companies for compliance with state law.
5. On May 29, 2014, an administrative complaint was filed by The AIDS Institute and The National Health Law Program. The complaint was filed with the federal Office of Civil Rights, U.S. Department of Health and Human Services (“HHS”) and a copy was provided to the OFFICE by HHS and by advocates for people living with HIV/AIDS.
6. The complaint alleged that COVENTRY’s two Qualified Health Plans (QHPs) placed all HIV drugs on a specialty drug tier, including generic versions of widely prescribed anti-retrovirals. The complaint further stated that coinsurance for this tier was forty percent (40%), making the access to these medications financially prohibitive for many of COVENTRY’s enrollees or potential enrollees. The complaint concluded that this benefit design discriminated against people living with HIV and AIDS, and deterred people who are living with HIV or AIDS from enrolling in the health plans, in violation of federal law.¹

¹ See 45 USC §18116; 45 CFR §156.125, 45 CFR §156.225(b).

7. Subsequently, the OFFICE confirmed that COVENTRY's QHP plans included all HIV drugs on the specialty tier of its formulary for plan year 2014. AETNA, on behalf of COVENTRY, asserts that because of required testing and treatment, the drugs are categorized as specialty medications, and that the categorization is not based on any intent to discriminate.

8. Pursuant to section 641.3007, Florida Statutes, an HMO subscriber contract may not limit coverage for exposure to the HIV infection or a specific sickness or medical condition derived from such infection. AETNA contends that COVENTRY has fully complied with the provisions of section 641.3007, Florida Statutes.

9. The OFFICE makes no finding with respect to whether or not COVENTRY's 2014 QHPs violate the Florida Insurance Code, Federal statutes, or the Code of Federal Regulations. AETNA on behalf of COVENTRY denies any allegation that its classification of drugs unfairly discriminates or that its plan violates the Florida Insurance Code, Federal statutes, or the Code of Federal Regulations, and further denies all of the allegations in the administrative complaint filed with the Office of Civil Rights. However, to avoid litigation, and maintain its commitment to all customers and facilitate access to medication in compliance with Florida law, COVENTRY will use a formulary in 2015, which will include the features described below, so that generic and lower-cost drugs are available at the specified cost sharing levels for subscribers. All generic drugs referred to in the complaint which are currently included in the Specialty Tier will be transferred to

the Non-Preferred Generic Tier. Generic HIV drugs, regardless of the medical condition being treated, will be categorized in the appropriate "Generic" tier.

10. Within 30 days of the date of this Order, AETNA shall request a meeting with representatives of The AIDS Institute, The AIDS Healthcare Foundation, and The National Health Law Program to address access to and the affordability of HIV/AIDS medications for all formulary drugs, as well as a discussion of prescription drug assistance programs.

11. COVENTRY will not require prior authorization for refills of HIV/AIDS drugs referred to in the complaint. Drug quantities shall be made available to subscribers as prescribed by the treating physician and shall never be limited to less than a thirty (30) day supply. Additionally, step therapy shall not be required for the administration of any of these drugs.

12. AETNA shall ensure that COVENTRY complies with all federal and Florida laws and HHS prescription drug guidelines applicable to QHPS in formulary designs, and will update its formulary in accordance with changes to the HHS prescription drug guidelines applicable to QHPs.

13. AETNA shall work with the OFFICE in good faith to address the issue of subscriber prescription medication access in a more comprehensive manner for plan years beginning

January 1, 2016. Beginning on the effective date of this Order through calendar year 2016, COVENTRY will notify the OFFICE in advance of any changes in its formulary for drugs used in the treatment of HIV/AIDS.

14. As an interim measure, during plan year 2015, COVENTRY will cap each subscriber's cost-sharing responsibility for each of the following widely prescribed drugs to \$200 per month per drug: Atripla, Complera, Stribild, and Fuzeon. AETNA and COVENTRY makes no representations of the placement of these drugs in the formulary in plan years after 2015, beyond the agreement in paragraph 13 to work in good faith to address drug costs for HIV/AIDS patients.

15. AETNA and COVENTRY hereby knowingly and voluntarily waive all rights to challenge or to contest this Consent Order, the making of Findings of Fact and Conclusions of Law by the OFFICE and all further and other proceedings herein to which they may be entitled by law or rules of the OFFICE, including the right to any administrative proceeding, circuit or federal court action, or any appeal.

16. The parties agree that this Consent Order will be deemed to be executed when the OFFICE has executed a copy of this Consent Order bearing the signature of AETNA and/or its authorized representative, notwithstanding the fact that the copy was transmitted to the OFFICE electronically or via facsimile machine. Further, AETNA agrees that its signature as affixed to this Consent Order shall be under the seal of a Notary Public.

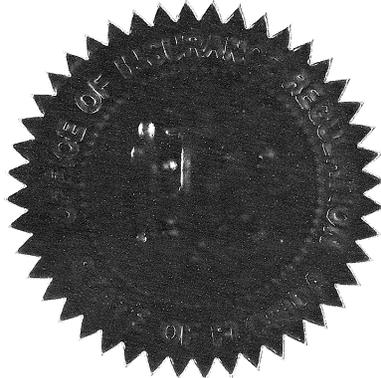
17. The requirements of this Order apply to individual products offered both on and off the federal exchange, and will be implemented in time for open enrollment on the exchange beginning November, 2014 and for all subscriber contracts effective January 1, 2015.

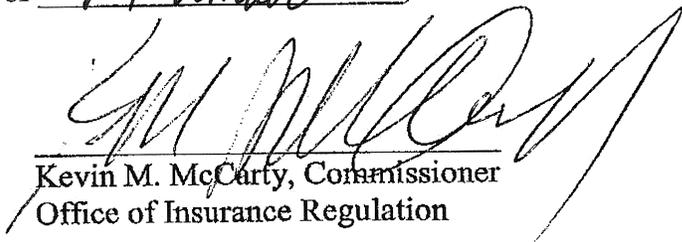
18. Except as noted above, each party to this action shall bear its own costs and attorney's fees.

WHEREFORE, the agreement between AETNA, COVENTRY and the OFFICE, subject to the terms and conditions set forth above, is APPROVED.

FURTHER, all terms and conditions contained herein are hereby ORDERED.

DONE AND ORDERED this 19th day of November, 2014.




Kevin M. McCarty, Commissioner
Office of Insurance Regulation

By execution hereof, COVENTRY HEALTH CARE OF FLORIDA, INC., and AETNA INC. consent to entry of this Consent Order, agrees without reservation to all of the above terms and conditions, and shall be bound by all provisions herein. The undersigned represents he/she has the authority to bind COVENTRY HEALTH CARE OF FLORIDA, INC. and AETNA INC. to the terms and conditions of this Consent Order.

AETNA, INC

Corporate Seal

By: Christopher A. Ciano

Print Name: Christopher Ciano

Title: President

Date: 11/14/14

STATE OF Florida
COUNTY OF Broward

The foregoing instrument was acknowledged before me this 14 day of Nov. 2014,

by Christopher A. Ciano as President
(name of person) (type of authority e.g. officer, trustee attorney in fact)

for Coventry Health Care of Florida - Aetna
(company name)



Coral N. Sutherland
(Signature of the Notary)

CORAL N. SUTHERLAND
(Print, Type or Stamp Commissioned Name of Notary)

Personally Known OR Produced Identification

Type of Identification Produced _____

COPIES FURNISHED TO:

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