

please describe how the undersigned has been harmed by the alleged breach. Please also set forth the relief that you request. You may attach any supporting materials you wish.

In order to allege a valid Compliance Dispute you must complete and return this form by First Class mail **no later than 30 days** after the Compliance Dispute first arose to:

[Compliance Dispute Facilitator]  
Shane v. Humana, Inc., et al.  
P.O. Box \_\_\_\_\_  
[city, state, zip] \_\_\_\_\_

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Miami Division**

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

IN RE:  
MANAGED CARE LITIGATION

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THIS DOCUMENT RELATES TO  
PROVIDER TRACK CASES ONLY

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**ORDER APPROVING SETTLEMENT, CERTIFYING CLASS  
AND DIRECTING ENTRY OF FINAL JUDGMENT**

The Court having reviewed and considered the Joint Motion for Final Approval of Settlement Concerning Claims Against Defendants Aetna Inc. and Aetna-U.S. Healthcare, Inc. dated May 21, 2003 in the action styled Shane v. Humana, Inc., et al., Master File No. 00-1334-MD-MORENO (the "Action"), and having reviewed and considered the terms and conditions of the proposed settlement (the "Settlement") as set forth in the Settlement Agreement dated May 21, 2003 (the "Settlement Agreement"), a copy of which has been submitted to the Court, and having reviewed and considered the applications of Class Counsel for an award of attorneys' fees and expenses and for an award of fees to Representative Plaintiffs, and the Court having held a Settlement Hearing after being satisfied that notice to the Class had been provided in accordance with the Court's Order Preliminarily Approving Proposed Settlement, Setting Form and Content of Notice to the Class and Scheduling Settlement Hearing entered on \_\_\_\_\_, 2003 (the "Preliminary Approval Order"), and the Court having taken into

account the objections submitted prior to the Settlement Hearing in accordance with the provisions of the Preliminary Approval Order and the presentations and other proceedings at the Settlement Hearing, and having considered the Settlement in the context of all prior proceedings had in this consolidated multi-district litigation, the Court makes the following FINDINGS:

A. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1367.

B. Capitalized terms used in this Order that are not otherwise defined herein have the meaning assigned to them in the Settlement Agreement.

C. Notice to members of the Class and other potentially interested parties has been provided in accordance with the notice requirements specified by the Court in the Preliminary Approval Order. Such notice constitutes the best means of notice to members of the Class that is practicable under the circumstances and is due and sufficient notice of the Settlement and the Settlement Hearing to all persons affected by and/or entitled to participate in the Settlement or the Settlement Hearing, in full compliance with the requirements of due process and the Federal Rules of Civil Procedure.

D. The Court has held a hearing to consider the fairness, reasonableness and adequacy of the Settlement, has been advised of all objections to the Settlement and has given fair consideration to such objections.

E. The Settlement is the product of good faith, arm's length negotiations between Representative Plaintiffs and the Signatory Medical Societies and their counsel, on one hand, and Aetna-U.S. Healthcare Inc., now known as Aetna Inc., a

Pennsylvania corporation (“Aetna”), and Aetna Inc., a Connecticut corporation (“Old Aetna”), on the other hand.

F. The Settlement, as provided for in the Settlement Agreement, is in all respects fair, reasonable, adequate and proper and in the best interest of the Class. In reaching this conclusion, the Court has considered a number of factors, including: (i) an assessment of the likelihood that the Representative Plaintiffs and/or the Class would prevail at trial; (ii) the range of possible recovery available to such plaintiffs as a result of such a trial; (iii) the consideration provided to members of the Class pursuant to the Settlement, as compared to the range of possible recovery discounted for the inherent risks of litigation; (iv) the complexity, expense and possible duration of such litigation in the absence of a settlement; (v) the nature and extent of any objections to the Settlement; and (vi) the stage of proceedings at which the Settlement was reached. See Bennett v. Behring Corp., 737 F. 2d 982, 986 (11th Cir. 1984).

G. A list of those members of the Class who have timely elected to opt-out of the Settlement and the Class and who therefore are not bound by the Settlement, the provisions of the Settlement Agreement, this Order and the Judgment to be entered by the Clerk of the Court hereon, has been submitted to the Court as an exhibit to the Affidavit of \_\_\_\_\_ sworn to on \_\_\_\_\_, 2003. A copy of such exhibit is attached hereto and incorporated by reference herein. All other members of the Class (as permanently certified below) shall be subject to all of the provisions of the Settlement, the Settlement Agreement, this Order and the Judgment to be entered by the Clerk of the Court.

H. The bar order provision of this Order, which prohibits the assertion of claims against the settling defendants and the other Released Parties, as set forth below, is a condition of the Settlement and a significant component of the consideration afforded to Aetna and Old Aetna in the Settlement, and that provision is reasonable under the circumstances. Supporting this conclusion is the fact that as an express term of that provision, the persons who are enjoined from asserting any claims against any of the Released Parties will not face any liability in the Action based on the conduct of the Released Parties.

I. The dismissal with prejudice and entry of Judgment contemplated by the Settlement and this Order will dispose of fewer than all of the claims at issue, or parties to, this Action. The Court finds that there is no just reason for delay in entering judgment in the form attached hereto (the "Judgment") dismissing the Action with prejudice as to Aetna and Old Aetna and that entry of the Judgment to that effect, as directed below, is warranted under Rule 54(b) of the Federal Rules of Civil Procedure.

On the basis of the foregoing findings and the submissions and proceedings referred to above, NOW THEREFORE, IT IS HEREBY ORDERED ADJUDGED AND DECREED:

Certification of Class and Approval of Settlement

1. The Settlement and the Settlement Agreement are hereby approved as fair, reasonable, adequate and in the best interests of the Class, and the requirements of due process and Rule 23 of the Federal Rules of Civil Procedure have been satisfied. The objections to the Settlement and the Settlement Agreement are overruled and denied in all respects.

2. The Court having found that each of the elements of Rules 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure are satisfied, for purposes of settlement only, pursuant to Federal Rules of Civil Procedure 23(a), (b)(2) and (b)(3), solely with respect to defendants Aetna and Old Aetna, as well as the other Released Parties, the Action is permanently certified as a class action on behalf of the following persons (the "Class"):

any and all Physicians, Physicians Groups and Physician Organizations who provided covered services to any individual enrolled in or covered by a plan offered or administered by Aetna, Old Aetna, any other entity named as a defendant in the complaint in the Action, or by any of the current or former subsidiaries or affiliates of any of the foregoing, from August 4, 1990 through and including \_\_\_\_\_, 2003 (the date of entry of the Preliminary Approval Order).

The persons identified on the list submitted to the Court (and attached hereto as an exhibit) as having timely and properly elected to opt-out from the Settlement and the Class are hereby excluded from the Class and shall not be entitled to any of the monetary or other benefits afforded to the Class under the Settlement Agreement. The Court notes

that because this certification of the Class is in connection with the Settlement rather than litigation, the Court need not resolve the issues of manageability presented by certification of the nationwide class proposed in the complaint in the Action.

3. For purposes of the Settlement only, Representative Plaintiffs are certified as representatives of the Class and Class Counsel is appointed counsel to the Class. The Court concludes that Class Counsel and Representative Plaintiffs have fairly and adequately represented the Class with respect to the Settlement and the Settlement Agreement.

4. Notwithstanding the certification of the foregoing Class and appointment of class representatives for purposes of effecting the Settlement, if this Order is reversed on appeal or the Settlement Agreement is terminated or is not consummated for any reason, the foregoing certification of the Class and appointment of class representatives shall be void and of no further effect and the parties to the Settlement shall be returned to the status each occupied before entry of this Order, without prejudice to any legal argument that any of the parties to the Settlement Agreement might have asserted but for the Settlement Agreement, and provided that in such circumstances any further ruling by this Court or an appellate court on the propriety of this Court's order dated September 26, 2002 certifying a class in the Action shall apply to Aetna and Old Aetna as if those defendants had participated in further proceedings with respect to that Order.

Release and Injunctions Against Released Claims

5. The "Released Parties," which shall include Aetna and each of its present and former parents, present and former wholly-owned subsidiaries, present and

former divisions and affiliates (including without limitation Lion Connecticut Holdings, Inc. (formerly Old Aetna) and each of its subsidiaries as of December 14, 2000) and each of their respective current or former officers, directors, employees, and attorneys (and the predecessors, heirs, executors, administrators, legal representatives, successors and assigns of each of the foregoing), but excluding all Delegated Entities and the Prudential Insurance Company of America, shall be released and forever discharged by the Signatory Medical Societies and all members of the Class who have not validly and timely elected to opt-out of the Settlement and the Class in accordance with the procedures set forth in the Preliminary Approval Order, and by their respective heirs, executors, agents, legal representatives, professional corporations, partnerships, assigns, and successors, but only to the extent such claims are derived by contract or operation of law from the Claims of Class Members (collectively, the "Releasing Parties") from any and all causes of action, judgments, liens, indebtedness, costs, damages, obligations, attorneys' fees, losses, claims, liabilities and demands of whatever kind or character (each a "Claim"), arising on or before the date of entry of the Preliminary Approval Order, that are, were or could have been asserted against any of the Released Parties based on or arising from the factual allegations of the complaint in the Action, whether any such Claim was or could have been asserted by any Releasing Party on its own behalf or on behalf of other Persons (the "Released Claims"). Notwithstanding the foregoing, the Releasing Parties shall not be deemed to have released claims for payment (the "Retained Claims") for Covered Services as to which, as of the date of entry of this Order, (i) no claim with respect to such Covered Services has been filed with Company, provided that the contractual period for filing such claim has not elapsed; or (ii) a claim

with respect to such Covered Services has been filed with Company but such claim has not been finally adjudicated by Company, as provided for in section 13(d) of the Settlement Agreement.

6. In addition to the Released Claims, the Releasing Parties shall be deemed to have discharged any and all claims that exist now or that might arise in the future against any other persons or entities, which claims arise from, or are based on, conduct by any of the Released Parties that occurred on or before \_\_\_\_\_, 2003 (the date of the Preliminary Approval Order) and are, or could have been, alleged in the complaint in the Action, whether any such claim was or could have been asserted by any Releasing Party on its own behalf or on behalf of other persons or entities. Nothing in this paragraph or in the Settlement Agreement is intended to relieve any person or entity that is not a Released Party from responsibility for its own conduct or the conduct of other persons or entities who are not Released Parties.

7. With respect to the Released Claims and the claims described in paragraph 6 of this Order, each member of the Class that has not timely elected to opt-out of the Settlement and the Class is hereby deemed expressly to have waived and released any and all provisions, rights and benefits conferred either (a) by California Civil Code § 1542, which reads:

Section 1542. General release; extent. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

or (b) by any law of any state or territory of the United States, or principle of common law, which is similar to § 1542 of the California Civil Code.

8. The Releasing Parties are permanently enjoined from: (a) filing, commencing, prosecuting, intervening in, participating in (as class members or otherwise) or receiving any benefits from any lawsuit, administrative or regulatory proceeding or order in any jurisdiction based on any or all Released Claims against one or more Released Parties; (b) instituting, organizing class members in, joining with class members in, amending a pleading in or soliciting the participation of class members in, any action, including but not limited to a purported class action, in any court against one or more Released Parties based on, involving, or incorporating, directly or indirectly, any or all Released Claims, and (c) filing, commencing, prosecuting, intervening in, participating in (as class members or otherwise) or receiving any benefits from any lawsuit, administrative or regulatory proceeding or order in any jurisdiction based on an allegation that Company's compliance with the provisions of the Settlement Agreement violates any legal right of any member of the Class.

9. All persons, including without limitation all defendants named in the complaint other than Aetna and Old Aetna, who are, have been, could be, or could have been alleged to be joint tortfeasors, co-tortfeasors, co-conspirators, or co-obligors with the Released Parties or any of them respecting the Released Claims or any of them, are hereby, to the maximum extent permitted by law, barred and permanently enjoined from instituting, commencing, prosecuting, participating in or continuing any claim, claim-over, cross-claim, action, or proceeding, however denominated, regardless of the allegations, facts, law, theories or principles on which they are based, in this Court or in any other court or tribunal, against the Released Parties or any of them with respect to the Released Claims, including without limitation equitable, partial, comparative, or

complete contribution, set-off, indemnity or otherwise, whether by contract, common law or statute, arising out of or relating in any way to the Released Claims. All such claims are hereby fully and finally barred, released, extinguished, discharged, satisfied, and made unenforceable to the maximum extent permitted by law, and no such claim may be commenced, maintained, or prosecuted against Aetna, Old Aetna or any Released Party. As consideration for the foregoing relief, the Settlement Agreement and paragraph 6 of this Order relieve the parties who are so enjoined from any liability in the Action based on the conduct of the Released Parties.

10. In contemplation of the dismissal with prejudice of such actions after this Order becomes final, all proceedings are stayed as to Aetna, Old Aetna or any other Released Party who is a defendant in any action brought by or on behalf of members of the Class that asserts any claim that as of the date of this Order would constitute a Released Claim that has been, or will in the future be assigned to this Court under MDL Docket No. 1334, *provided, however*, that this stay in contemplation of dismissal shall not apply to any such action to the extent that a named plaintiff has timely elected to opt-out of the Settlement and the Class.

11. In accordance with the terms of the Settlement Agreement, the Releasing Parties and Class Counsel are barred from pursuing discovery in the Action against Aetna, Old Aetna or the other Released Parties.

Applications for Attorneys' Fees and Representative Plaintiff Fees

12. The Court has reviewed the application for an award of fees and expenses submitted by Class Counsel and the exhibits, memoranda of law and other materials submitted in support of that application. The Court recognizes that in the

Settlement Agreement Aetna has agreed not to oppose an award of fees and expenses to Class Counsel up to \$\_\_\_\_\_, to be paid by Aetna up to that amount. This agreement is in addition to the monetary consideration and other benefits to be provided to members of the Class under the Settlement Agreement. On the basis of its review of the foregoing, the Court hereby awards fees and expenses to Class Counsel in the aggregate amount of \$\_\_\_\_\_, to be paid by Aetna in accordance with the provisions of the Settlement Agreement.

13. The Court has also reviewed the application for a fee award to Representative Plaintiffs. The Court recognizes that in the Settlement Agreement Aetna has agreed not to oppose an award of fees up to \$7,500.00 for each Representative Plaintiff, to be paid by Aetna up to that amount. This agreement is in addition to the monetary consideration and other benefits to be provided to members of the Class under the Settlement Agreement. On the basis of its review of the foregoing, the Court hereby awards a fee of \$\_\_\_\_\_ to each Representative Plaintiff, to be paid by Aetna in accordance with the provisions of the Settlement Agreement.

#### Other Provisions

14. Aetna and Old Aetna are hereby permanently relieved from any and all obligations under the Agreed Order For Preservation of Records entered in this Action on January 12, 2001.

15. Neither the Settlement Agreement nor any provision therein, nor any negotiations, statements or proceedings in connection therewith shall be construed as, or be deemed to be evidence of, an admission or concession on the part of any of the Representative Plaintiffs, the Signatory Medical Societies, Class Counsel, any members

of the Class, Aetna, Old Aetna or any other person of any liability or wrongdoing by them, or that the claims and defenses that have been, or could have been, asserted in the Action are or are not meritorious, and this Order, the Settlement Agreement or any such communications shall not be offered or received in evidence in any action or proceeding, or be used in any way as an admission or concession or evidence of any liability or wrongdoing of any nature or that Representative Plaintiffs, the Signatory Medical Societies, any member of the Class or any other person has or has not suffered any damage; *provided, however*, that the Settlement Agreement, this Order and the Judgment to be entered thereon may be filed in any action by Aetna, Old Aetna or any Released Party seeking to enforce the Settlement Agreement or the Judgment by injunctive or other relief, or to assert defenses including, but not limited to, *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any theory of claim preclusion or issue preclusion or similar defense or counterclaim. The terms of the Settlement Agreement and of this Order and the Judgment shall be forever binding on, and shall have *res judicata* and preclusive effect in, all pending and future lawsuits or other proceedings that are subject to the Release and other prohibitions that are set forth in paragraphs 5, 6, 8 and 9 of this Order that are maintained by, or on behalf of, the Releasing Parties or any other Person subject to those provisions of this Order.

16. In the event that the Settlement Agreement does not become effective or is canceled or terminated in accordance with the terms and provisions of the Settlement Agreement, then this Order and the Judgment shall be rendered null and void and be vacated and all orders entered in connection therewith by this Court shall be rendered null and void.

Entry of Judgment; Continuing Jurisdiction

17. The Clerk of the Court is directed to enter the Judgment in the form attached to this Order dismissing the Action with prejudice as to Aetna and Old Aetna pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

18. Without in any way affecting the finality of this Order and the Judgment, this Court hereby retains jurisdiction as to all matters relating to (a) the interpretation, administration, and consummation of the Settlement Agreement and (b) the enforcement of the injunctions described in paragraphs 8 and 9 of this Order. In accordance with the terms of the Settlement Agreement, in any future dispute concerning the negotiation, approval, performance or alleged breach of the Settlement Agreement that may arise between or among the parties to the Settlement Agreement, the Court shall award attorneys' fees and costs to the prevailing party.

SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2003.

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U.S.D.J.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Miami Division**

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

**IN RE:  
MANAGED CARE LITIGATION**

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

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**CHARLES B. SHANE, M.D.; JEFFREY BOOK, D.O.;  
MICHAEL BURGESS, 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 MORAN, 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; and ANTHEM, INC.,**

**Defendants.**

## JUDGMENT

In accordance with, and for the reasons set forth in, the Order Approving Settlement, Certifying Class and Directing Entry of Final Judgment entered on \_\_\_\_\_, 2003 (the "Order"), this Action is dismissed with prejudice as to defendants Aetna Inc., a Connecticut corporation and Aetna U.S. Healthcare, Inc., (now known as Aetna Inc.) a Pennsylvania corporation pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

Dated: Miami, Florida  
\_\_\_\_\_, 2003

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Clerk of the Court

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Miami Division**

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

**IN RE:  
MANAGED CARE LITIGATION**

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

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**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION WITH  
AETNA, OF SETTLEMENT HEARING TO CONSIDER THE  
PROPOSED SETTLEMENT AND OF YOUR RIGHTS  
CONCERNING THE PROPOSED SETTLEMENT**

**IF YOU ARE A PHYSICIAN WHO PROVIDED COVERED SERVICES TO ANY INDIVIDUAL ENROLLED IN OR COVERED BY CERTAIN HEALTH CARE PLANS AT ANY TIME BETWEEN AUGUST 4, 1990 AND \_\_\_\_\_, 2003, OR A PHYSICIANS' GROUP OR OTHER PHYSICIANS' ORGANIZATION THAT INCLUDES SUCH PHYSICIANS, PLEASE READ THIS NOTICE CAREFULLY. THIS CLASS ACTION AND THE PROPOSED SETTLEMENT MAY AFFECT YOUR RIGHTS.**

**I. WHY SHOULD YOU READ THIS NOTICE?**

If you are or have been a physician who actively practiced in the United States since August 1990, or a physician's group or similar organization, your rights may be affected by a proposed settlement with Aetna Inc. and Aetna U.S. Healthcare Inc. (together, "Aetna") in the class action lawsuit known as Shane v. Humana, Inc., et al., Master File No. 00-1334-MD-MORENO (the "Action"), which is part of a federal multi-district litigation that is pending in the U.S. District Court for the Southern District of Florida (the "Court") called In re Managed Care Litigation, MDL Docket No. 1334 (Provider Track Cases). The class representatives and certain medical societies have agreed to settle all claims against Aetna in the Action in exchange for Aetna's adoption of a number of commitments and initiatives regarding its business practices, the creation of a charitable foundation and the establishment of a settlement fund against which

individuals who are members of the Class (as defined below) can make claims for a settlement payment. The Court has scheduled a hearing to consider the fairness, reasonableness and adequacy of the proposed settlement with Aetna, together with certain other matters, to be held on \_\_\_\_\_, 2003 at \_\_\_:00 A.M./P.M. at the United States Courthouse, U.S. District Court for the Southern District of Florida, 301 North Miami Avenue, Miami, Florida (the "Settlement Hearing").

You may be a member of the Class who therefore would be entitled to receive the benefits of the proposed settlement. As a member of the Class, however, you will also be bound by the release and other provisions of the settlement if it is approved by the Court. You may elect to opt-out of the Class and the settlement, as explained below. You also have a right to object to the settlement or to the applications for attorneys' fees and representative plaintiffs' fees that counsel for the Class intend to make to the Court, but only if you comply with the procedures described in this notice. **BECAUSE YOUR RIGHT TO PURSUE CERTAIN TYPES OF CLAIMS AGAINST AETNA, CERTAIN OTHERS AFFILIATED WITH AETNA, AND OTHER DEFENDANTS IN THE ACTION BASED ON AETNA'S CONDUCT MAY BE AFFECTED BY THE SETTLEMENT, YOU SHOULD READ THIS NOTICE CAREFULLY.**

## II. WHAT IS THIS LITIGATION ABOUT?

The Action has been brought by the representative plaintiffs, who are practicing or retired physicians from around the United States, on behalf of a class of physicians, and by certain medical societies against a number of health care insurance companies, including Aetna, Anthem, Inc., Cigna, Coventry Health Care, Inc., Health Net, Inc., Humana Health Plan, Inc., Humana, Inc., Pacificare Health Systems, Inc., Prudential Insurance Company of America, United Health Care, United Health Group and Wellpoint Health Networks, Inc. (collectively the "Defendants"). The complaint in the Action alleges that between 1990 and 2002, these companies engaged in a conspiracy to improperly deny, delay and/or reduce payment to physicians by engaging in several types of allegedly improper conduct, including:

- Misrepresenting and/or failing to disclose the use of edits to unilaterally "bundle," "downcode" and/or reject claims for medically necessary covered services;
- Failing and/or refusing to recognize CPT® modifiers;
- Concealing and/or misrepresenting the use of improper guidelines and criteria to deny, delay, and/or reduce payment for medically necessary covered services;
- Misrepresenting and/or refusing to disclose applicable fee schedules;

- Failing to pay claims for medically necessary covered services within the required statutory and/or contractual time periods; and
- Misrepresenting and/or failing to disclose the use of inappropriate or unsound criteria to calculate payments due to physicians compensated under a “capitation” system.

The complaint claims that this conduct violated various state and federal statutes. The named plaintiffs in the complaint also seek recovery on various common law theories, including breach of contract. If you would like further information about the claims asserted in the Action, you can review a copy of the complaint on Aetna’s website, [www.aetna.com](http://www.aetna.com).

The Action is one significant component of litigation asserting these claims and certain others against managed care companies which began in early 2000 and ultimately were transferred to the federal court in Miami. Since the initial complaints were filed, substantial proceedings have occurred in the Action, including the production of a significant number of documents by the Defendants, which has included hundreds of thousands of pages from Aetna, as well as depositions of several of the representative plaintiffs and of several witnesses from Aetna and other Defendants. In an order dated September 26, 2002, the Court certified a plaintiff class of physicians in the Action. The Defendants in the Action, including Aetna, have appealed that ruling to the federal court of appeals, and proceedings on that appeal are still ongoing. As part of the settlement, Aetna would no longer actively participate in that appeal, but Aetna expects the other Defendants, who are not parties to the proposed settlement, to continue to pursue that appeal and to defend the claims asserted in the Action on various grounds.

### III. WHAT ARE THE TERMS OF THE PROPOSED SETTLEMENT?

In a settlement agreement dated May \_\_, 2003 (the “Settlement Agreement”), the representative plaintiffs and the signatory medical societies have agreed to settle all claims that were or could have been asserted against Aetna and its affiliates and subsidiaries in the Action in exchange for Aetna’s agreement regarding its business practices and for certain monetary consideration. The terms of the Settlement Agreement are summarized in this notice, but a copy of the entire Settlement Agreement can be reviewed on Aetna’s website, [www.aetna.com](http://www.aetna.com).

None of the Defendants in the Action other than Aetna are parties to the proposed settlement, and even if the settlement is approved by the Court, the representative plaintiffs and the signatory medical societies intend to continue to prosecute their claims against the other Defendants in the Action, although, in those circumstances, as part of the settlement the non-settling Defendants could not be held liable based on Aetna’s conduct.

#### A. The Settlement Class

The proposed settlement will be on behalf of a settlement class (the "Class") consisting of any and all physicians, physician groups and physician organizations who provided covered services to any individual enrolled in or covered by a plan offered or administered by Aetna, any other entity named as a Defendant in the complaint in the Action, or by any of the current or former subsidiaries or affiliates of any of the foregoing, beginning on August 4, 1990 and ending on \_\_\_\_\_, 2003 (the date that the Court entered its order preliminarily approving the proposed settlement and directing that this notice be provided to you).

—The settlement Class is different than the class certified by the Court in the Action in an Order dated September 26, 2002, which is the subject of an appeal by the Defendants. Among other things, the settlement Class includes physician groups and physician organizations, while the class that has been certified by the Court is limited to physicians alone. Aetna believes that there are significant aspects of the settlement Class that distinguish it from the class that has been certified by the Court, including among other things the fact that if the proposed settlement is approved and becomes effective, both Aetna and all members of the settlement Class will be deemed to have waived their rights to arbitration under the applicable contracts. In addition, the settlement Class does not raise the problems of manageability that Aetna believes affect the class as certified by the Court in the Action.

#### B. The Settlement Consideration

If the settlement is approved by the Court, the Settlement Agreement provides for both monetary and other benefits to be provided by Aetna to members of the Class.

##### 1. Business Practice Initiatives

As a part of the settlement, Aetna has agreed to certain commitments regarding its policies and procedures. For example, Aetna has agreed to: (a) include in its contracts with Physicians a definition of medical necessity which bases medical necessity determinations on generally accepted standards of medical practice; (b) use clinical guidelines that are based on credible scientific evidence published in peer reviewed medical literature (taking into account Physician Specialty Society recommendations, the views of Physicians practicing in the relevant clinical areas, and other relevant factors) when making medical necessity determinations; (c) provide physicians access to Company's medical necessity external review process; (d) establish an independent external review board for resolving disputes with physicians concerning many common billing disputes; (e) make investments designed to facilitate the automated adjudication of claims submitted by physicians and thereby reduce the average time taken by Aetna to pay valid claims; (f) fund initiatives to increase the percentage of claims issues resolved on initial review and thereby reduce the percentage of resubmitted claims; (g) not automatically reduce the intensity coding of evaluation and management codes billed for covered services; (h) disclose payment rules and conform its bundling and other computerized editing rules as specified in the agreement; (i) confirm the elimination of

“all product” and “gag clauses”; (j) improve accuracy of information about eligibility of plan members; (k) ensure the payment of valid clean claims within 15 days for electronically-submitted claims and 30 days for paper claims; (l) provide physicians with the ability to view a complete fee schedule and agree to maintain and agree to update such fees on an annual basis, and (m) establish a compliance dispute resolution mechanism to address disputes regarding Aetna’s compliance with the agreement. In addition, Aetna will disclose additional information about its claim administration policies and procedures on its existing website. These changes, as well as others, are more fully described in the Settlement Agreement.

## 2. A Charitable Foundation

Aetna has also agreed to provide \$20 million in initial funding to a charitable foundation to be established if the settlement is approved. The foundation will be dedicated to promoting high quality healthcare and will give particular emphasis to initiatives that assist physicians to improve and enhance the quality of care received by patients.

In addition to the initial financing to be provided by Aetna directly to the foundation, members of the Class may elect to have the amount of their settlement payment from the settlement fund (discussed in the next section) contributed to the foundation on their behalf. In the event that there are unclaimed funds in the settlement fund after payment of all claims, those funds would also be contributed to the foundation to support its operations and initiatives.

## 3. The Settlement Fund

A final component of the consideration to be provided to individual physicians who are members of the Class under the proposed settlement is the establishment of a settlement fund in the aggregate amount of \$100 million. If the settlement is approved by the Court, these members of the Class will be entitled to payments from the settlement fund in accordance with formulas that are set forth in the Settlement Agreement.

- A Physician who provided any covered services reimbursed by any Defendant or its affiliates since 1990 but who has since become inactive, has retired from the practice of, or has otherwise ceased to practice, medicine, or has died, will receive a pro rata portion of the amount of the settlement fund that has been allocated to such inactive, retired or deceased physicians.
- A Physician who, based on a review of Aetna’s records for the years 2000, 2001, and 2002 never received payments from Aetna or received payments from Aetna that were in the aggregate \$5,000 or less, will receive a pro rata portion of the “base amount” from the amount of the settlement fund that is allocated to active physicians;

- A Physician who, based on a review of Aetna's records for the same three-year period, received payments from Aetna that were in the aggregate less than \$50,000 but greater than \$5,000, will receive a pro rata portion of two times the "base amount" from the amount of the settlement fund that is allocated to active physicians; and
- A Physician who, based on a review of Aetna's records for the same three-year period, received payments from Aetna that were (in the aggregate for those three years) \$50,000 or greater, will receive a pro rata portion of three times the "base amount" from the amount of the settlement fund that is allocated to active physicians.

If you are an individual physician who is a member of the Class but you believe you fall into a category of payments that would qualify you for a higher amount from the settlement fund (i) based on your payments from Aetna in any earlier three-year period since 1990, (ii) based on payments that were made to you through a delegated claims-paying entity for providing services to a member covered by a plan offered or administered by Aetna, or (iii) because you believe an error was made in determining the category you fall within, you may submit billing records to the Settlement Administrator at the following address to establish such facts:

[Name of Settlement Administrator]  
 [Address of Settlement Administrator]  
 [Phone Number of Settlement Administrator]

C. The Release and Dismissal with Prejudice

In exchange for this consideration, if the Settlement Agreement is approved, the Action will be dismissed with prejudice as to Aetna. In addition, Aetna, certain others affiliated with Aetna and other Defendants in the Action (to the extent such Defendants are sued based on Aetna's conduct) will receive a release and discharge from the Class (which would not include members of the Class who timely elect to opt-out of the settlement, as discussed below) of any and all causes of action, judgments, liens, indebtedness, costs, damages, obligations, attorneys' fees, losses, claims, liabilities and demands of whatever kind or character (each a "claim"), arising on or before \_\_\_\_\_, 2003 (the date that the Court's order preliminary approving the settlement was entered), that are, were or could have been asserted against any of the released parties based on or arising from the factual allegations of the complaint in the Action, whether any such claim was or could have been asserted by any releasing party on its own behalf or on behalf of other persons.

In addition to this release, members of the Class who have not opted-out of the settlement will be deemed to have forever abandoned and discharged any and all claims

that exist now or that might arise in the future against any other persons or entities, including the other Defendants in the Action, which claims arise from, or are based on, conduct by Aetna or any of the other released parties that occurred on or before \_\_\_\_\_, 2003 and are, or could have been, alleged in the complaint in the Action, whether any such claim was or could have been asserted by any releasing party on its own behalf or on behalf of other Persons. Nevertheless, the Settlement Agreement does not operate to relieve any person or entity other than Aetna or the other released parties from responsibility for its own conduct or conduct of other persons who are not released parties.

Excluded from the release are claims for certain covered services that are or were in the process of being submitted to, adjudicated or paid by Aetna at or around the time that the Settlement Agreement was entered into and the Court approval process was begun. This provision is discussed in more detail in section 13(d) of the Settlement Agreement, to which you should refer if you have any questions as to its applicability.

Finally, the Settlement Agreement includes a covenant not to sue Aetna or the other released parties for claims that are generally subject to the release, subject to certain limited exceptions which are described in detail in section 13(e) of the Settlement Agreement.

The release provided for in the Settlement Agreement applies to claims whether they are known or unknown. In this regard, each member of the Class that has not timely elected to opt-out of the settlement and the Class shall be deemed expressly to have waived and released any and all provisions, rights and benefits conferred either (a) by California Civil Code § 1542, which reads:

“Section 1542. General release; extent. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

or (b) by any law of any state or territory of the United States, or principle of common law, which is similar to § 1542 of the California Civil Code.

#### IV. WHAT WILL HAPPEN AT THE SETTLEMENT HEARING?

As mentioned above, the Settlement Hearing will be held on \_\_\_\_\_, 2003 at \_\_\_:00 A.M./P.M. at the United States Courthouse, U.S. District Court for the Southern District of Florida, 301 North Miami Avenue, Miami, Florida. However, the order scheduling that hearing also provides that it may be adjourned by the Court and that no additional notice will be provided to potential members of the Class other than an announcement in open court.

At the Settlement Hearing, the Court will consider several different issues.

First, the Court will consider whether the proposed settlement of the Action with Aetna that is reflected in the Settlement Agreement is fair, reasonable and adequate to members of the Class.

Second, the Court will consider whether it should certify the Class pursuant to Rules 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure. Among other things, this will require the Court to determine (i) whether questions of law or fact common to the members of the Class predominate over questions affecting only individual members of the Class, and (ii) whether a class action is superior to other available methods for fair and efficient adjudication of the controversy. If the Court certifies the Class, potential Class members who have timely elected to opt-out from the Class by following the procedures described below will be excluded from it.

Third, the Court will consider whether to enter orders that would prevent members of the Class and certain other persons, including the Defendants in the Action other than Aetna, from asserting certain claims against Aetna in the future.

Fourth, the Court will consider the application for a payment of fees to the representative plaintiffs by Aetna, which is discussed in more detail below.

Finally, the Court will consider an application by counsel to the Class for attorneys' fees and expenses to be paid by Aetna, which is also discussed in more detail below.

V. CAN I PARTICIPATE IN THE SETTLEMENT HEARING?

Anyone who objects to the proposed settlement with Aetna, the Settlement Agreement, the application for plaintiffs' attorneys' fees or the other matters to be considered at the Settlement Hearing may appear and present such objections. In order to be permitted to do so, however, you must, on or before \_\_\_\_\_, 2003,:

- File with the Court a notice of your intention to appear, together with a statement setting forth your objections, if any, to the matters to be considered and the basis for those objections, together with any documentation that you intend to rely upon at the Settlement Hearing, and
- Serve copies of all such materials either by hand delivery or by first-class mail, postage prepaid, upon the following counsel:

Harley S. Tropin, Esq.  
Kozyak Tropin & Throckmorton, P.A.  
200 South Biscayne Boulevard  
Miami, Florida 33131

Hilarie Bass, Esq.  
Greenberg Traurig, P.A.  
1221 Brickell Avenue  
Miami, Florida 33131

If you do not comply with the foregoing procedures and deadlines for submitting written objections and/or appearing at the Settlement Hearing, you may lose substantial legal rights, including but not limited to, the right to appear and be heard at the Settlement Hearing; the right to contest approval of the proposed settlement or the application for an award of attorneys' fees and expenses to plaintiffs' counsel; the right to contest approval of the application for an award of a fee to representative plaintiffs; or the right to contest any other orders or judgments of the Court entered in connection with the proposed settlement.

If the Court does not approve the proposed settlement, the Settlement Agreement will be null and void. If there are further actions taken in the Action that affect your rights, you will receive notice as determined by the Court.

VI. HOW DO I FILE A CLAIM?

As discussed above, the proposed settlement contemplates certain settlement payments to members of the Class who timely submit claim forms to the settlement administrator. In order to qualify for a settlement payment, you must complete the enclosed claim form and sign the form, then mail the completed and signed form by **NO LATER THAN \_\_\_\_\_, 2003** to:

[Name of Settlement Administrator]  
[Address of Settlement Administrator]  
[Phone number of Settlement Administrator]

**IN ORDER TO BE ENTITLED TO RECEIVE ANY PAYMENT FROM THE SETTLEMENT FUND, YOU MUST COMPLETE AND SIGN A CLAIM FORM AND THE ENVELOPE RETURNING YOUR CLAIM FORM MUST BE POSTMARKED BY NO LATER THAN \_\_\_\_\_, 2003. IF YOU DO NOT MAIL YOUR SIGNED CLAIM FORM BY THIS DEADLINE, YOU WILL BE DEEMED TO HAVE WAIVED YOUR RIGHT TO RECEIVE ANY PAYMENT FROM THE SETTLEMENT FUND AND THE SHARE OF THE SETTLEMENT FUND THAT WOULD HAVE BEEN PAID TO YOU WILL BE CONTRIBUTED TO THE FOUNDATION.**

If you file a claim, you will be electing to be a member of the Class and will be bound by all proceedings, orders, and judgments entered in connection with the proposed settlement and the Settlement Agreement, including the release, covenant not to sue and dismissal with prejudice described above.

**VII. WHAT IF I DO NOT WANT TO BE PART OF THE SETTLEMENT?**

If you do not want to be a member of the Class and participate in the proposed Settlement, then **BY NO LATER THAN \_\_\_\_\_, 2003**, you must send a signed statement to that effect that includes your name, business address, telephone number and Federal Tax Identification Number to the following:

[Name of Settlement Administrator]  
[Address of Settlement Administrator]  
[Phone number of Settlement Administrator]

**TO BE CONSIDERED TIMELY AND TO EFFECTIVELY OPT-OUT OF THE SETTLEMENT, YOUR COMPLETED AND SIGNED OPT-OUT NOTICE MUST BE POSTMARKED BY NO LATER THAN \_\_\_\_\_, 2003. IF IT IS NOT POSTMARKED BY THAT DATE, YOUR RIGHT TO OPT-OUT WILL BE DEEMED WAIVED AND YOU WILL BE BOUND BY ALL ORDERS AND JUDGMENTS ENTERED IN CONNECTION WITH THE SETTLEMENT**

If you choose to opt-out of the settlement and the settlement Class, you will not be entitled to receive the benefits of the proposed settlement with Aetna, including any payment from the settlement fund. Your claims against Aetna will not be released and you will be free to pursue any claims you believe you have by filing a separate action or request for arbitration if you are subject to an arbitration agreement.

**VII. WHAT ABOUT ATTORNEYS' FEES AND EXPENSES?**

Since the beginning of this litigation, plaintiffs' counsel in the Action have not received any payment for their services in prosecuting the Action, nor have they been reimbursed for any out-of-pocket expenses. If the Court approves the proposed settlement, counsel to the plaintiff class will apply to the Court for an award of attorneys' fees, including costs and expenses. In the Settlement Agreement, Aetna agreed not to oppose such an application in the aggregate amount of up to \$\_\_\_ million. If the Court awards plaintiffs' attorneys' fees and expenses in an amount no greater than that amount, Aetna will pay the amount awarded by the Court to plaintiffs' counsel. This payment is in addition to the consideration to the members of the Class that is described above and will not reduce the amount available to members of the Class if the proposed settlement is approved.

**VIII. WHAT ARE THE REPRESENTATIVE PLAINTIFFS' FEES?**

In addition to the application for attorneys' fees and expenses described in the preceding section, in connection with the Court's consideration of the proposed settlement, the representative plaintiffs intend to seek an award from the Court of fees in the amount of up to \$7,500.00 for each representative plaintiff, which if awarded would

be in addition to the settlement consideration that will be available to members of the Class generally. In the Settlement Agreement, Aetna agreed not to oppose such an application up to \$7,500.00 for each representative plaintiff. If the Court awards representative plaintiffs a fee up to that an amount, Aetna will pay such amount to the representative plaintiffs.

**IX. WHO CAN I CONTACT WITH QUESTIONS?**

If you have questions regarding this notice, the proposed settlement with Aetna or the Action generally, you can obtain additional information from the following sources:

On the Internet, at any of these sites:

[www.aetna.com](http://www.aetna.com)  
[www.ArchieLamb.com](http://www.ArchieLamb.com)  
[www.kttlaw.com](http://www.kttlaw.com)

[www.WhatleyDrake.com](http://www.WhatleyDrake.com)  
[www.milberg.com](http://www.milberg.com)  
[www.GordonSilberman.com](http://www.GordonSilberman.com)

By Telephone:

(800) 368-5790

By Mail

Law Offices of Archie Lamb, LLC  
2017 2nd Avenue  
Birmingham, Alabama 35203  
Attention: Archie Lamb, Esq.

Kozyak Tropin & Throckmorton  
200 South Biscayne Boulevard  
Miami, Florida 33131-2335  
Attention: Harley Tropin, Esq.

Milberg Weiss Bershad Hynes & Lerach LLP  
One Pennsylvania Plaza  
New York, New York 10119-0165  
Attention: Edith Kallas, Esq.

**PLEASE DO NOT CALL AETNA, YOUR AETNA PROVIDER RELATIONS REPRESENTATIVE, THE COURT OR THE CLERK'S OFFICE.**

**X. EXAMINATION OF PAPERS**

This notice is a summary and does not describe all details of the proposed settlement with Aetna, the Settlement Agreement or the proceedings in the Action

generally. Complete copies of the Settlement Agreement and certain pleadings and papers filed in the Action can be found for review on the following websites:

[www.aetna.com](http://www.aetna.com)  
[www.ArchieLamb.com](http://www.ArchieLamb.com)  
[www.kttlaw.com](http://www.kttlaw.com)

[www.WhatleyDrake.com](http://www.WhatleyDrake.com)  
[www.milberg.com](http://www.milberg.com)  
[www.GordonSilberman.com](http://www.GordonSilberman.com)

In addition, you may review the complete files of papers submitted in the Action at the office of the Clerk of the Court, United States Courthouse, U.S. District Court for the Southern District of Florida, 301 North Miami Avenue, Miami, Florida during regular business hours.

**XI. REQUEST TO FORWARD THIS NOTICE**

If you would be a member of the Class described in this notice but you have assigned any claim that might be covered by the proposed settlement or the release described above, please forward this notice to the appropriate person as soon as possible.

Dated: \_\_\_\_\_, 2003

BY ORDER OF THE UNITED STATES DISTRICT  
COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Miami Division**

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

IN RE:  
MANAGED CARE LITIGATION

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THIS DOCUMENT RELATES TO  
PROVIDER TRACK CASES ONLY

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**ORDER PRELIMINARILY APPROVING PROPOSED SETTLEMENT,  
SETTING FORM AND CONTENT OF NOTICE TO THE CLASS  
AND SCHEDULING SETTLEMENT HEARING**

The Court having reviewed and considered the Joint Motion for Preliminary Approval Of Settlement Concerning Claims Against Defendants Aetna Inc. and Aetna-U.S. Healthcare Inc. dated May 21, 2003, and having reviewed and considered the terms and conditions of the proposed settlement (the "Settlement") as set forth in the Settlement Agreement dated May 21, 2003 (the "Settlement Agreement"), a copy of which has been submitted with the joint motion, and on the basis of such submissions, together with any other submissions by the parties in support of the joint motion, and all prior proceedings had in this consolidated multi-district litigation, good cause for this Order having been shown,

**NOW, THEREFORE, IT IS HEREBY ORDERED:**

1. The terms of the Settlement Agreement are hereby preliminarily approved, subject to further consideration at the Settlement Hearing provided for below.

The Court concludes that the Settlement is sufficiently within the range of reasonableness to warrant the conditional certification of the settlement Class, the scheduling of the Settlement Hearing and the circulation of notice to members of the Class, each as provided for in this Order.

Conditional Certification of the Class

2. For purposes of settlement only, pursuant to Federal Rules of Civil Procedure 23(a), (b)(2) and (b)(3), solely with respect to defendants Aetna-U.S. Healthcare Inc., now known as Aetna Inc., a Pennsylvania corporation (“Aetna”) and Aetna Inc., a Connecticut corporation (“Old Aetna”) and the other Released Parties, the action styled Shane v. Humana, Inc., et al., Master File No. 00-1334-MD-MORENO (the “Action”), is conditionally certified as a class action on behalf of the following persons (the “Class”):

any and all Physicians, Physicians Groups and Physician Organizations who provided covered services to any individual enrolled in or covered by a plan offered or administered by Aetna, Old Aetna, any other entity named as a defendant in the complaint in the Action, or by any of the current or former subsidiaries or affiliates of any of the foregoing, from August 4, 1990 through and including the date of entry of this Order.

Representative Plaintiffs are temporarily certified as representatives of the Class. This conditional certification of the settlement class and class representatives is solely for purposes of effectuating the Settlement. If the Settlement Agreement is terminated or is not consummated for any reason, the foregoing conditional certification of the Class and appointment of class representatives shall be void and of no further effect and the parties to the Settlement shall be returned to the status each occupied before entry of this Order without prejudice to any legal argument that any of the parties to the Settlement

Agreement might have asserted but for the Settlement Agreement, and provided that in such circumstances any further ruling by this Court or an appellate court on the propriety of this Court's order dated September 26, 2002 certifying a class in the Action shall apply to Aetna and Old Aetna as if those defendants had participated in further proceedings with respect to that Order. The Court notes that because the proposed certification of the Class is in connection with the Settlement rather than litigation, the Court need not resolve the issues of manageability presented by certification of the nationwide class proposed in the complaint in the Action.

Settlement Hearing: Right to Appear and Object

3. A hearing (the "Settlement Hearing") shall be held before the Court on \_\_\_\_\_, 2003, in the United States Courthouse, U.S. District Court for the Southern District of Florida, 301 North Miami Avenue, Miami, Florida, to determine:

- (a) whether the Court should certify the Class and whether Representative Plaintiffs and their counsel have adequately represented the Class;
- (b) whether the Settlement, on the terms and conditions provided for in the Settlement Agreement, should be finally approved by the Court as fair, reasonable and adequate;
- (c) whether the Action should be dismissed on the merits and with prejudice as to Aetna and Old Aetna;
- (d) whether the Court should permanently enjoin the assertion of any claims that arise from or relate to the subject matter of the Action against Aetna

and Old Aetna or any of the other Released Parties by the members of the Class, the other defendants in the Action or any other persons;

(e) whether the application for attorneys' fees and expenses to be submitted by Class Counsel in connection with the Settlement Hearing should be approved;

(f) whether the application for a fee award to Representative Plaintiffs to be submitted in connection with the Settlement Hearing should be approved; and

(g) such other matters as the Court may deem necessary or appropriate.

The Court may finally approve the Settlement at or after the Settlement Hearing with any modifications agreed to by the parties and without further notice to the Class.

4. Any member of the Class that has not timely and properly provided notice of an election to opt-out of the Class and the Settlement in the manner set forth below, and any other interested person, may appear at the Settlement Hearing in person or by counsel and be heard, to the extent allowed by the Court, either in support of or in opposition to the matters to be considered at that hearing, provided, however, that no person shall be heard, and no papers, briefs or other submissions shall be considered by the Court in connection with its consideration of those matters, unless on or before \_\_\_\_\_, 2003, such person:

(a) files with the Court a notice of such person's intention to appear, together with a statement setting forth such person's objections, if any, to the matters to be considered and the basis therefor, together with any

documentation that such person intends to rely upon at the Settlement Hearing,

and

(b) serves copies of all such materials either by hand delivery or by first-class mail, postage prepaid, upon the following counsel:

Harley S. Tropin  
Kozyak Tropin & Throckmorton, P.A.  
200 South Biscayne Boulevard  
Miami, Florida 33131

and

Hilarie Bass  
Greenberg Traurig, P.A.  
1221 Brickell Avenue  
Miami, Florida 33131

5. The Court may adjourn the Settlement Hearing, or any adjournment thereof, including the consideration of the application for attorneys' fees and expenses, without further notice of any kind other than an announcement of such adjournment in open court at the Settlement Hearing or any adjournment thereof.

Form and Timing of Notice

6. As soon as practicable after entry of this Order, but no later than 30 days after this Order is entered, Class Counsel or its designee shall cause copies of the Notice of Class Action and Proposed Settlement in the form attached as Exhibit E to the Settlement Agreement (the "Mailed Notice"), and in the case of members of the Class who are individuals, including the claim form substantially in the form attached as Exhibit A to the Settlement Agreement (the "Claim Form"), the form of which is hereby approved, to be mailed by first-class mail, postage pre-paid, to all potential members of the Class to the extent that such Class members can be identified with reasonable

diligence from either (a) Aetna's books and records, at their last known address appearing in such books and records or (b) records maintained by the American Medical Association (the "AMA"), to the extent that such records can be obtained by Class Counsel for this purpose within the schedule for notice provided in this Order. No later than 20 days after entry of this Order, (x) Aetna shall provide in machine readable format to Class Counsel or their designee the information available from its records concerning Class members that is necessary to comply with this provision and (y) Class Counsel shall cause to be obtained from the AMA, in machine readable form to the extent reasonably available, the AMA records referred to in this paragraph.

7. As soon as practicable after the first mailing of the Mailed Notice, and in all events no later than 30 days prior to the Opt-Out Deadline that is set forth below, Class Counsel shall cause to be published in the legal notices sections of the national editions of *The Wall Street Journal* and *USA Today*, one day a week for two consecutive weeks, a summary notice substantially in the form of Exhibit G to the Settlement Agreement, the form of which is hereby approved (the "Summary Notice"). In addition, to the extent reasonably practicable within the schedule contemplated by this Order, Class Counsel shall cause the Summary Notice to be published at least once no later than 30 days prior to the Opt-Out Deadline in a nationwide periodical addressing issues of concern to physicians, such as *The Journal of the American Medical Association* or *The American Medical News*.

8. Beginning on the earliest date that notice is provided pursuant to paragraphs 6 and 7 of this Order and continuing through the deadline for members of the Class to return a completed Claim Form (as that date is specified in the Settlement

Agreement), Aetna and Class Counsel shall make available to potential members of the Class printable versions of the Mailed Notice and the Claim Form on the public websites maintained by or on behalf of Aetna and at least five of the law firms serving as Class Counsel in the Action.

9. Prior to the Settlement Hearing, (a) Class Counsel shall serve and file a sworn statement attesting to compliance with paragraphs 6 and 7 of this Order and (b) Class Counsel and Aetna shall file a sworn statement attesting to compliance with paragraph 8 of this Order. Costs of providing the notice to the Class that is specified in this Order shall be paid as set forth in the Settlement Agreement.

10. The notice to be provided as set forth in paragraphs 6, 7 and 8 of this Order is hereby found to be the best means of notice to members of the Class that is practicable under the circumstances and, when completed, shall constitute due and sufficient notice of the Settlement and the Settlement Hearing to all persons affected by and/or entitled to participate in the Settlement or the Settlement Hearing, in full compliance with the requirements of due process and the Federal Rules of Civil Procedure.

#### Ability of Class Members to Opt-Out of Settlement Class

11. All members of the Class who wish to opt-out of the Class must do so by sending written notice of their election to opt-out to the settlement administrator at the address set forth in the notices to be provided pursuant to paragraphs 6 and 7 of this Order. To be considered timely, and thereby effectively exclude a person from the Class, the envelope delivering a completed opt-out request for such person must be postmarked by no later than \_\_\_\_\_, 2003 (the "Opt-Out Deadline"). Prior to the Settlement

Hearing, Class Counsel or their designee shall submit to the Court a sworn statement setting forth the names and addresses of each member of the Class who has timely elected to opt-out from the Class.

12. Any potential member of the Class that does not properly and timely request exclusion from the Class shall be included in such Class and, if the Settlement is approved and becomes effective, shall be bound by all the terms and provisions of the Settlement Agreement, including but not limited to the releases, waivers and covenants not to sue described therein, whether or not such person shall have objected to the Settlement and whether or not such person makes a claim upon, or participates in, the Settlement Fund or the other benefits to the Class to be provided under the Settlement Agreement.

#### Other Provisions

13. Capitalized terms used in this Order that are not otherwise defined herein have the meaning assigned to them in the Settlement Agreement.

14. All proceedings against or concerning Aetna or Old Aetna in the Action, other than proceedings as may be necessary to carry out the terms and conditions of the Settlement, are hereby stayed and suspended until further order of the Court. Pending final determination of whether the Settlement and the Settlement Agreement should be approved and the Class permanently certified, all members of the Class are hereby barred and enjoined from commencing or prosecuting any action asserting any Released Claims.

15. No discovery with regard to the Settlement or the Settlement Agreement shall be permitted as to any of the parties to the Settlement Agreement other

than as may be directed by the Court upon a proper showing by the party seeking such discovery by motion properly noticed and served in accordance with this Court's Local Rule 7.1.

16. In each of the Provider Track Cases assigned to this Court under MDL Docket No. 1334 that involve Class Members or any Signatory Medical Society, all discovery and any other proceedings are hereby stayed in all respects as to Aetna, Old Aetna and the other Released Parties until the Court has entered an Order setting forth its final determination with respect to the parties' application for final approval of the Settlement.

17. Pending entry of an Order setting forth the final determination of the Court with respect to the parties' application for final approval of the Settlement, Aetna and Old Aetna are hereby relieved of any and all obligations under paragraph 2(b) of the Agreed Order For Preservation of Records entered in this Action on January 12, 2001, to preserve Future Documents (as defined in the January 12, 2001 Order) created on or after the date of this Order.

18. Neither the Settlement Agreement nor any provision therein, nor any negotiations, statements or proceedings in connection therewith shall be construed as, or be deemed to be evidence of, an admission or concession on the part of any of the Representative Plaintiffs, the Signatory Medical Societies, Class Counsel, any members of the Class, Aetna or Old Aetna or any other person of any liability or wrongdoing by them, or that the claims and defenses that have been, or could have been, asserted in the Action are or are not meritorious, and neither the Settlement Agreement nor any such communications shall be offered or received in evidence in any action or proceeding, or

be used in any way as an admission or concession or evidence of any liability or wrongdoing of any nature or that Representative Plaintiffs, the Signatory Medical Societies, any member of the Class or any other person has or has not suffered any damage.

19. In the event that the Settlement Agreement is terminated or is not consummated for any reason, the Settlement and all proceedings had in connection therewith shall be null and void, except to the extent expressly provided to the contrary in the Settlement Agreement, and without prejudice to the rights of the parties to the Settlement Agreement before it was executed.

SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2003.

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U.S.D.J.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Miami Division

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

IN RE:  
MANAGED CARE LITIGATION

THIS DOCUMENT RELATES TO  
PROVIDER TRACK CASES ONLY

NOTICE OF PROPOSED SETTLEMENT WITH AETNA

**IF YOU ARE A PHYSICIAN WHO PROVIDED COVERED SERVICES TO ANY INDIVIDUAL ENROLLED IN OR COVERED BY CERTAIN HEALTH CARE PLANS AT ANY TIME BETWEEN AUGUST 4, 1990 AND \_\_\_\_\_, 2003, OR A PHYSICIANS' GROUP OR OTHER PHYSICIANS' ORGANIZATION THAT INCLUDES SUCH PHYSICIANS, PLEASE READ THIS NOTICE CAREFULLY. THIS CLASS ACTION AND THE PROPOSED SETTLEMENT MAY AFFECT YOUR RIGHTS.**

If you are or have been a physician who actively practiced in the United States since August 1990 or a physicians' group or organization that includes such physicians, your rights may be affected by a proposed settlement with Aetna Inc. and Aetna U.S. Healthcare Inc. (together, "Aetna") in a class action lawsuit known as Shane v. Humana, Inc., et al., Master File No. 00-1334-MD-MORENO (the "Action"), which is part of a federal multi-district litigation that is pending in the U.S. District Court for the Southern District of Florida (the "Court") called In re Managed Care Litigation, MDL Docket No. 1334 (Provider Track Cases). The class representatives and certain medical societies have agreed to settle all claims against Aetna in the Action in exchange for Aetna's adoption of a number of changes to its business practices, the creation of a charitable foundation and the establishment of a settlement fund against which members of the Class (as defined below) can make claims for a settlement payment. The Court has scheduled a hearing to consider the fairness, reasonableness and adequacy of the proposed settlement with Aetna, together with certain other matters, to be held on \_\_\_\_\_, 2003 at \_\_\_:00 A.M./P.M. at the United States Courthouse, U.S. District Court for the Southern District of Florida, 301 North Miami Avenue, Miami, Florida. You may be a member of the Class who therefore would be entitled to receive the benefits of the proposed settlement. As a member of the Class, however, you will also be bound by the release and other provisions of the settlement if it is approved by the Court. You may elect to opt-out of the Class and the settlement, as explained below. You also have a right to object to the settlement or to the applications for attorneys' fees and representative plaintiffs' fees that counsel for the Class intend to make to the Court, but only if you comply with the procedures described in this notice or the other resources it refers to.

**WHAT IS THE LITIGATION ABOUT?**

The Action has been brought by the representative plaintiffs, who are practicing physicians from around the United States, and certain

medical societies, on behalf of physicians against the following health care insurance companies: Aetna, Anthem, Inc., Cigna, Coventry Health Care, Inc., Health Net, Inc., Humana Health Plan, Inc., Humana, Inc., Pacificare Health Systems, Inc., Prudential Insurance Company of America, United Health Care, United Health Group and Wellpoint Health Networks, Inc. The complaint in the Action alleges that between 1990 and 2002, these companies engaged in a conspiracy to improperly deny, delay and/or reduce payment to physicians and other health care providers by engaging in several types of allegedly improper conduct. The complaint seeks relief on behalf of a purported nationwide class under various theories arising under federal and state statutory and common law.

**WHO IS INVOLVED?**

The proposed settlement, which is only with Aetna and not any of the other defendants in the Action, will be on behalf of a settlement class (the "Class") consisting of "any and all physicians, physician groups and physician organizations who provided covered services to any individual enrolled in or covered by a plan offered or administered by Aetna, any other person named as a defendant in the complaint in the Action, or by any of the current or former subsidiaries or affiliates of any of the foregoing, during the period beginning on August 4, 1990 and ending on \_\_\_\_\_, 2003 (the date that the Court entered its order preliminarily approving the proposed settlement and directing that this notice be provided to you).

**THE PROPOSED SETTLEMENT**

Under the proposed settlement, Aetna has agreed that it will make significant changes to certain business practices. In addition, Aetna will create and fund a charitable foundation that will be dedicated to promoting high quality healthcare and Aetna will fund a settlement fund against which individual physicians who are members of the Class will be able to make claims for a settlement payment according to a

formula that is set forth in the settlement agreement. This settlement consideration is described more fully in a longer notice that has been mailed directly to the members of the class. If you have not received the mailed notice, you can access it and other information about the settlement at [www.aetna.com](http://www.aetna.com) or use the resources described below.

Only claims against Aetna (and claims against others based on Aetna's conduct, as distinct from the conduct of such other persons or entities) will be resolved in the Action if the settlement is approved. The other defendants are not parties to the settlement and even if the settlement is approved by the Court, the representative plaintiffs and the signatory medical societies who are parties to the Action intend to continue to prosecute their claims against the other defendants in the Action, although, in those circumstances, as part of the settlement, the non-settling defendants could not be held liable based on Aetna's conduct.

#### **YOUR RIGHTS**

If you want to participate in the proposed settlement fund, you must complete, sign and return a proof of claim form to the settlement administrator **BY NO LATER THAN [insert date that is 90 days after the date of notice]**. The form and the address to which it must be sent can be obtained on Aetna's website, [www.aetna.com](http://www.aetna.com). If you are a member of the class and submit a claim form or if you do not do anything, you will be considered a participant in the proposed settlement, but you will only be entitled to payment if you timely submit a proof of claim form. In either case, you will be bound by all orders of the Court relating to the settlement and if the settlement is approved, certain possible legal claims you may have against Aetna (which Aetna disputes), will be resolved and forever released.

If you want to be excluded from the proposed settlement, you must submit a request for exclusion. This must be signed by you and must include: your name, business address and telephone number and all federal tax identification numbers under which you have sought or received reimbursement from Aetna or any of the other health care insurance companies identified above. The completed request must be **POSTMARKED NO LATER THAN [ ]**, 2003, and mailed to:

**[INSERT SETTLEMENT ADMIN. INFO.]**

The Court has scheduled a hearing to consider the proposed settlement and other matters, which will take place on \_\_\_\_\_ 2003, at \_\_\_\_\_ a.m./p.m. at the United States District Court for the Southern District of Florida, 301 N. Miami Ave., Miami, Florida. At that hearing, the Court will determine, among other things, whether the proposed settlement with Aetna should be approved as fair,

reasonable and adequate, whether the proposed settlement class should be certified, whether the Court should award attorneys' fees and expenses to plaintiffs' counsel or to the representative plaintiffs in the Action, and certain other matters. You may attend this hearing if you wish, but you do not have to attend in order to participate in the proposed settlement.

If you wish to appear at the settlement hearing or to object to the proposed settlement, you must submit a written objection and/or notice to appear in accordance with the procedures and deadlines that are described in the longer notice. If you have not received that notice, you should request it from one of the sources identified below. If these procedures and deadlines are not followed, you may lose significant legal rights, including, but not limited to, the right to have your objections considered by the Court.

#### **For Complete Information and a Copy of the Full Notice:**

**Call: 1-800-368-5790**

#### **Or Write to:**

Law Offices of Archie Lamb, LLC  
2017 2nd Avenue  
Birmingham, Alabama 35203  
Attention: Archie Lamb, Esq.

Kozyak Tropin & Throckmorton  
200 South Biscayne Boulevard  
Miami, Florida 33131-2335  
Attention: Harley Tropin, Esq.

Milberg Weiss Bershad Hynes & Lerach LLP  
One Pennsylvania Plaza  
New York, New York 10119-0165  
Attention: Edith Kallas, Esq.

#### **Or Visit:**

[www.aetna.com](http://www.aetna.com)  
[www.WhatleyDrake.com](http://www.WhatleyDrake.com)  
[www.ArchieLamb.com](http://www.ArchieLamb.com)  
[www.milberg.com](http://www.milberg.com)  
[www.kttlaw.com](http://www.kttlaw.com)  
[www.GordonSilberman.com](http://www.GordonSilberman.com)

**Please do not contact the Court directly.**

**EXHIBIT H**

**START DATE OF SECTION 7 COMMITMENTS**

<u>Section</u>	<u>Description of Commitment</u>	<u>Start Date</u>
7.1	Auto-adjudication enhancements	1/1/03
7.2	Connectivity enhancements	I.D.**
7.3	Fee schedule disclosure (website)	12/31/04
	Fee schedule disclosure (up to 50 copies, on written request)	E.D. + 3 mos.
7.4	Investments for 7.2/7.3	1/1/03
7.5	Pre-certification list	E.D.††
	Disclosure of customized pre-certification lists	I.D. + 6 mos.
7.6	90-day M.A.C. notice	E.D.
7.7	Initiatives re claims resubmissions	E.D.
7.8	Claims payment practice	
(a)	Consistent rules	12/31/04
(b)	Claim Check "look through"	12/31/03, or as soon thereafter as practicable
(c)	Other payment rules disclosure	12/31/03, or as soon thereafter as practicable
(c)(i)	Claim Check "customization" disclosure	I.D. + 6 mos.
(c)(ii)	Not routinely requiring records	E.D.
(c)(iii)	Disclosure of modifier 25/59 "inappropriate" rules	I.D. + 6 mos.
(d)	Update 7.8 (c) disclosures	N/A
7.9 (a)	Physician Advisory Committee (first meeting)	Later of 1/31/04 and selection of Committee Members

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\*\* Implementation Date.

†† Execution Date

7.10	Billing Dispute external review	I.D.
7.11	Medical Necessity external review (physician access)	I.D. + 9 mos., or as soon thereafter as practicable
7.12	ERA/EFT subsidy	I.D. + 6 mos., or as soon thereafter as practicable
7.13 (a)	Expedited credentialing	I.D. + 6 mos., or as soon thereafter as practicable
	(b) No all products clause	E.D.
	(c) Bilateral termination without cause	E.D.
7.14 (a)	Fee schedules	I.D.
	(b) Payment for vaccine administration	I.D.
	(b) Payment for injectibles	I.D.
	(b) Payment for pediatric vaccines outside of capitation	I.D.
	(b) Issue coverage policy bulletin within 120 days of specialty society recommendation	I.D.
7.15	Accept benefit assignments	I.D.
7.16 (a)(i)	Medical necessity definition	E.D.
	(a)(ii) Medical necessity denial rate	After calendar year following Implementa- tion Date
	(b) Coverage policy bulletin standards	E.D.
7.17 (a)	Time period for accepting claims	E.D.
	(b) Accept claims on standard forms	E.D.
	(c) COB rules	E.D.
7.18	Claim processing timelines	I.D. + 6 mos.
7.19	No automatic downcoding	E.D.
7.20 (a)	Joint effort regarding claims-editing software reform	I.D.
	(b) Interim commitments regarding claims edits	E.D., or as soon thereafter as practicable
7.21	Explanation of benefit forms	12/31/04, or as soon thereafter as practicable
7.22	Overpayment recovery procedures	I.D.
7.23	Accuracy of eligibility information	I.D.

7.24	Provider service centers	12/31/04, or as soon thereafter as practicable
7.25	Confirmation of medical necessity	E.D.
7.26	Provider website availability	E.D.
7.27	Public website information about doctors	I.D.
7.28 (a)	Capitation reporting	I.D.
(b)	Assignment of primary care physician for certain plan members	1/1 after I.D.
7.29 (a)	No "gag" clauses	E.D.
(b)	Medical records ownership	E.D.
(c)	Arbitration fee limits	E.D.
(d)	Coordination with existing physician contracts	E.D.
(e)	No impact on scope of covered services	E.D.
(f)	Privacy of records	E.D.
(g)	Pharmacy risk pools	E.D.
(h)	"Stop loss"	E.D.
(i)	Pharmacy provisions	E.D.
(j)	Mail order discount card	I.D. + 6 months
(k)	Physician specialty society guidelines	E.D.
(l)	Scope of Company's responsibilities	E.D.
(m)	Copies of contracts	I.D.
(n)	Compliance with law	E.D.
(o)	Modification of means of disclosure	E.D.

**PRE-CERTIFICATION LIST AS OF MAY 2003**

**Contact Agent for Precertification**

Agents by Area: Choice<sup>SM</sup>, QPOS, Area Golden Circle<sup>SM</sup>, Area HealthFirst<sup>SM</sup>, Blue Cross, Golden Medicare Plan<sup>SM</sup>, HMO, Managed Choice, Open Access<sup>SM</sup>, Blue Choice, Open Access<sup>SM</sup>, HMO, Open Access<sup>SM</sup>, Managed Choice, Open Access<sup>SM</sup>, QPOS and USAccess benefit plans

**1. Inpatient confinements:**

- Surgical and non-surgical confinements
- Skilled nursing facility
- Rehabilitation facility
- Inpatient hospice (except Medicare)
- Maternity confinements (for notification purposes only please call after the first prenatal visit)

**2. Reconstructive procedures and procedures that may be considered cosmetic:**

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>▪ Blepharoplasty/canthopexy/canthoplasty</li> <li>▪ Excision of excessive skin due to weight loss</li> <li>▪ Tattoo removal, revision or application</li> <li>▪ Rhinoplasty/rhytidectomy</li> <li>▪ Gastroplasty/gastric bypass</li> <li>▪ Pectus excavatum repair</li> </ul> | <ul style="list-style-type: none"> <li>▪ Breast reconstruction/breast enlargement</li> <li>▪ Breast reduction/mammoplasty</li> <li>▪ Surgical treatment of gynecomastia</li> <li>▪ Lipectomy or excess fat removal</li> <li>▪ Treatment of penile dysfunction</li> <li>▪ Sclerotherapy or surgery for varicose veins</li> <li>▪ Any other potentially cosmetic procedure</li> </ul> |
|--|---|

**3. Selected durable medical equipment:**

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>▪ Electric or motorized wheelchairs and scooters</li> <li>▪ Clinitron and electric beds</li> </ul> | <ul style="list-style-type: none"> <li>▪ Limb and torso prosthetics</li> <li>▪ Customized braces</li> </ul> |
|---|---|

**4. Medical Injectables:**

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>▪ Intravenous immunoglobulin (IVIG)</li> <li>▪ Growth hormone</li> <li>▪ Rebif</li> </ul> | <ul style="list-style-type: none"> <li>▪ Blood clotting factors</li> <li>▪ Remicade</li> <li>▪ Pegasys</li> </ul> |
|--|---|

**5. Uvulopalatopharyngoplasty including laser-assisted procedures**

**6. Orthognathic surgery procedures, osteotomies and surgical management of the temporomandibular joint**

**7. Laparoscopic infertility surgery**

**8. Bunionectomy and hammertoe surgery**

**9. Elective (non-emergent) transportation by ambulance, or medical van and all transfers via air ambulance**

**10. All home health care services**

**11. Requests for in-network level of benefits for nonparticipating physicians and providers for non-emergent services<sup>2</sup>**

**12. Dental implants and oral appliances**

**13. Services that may be considered investigational or experimental**

**Special Programs**

- Mental health, substance abuse or behavioral health services: see member's ID card
- Moms to Babies<sup>SM</sup> Maternity Management Program, including genetic testing, antenatal testing, perinatal consultations & counseling: 1-800-272-3531
- Infertility Program: 1-800-575-5999. Requests received after 4PM EST will not be evaluated until the next business day
- Pharmacy Precertification: 1-800-414-2386 (Only medical injectables listed in #4 above must be precertified through Patient Management by calling the number on the member's ID card.)
- National Medical Excellence Program for all major organ transplant evaluations and transplants including but not limited to kidney, liver, heart, lung and pancreas and bone marrow replacement or stem cell transfer after high dose chemotherapy: 1-877-212-8811
- (Where applicable) HMO plan members only: Outpatient imaging precertification for CTs MRI/MRA, Nuclear Cardiology, Pet Scans: 1-800-XXX-XXXX

<sup>1</sup> Not all plans are offered in all service areas.

<sup>2</sup> For Golden Medicare Plan<sup>SM</sup>, QPOS, USAccess and Managed Choice benefit plans, members may elect to go outside the network and receive reduced benefits.

**Additional Assistance and Information:**

- Call Member Services for confirmation of member benefits and eligibility; see members' ID card for toll-free number.

- Visit <http://www.aetna.com/cpb/index.html> for Coverage Policy Bulletins.
- Visit <http://www.aetna.com/docfind/index.html> for DocFind<sup>®</sup>, a searchable index of participating physicians/providers.
- Contact your local Provider Relations representative.

## Term Sheet for Not-For Profit Medical Foundation

**Purpose:**

To use the sum of \$20 million paid by the Company, and any other proceeds contributed to the Foundation in connection with the settlement of In re Managed Care Litigation, MDL Docket No. 1334, in each case in accordance with the guidelines set forth herein, with the stated objective of using annually at least 25% of the \$20 million initially funded by Company and 10% of the additional proceeds contributed to the Foundation per the above.

**Form:**

Not-for profit, private non-stock corporation incorporated in Florida, with no stockholders (the "Foundation"). The Foundation will be established as a tax-exempt foundation under Section 501(c)(3) of the Federal Internal Revenue Code.

**Governance:** The original Executive Board of Directors ("Executive Board") to consist of ten voting members ("Voting Directors") and one non-voting member ("Non-voting Director"). In addition, there will be an "Advisory Board ("Advisory Board") consisting of all Signatory Societies who are not on the Executive Board. The Signatory Societies are the medical associations or societies, of California, Texas, Florida, Louisiana, Georgia, Denton County (Texas), Alaska, Connecticut, Hawaii, Nebraska, New Hampshire, New Jersey, New York, North Carolina, South Carolina, Tennessee, Washington, El Paso County and North Virginia ("Signatory Societies"). The Advisory Board will provide advice and assistance to the Executive Board but will not govern the Foundation. The Executive Board will govern the Foundation and generally will take action by majority vote at a meeting at which a quorum is present (to be decided by the proposed Executive Board).

**Appointment of Directors:**

10 original Voting Directors will be selected by Signatory Societies. Any replacement or future voting directors shall be appointed by Signatory Societies. The original Voting Directors will be named in the articles of incorporation; remaining 1 Non-voting Director to be selected by Company and named in the articles of incorporation. Any replacement or future non-voting directors shall be appointed by the Company

**Election of Officers for the Executive Board:**

To be elected by the majority of the Executive Board.

**Actions Requiring Majority Executive Board (Voting Directors) Approval:**

- 1) All grant approval and funding;
- 2) Expenditure of Foundation funds in an amount exceeding \$[ ];
- 3) Hiring and firing of management of the Foundation, which management will be responsible for administering the day- to-day operations of the Foundation;

4) Retention of money managers to make appropriate investments of the proceeds held by the Foundation.

**Actions Requiring Consent of All (Voting and Non-Voting) Directors:**

Any amendment to the stated Purposes or Mission of the Foundation, the Foundation's tax status, the prohibited Foundation activities (specified below), the Company's right to appoint the Non-voting Director will require approval of all (voting and non-voting) directors or mutual approval by the Signatory Medical Societies and the Company.

**Removal of Voting and Non-voting Directors:**

No Voting Director or Non-voting Director may be removed once in office, except for cause by, in the case of a Voting Director, a two-thirds majority vote of such directors must approve and, in the case of the Non-voting Director, the approval of the Company.

**Alternative Structure: IF Company accepts plaintiffs request that the Company director be a non-voting director, the following should be included:**

If Florida law does not permit the effectuation of the rights of the Non-voting Director, as outlined herein, then the Foundation shall instead be established with at least two classes of members. One class of member will be comprised of Company (the "Company Member"). Instead of Company being entitled to appoint the Non-voting Director, the Company Member will be entitled to appoint a non-voting director to the Executive and Advisory Boards who will not be entitled to vote with respect to matters considered by such boards, but who will be entitled to receive advance notice of, and materials prepared in connection with, and to attend and participate in (but not vote at) all meetings of the Executive and Advisory Boards (and any committees thereof).

The consent of the Company Member would be required in order for the Foundation to take any of the actions identified herein under the caption "Actions Requiring Consent of All Directors" and would also be required to (i) remove of the Company Member's non-voting director" and (ii) modify of any of the provisions described in the preceding paragraph.

**Investment of Foundation Proceeds:**

Funds held by the Foundation will be invested in [identify requirements that must be satisfied for short-term investments by Foundation - where funds will be "parked" pending decision by Foundation to expend funds in a particular manner].

**Location of Foundation's Offices:**

[To be decided by the Executive Board]

**Termination/ Liquidation of the Foundation:**

[To be decided by the Executive Board]

**Mission Statement:**

The Foundation shall be dedicated to promoting high quality healthcare and shall give particular emphasis to initiatives that assist physicians to improve/enhance the quality of care received by patients.

**Foundation Initiatives:**

To be determined by the Executive Board, in good faith consultation with Company, it being understood that the decision as to the appropriate Foundation initiatives shall be made by the Executive Board.

**Prohibited Foundation Activities**

- 1) Lobbying or political advocacy:
- 2) Activities related to litigation, arbitration or other dispute resolution (other than any such activities that relate directly to the operation of the Foundation):
- 3) Medical research or animal research:
- 4) Research and or development of drugs or medical devices:
- 5) Any activity inconsistent with its status as a 501(c)(3) foundation.