

Aetna Step-by-Step Compliance Dispute Procedure

WHEN CAN I FILE A COMPLIANCE DISPUTE?

If you believe that Aetna has violated the terms of the Agreement, you may be entitled to file a compliance dispute.

HOW DO I INITIATE A COMPLIANCE DISPUTE?

Any physician who has not opted-out¹ of the Settlement, or any Signatory Medical Society (listed below), or Additional Signatory Medical Society (listed below) may direct a compliance dispute to the Compliance Dispute Facilitator (the “Facilitator”), Julia Stewart, Esq.² Julia Stewart is an attorney who for the last three and a half years has represented physicians in the underlying MDL lawsuit out of which the settlement with Aetna arose. She has been appointed Facilitator by the federal judge in the case. As Facilitator, she will serve as the physicians’ representative in any compliance disputes with Aetna, unless the physician elects to employ separate counsel. Graduating from the University of Alabama School of Law in 1977, and then serving as a Federal Clerk for the United District Court, she has had an active civil and criminal litigation practice for the last twenty-five years.

Signatory Medical Societies include:

Alaska State Medical Association
California Medical Association
Connecticut State Medical Society
Denton County Medical Association (TX)
El Paso County Medical Society (CO)
Florida Medical Association
Medical Association of Georgia
Louisiana State Medical Society
Nebraska Medical Association
New Hampshire Medical Society
Medical Society of New Jersey
Medical Society of the State of New York
North Carolina Medical Society
Northern Virginia Medical Societies
South Carolina Medical Society
Tennessee Medical Association
Texas Medical Association
Washington State Medical Association

Additional Signatory Medical Societies include:

Medical Association of the State of Alabama
American Psychoanalytic Association
American Association of Practicing Psychiatrists
Arkansas Medical Society
Clear Creek Valley Medical Society (CO County)
Colorado Medical Society
Medical Society of Delaware
The Psychiatric Society of Delaware
Denver Medical Society (CO County)
Massachusetts Medical Society
Massachusetts Psychiatric Society
Oklahoma State Medical Association
Pennsylvania Medical Society
Rhode Island Medical Society
Medical Society of Virginia

¹ Under the terms of the Settlement, “opt-out” is defined as any physician who timely requested to be excluded from the terms of the Settlement.

² Ms. Stewart was selected by the plaintiff physicians and medical society signatories to the Settlement. A copy of Ms. Stewart’s resume can be downloaded from the following website: www.hmoselements.com or at http://www.milberg.com/pdf/Julia_Smeds_Stewart_Resume.pdf.

- In order to submit a compliance dispute, you must submit a **claim form** to the Facilitator. A **claim form** can be downloaded at the following website: www.hmoselements.com or at http://www.milberg.com/pdf/aetna_settlement/proof_of_claim.pdf. Although it is not required, we recommend that you include, with your claim form, supporting documentation and/or a supporting affidavit.

- All compliance disputes should be directed to the Facilitator, at the following address:

Julia Smeds Stewart, Esq.
Aetna Compliance Dispute Facilitator
WHITE ARNOLD ANDREWS & DOWD P.C.
2025 Third Avenue North, Suite 600
Birmingham, AL 35203
(205) 323-1888
jstewart@waadlaw.com

- Please note that physician or medical society must submit a completed Claim Form **within 30 calendar days after the Compliance Dispute arose**.

WHAT HAPPENS NEXT?

Role of the Facilitator

- Upon receipt of a claim form, the Facilitator must determine the following: (1) that the claim is not frivolous (“frivolous” is defined as claim filed for nuisance purposes or otherwise without merit); (2) that the physician initiating the compliance dispute has not opted-out and that the claim form demonstrates that the physician has been adversely impacted; (3) that the matter cannot be easily resolved by the Facilitator; **and** (4) that the compliance dispute does not involve a billing dispute or Medical Necessity Dispute, except to the extent that the subject matter of the dispute constitutes a violation of any of the terms of the Agreement.
- If the Facilitator determines that the matter can be resolved without referring the matter to the Compliance Dispute Officer (“CDO”), the Facilitator will refer the physician or medical society to appropriate resources or otherwise assist in the resolution of the dispute.
- If the Facilitator determined that a claim is frivolous, the Facilitator may reject such claim and issue a written explanation or a written order of grounds for the denial. There is no appeal of this denial.

Role of the CDO

- The “Compliance Dispute Officer” (CDO) for the Aetna Settlement is Talbot “Sandy” D’Alemberte, Esq.³ Mr. D’Alemberte is currently a law professor at Florida State University of Law, having served previously as President of the American Bar Association and President of Florida State University. For more information, including a listing of his numerous awards, go to www.hmoselements.com or at www.law.fsu.edu/faculty/profiles or at http://www.milberg.com/pdf/Talbot_Sandy_DAlemberte_Vita.pdf.

³ Mr. D’Alemberte was mutually agreed upon by the signatories to the Aetna Settlement to serve as the CDO.

- If the Facilitator determines that the compliance dispute is eligible and cannot be resolved informally as described above, the Facilitator will notify the physician or medical society, Aetna and the CDO. The CDO will then direct the physician or medical society, Aetna and the Facilitator to begin negotiations and attempt to resolve the dispute in mutually agreeable terms. If requested by both parties, the CDO will act as mediator of these negotiations. The Facilitator will act as the physician or medical society representative unless the physician or medical society chooses otherwise.
- If, after **90 calendar days of negotiations** (counting from the date that the CDO instructed negotiations to begin), no agreement can be reached, the Facilitator must refer the dispute to the CDO.

Requirement of Written Memoranda

- Once the CDO is informed that a dispute could not be resolved, the physician or medical society must submit a written memorandum supporting his/her position within **15 calendar days**.
- Thereafter, Aetna will have **15 calendar days** to submit written memoranda responding to the physician or medical society memorandum. Requests for extensions of time must be submitted to the CDO no less than 5 calendar days before the date that the memoranda are due.
- When either the physician or medical society or Aetna submit their respective memoranda, they can request that an oral argument be scheduled and upon request of either party, the CDO shall schedule and hear oral argument.

Determination by CDO

- The CDO will decide whether Aetna or the physician or medical society breached its obligations under Section 7 of the Settlement Agreement. The CDO is required to issue a written opinion announcing and setting forth the basis of the decision and if so what remedy is ordered.

Petition for Rehearing

- **Within 10 calendar days** of issuing a decision, the physician or medical society and/or the Company may petition for a rehearing. The petition for a rehearing must be in writing. The CDO may deny the petition or issue a new written opinion.

Finality of Determination

- The CDO's decision is binding upon the physician or medical society and Aetna, unless appealed to the Court. Once the CDO makes a decision, the party to the compliance dispute found not to be in compliance shall **have 30 calendar days** from the date of the decision to cure the non-compliance.
- If after **30 calendar days**, the non-compliant party to the compliance dispute had not cured the non-compliance, the CDO must certify that the party is not compliant and the opposing party can petition the Court for enforcement.