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January 4, 2019

VIA E-MAIL - Stacy.Guidry@LA.GOV

Ms. Stacy Guidry
Section Chief, Health Plan Management
Louisiana Department of Health
628 N. Fourth Street
Baton Rouge, LA 70821

RE: Notice of Monetary Penalty Regarding Failure to Meet Established Benchmarks for Quality Improvement – Performance Measure Outcomes

Dear Stacy:

Aetna Better Health of Louisiana ("Aetna") respectfully submits this protest and appeal to your letter dated December 4, 2018 regarding failure to meet established benchmarks for quality improvement with respect to performance measure outcomes. Specifically at issue is the imposition of the $250,000 penalty for each managed care organization ("MCOs") and their respective failures to meet the Louisiana Department of Health ("LDH") Performance Guarantee target for (i) Emergency Department ("ED") Visits per 1,000 Member Months and (ii) Cesarean Rates.

1. Ambulatory Care Emergency Department Visits/1,000 MM

Aetna questions the validity of the target given that all MCOs missed the target by significant margins. The goals published for MCOs in the *2017 Healthy Louisiana Performance Measures: Guide for MCO Reporting* were based on targets originally published during 2016. With the carve-in of the expansion population, the shift in demographics clearly increased all utilization. LDH did not have the benefit of experience with this population on which to base a target for ED visits. Therefore, without the expansion population claims experience factored into the development of the target, such target is inaccurate and creates a formula only for failure. The same hindrance applies to all health plans. Without adequate data upon which to base an objection, it was impossible to make a rational argument for a different goal.

Due to the significant challenges faced with reducing emergency room ("ER") utilization in August of 2018, LDH asked Dr. John Couk from the LSU Health Science Center in New Orleans to meet with all MCOs separately to discuss potential interventions to curb ER utilization. Dr. Couk presented to the 2018Q2 Medicaid Quality Committee where he referred to the "tremendous challenges" all players in the healthcare system face regarding ER utilization. From that presentation, it was recommended that MCOs pursue a tiered approach to the ED utilization challenges with one (1) region selected as a pilot.

Even Mercer, in its "Quality Withhold Analysis" prepared in advance of the contract extension amendment in August 2017, advised LDH that the only measure it "doesn't consider reasonably attainable in rate development is the Emergency Department measure".

Further, the Island Peer Review Organization (IPRO) recommends using a target for each plan that is risk adjusted for specific plans, taking into consideration its proportion of Medicaid expansion members.

Given the inadequate data upon which to base a target that included the nearly 500,000 new recipients, and having inadequate data and time for the MCOs to provide feedback, Aetna respectfully requests that LDH rescind it monetary penalty for ED utilization.

2. Nulliparous Singleton Vertex Births (Cesarean Rate for Low-Risk First Birth Women)

LDH states that Aetna did not meet the performance measure for Nulliparous Singleton Vertex Births (Cesarean Rate for Low-Risk First Birth Women) in 2017. Although Aetna's performance measure was higher than the performance target, it should not be assessed a monetary penalty because Aetna exceeded the performance measure improvement requirements as set forth in the State Contract. Section 5.4.2.1.8.1 of the State Contract states:

> To earn back the full withhold amount associated with each incentive-based measure, MCO performance must **either** meet the target for that measure **or improve over the MCO's performance for that measure for the prior measurement year by at least 2 points (2.0 without any rounding).** If the MCO did not report data for a particular measure in accordance with LDH requirements for the prior measurement year, the MCO must meet the target to earn the withhold for this measure.

(emphasis added).

Aetna improved in excess of three percent (actually 3.2%-see below) year over year on its Cesarean Rate, thereby exceeding the two (2) point improvement required under the State Contract to prevent a withhold.

Measure	Rate	Measure Start	Measure End
Cesarean Section	33.6	1/1/2016	12/31/2016
Cesarean Section	30.4	1/1/2017	12/31/2017

3. Discretion for Monetary Penalties

In addition, it should be noted that LDH will not be using the Cesarean Rate performance measure going forward. As such, Aetna submits that, along with demonstrating a three percent (3%) improved Cesarean Rate performance measure, it should not be penalized as this measure will no longer be subject to monetary penalty.

The State Contract also grants LDH discretion when imposing monetary penalties. When imposing a monetary penalty, the Section 20.3.1 of the State Contract requires LDH to consider several factors, as follows:

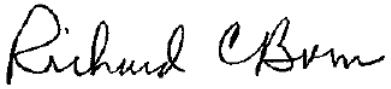
The decision to impose monetary penalties shall include consideration of the following factors:

- The duration of the violation;
- Whether the violation (or one that is substantially similar) has previously occurred;
- The MCO's history of compliance;
- The severity of the violation and whether it imposes an immediate threat to the health or safety of the Medicaid members; and
- The "good faith" exercised by the MCO in attempting to stay in compliance.

Aetna has not previously been cited for this violation while participating in the Healthy Louisiana program and continues to act in good faith in improving its performance measures. Additionally, Aetna asserts that because LDH is will not be using this performance measure going forward, the severity of a violation, if any, is significantly diminished. In the event LDH does not withdraw or suspend the monetary penalties, Aetna requests that the penalties be reduced substantially for the aforementioned reasons, and Aetna will continue to work with LDH to meet the required performance measures.

Should you have any questions, please do not hesitate to contact to me. I look forward to working with you to resolve this matter.

Sincerely,



Richard C. Born
Chief Executive Officer
Aetna Better Health of Louisiana

cc: A.J. Herbert III (aherbert@taggartmorton.com)