

**ATTORNEY GENERAL OF THE STATE OF NEW YORK
HEALTH CARE BUREAU**

IN THE MATTER OF

Assurance No. 12-063

AXA EQUITABLE LIFE INSURANCE COMPANY

**ASSURANCE OF DISCONTINUANCE
PURSUANT TO NEW YORK EXECUTIVE LAW
SECTION 63, SUBDIVISION 15**

Pursuant to the provisions of New York Executive Law ("EL") § 63(12) and Article 22-A of the New York General Business Law ("GBL"), Eric T. Schneiderman, Attorney General of the State of New York, caused an inquiry to be made into certain business practices of AXA Equitable Life Insurance Company ("AXA Equitable"), relating to its use of NCN's Data iSight reimbursement protocol to reimburse members' health and medical claims ("claims").

AXA Equitable Life Insurance Company ("AXA Equitable"), formerly The Equitable Life Assurance Society of the United States, is a New York state licensed insurance company headquartered at 1290 Avenue of the Americas, New York, New York 10104. AXA Equitable is a financial protection company and a provider of life insurance, annuities and related financial services.

THE ATTORNEY GENERAL'S INVESTIGATION AND FINDINGS

1. The Office of the New York State Attorney General's ("OAG") Health Care Bureau investigated ("the Investigation") AXA Equitable's undisclosed change in the reimbursement mechanism it used to process health provider claims.

2. In December 2011, the OAG became aware that AXA Equitable changed its claims reimbursement mechanism with the result of lower provider reimbursement rates for

some of its health plan members from the previous reimbursement mechanism. AXA Equitable did not notify its health plan members prior to changing the claims reimbursement mechanism nor once implemented did AXA Equitable inform its health plan members that the claims reimbursement mechanism had changed as a consequence of AXA Equitable's contract with its third party administrator, WEB-TPA, to use NCN's Data iSight reimbursement protocol.

3. AXA Equitable has nine New York State-issued health insurance policies that currently use NCN's Data iSight reimbursement protocol, covering approximately 3,100 members. AXA Equitable insures approximately 2,000 additional members through other insurance policies issued in other states. These policies provide for reimbursement of reasonable and customary charges.

4. Prior to May 2009, AXA Equitable used Ingenix data to reimburse its health plan members for claims based on a "reasonable and customary" rate. In May 2009, following the OAG's settlements to stop insurers from using Ingenix, AXA Equitable implemented a claims reimbursement mechanism based on 100% of provider charges (the "100% claims reimbursement mechanism"), subject to the member's applicable deductible and co-insurance.

5. On or about September 20, 2011, AXA Equitable switched from the 100% claims reimbursement mechanism to NCN's Data iSight reimbursement protocol, which bases its reimbursement calculation upon standard relative value units for each CPT/HCPCS code multiplied by a conversion factor (the "Data iSight reimbursement protocol").

6. As a result of AXA Equitable switching from the 100% claims reimbursement mechanism to the Data iSight reimbursement protocol, some members experienced higher out-of-pocket expenses because AXA Equitable reimbursed their claims at lower rates than had previously been the case.

7. From September 2011 through February 2012, there were 773 claims processed using the Data iSight reimbursement protocol for 196 members with New York state-issued AXA Equitable insurance policies. These claims totaled \$1,096,050.10, but AXA Equitable, using the Data iSight reimbursement protocol, reimbursed about half of that amount to members. For the same period of time there were 714 claims processed using the Data iSight reimbursement protocol for 158 members with non-New York state-issued AXA Equitable insurance policies. These claims totaled \$768,933.05, and AXA Equitable, using the Data iSight reimbursement protocol, reimbursed less than half that amount to members.

8. In addition to not notifying its health plan members regarding its transition from use of a 100% claims reimbursement mechanism to use of the Data iSight reimbursement protocol, AXA Equitable also did not notify the New York State Department of Financial Services of this material change.

9. AXA Equitable has taken steps to end its reliance on the Data iSight reimbursement protocol as of June 1, 2012. Prior to that date, AXA Equitable notified its members of the changes via an OAG-approved letter. Effective June 1, 2012:

- a. AXA Equitable ceased using the Data iSight reimbursement protocol to reimburse non-facility based claims (e.g., claims from doctors, psychologists, and physical therapists) and implemented a reimbursement mechanism that uses data supplied by FAIR Health, Inc. (FH RV Benchmark), as the basis for calculating reasonable and customary charges; and
- b. AXA Equitable ceased using the Data iSight reimbursement protocol to reimburse facility claims (e.g., claims from hospitals and rehabilitation centers) and began reimbursing members based on negotiated rates (subject to the member's

applicable deductible and co-insurance) with providers that will not result in a balance bill. In the event a negotiated outcome is not achieved, reimbursement is based on the 100% claims reimbursement mechanism (subject to the member's applicable deductible and coinsurance). In the event that AXA Equitable determines that it will no longer reimburse facility based claims using the 100% claims reimbursement mechanism when a negotiated outcome is not achieved, then it shall take reasonable steps to incorporate FAIR Health data into its facility claims reimbursement mechanism within twelve (12) months of that determination. In that instance, AXA Equitable shall give thirty (30) days notice to its members prior to its incorporation of the FAIR Health data into its process to adjudicate facility claims.

APPLICABLE LAW

Based on these findings, the OAG has determined that:

10. The OAG finds AXA Equitable's use of NCN's Data iSight reimbursement protocol to reimburse health and medical claims violates EL § 63(12) and GBL § 349(a).

WHEREAS, AXA Equitable neither admits nor denies the OAG's paragraphs (1-10) above;

WHEREAS, the OAG is willing to accept the terms of this Assurance of Discontinuance ("Assurance") pursuant to EL § 63(15) and to discontinue its investigation;

WHEREAS, this Assurance follows a cooperative effort by AXA Equitable and the OAG to resolve this matter;

WHEREAS, the scope of this Assurance shall be limited to AXA Equitable policies that reimbursed claims using the Data iSight reimbursement protocol, resulting in balance billing to the subscribers or members of those policies; and

WHEREAS, the parties each believe that the obligations imposed by this Assurance are prudent and appropriate;

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the parties that:

RESTITUTION

11. AXA Equitable shall:
 - a. within sixty (60) days of the Effective Date, subject to OAG prior approval, prepare and send a Notification Letter to AXA Equitable members who had claims processed using the Data iSight reimbursement protocol ("Eligible Members") informing them that:
 - i. the Notification Letter is sent pursuant to an agreement with the OAG to ensure that AXA Equitable reimburses claims in a manner that is consistent with members' policy language;
 - ii. the Notification Letter is being sent to AXA Equitable Eligible Members who had claims processed September 20, 2011 (the date that AXA Equitable first implemented the Data iSight reimbursement protocol) through the last day that AXA Equitable implemented the Data iSight reimbursement protocol (hereafter, this time period shall be defined as the "Look-Back Period");
 - iii. they are eligible to receive additional reimbursement (a) if the member paid his/her health care provider more than the amount AXA Equitable

reimbursed the member or provider for the claim/s (other than applicable amounts owed for deductible and co-insurance) or (b) for the amount still owed to the health care provider after AXA Equitable's payment to the member or that provider (other than applicable amounts owed for deductible and co-insurance);

- iv. they must attest ("Member Attestation") to either the amount they paid to the health care provider above the amount AXA Equitable reimbursed him/her or the health care provider, or the amount still owed to the health care provider;
 - v. knowingly providing false information could result in criminal liability and may be punishable by a fine;
 - vi. they have forty-five (45) days from the date of the Notification Letter to submit the Member Attestation to AXA Equitable; and
 - vii. they may contact the OAG's Health Care Bureau hotline if they have questions about the letter.
- b. within one hundred twenty (120) days of the Effective Date, log all Member Attestations;
 - c. within one hundred fifty (150) days of the Effective Date, for each member that submitted a Member Attestation, reprocess their Look-Back Period claims using 100% of the provider's charge as the basis of reimbursement¹;
 - d. within one hundred fifty (150) days of the Effective Date, issue restitution checks to all members who are entitled to restitution pursuant to paragraph "11.c" above;

¹ 5% interest will be paid on claims. Interest will be calculated from date of AXA Equitable's initial payment through the day the restitution check is issued.

- e. after taking reasonable efforts to obtain a working mail address for a member whose restitution check is returned to AXA Equitable as undeliverable, AXA Equitable shall follow appropriate unclaimed property law procedures.

REPORT TO THE OAG

12. AXA Equitable shall within one hundred eighty (180) days of the Effective Date prepare a report, certified by (i) AXA Equitable's General Counsel and (ii) an officer of AXA Equitable, that includes:

- a. the number of members sent notices identified in paragraphs "9" and "11.a" above;
- b. the number of member notices identified in paragraphs "9" and "11.a" above that were returned to AXA Equitable as undeliverable;
- c. the number of claims that were processed during the Look-Back Period using the Data iSight reimbursement protocol;
- d. the number of Member Attestations received by AXA Equitable;
- e. the number of Look-Back claims that were reprocessed in paragraph "11.c" above;
- f. the number of members that were sent restitution checks;
- g. the numbers of members, if any, that were deemed ineligible to receive a restitution check;
- h. a list of any returned restitution checks with the member name and the amount of the check;
- i. the total dollar amount of the restitution checks issued to members for claims processed during the Look-Back period;

- j. a description of the efforts that AXA Equitable took to obtain corrected addresses for members who notices in "9" and "11.a" above, or restitution check was returned to AXA Equitable as undeliverable.

COSTS

13. AXA Equitable agrees to pay, thirty thousand dollars (\$30,000) to the New York State Department of Law, within thirty (30) days from the Effective Date of this Assurance.

CORRESPONDENCE AND PAYMENT

14. All notices, reports, requests, and other communications to any party pursuant to this Assurance must reference "AOD #12-063", shall be in writing and shall be directed as follows:

If to AXA Equitable:

AXA Equitable Life Insurance Company
Law Department
1290 Avenue of the Americas
New York, New York 10104
Attention: Paul Boucher, Vice President

If to the OAG:

Brant Campbell, Assistant Attorney General
Office of the Attorney General
Health Care Bureau
120 Broadway
New York, New York 10271

MISCELLANEOUS

15. AXA Equitable hereby accepts the terms and conditions of this Assurance and waives any right to challenge it in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules or in any other action or proceeding.

16. OAG has agreed to the terms of this Assurance based on, among other things, the representations made to OAG by AXA Equitable and their counsel and OAG's own factual investigation. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

17. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by AXA Equitable in agreeing to this Assurance.

18. AXA Equitable represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized. AXA Equitable shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis. Nothing in this paragraph affects AXA Equitable's (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which OAG is not a party. This Assurance is not intended for use by any third party in any other proceeding and is not intended, and should not be construed, as an admission of liability by AXA Equitable.

19. This Assurance may not be amended except by an instrument in writing signed on behalf of all the parties to this Assurance.

20. This Assurance shall be binding on and inure to the benefit of the parties to this Assurance and their respective successors and assigns, provided that no party, other than OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of OAG.

21. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

22. To the extent not already provided under this Assurance, AXA Equitable shall, upon request by OAG, provide all documentation and information necessary for OAG to verify compliance with this Assurance.

23. Acceptance of this Assurance by OAG shall not be deemed approval by OAG of any of the practices or procedures referenced herein, and AXA Equitable shall make no representation to the contrary.

24. Pursuant to EL § 63(15), evidence of a violation of this Assurance shall constitute prima facie proof of violation of the applicable law in any action or proceeding thereafter commenced by OAG.

25. If a court of competent jurisdiction determines that AXA Equitable has breached this Assurance, AXA Equitable shall pay to OAG the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

26. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. The OAG is willing to accept this Assurance pursuant to EL § 63(15), in lieu of commencing a statutory proceeding. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

27. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

EFFECTIVE DATE

28. The Effective Date is the date that the OAG signs this Assurance.

IN WITNESS THEREOF, the undersigned subscribe their names:

Dated: New York, New York

~~June 5~~, 2012

July

ERIC T. SCHNEIDERMAN

Attorney General of the State of New York

LISA LANDAU

Health Care Bureau Chief

By: 

Brant Campbell, Esq.

Assistant Attorney General

Health Care Bureau

Dated: Albany, New York

June ~~27~~, 2012

By: 

Fredric L. Bodner, Esq.

Hintman Straub, P.C.

Counsel for AXA Equitable Life Insurance
Company

Dated: New York, New York

June ~~28~~, 2012

By: 

Paul Boucher

Vice President

AXA Equitable Life Insurance Company