April 21, 2008

Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: 408(b)(2) Hearing
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Submitted Electronically (e-ORI@dol.gov)

Dear Sir/Madam:

Aetna Life Insurance Company ("Aetna"), one of America's leading health insurers and self funded health and welfare plan third party administrators, is writing to supply additional comments on the record, as follow-up to the April 1, 2008, oral testimony of Aetna's National Accounts Counsel, Bill Kowalski, concerning the Proposed Rule issued by the Department of Labor, Employee Benefits Security Administration (EBSA) regarding Reasonable Contracts or Arrangements Under Section 408(b)(2) – Fee Disclosure.

Aetna's recommendations can be encapsulated in three words: "Verify," "Clarify" and "Simplify:"

- Verify – Aetna recommends EBSA verify that application of the current version of the proposed regulation to the health benefits arena is warranted, through specific research into current practices and protocols in that area. As indicated in my April 1, 2008 testimony, the impact of the regulations will likely be greater than anticipated by EBSA, due to the unique nature of health benefits administration, and the voluminous number of service providers, RFP responses and contracts inherent in administering a benefit plan for even a single large employer.[1] Before implementing a process which could result in the inundation of claim fiduciaries with unnecessary, confusing and expensive documentation, inconsistently compiled across competing service providers, EBSA has the public policy obligation to determine if a need exists in this particular field which warrants additional regulation, and if so, whether the regulation currently proposed for the financial services arena is the best model for use in the field of health and welfare benefits. Aetna is not aware of any evidence on the record of the proceeding to date that would warrant the level of regulation currently proposed.

[1] As stated in my April 1, 2008 testimony, a single large employer could conceivably have twenty or more individual contracts with service providers relating to their health & welfare plan, including contracts for any of the following: one or more self-funded medical products (e.g., HMO, POS); one or more fully insured medical

- Clarify - If EBSA assembles a record justifying the application of the proposed regulation to health benefits administration, Aetna suggests that any excessive impact of the regulation on plan fiduciaries and service providers alike could be mitigated by a simple clarification in the text of the regulation. By amending the regulation to expressly provide that the required disclosure need only be filed by the service provider ultimately chosen by the plan fiduciary - but prior to entering into any contract – EBSA will minimize the potentially voluminous and confusing information likely to be submitted by all service providers as part of the typical bidding or RFP ("request for proposal") process. In so doing, the disclosure process would become the last step of due diligence between the claim fiduciary and the selected service provider. As such, the goal of the disclosure regulation would be met – as the plan fiduciary would have the necessary information required to determine if compensation being provided is reasonable - while still eliminating what could be hundreds, if not thousands, of pages of inconsistently reported information requiring review by a single plan fiduciary.[2] Under the proposed regulations, for each RFP, a plan fiduciary would be required to disclose every third party with which it has a relationship, so that each service provider responding to the RFP could research and disclose any potential arrangement between it, and its own third parties, with each of the plan fiduciary's service providers. As a result, the effort and expense required to provide the analysis necessary for each individual contract bid will likely be much more significant than that assumed in the proposed rules published in the December 13, 2007 Federal Register (see, e.g., assumptions at p.71003). In addition, given the requirement to review and respond to each of a specific plan fiduciaries' other service providers, a bidding service provider would not be able to generate standardized or generic responses which satisfied the regulations – contrary to EBSA's assumption at page 70998 of the proposed rules ("The Department assumed that many written disclosure statements under the proposal could be made routine and automatic.")

(footnote[1] continued) ...products (e.g., PPO, indemnity); a Medicare supplement plan; an executive medical plan; a pharmacy benefit plan; a stop loss policy; a subrogation vendor; an eligibility vendor; a claims auditor; an implementation auditor; a disease management vendor; one or more dental products (fully insured and self funded); disability coverage – both short and long term; family medical leave act administration; wellness benefit plan administration; a personal health record vendor; a data analytics vendor; an FSA vendor, long term care coverage; group life insurance, and one or more brokers or plan design consultants. While it is likely that a single service provider could provide more than one service, this example illustrates the need for specific additional review to determine if the EBSA's assumption of only 3.55 affected service providers per plan, (12/13/07 Fed. Reg. at p. 70998), is valid in the health and welfare benefits arena.

[2] (11 pages of additional contract disclosure cited by EBSA at p. 71003 of 12/13/07 Federal Register) x (20 contracts from the example in FN 1, above) x (6 bidders per contract) = 1320 pages of disclosure for a single plan.

However, by limiting the disclosure obligation to the service provider ultimately selected in the contract bidding process, the EBSA would substantially mitigate any unnecessary adverse impact of the regulations upon service providers and plan fiduciaries alike.

- Simplify - If EBSA applies the regulation to health & welfare benefits administration, Aetna would contend that the required disclosure need only be one page in length, rather than the 11 pages referenced in the proposed regulations and need only contain 2 questions to be answered by the service provider:

    - "What additional fees or compensation as defined in the regulations will the service provider and any of its affiliates, excluding unaffiliated third parties, receive that is not disclosed in the underlying service agreement;" and
    - "To the best of the service provider's knowledge, what actual conflicts of interest exist between the service provider and any known third parties relating to the services provided pursuant to the underlying services agreement."

  Such a template would eliminate the requirement contained in the current regulation to disclose all third party relationships (including subcontractors) in bundled service arrangements, regardless of whether the service provider submitting the disclosure receives any compensation from those third parties. Absent the service provider's sharing in third party compensation, the reasonableness of the contract between that service provider and the plan fiduciary is a more straightforward evaluation. In addition, the use of a simplified, standardized format – one which would allow the "apples-to-apples" comparison mentioned by several parties in the April 1, 2008 testimony as desirable -- would ease the burden of the regulations upon plan fiduciaries, and allow them to make a meaningful evaluation of the reasonableness of the contracts which they enter on their plans' behalf.

Conclusion

Aetna appreciates the opportunity to provide additional input with respect to the Proposed Rule. We welcome disclosure in the health and welfare plan contracting process, but believe that further analysis of the unique attributes of the industry is required to effectuate the most efficient regulatory process.

We believe that the suggestions submitted above constitute a step toward that end, and look forward to any additional opportunity to work with the EBSA on this matter in the future.

Sincerely,

Bill Kowalski
National Accounts Counsel