

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No.

THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, COLORADO

Plaintiff,

v.

AETNA LIFE INSURANCE COMPANY., a Connecticut Corporation,

Defendant.

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**COMPLAINT**

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Plaintiff The Board of County commissioners of Douglas County ( the “County”), by and through the Douglas County Attorney’s Office, for its Complaint against Defendant Aetna Life Insurance Company (“Aetna”) states as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Douglas County, Colorado, is a statutory county established pursuant to the Colorado Constitution Art. XIV, C.R.S. § 30-5-120 and C.R.S. § 30-11-101.
2. Aetna Life Insurance Company is a Connecticut Corporation headquartered at 51 Farmington Avenue, Hartford, Connecticut, authorized to do business in Colorado. Aetna’s local agent is registered at 7700 E Arapahoe Rd Ste 220, Centennial, Colorado.

**JURISDICTION AND VENUE**

3. Jurisdiction is proper in this Court pursuant to 28 U.S.C § 1332. There is diversity of citizenship between the parties in this case and the amount in controversy exceeds \$75,000, exclusive of interest and costs.
4. Venue is in this Court pursuant to 28 U.S.C. § 1391, because a substantial part of the events giving rise to the claims occurred in Colorado, and the property that is the subject of the action is situated in Colorado.

**INTRODUCTION**

5. Douglas County seeks to provide its employees with the best possible health insurance at the lowest possible price. To accomplish this the County entered into a contract with Aetna in 2013 to provide health insurance and pharmacy services to County employees. Colorado law

prohibits local governments, including counties from entering into multi-year contracts. The County entered into a single year Master Services Agreement (“MSA”) with Aetna, that could be renewed on an annual basis. The MSA clearly acknowledged that it was a not a multi-year contract. (Exhibit 1 §§ 2, 21(A)).

6. In 2018, Aetna and the County amended the MSA to include change to pharmacy benefits, under which the County would receive a portion of pharmacy rebates Aetna collected as consideration for making CVS Pharmacy the preferred pharmacy for its employees.

7. In 2023, the County put its health care insurance services out for bid. Through that process, the County decided to enter into a contract with United Healthcare. The county timely notified Aetna that the County would not renew its contract with Aetna at the end of the 2023, the current contract term.

8. Despite the law against multi-year contracts, the MSA provisions stating this was a single year contract, and the fact the County fulfilled the current contract, Aetna decided to enforce, what it termed, as “early termination clause” and withhold over one million dollars (\$1,000,000.00) in rebates that would have otherwise been payable to the County.

### **GENERAL ALLEGATIONS**

9. On November 15, 2013, the County entered into a contract with Aetna for Aetna to be the service provider for a self-insured health insurance plan. (Exhibit 1).

10. Because Colorado law, including C.R.S. § 29-1-110, prohibits multi-year contracts, the MSA was specific that the agreement was for a single year with the potential for successive one-year terms. (Exhibit 1, § 2).

11. The County signed the MSA on November 15, 2013, and Aetna signed on November 7, 2013.

12. The MSA explicitly supersedes any other agreement between the parties. (Exhibit 1, § 20(G)).

13. Pharmacy services are controlled by an exhibit to the MSA titled the “Self-Funded Prescription Drug Benefits Plan Statement of Available Services” (“SAS”). (Exhibit 1, pg. 33-52).

14. The SAS is explicit that it is a one-year agreement that renews unless party terminates either the MSA as a whole or the SAS specifically. (Exhibit 1, Pg. 33, §(1)(a)).

15. The SAS explicitly incorporates the Fee Schedule. (Exhibit 1, Pg. 33, ¶1).

16. The SAS state that in a conflict between the Fee Schedule and the SAS, the SAS controls. (Exhibit 1, Pg. 33, ¶1).

17. The SAS lays out the condition by which the County may continue to receive rebates. (Exhibit 1, Pg. 46).
18. The condition is that the County does not enter into a contract with any other entity for discounts, rebates, or other financial incentives on pharmaceutical products (Exhibit 1, Pg. 46).
19. The County never breached this condition.
20. Aetna has not alleged that the County breached this condition.
21. While the MSA was amended 22 times, only three of those explicitly reference the Pharmacy rebates at issue.
22. None of the amendments convert the MSA into a multi-year agreement.
23. Amendment 12, which was effective August 1, 2018, (Exhibit 2), signed January 15, 2019, adopts a new Pharmacy Services and Fee Schedule (“PSFS”) (Exhibit 3).
24. The August 2018 PSFS contains a section titled “Early Termination” whereby Aetna can retain unpaid rebates if the County terminates the contract before December 31, 2020. (Exhibit 3, pg. 8).
25. These penalty sections are commonly referred to as claw-back provisions.
26. This Early Termination clause assumes that a multi-year contract exists and is in conflict with both the MSA and the SAS.
27. Amendment 19, which was effective January 1, 2021, (Exhibit 4), adopts a new Pharmacy Services and Fee Schedule (“PSFS”) (Exhibit 5).
28. The January 2021 PSFS contains a section titled “Early Termination” whereby Aetna can retain unpaid rebates if the County terminates the contract before December 31, 2022. (Exhibit 5, pg. 10).
29. This Early Termination clause assumes that a multi-year contract exists and is in conflict with both the MSA and the SAS.
30. Amendment 21, which was effective January 1, 2023, (Exhibit 6), adopts a new Pharmacy Services and Fee Schedule (“PSFS”) (Exhibit 7).
31. The January 2023 PSFS contains a section titled “Early Termination” whereby Aetna can retain unpaid rebates if the County terminates the contract before December 31, 2025. (Exhibit 7, pg. 9).
32. This Early Termination clause assumes that a multi-year contract exists and is in conflict with both the MSA and the SAS.

33. All three amendments contain the disclaimer that they do not “alter or affect any term of the services agreement except as herein stated.”

34. All of the Early Termination Clauses in the three PSFS’s presume an illegal multi-year contract the conflicts with both Colorado law and the explicit terms of the MSA and SAS.

35. On August 14, 2023, the County informed Aetna during a meeting that the County was considering not renewing the MSA.

36. The following day on August 15, 2023, Joel Krzan, an executive with Aetna, emailed Aon, an insurance broker used by the County, and noted that the PSFS included “Termination Provisions for early termination of multi-year agreements” [sic]. (Exhibit 8).

37. Mr. Krzan went on to state “The early termination penalties are necessary and were factored in to just how aggressive we were able to get on our 2023-2025 terms.”

38. This email is clear evidence of Aetna’s belief that the claw-back provision in question only applied to multi-year agreements of the kind prohibited by Colorado law.

39. The MSA is a single year renewable agreement and not a multi-year agreement on the kind contemplated by Mr. Krzan and Aetna.

40. On November 9, 2023, the County communicated its intent to Aetna to not renew the contract and allow it to expire at the end of the year. (Exhibit 9).

41. Aetna communicated its belief to the County that the failure to exercise optional renewals for two additional years represented “early termination” in a letter dated February 13, 2024. (Exhibit 10).

42. Aetna’s refusal to remit earned rebate payments to the County has cost the County an estimated \$1,120,000.00 in revenue.

43. The MSA has a mandatory dispute resolution provision that requires the parties to attempt in good faith to resolve any dispute by a meeting between decision makers and, if that fails, are encouragement to engage in mediation. Decisions makers from the parties have met and were unsuccessful in resolving this matter. The County offered mediation, which Aetna declined. (Exhibit 11).

44. Aetna is seeking in bad faith to retroactively rewrite the agreement in a way that both conflicts with the plain language of the agreement (MSA § 2) and Colorado Law, C.R.S. § 29-1-110.

45. The penalty provision is only enforceable against a customer who is terminating a multi-year agreement early. The County has never had a multi-year agreement with Aetna. Therefore, Aetna seeks to enforce the penalty provision against the County in bad faith and in clear breach of the MSA.

**First Claim for Relief**  
(Breach of Express or Implied-in-Fact Contract)

46. The County hereby incorporates and realleges the allegations set forth in Paragraphs 1 to 42 as if they were fully stated herein.
47. The County and Aetna agreed to a single year MSA, that could be renewed for successive one-year terms.
48. All parties were aware that the County could choose to not renew the MSA at the end of each calendar year by notifying Aetna.
49. At no point was the contract amended to a multi-year agreement covering any of the years covered by the Early Termination Clauses.
50. The County choose to exercise its contractual and legal right to not renew the MSA at the end of 2023.
51. Aetna is in breach of the contract by withholding agreed upon rebate funds in violation of the explicit terms of the MSA and Colorado law resulting in the County suffering damages.

**Second Claim for Relief**  
(Breach of the Implied Covenant of Good Faith and Fair Dealing)

52. The County hereby incorporates and realleges the allegations set forth in Paragraphs 1 to 45 as if they were fully stated herein.
53. The County and Aetna entered into the MSA.
54. The County substantially performed its obligations.
55. Aetna breached the implied covenant of good faith and fair dealing, by acts and omissions including, without limitation, withholding rebates it agreed to pay to the County and treating a single year contract as a multi-year contract solely for its own enrichment.
56. The County has been damaged by these breaches, and others, in an amount to be proven at the trial of this matter, and the County is entitled to recover all damages, including attorneys' fees and costs.

**Third Claim for Relief**  
(Declaratory Judgment)

57. The County hereby incorporates and realleges the allegations set forth in Paragraphs 1 to 43 as if they were fully stated herein.
58. The County seeks the following declarations;

- a. That the MSA was a legal single year contract with subsequent year subject to appropriation;
  - b. That Aetna's Early Termination Clauses in a Fee Schedule do not amend the MSA, are subordinate to the terms of the MSA and unenforceable;
  - c. That Aetna must pay the County any and all rebates earned during the term of the MSA.
59. An adjudication declaring the respective rights, and obligations of the County and Aetna consistent with the above would terminate the controversy giving rise to this Third Claim for Relief.

**WHEREFORE**, the County prays for the following relief:

- a) Entry of judgment in the County's favor and an award of full damages, currently estimated at \$1,120,000.00 on all claims set forth in the Complaint;
- b) Entry of declarations consistent with the County's Third Claim For Relief; and
- c) All such other further relief as the Court deems just and proper, including costs, pre- and post-judgment interest, and attorneys' fees.

**JURY DEMAND**

The County demands a trial by jury on all issues so triable.

Respectfully submitted this 19<sup>th</sup> day of August, 2024.

OFFICE OF THE COUNTY ATTORNEY  
DOUGLAS COUNTY, COLORADO

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