

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
(DALLAS DIVISION)**

UNITED STATES OF AMERICA, and the STATE OF TEXAS, <i>Plaintiffs,</i>	)	
v.	)	Civil Action No.: 3-99CV 1398-H
AETNA INC., and THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, <i>Defendants.</i>	)	Filed: June 21, 1999
	)	

**HOLD SEPARATE STIPULATION AND ORDER**

It is hereby stipulated by and between the undersigned parties, by their respective attorneys, subject to approval and entry by the Court, that:

**I. DEFINITIONS**

As used in this Hold Separate Stipulation and Order:

A. "Aetna" means defendant Aetna Inc., a Connecticut corporation with its headquarters and principal place of business in Hartford, Connecticut, its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and its directors, officers, managers, agents, and employees.

B. "NYLCare-Gulf Coast" means NYLCare Health Plans of the Gulf Coast, Inc., a wholly-owned subsidiary of Aetna that operates a licensed HMO and HMO-based POS business

under that name in Houston, Brazoria, Galveston, Austin, San Antonio, and Corpus Christi, Texas.

C. “NYLCare-Southwest” means NYLCare Health Plans of the Southwest, Inc., a wholly-owned subsidiary of Aetna that operates a licensed HMO and HMO-based POS business under that name in Dallas, Fort Worth, and several smaller cities in North Texas, including Paris, Tyler, Longview, and Amarillo.

D. “Prudential” means defendant The Prudential Insurance Company of America, a New Jersey mutual insurance company with its principal place of business in Newark, New Jersey, its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and its directors, officers, managers, agents, and employees.

## **II. OBJECTIVES**

A. The proposed Final Judgment filed in this case is meant to ensure Aetna’s prompt divestiture of NYLCare-Gulf Coast and NYLCare-Southwest for the purpose of maintaining viable competitors in the sale of HMO and HMO-based POS plans and the purchase of physician services, and to remedy the effects that the United States and the State of Texas allege would otherwise result from Aetna’s proposed acquisition of Prudential’s health care assets.

B. This Hold Separate Stipulation and Order is intended to ensure, prior to such divestiture, that NYLCare-Gulf Coast and NYLCare-Southwest, which are being divested, be maintained as independent, economically viable, ongoing business concerns, and that competition is maintained during the pendency of the divestiture.

### **III. HOLD SEPARATE PROVISIONS**

Until the divestiture required by the Final Judgment has been accomplished:

A. Aetna shall immediately begin to take all steps necessary to preserve, maintain, and operate NYLCare-Gulf Coast and NYLCare-Southwest as independent competitors with management, sales, service, underwriting, administration, and operations held entirely separate, distinct, and apart from those of Aetna. Aetna shall not coordinate the pricing, marketing, or sale of health care services from NYLCare-Gulf Coast and NYLCare-Southwest with the pricing, marketing, or sale of health care services by Aetna. Within twenty-five (25) calendar days of the filing of the Complaint in this matter, Aetna will comply and inform plaintiffs of the steps taken to comply with this provision.

B. Aetna shall take all steps necessary to ensure that NYLCare-Gulf Coast and NYLCare-Southwest are maintained and operated as independent, ongoing, economically viable, and active competitors, including but not limited to the following:

1. Aetna will appoint experienced senior management to run the combined business of NYLCare-Gulf Coast and NYLCare-Southwest until the divestiture required by the Final Judgment has been accomplished. These executives may be recruited from within the existing Aetna or NYLCare organizations, with plaintiffs' approval, subject to Section IV.C, or from outside the company.
2. Aetna will create a separate and independent sales organization for NYLCare-Gulf Coast and NYLCare-Southwest.
3. Aetna will create a separate and independent provider relations organization for NYLCare-Gulf Coast and NYLCare-Southwest.

4. Aetna will create a separate and independent patient management/quality management organization for NYLCare-Gulf Coast and NYLCare-Southwest.
5. Aetna will create a separate and independent commercial operations organization for the combined NYLCare-Gulf Coast and NYLCare-Southwest.
6. Aetna will create a separate and independent network operations organization for the combined NYLCare-Gulf Coast and NYLCare-Southwest.
7. Aetna will create a separate and independent underwriting organization for the combined NYLCare-Gulf Coast and NYLCare-Southwest.
8. Pursuant to transition services agreements approved by plaintiffs, subject to Section IV.C, Aetna will provide certain support services to NYLCare-Gulf Coast and NYLCare-Southwest until the divestiture. These services may include human resources, legal, finance, actuarial, software and computer operations support, and other services which are now provided to NYLCare-Gulf Coast and NYLCare-Southwest by other Aetna companies. These transition services agreements will contain appropriate confidentiality provisions to ensure that Aetna employees (other than the employees performing services under the agreements) do not receive information that Aetna is prohibited from receiving under paragraph III.C of this Hold Separate Stipulation and Order.

C. Aetna shall take all steps necessary to ensure that the management of NYLCare-Gulf Coast and NYLCare-Southwest will not be influenced by Aetna except as necessary to meet Aetna's obligations as described below, and that the books, records, competitively sensitive sales, marketing and pricing information, and decision-making associated with NYLCare-Gulf Coast

and NYLCare-Southwest will be kept separate and apart from the operations of Aetna. Aetna's influence over NYLCare-Gulf Coast and NYLCare-Southwest shall be limited to that necessary to carry out Aetna's obligations under this Hold Separate Stipulation and Order, the Final Judgment, and any applicable regulatory requirements, including all reserve or capital requirements. Aetna may receive aggregate historical financial information (excluding rate or pricing information) relating to NYLCare-Gulf Coast and NYLCare-Southwest to the extent necessary to allow Aetna to prepare financial reports, tax returns, personnel reports, regulatory filings, and other necessary or legally required reports.

D. Aetna shall maintain at either current levels or at the highest levels approved during the year prior to Aetna's acquisition of NYLCare-Gulf Coast and NYLCare-Southwest, whichever are higher, promotional, advertising, sales, technical assistance, marketing, and merchandising support for NYLCare-Gulf Coast and NYLCare-Southwest, but in any event at levels sufficient to ensure that NYLCare-Gulf Coast and NYLCare-Southwest are economically viable businesses.

E. Aetna shall provide and maintain all required reserves and sufficient working capital to maintain NYLCare-Gulf Coast and NYLCare-Southwest as economically viable, ongoing businesses.

F. Aetna shall provide and maintain sufficient lines and sources of credit to maintain NYLCare-Gulf Coast and NYLCare-Southwest as economically viable, ongoing businesses.

G. Aetna shall not take any action to consummate the proposed acquisition of Prudential's health care business pursuant to the Asset Transfer and Acquisition Agreement, dated as of December 9, 1998, or any subsequent agreement between Aetna and Prudential, until such

time as the plaintiffs in their sole discretion, subject to Section IV.C, have determined that NYLCare-Gulf Coast and NYLCare-Southwest are independent, viable competitors and that Aetna has complied with this Hold Separate Stipulation and Order, or until the divestitures required by the Final Judgment are complete.

H. Aetna shall not, except in the ordinary course of business, or as otherwise permitted under this Hold Separate Stipulation and Order, or as part of a divestiture approved by the plaintiffs in their sole discretion, subject to Section IV.C, remove, sell, lease, assign, transfer, pledge as collateral for loans, or otherwise dispose of, any asset, tangible or intangible, of NYLCare-Gulf Coast and NYLCare-Southwest.

I. Aetna shall maintain, in accordance with sound accounting principles, separate, true, accurate, and complete financial ledgers, books, and records that report, on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, income, profit, and loss of NYLCare-Gulf Coast and NYLCare-Southwest.

J. Until such time as NYLCare-Gulf Coast and NYLCare-Southwest are divested, except in the ordinary course of business or as is otherwise consistent with this Hold Separate Stipulation and Order, Aetna shall not hire, transfer, terminate, or alter, to the detriment of any employee, any current employment or salary agreement for any employee who on the date of the signing of this Hold Separate Stipulation and Order is employed at NYLCare-Gulf Coast or NYLCare-Southwest.

K. Aetna may retain an independent consultant (the "Consultant") to monitor the operations of NYLCare-Gulf Coast and NYLCare-Southwest until the divestiture(s) required by the Final Judgment has been accomplished. The Consultant shall have no role in the management

of NYLCare-Gulf Coast and NYLCare-Southwest, but shall be given reasonable access to files, data, reports, and other information regarding the operations of NYLCare-Gulf Coast and NYLCare-Southwest. The Consultant's sole responsibility will be to report at least monthly to Aetna's Director of Internal Audit, stating the Consultant's opinion on the question whether NYLCare-Gulf Coast and NYLCare-Southwest are being managed in accordance with applicable law, consistent with prudent underwriting and other industry standards, and consistent with the fiduciary duties of its management. If the Consultant's opinion on this question is anything other than an unqualified "yes," the Consultant shall submit a written report stating the basis for its opinion to the Director of Internal Audit, with a copy to the plaintiffs. The Consultant shall not transmit to Aetna any information that Aetna is prohibited from receiving under paragraph III.C of this Hold Separate Stipulation and Order. After receiving the Consultant's written report, and with the consent of the plaintiffs in their sole discretion, subject to Section IV.C, Aetna may take appropriate corrective action.

#### **IV. OTHER PROVISIONS**

A. Aetna shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to a suitable purchaser.

B. Prudential shall take no action that would hinder or obstruct Aetna's ability or efforts to comply with this Hold Separate Stipulation and Order.

C. In the event plaintiffs are unable to agree on a course of action regarding any item within their discretion in seven days, then the United States may, in its sole discretion, act alone (or decline to act) with respect to that course of action.

D. With the consent of the plaintiffs, in their sole discretion, subject to Section IV.C, Aetna may exclude certain NYLCare-Gulf Coast and NYLCare-Southwest assets from this Hold Separate Stipulation and Order.

E. This Hold Separate Stipulation and Order shall remain in effect until the divestitures required by the Final Judgment are complete, or until further Order of this Court.

Respectfully submitted,

FOR PLAINTIFF  
UNITED STATES OF AMERICA

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**IT IS SO ORDERED.**

Dated \_\_\_\_\_, 1999.

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\_\_\_\_\_  
United States District Judge