June 22, 2018

Submitted via email to E-OHPSCA-FAQ39@dol.gov

U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20710

U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

U.S. Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Re: Request for Comment on the "Proposed FAQs about Mental Health and Substance Use Disorder Parity Implementation and The 21st Century Cures Act Part 39" and the "Revised Draft MHPAEA Disclosure Template"

To Whom It May Concern:

I am writing on behalf of Aetna Behavioral Health, LLC and its affiliates ("Aetna"), who administer Aetna's behavioral health and substance use disorder benefits, to provide comments on the Department of Labor, Department of Health and Human Services, and Department of Treasury's ("Departments") request for comment on the "Proposed FAQs About Mental Health And Substance Use Disorder Parity Implementation And The 21st Century Cures Act Part 39" and the "Revised Draft MHPAEA Disclosure Template," due by June 22, 2018. Because the "Self-Compliance Tool for the Mental Health Parity and Addiction Equity Act ("MHPAEA") is so closely related to this guidance, our comments address it as well.

Aetna is one of the nation's leading diversified health care benefits companies, offering programs and services designed to improve the quality of health care while controlling rising employee benefit costs. Our behavioral health network consists of over 160,000 providers and 6,000 facilities. Aetna has long recognized that there can be no health without mental health. To that end, we were recognized by Senator Ted Kennedy for our support of and assistance with the passage of MHPAEA. We are committed not only to the requirements of MHPAEA, but its underlying purpose as well. We appreciate the Departments' efforts to provide clear guidance regarding the MHPAEA. Our recommendations fall in three areas:

I. Making the FAQs More Useful

Aetna has three high-level recommendations regarding the FAQs:

- Expand Question 7 to address the common situation of issuers having more complex reimbursement models (e.g. an issuer with multiple reimbursements models).
- Supplement the FAQs with an additional guidance document that addresses more complex Non-Quantitative Treatment Limitation (NQTL) topics. These would include the rigor of analysis that must be supplied related to the "sources" needed to support a NQTL factor, the Departments' expectation of the use of denial rates (beyond their permissible use as a warning sign), and deeper analysis on what types of plan design features are appropriately classified as a NQTL as defined under MHPAEA (e.g. see network adequacy feedback below).

- Reconsider classifying network adequacy as an NQTL. Network adequacy is an outcome of various elements of plan design, some which themselves are subject to NQTL testing, and not a "limit on the scope or duration of treatment that are not expressed numerically".[1] Aetna recommends that the Departments remove this FAQ and publish additional guidance that clarifies that while elements of network design (e.g. admission criteria, credentialing,) are appropriately subject to NQTL testing, network adequacy itself should not be subject to NQTL testing.

II. Improving the Template Disclosure Form

Aetna has two primary concerns with the revised draft MHPAEA disclosure form. First, this draft form goes far beyond the disclosures required by the MHPAEA. The Cures Act directed the Departments to create a guidance document, but does not impose any new disclosure requirements beyond those of the MHPAEA.[2] Second, because it is overly broad, the draft form will create unnecessary confusion among both enrollees and health plans. There appears to be significant overlap with information enrollees already receive under ERISA (e.g., plan documents, EOBs). The unnecessary overlap makes it challenging for plans and issuers to respond to the discrete MHPAEA questions.

We recommend that the Departments:

- Simplify the form by revising it to use simple check-boxes for the statutorily required disclosures; Release a model disclosure request and response so that stakeholders can have some sense for the rigor required to satisfy a typical request (at least with respective to a discrete fact pattern).

III. Self-Compliance Tool

- Given that this tool effectively provides new standards for plans and issuers, we believe it would be in the best interests of the public if the Departments published a draft tool for public comment. Section 13001(b) of the Cures Act makes it clear that to the extent the Departments supply "additional guidance", the Departments are required to allow for public comment.
    - MHPAEA treats the terms "processes", "strategies", "evidentiary standards", or "other factors" as equivalent "factors". MHPAEA gives deference to the plan or issuer to supply "any" of the above "factors". The Compliance Tool could be read to suggest that an evidentiary standard must be considered for all NQTLs; thus disproportionately weighting this factor.

Aetna appreciates the opportunity to comment on proposed FAQs, revised Disclosure Template, and the Compliance Tool. We would be happy to respond to follow up questions from the Departments.

Sincerely,

Bonnie Washington
Vice President, Public Policy

[1] Federal Register Vol. 78, No. 219 page 68241 (Final Rule)
[2] Sec. 13001(a) of the 21st Century Cures Act; Public Health Service Act Sec. 2726(a)(4) (42 U.S.C. 300gg–26(a)(4)); 45 C.F.R. 146.136(d).