STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LUIS APONTE, M.D.,

Petitioner,

vs. Case Nos. 19-1517
19-2653

DEPARTMENT OF FINANCIAL SERVICES, DIVISION OF WORKERS' COMPENSATION,

Respondent.
_________________________________/

RECOMMENDED ORDER

On August 8, 2019, a disputed-fact evidentiary hearing was held in these consolidated cases by video teleconference at sites in Tampa and Tallahassee, Florida, before Elizabeth W. McArthur, Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Luis Aponte, M.D., pro se
Post Office Box 4542
Tampa, Florida 33677

For Respondent: Thomas Nemecek, Esquire
Keith C. Humphrey, Esquire
Department of Financial Services
Division of Workers' Compensation
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STATEMENT OF THE ISSUE

The issue in these consolidated cases is whether two Petitions for Resolution of Reimbursement Dispute are entitled to be considered on the merits, or whether, instead, they should be dismissed.

PRELIMINARY STATEMENT

On February 8, 2019, Luis Aponte, M.D. (Dr. Aponte or Petitioner), served a Petition for Resolution of Reimbursement Dispute on the Department of Financial Services, Division of Workers' Compensation, Medical Services Section (Department or Respondent). On February 21, 2019, the Department issued a Reimbursement Dispute Dismissal, dismissing the petition as untimely. Dr. Aponte was informed of his right to request an administrative hearing to contest the dismissal, and he timely exercised that right. The matter was transmitted to DOAH, and assigned Case No. 19-1517.

Dr. Aponte served another Petition for Resolution of Reimbursement Dispute on the Department on January 31, 2019, seeking resolution of different reimbursement disputes. The Department issued a Notice of Deficiency, and gave Dr. Aponte ten days to cure the deficiencies. Dr. Aponte timely responded to the Notice of Deficiency, but the Department took the position that he did not cure the deficiencies. On March 29, 2019, the Department issued a Reimbursement Dispute Dismissal, dismissing

the petition for failure to cure all deficiencies. Dr. Aponte was informed of his right to request an administrative hearing, and he timely exercised that right. The matter was transmitted to DOAH and assigned Case No. 19-2653.

At the request of the parties, the two cases were consolidated and set for hearing on August 8, 2019.

At the hearing, Petitioner testified on his own behalf. Respondent presented the testimony of Marcia Paulk, R.N., and Stephanie Law, R.N. Respondent's Exhibits 1 through 6[1/] were admitted into evidence without objection.

The one-volume Transcript of the final hearing was filed on August 22, 2019. Respondent timely filed its proposed recommended order, which has been considered in the preparation of this Recommended Order. As of the date hereof, Petitioner has not filed a proposed recommended order.

FINDINGS OF FACT

1. The Department is the state agency with exclusive jurisdiction to resolve reimbursement disputes between health care providers and carriers under section 440.13(7), Florida Statutes (2019),[2/] part of the Workers' Compensation Law.

2. Dr. Aponte is a physician. As such, he is a health care provider, as defined in section 440.13(1)(g). Dr. Aponte operates a business called Body Contouring, Inc., at which he provides medical services to patients, including injured workers.

3. Sedgwick Claims Management Services, Indemnity Insurance Company of North America, The Hartford Medical Bill Processing Center, and Twin City Fire Insurance Company are carriers, as defined in section 440.13(1)(c).

4. At issue in both cases are bills submitted by Dr. Aponte to one of the referenced carriers for services provided to injured workers, which were paid, in part, and adjusted by the carrier.

5. In each case, Dr. Aponte was notified of the adjustments to each bill by means of an Explanation of Bill Review (EOBR) from the carrier explaining why his bill was not fully paid.

6. If a health care provider such as Dr. Aponte is dissatisfied with a carrier's adjustment or disallowance of charges on a bill for services to an injured worker, the provider's recourse is to serve a Petition for Resolution of Reimbursement Dispute on the Department within 45 days after the provider receives the EOBR.

7. In both consolidated cases, Dr. Aponte seeks to contest certain carrier adjustments to bills submitted for services he rendered to injured workers. The specific adjustments he seeks to contest are reductions to his charges that were explained in EOBRs as being made pursuant to a contractual arrangement. Each EOBR making this adjustment identified a preferred provider organization (PPO) network--Coventry Pend and Transmit, or

Coventry P&T--and each EOBR explained that the PPO reduction was made pursuant to the terms of Dr. Aponte's/Body Contouring, Inc.'s contract with Aetna.

8. Dr. Aponte seeks to contest these PPO reductions because he claims that the contract with Aetna was terminated. The merits of the reimbursement disputes are not at issue, however. The sole issue presented is whether the Department should accept Dr. Aponte's petitions and proceed to resolve the reimbursement disputes presented.

Case No. 19-1517

9. On May 2, 2018, an injured worker had a 15-minute outpatient office visit with Dr. Aponte at Body Contouring, Inc.

10. Dr. Aponte submitted a bill for the 15-minute outpatient office visit to the employer's carrier. The billed amount was $125.00.

11. The bill was adjusted by the carrier for two reasons explained in an EOBR issued on May 11, 2018. The carrier reduced the charge because it exceeded the fee schedule allowance in the Florida Workers Compensation Health Care Provider Reimbursement Manual (Provider Manual). The carrier also reduced the charge by an additional $25.37, based on a written contractual arrangement. The EOBR identified the "PPO Network" as Coventry Pend and Transmit, or Coventry P&T, and the explanatory notes indicated that the Coventry P&T PPO reduction was "in accordance with your

Aetna contract." After the two adjustments, Dr. Aponte was paid $54.63.

12. The May 11, 2018, EOBR included the notice required by the Department for carrier EOBR forms. The notice specified that the health care provider may elect to contest the disallowance or adjustment of payment under section 440.13(7), and that such an election must be made by the provider within 45 days of receipt of the EOBR.

13. Dr. Aponte did not timely serve a Petition for Resolution of Reimbursement Dispute on the Department to contest the adjustments in the May 11, 2018, EOBR. Instead, he communicated directly with the carrier. Ultimately, on February 6, 2019, Dr. Aponte resubmitted the same bill to the carrier for the 15-minute outpatient office visit on May 2, 2018, with the same $125.00 charge, and asked the carrier to reconsider.

14. That same day--February 6, 2019--the carrier issued a second EOBR. The EOBR indicated that payment of the resubmitted $125.00 bill was disallowed in its entirety, and gave the following explanation: "billing error: duplicate bill."

15. Dr. Aponte prepared a Petition for Resolution of Reimbursement Dispute on the form required by the Department (incorporated by reference in a rule), and served it on the Department on February 8, 2019.

16. Dr. Aponte's petition asserted that the EOBR he was contesting was received on February 6, 2019, which was the date on which the second EOBR was issued.

17. Dr. Aponte identified a single issue in dispute: whether the carrier improperly adjusted the charge by applying a PPO network reduction of $25.37. Dr. Aponte contended that "there is no contract between Luis Aponte, MD/Body Contouring[,] Inc.[,] and Coventry."

18. However, the PPO network adjustment was not made in the February 6, 2019, EOBR. The adjustment Dr. Aponte wanted to contest was made in the May 11, 2018, EOBR.

19. Dr. Aponte attached both the May 11, 2018, EOBR and the February 6, 2019, EOBR to his petition. He added the following explanation for attaching the two EOBRs: "A petition for resolution of reimbursement dispute was previously submitted to the FL Dept. Financial Services on 07/30/18 initiating this reimbursement dispute."

20. The Department reviewed the petition and attachments to determine if the petition was timely served. Since the 45-day window to serve a petition begins to run upon receipt of the EOBR, the Department has a "computation of time" rule providing alternative ways for a provider to prove the date of EOBR receipt. See Fla. Admin. Code R. 69L-31.008. One way is by showing a date stamp affixed by the provider to the EOBR on the

date of receipt. Another way is through a verifiable login process. The third way is to show the postmark date on the envelope in which the EOBR was received, in which case five calendar days is added to the postmark date to allow for mail time. If the provider does not utilize one of these three methods to prove the date of receipt, the Department will use the "default" method in its rule, whereby the EOBR receipt date is deemed to be five calendar days after the date on which the EOBR was issued.

21. Dr. Aponte did not utilize one of the three options in the Department's rule, which are set forth in the form petition, to prove the dates on which he received either EOBR. As noted above, he completed the petition by giving only the date on which he received the second EOBR.

22. The Department applied the default method in its rule to determine the receipt date of the first EOBR, which is the EOBR that made the PPO reduction adjustment sought to be challenged. The Department determined that Petitioner was deemed to have received the first EOBR on May 16, 2018. Accordingly, the deadline for serving a petition to contest the adjustments in the May 11, 2018, EOBR was June 30, 2018, 45 calendar days after May 16, 2018.

23. The Petition for Resolution of Reimbursement Dispute at issue in this case, served on the Department on February 8, 2019,

was more than seven months too late.[3/] Petitioner offered no evidence or argument to excuse his untimely submittal.

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24. Dr. Aponte provided services to an injured worker at Body Contouring, Inc., on October 10, 2018, and October 31, 2018, for which Dr. Aponte submitted bills to the employer's carrier.

Bill for Services on October 10, 2018

25. On October 10, 2018, Dr. Aponte saw the patient for an outpatient office visit at Body Contouring, Inc., at which Dr. Aponte provided prolonged evaluation and management (E&M). Dr. Aponte's charges submitted to the carrier were $450.00 for the office visit and $220.00 for the prolonged E&M service.

26. An EOBR was issued on November 16, 2018, adjusting both charges for two reasons explained in the EOBR.

27. Both charges were reduced because they exceeded the fee schedule in the Provider Manual. Both charges were further reduced by a total of $79.91 pursuant to a written contractual arrangement. The EOBR explained these adjustments as Coventry P&T PPO reductions "in accordance with your Aetna contract."

28. After the adjustments, Dr. Aponte was paid $260.09.

29. The 45-day deadline to serve a petition on the Department to contest the adjustments explained in the November 16, 2018, EOBR was January 5, 2019 (using the default methodology to determine the EOBR receipt date in the absence of

any other evidence). Dr. Aponte did not timely serve a Petition for Resolution of a Reimbursement Dispute on the Department to contest the adjustments in the November 16, 2018, EOBR. Instead, he communicated directly with the carrier and requested a re-evaluation of the bill.

30. The carrier issued a second EOBR on December 31, 2018, disallowing payment of both line item charges on the resubmitted bill. The explanation in the EOBR for disallowing payment was "billing error: line item service previously billed and reimbursement decision previously rendered."

Bill for Services on October 31, 2018

31. On October 31, 2018, Dr. Aponte saw the same injured worker for another outpatient office visit at Body Contouring, Inc., at which the patient received two injections. Dr. Aponte's charges submitted to the carrier were: $300.00 for the office visit; $330.00 for one injection; and $100.00 for the other injection.

32. An EOBR was issued on November 21, 2018, adjusting the office visit charge and disallowing the two injection charges, for reasons explained in the EOBR.

33. The $300.00 office visit charge was reduced because it exceeded the fee schedule allowance in the Provider Manual. The charge was further reduced by $48.16, pursuant to a written contractual arrangement. The EOBR explained the latter reduction

as a Coventry P&T PPO reduction, "in accordance with your Aetna contract." The EOBR also explained that both injection charges were disallowed because the documentation did not substantiate that the services billed were rendered. After the adjustments and the disallowances, Dr. Aponte was paid $110.84.

34. The 45-day deadline to serve a petition on the Department to contest the adjustments or disallowances in the November 21, 2018, EOBR was January 10, 2019 (using the default methodology to determine the EOBR receipt date in the absence of any other evidence). Dr. Aponte did not timely serve a petition for resolution of a reimbursement dispute on the Department to contest the adjustments in the November 21, 2018, EOBR. Instead, he communicated directly with the carrier and requested a re-evaluation of the bill.

35. The carrier issued another EOBR on December 27, 2018, disallowing payment of the resubmitted bill for services rendered on October 31, 2018. The reason given for disallowing payment as to each of the three charges on the bill was "billing error: line item service previously billed and reimbursement decision previously rendered."[4/]

36. Dr. Aponte prepared a Petition for Resolution of Reimbursement Dispute on the required form, seeking to contest the PPO adjustments made to the bills for services rendered to the same injured employee on October 10 and 31, 2018. He

attached only the final re-evaluation EOBRs, issued December 31, 2018 (for the bill for services on October 10, 2018), and December 27, 2018 (for the bill for services on October 31, 2018).

37. Dr. Aponte named the Petitioner as "Luis Aponte/Body Contouring, Inc." The instructions on the form specify that the named Petitioner must be a health care provider as defined in section 440.13(1)(b).

38. Dr. Aponte gave a single date--January 7, 2019--as the EOBR receipt date. However, he did not select the method used to establish the EOBR receipt date, as provided in the form petition. The form instructs that if the EOBR receipt date is not established by one of the specified methods, then the EOBR receipt date will be deemed to be five days from the issue date on the EOBR.

39. Dr. Aponte identified the issue in dispute as the PPO adjustments applied to the bills. However, neither of the re-evaluation EOBRs attached to the petition made any PPO adjustment.

40. Dr. Aponte identified the disputed amount of the PPO adjustments as $162.69. That is the sum of the PPO adjustments made in the November 16, 2018, EOBR ($79.91), the November 21, 2018, EOBR ($48.16), and the December 7, 2018, EOBR ($34.62) (<u>see</u> endnote 4).

41. Dr. Aponte did not attach any of the EOBRs that made the disputed PPO adjustments, but he did attach a letter that he identified and explained as follows: "A copy of the contract termination notice sent to Aetna has been provided."[5/]

42. The Department reviewed the petition for completeness. The Department evaluator noted that the attached EOBRs were identified as "Re-evaluation" EOBRs that did not make the disputed PPO adjustments. However, no timeliness determination could be made because the EOBRs that explained the PPO adjustments were not attached.

43. In addition to failing to attach the relevant EOBRs, the petition was found to also be deficient in several other respects. The Department identified all perceived deficiencies in a Notice of Deficiency sent to Dr. Aponte by certified mail. He was instructed to correct all of the deficiencies within ten days after his receipt of the notice.

44. Dr. Aponte timely responded, and cured all perceived deficiencies except one. The Department had found the petition deficient because it named as the petitioner "Luis Aponte/Body Contouring, Inc." However, the instructions on the form petition emphasize that the named petitioner had to be a "health care provider" as defined in section 440.13(1)(g). The Notice of Deficiency required a new form petition curing "Petitioner name and mailing address. This is the provider name, not the business

name." The directive is not very clear. It could be interpreted as describing what is in the petition Dr. Aponte submitted ("This is"), instead of describing what should have been in the petition.

45. Dr. Aponte's transmittal letter, listing the documents enclosed to cure the deficiencies, states that he provided a completed petition with the Petitioner's name and address. The transmittal letter was signed, with the following typed on two separate lines below the signature line: "Luis Aponte, MD" and "Body Contouring, Inc." The enclosed petition, however, named the Petitioner in the same manner as in the original petition: "Luis Aponte/Body Contouring, Inc."

46. The undersigned appreciates the Department's concern that a Petition for Resolution of Reimbursement Dispute must be submitted by a "health care provider" meeting the statutory definition. But in this instance, the Department was well aware that the health care provider was Luis Aponte, M.D., as were the carriers involved in reviewing and adjusting his bills, and issuing the EOBRs that Dr. Aponte is seeking to contest. Indeed, the Department's initial decision, set forth in a Reimbursement Dispute Dismissal, names the Petitioner as "Luis Aponte, M.D."

47. The Department's Reimbursement Dispute Dismissal recites that Dr. Aponte failed to provide the curative documentation as required in the Notice of Deficiency. At

hearing, the Department, through its evaluator who signed the Reimbursement Dispute Dismissal, testified that the sole deficiency not cured by Dr. Aponte was to name a petitioner that met the definition of a "health care provider." According to the Department, Dr. Aponte needed to add "M.D." after his name on the petition (as he did in the transmittal letter).

48. The Department's evaluator also testified that since she determined that the petition had to be dismissed for failure to cure this deficiency, she did not go on to address the timeliness issue that could not be determined previously without the relevant EOBRs.

49. Had the evaluator determined the deficiencies to be cured, she would have proceeded to assess the relevant EOBRs, which were provided by Dr. Aponte in response to the deficiency notice. She would have determined that the petition was not served on the Department within 45 days of receipt of the EOBRs that explained the contested PPO adjustments, and she would have dismissed the petition as untimely.

50. Based on the Department's evidence and an independent assessment of the facts by which timeliness is determined, the undersigned finds that Dr. Aponte's petition, served on February 8, 2019, was not timely. The 45-day deadlines to serve petitions contesting the PPO adjustments explained in three different EOBRs were: January 5, 2019 (for the November 16,

2018, EOBR); January 10, 2019 (for the November 21, 2018, EOBR); and January 19, 2019 (for the December 7, 2018, EOBR).
Dr. Aponte's petition was untimely, and not just by a day or two, but by at least 20 days. He offered no evidence or argument to excuse his untimely submittal.

CONCLUSIONS OF LAW

51. The Division of Administrative Hearings has jurisdiction over the parties and subject matter, pursuant to sections 120.569 and 120.57(1), Florida Statutes.

52. At issue in these consolidated cases is whether two Petitions for Resolution of Reimbursement Dispute are entitled to be considered on the merits, or whether, instead, they should be dismissed.

53. The proposed agency action by the Department, following its free-form review, was that both petitions should be dismissed because Dr. Aponte did not meet the threshold requirements that must be met before such petitions are entitled to consideration on the merits.

54. Dr. Aponte timely requested administrative hearings to contest the Department's initial decisions. His position is that the petitions submitted to the Department are entitled to consideration on the merits. Although not articulated in so many words, he contends that his petitions met the statutory and rule requirements.

55. As the party asserting the affirmative of the issue, Dr. Aponte has the burden of proving by a preponderance of the evidence that his petitions meet the statutory and rule requirements that entitle them to consideration on the merits. See generally Balino v. Dep't of Health & Rehab. Servs., 348 So. 2d 349, 350 (Fla. 1st DCA 1977); § 120.57(1)(j), Fla. Stat.

56. Section 440.13(7)(a) sets forth requirements to petition the Department to resolve a reimbursement dispute, providing as follows:

> Any health care provider who elects to contest the disallowance or adjustment of payment by a carrier under subsection (6) must, within 45 days after receipt of notice of disallowance or adjustment of payment, petition the department to resolve the dispute. The petitioner must serve a copy of the petition on the carrier and on all affected parties by certified mail. The petition must be accompanied by all documents and records that support the allegations contained in the petition. Failure of a petitioner to submit such documentation to the department results in dismissal of the petition.

57. Florida Administrative Code Rule 69L-7.710(1)(y) contains the following definition germane to section 440.13(7)(a): "'Explanation of Bill Review' (EOBR) means the document used to provide notice of payment or notice of adjustment, disallowance or denial by a [carrier]."

58. Rule 69L-7.740 addresses the carrier's responsibilities in reviewing provider bills for payment, adjustment,

disallowance, or denial. Paragraph (14) provides that a carrier "shall notify the health care provider of notice of payment or notice of adjustment, disallowance or denial only through an EOBR. An EOBR shall specifically state that the EOBR constitutes notice of disallowance or adjustment of payment within the meaning of subsection 440.13(7), F.S."

59. The EOBR, therefore, is the "notice of disallowance or adjustment of payment" referred to in section 440.13(7)(a). Receipt of the EOBR starts the 45-day period within which a health care provider electing to contest adjustments in the EOBR "must" petition the Department to resolve the dispute.

60. Rule 69L-31.008 addresses computation of time. Paragraph (1) sets forth the three alternative methods by which a provider can prove the date of receipt of an EOBR (received date stamp on the EOBR, verifiable login process, or EOBR envelope with postmarked date to which five days will be added for mail time). Where, as in both cases here, the provider does not prove EOBR receipt dates using one of the rule's options, the rule provides that the EOBR is deemed received five calendar days after the date on which the EOBR was issued.

61. Rule 69L-31.008(2) addresses the end point of the 45-day time period. It provides: "Petitioning the Department shall be effectuated upon service of the petition upon the Department."

Details for establishing the date of service are set forth for different modes of transmitting a petition to the Department.

62. Applying the foregoing statutory and rule provisions to the facts found above, Dr. Aponte failed to prove that his petitions at issue in these consolidated cases were timely served on the Department. Instead, the facts establish that Dr. Aponte did not serve his petitions within 45 days of receiving any of the EOBRs that made the PPO adjustments he is seeking to dispute.

63. That Dr. Aponte chose to pursue resolution of his disputes directly with the carriers by asking them to reconsider or re-evaluate his bills does not explain or excuse the untimeliness of his petitions. The 45-day window to submit a petition to the Department is mandatory if a provider wants the Department to resolve a reimbursement dispute regarding a carrier's adjustments to the provider's bills. Nothing prevented Dr. Aponte from timely submitting petitions to the Department within 45 days after he received the EOBRs that notified him of the disputed PPO adjustments. He could have filed petitions while also seeking to resolve the disputes directly with the carriers. Indeed, the Department’s rules contemplate this dual path. Rule 69L-31.012 provides that after a reimbursement dispute resolution petition and carrier response have been filed, the provider and carrier can stipulate to holding the reimbursement dispute in abeyance for a specified period of time

"for the parties to seek resolution of their reimbursement dispute without the need for a determination by the Department."

64. Dr. Aponte's attempt to use subsequent EOBRs making no changes on reconsideration as springboards for opening up new 45-day windows to petition the Department must be rejected, because that would render the 45-day statutory limit meaningless. Any time a provider failed to timely avail himself of the limited recourse in 440.13(7), he could manufacture a new 45-day window by asking a carrier to reconsider and having the carrier deny the request.

65. Instead, the Department’s position is the only reasonable way to apply the statute as interpreted in Department rules: If a provider wants the Department to resolve a reimbursement dispute pursuant to section 440.13(7), the provider must serve his petition on the Department within 45 days of the provider receipt of an EOBR that gives notice of the disputed adjustment or disallowance. Dr. Aponte failed to do so in both cases.

66. While the foregoing conclusion is dispositive as to both cases, the Department's alternative theory for dismissing Dr. Aponte's petition at issue in Case No. 19-2653, set forth in its initial decision, is rejected. The petition form provides a blank for "Petitioner Name" and emphasizes in bold print underneath the blank: "(MUST BE 'Healthcare Provider' as defined

[in the statute])." Luis Aponte's name was set forth, along with his business's name, Body Contouring, Inc. Luis Aponte is, in fact, a health care provider, as defined in the statute. He is, in fact, a physician. The Department knew this, and identified him as such in its initial decision to dismiss the petition. Dr. Aponte's petition complied with this particular statutory and rule requirement by providing the name of a petitioner who is a health care provider.

67. Notably, the petition form does not require that a named petitioner demonstrate that he, she, or it is a "health care provider," such as by providing a license number. While "M.D." after a name is an indicator that the person is a physician, it is not part of the provider's actual name, which is what the form requires. Moreover, other types of health care providers would not self-announce as health care providers simply by providing their names. For example, "health care provider" includes a health care facility, which is defined as "any hospital licensed under chapter 395 and any health care institution licensed under chapter 400 or chapter 429." § 440.13(f), Fla. Stat. Nursing homes and other licensed health care facilities may, and often do, have names that sound more like vacation resorts, hotels, or apartment complexes than like health care facilities.

68. The Department's demand for more than the name of a petitioner (who is, in fact, a health care provider) might be a reasonable demand that could be added via rule amendment procedures, but it is not currently called for under the Department's form petition, adopted as a rule.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered in these consolidated cases by the Department of Financial Services, Division of Workers' Compensation, dismissing as untimely the Petitions for Resolution of Reimbursement Dispute submitted by Petitioner, Luis Aponte, M.D.

DONE AND ENTERED this 4th day of October, 2019, in Tallahassee, Leon County, Florida.

ELIZABETH W. MCARTHUR
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 4th day of October, 2019.

ENDNOTES

[1/] Respondent's Exhibits 1 and 2 pertain to Case No. 19-1517. Respondent's Exhibits 3 through 6 pertain to Case No. 19-2653.

[2/] References to Florida Statutes are to the 2019 codification and references to Department rules are to the current versions, unless otherwise noted. The relevant statute and rules in effect when Dr. Aponte's petitions were submitted and addressed by the Department remain unchanged.

[3/] At the hearing, Dr. Aponte explained the reference in his petition to an earlier petition previously submitted to the Department on July 30, 2018. Although the underlying facts were not established in the record, apparently Dr. Aponte sent a letter or petition to the Department to dispute the May 11, 2018, EOBR. Dr. Aponte admitted that he did not follow the instructions in the EOBR's notice stating that he had to submit his dispute within 45 days after receipt of the EOBR. Instead, Dr. Aponte admitted that he did not attempt to dispute the adjustment until after he received the check, which he claims was not issued until June 14, 2018. Assuming he did not receive the check until on or about June 19, 2018, he still had over ten days of the 45-day period remaining to submit a petition contesting the EOBR's adjustment. Instead, he apparently waited until July 30, 2018, to submit his dispute to the Department.

Dr. Aponte testified that he received a Reimbursement Dispute Dismissal in August 2018, dismissing his July 30, 2018, submittal as untimely. Dr. Aponte admitted that, unlike in these two consolidated cases, he did not ask for an administrative hearing to contest the dismissal. Therefore, even if the underlying facts were established in this record, the dismissal of his prior attempt to contest the May 11, 2018, EOBR is final and not at issue in this case. Regardless, if Dr. Aponte were to argue in this case that a petition for resolution of reimbursement dispute could be considered timely if filed 75 days after receipt of the EOBR that explains the adjustments the provider wants to dispute, the undersigned would have to reject that argument as contrary to the plain language of the statute and implementing rules. The window to contest a carrier's adjustment to a bill is within 45 days after receipt of the EOBR explaining the adjustments, not within 45 days after receipt of the check.

[4/] It appears that the December 27, 2018, EOBR was the third EOBR issued with respect to the bill for services rendered October 31,

2018. An interim re-evaluation was conducted based on additional documentation submitted by Dr. Aponte to support the charges for two injections. An EOBR was issued on December 7, 2018. The EOBR document in evidence is blurry (see Pet. Ex. 5 at Bates p. 047), but it appears that the carrier reconsidered and adjusted payment on the two injection charges, rather than disallowing payment entirely. Although not all of the numbers can be discerned, the PPO adjustment numbers are legible, and those are the adjustments that Dr. Aponte is attempting to dispute. The carrier reduced one injection charge by $34.22 and the other injection charge by $0.40 as the PPO adjustments in accordance with the Aetna contract. The 45-day period to serve a petition on the Department to dispute these adjustments would have ended on January 19, 2019, applying the default methodology to prove the EOBR receipt date in the absence of any other evidence.

[5/] As previously noted, the merits of Dr. Aponte's claim that no PPO reductions should have been applied are not at issue in this proceeding. However, the undersigned notes that the August 30, 2018, letter in evidence, from Luis Aponte, MD, Body Contouring, Inc., to Aetna, Inc., states: "Consider this communication the notice of my immediate termination as a contract provider with Aetna becoming effective today in view that Body Contouring[,] Inc.'s[,] practice has closed. Please respond by sending through certified mail the confirmation of the termination of the agreement between Body Contouring[,] Inc.[,] and Aetna." Pet. Ex. 5 at Bates p. 042. But Dr. Aponte continued to bill for services provided through his practice, Body Contouring, Inc.; all of the EOBRs at issue in these cases identify both Dr. Aponte and Body Contouring, Inc.; and Dr. Aponte named as the petitioner in the two Petitions for Resolution of Reimbursement Dispute at issue in these cases "Luis Aponte, MD/Body Contouring[,] Inc." (Case No. 19-1517) and "Luis Aponte/Body Contouring[,] Inc." (Case No. 19-2653). It is unknown if Dr. Aponte ever received the requested confirmation from Aetna, and it is unknown if his notice would have been effective to terminate the contract, given that the premise of the notice was contradicted by the subsequent continued practice and billing in the name of Body Contouring, Inc. These issues would have to be considered based on evidence not offered here, such as the contract itself, if the merits of Dr. Aponte's reimbursement disputes were presented for determination.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.