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March 4, 2022

Arizona Department of Insurance and Financial Institutions

Submitted electronically via email to public_comments@difi.az.gov

Re: Mental Health Parity II

To Whom It May Concern:

Thank you for the opportunity to provide comments in response to the Arizona Department of Insurance and Financial Institutions' ("DIFI") draft regulations ("draft rule") implementing Arizona SB 1523 (Chapter 4, Laws 2020) published February 4, 2022. Medica (also referred to as "we," "our," or "us,") is an independent and nonprofit health care organization with approximately 900,000 members, and is proud to be a new entrant to the Arizona individual health insurance market in 2022. Medica's mission is to be the trusted health plan of choice for customers, members, partners, and our employees. Medica offers health insurance coverage in Minnesota, Wisconsin, North Dakota, South Dakota, Iowa, Nebraska, Kansas, Oklahoma, and Missouri.

Medica appreciates DIFI's engagement with health care insurers on this subject. We understand the importance of ensuring compliance with MHPAEA, and we are familiar with a number of different approaches adopted by states to evaluate MHPAEA compliance. We submitted comments on a previous version of the draft rule; Medica's comment letter was dated November 29, 2021, and those comments are generally still applicable to the version of the draft rules published in February 2022. We thank DIFI for using the term "health care insurer" consistently in the draft rule to provide clarity. We also thank DIFI for removing the extraneous definition of "medical necessity / medically necessary."

We reiterate, however, our concerns about DIFI's approach regarding MHPAEA compliance. There is significant federal legislative and regulatory activity expected in 2022 on MHPAEA, and it is imprudent for DIFI to develop its own reporting mechanisms when the underlying federal requirements are transforming.

The U.S. Departments of Health and Human Services and Labor are required to release revised MHPAEA regulations in 2022 under the Consolidated Appropriations Act of 2021 (Pub. L. 116-260). The U.S. Department of Labor also recently released its MHPAEA Compliance Report to Congress and provided indications to health plans on how they should conduct the comparative analyses of nonquantitative treatment limits under the Consolidated Appropriations Act of 2021 (Pub. L. 116-260). Finally, the U.S. Senate is working on a bipartisan legislative package to strengthen behavioral health care in the United States, including by strengthening MHPAEA. The federal activities will drive the future of MHPAEA

compliance, and DIFI should defer to existing federal tools for overseeing MHPAEA compliance until additional federal guidance is released.

Specifically, rather than developing its own reporting tool for MHPAEA NTQL reporting, we recommend DIFI leverage the Consolidated Appropriations Act of 2021's comparative analyses for NTQLs. Health insurers have been required to make these comparative analyses available to state regulators upon request since February of 2021. We recommend DIFI ask health insurers to provide the comparative analyses rather than completing an Arizona-specific data request. As a health insurer offering fully-insured products across 10 different states, we recommend alignment so that we do not have to create unique reporting processes for each state.

Additionally, we recommend DIFI clarify its approach to requiring the use of the CMS MHPAEA Tool for QTL reporting in the draft rule. The CMS MHPAEA Tool is not automatically available to health insurers; it is a tool developed for state regulators to use, and health insurers do not have access to the tool during the filing season to run it on their plan designs. We also note that the CMS MHPAEA Tool does not incorporate the subclassification safe harbor for outpatient office visits and outpatient other visits. As such, the tool acknowledges that it may give "false positives" of parity violations. We recommend the DIFI recognize the limitations of the tool in assessing MHPAEA Compliance.

Thank you once again for the opportunity to provide these comments. Please do not hesitate to contact me if you have any questions or would like to discuss Medica's comments in more detail.

Sincerely,

A handwritten signature in blue ink that reads "Jay McLaren". The signature is written in a cursive, flowing style.

Jay McLaren
Vice President, Public Policy and Government Relations

