

February 15, 2022

The Honorable Nancy Pelosi
Speaker
United States House of Representatives
1236 Longworth House Office Building
Washington, DC 20515

The Honorable Chuck Schumer
Majority Leader
United States Senate
322 Hart Senate Office Building
Washington, DC 20510

Dear Speaker Pelosi and Majority Leader Schumer,

The undersigned organizations that support health coverage parity for mental health and substance use disorders write to ask you to continue to support civil monetary penalty authority for the U.S. Department of Labor (USDOL) to enforce the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). This authority has been included in every version of the Build Back Better Act, and it is critical that Congress includes it in any final package.

Just last month in a damning report to Congress on health plans' failure to comply with MHPAEA, USDOL unambiguously called on Congress to amend the Employee Retirement Income Security Act (ERISA) to provide it with this authority to "greatly strengthen the protections of MHPAEA."¹ Despite finding that "[n]one of the comparative analyses reviewed to date have contained sufficient information upon initial receipt" and identifying numerous parity violations, USDOL noted that its current authority falls short in deterring plans from violating the law.

In the middle of a mental health and addiction crisis – with overdose deaths exceeding 100,000 for the first time² and with leading national children's organizations³ and the U.S. Surgeon

¹ 2022 MHPAEA Report to Congress: Realizing Parity, Reducing Stigma, and Raising Awareness: Increasing Access to Mental Health and Substance Use Disorder Coverage, January 2022.
<https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/report-to-congress-2022-realizing-parity-reducing-stigma-and-raising-awareness.pdf>

² Provisional Drug Overdose Death Counts, National Center for Health Statistics, November 2021.
<https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>

³ AAP-AACAP-CHA Declaration of a National Emergency in Child and Adolescent Mental Health, October 2021.
<https://www.aap.org/en/advocacy/child-and-adolescent-healthy-mental-development/aap-aacap-cha-declaration-of-a-national-emergency-in-child-and-adolescent-mental-health/>

General⁴ sounding the alarm on youth mental health – Congress should not miss this opportunity to close a glaring loophole that undermines parity.

Civil monetary penalty authority will position USDOL – which has one investigator for every 12,500 plans⁵ – to step in more aggressively when necessary to change plans’ coverage practices, make parity a reality, and increase access to life-saving treatment. This provision also carefully balances the interests of Americans seeking mental health and substance use disorder care with insurers, plan sponsors, and administrators attempting to comply with the law. By adding MHPAEA to USDOL’s existing civil monetary penalty authority for violations of the Genetic Information Non-Discrimination Act (GINA), this provision captures the existing safe harbor provision that protects insurers, plan sponsors, and administrators that exercise “reasonable diligence” to comply with the law.

Civil monetary penalty authority to ensure compliance with MHPAEA has enjoyed bipartisan support in the past. President Obama’s Mental Health and Substance Use Disorders Parity Task Force strongly recommended providing this authority⁶, as did President Trump’s Commission on Combating Drug Addiction and the Opioid Crisis.⁷ In fact, former New Jersey Governor Chris Christie, chair of the Commission, stated that the authority is “absolutely necessary” and that the Commission “unequivocally” supported Congressional action to give USDOL the authority to issue penalties.

Our organizations hope that Congress will seize this opportunity to give USDOL the powers it is requesting help end discrimination against individuals living with mental health and substance use disorders. We stand ready to assist you however we can.

Sincerely,

The Kennedy Forum
A New PATH (Parents for Addiction Treatment & Healing)
AFSCME
American Association for Psychoanalysis in Clinical Social Work
American Association on Health and Disability
American Association for the Treatment of Opioid Dependence
American College of Medical Toxicology (ACMT)
American Foundation for Suicide Prevention
American Psychiatric Association

⁴ Protecting Youth Mental Health: The U.S. Surgeon General’s Advisory, December 2021.

<https://www.hhs.gov/sites/default/files/surgeon-general-youth-mental-health-advisory.pdf>

⁵ U.S. Government Accountability Office, “State and Federal Oversight of Compliance with Parity Requirements Varies, December 2019. <https://www.gao.gov/assets/gao-20-150.pdf>

⁶ Final Report of The Mental Health & Substance Use Disorder Parity Task Force, October 2016. <https://www.hhs.gov/sites/default/files/mental-health-substance-use-disorder-parity-task-force-final-report.PDF>.

⁷ Recommendation 35 of The President’s Commission on Combating Drug Addiction and the Opioid Crisis, November 2017. <https://facesandvoicesofrecovery.org/wp-content/uploads/2019/06/Final-Report-The-Presidents-Commission-on-Combating-Drug-Addiction-and-The-Opioid-Crisis.pdf>.

American Psychological Association
American Society of Addiction Medicine
Association For Ambulatory Behavioral Healthcare (AABH)
Autism Legal Resource Center
Autism Speaks
College of Psychiatric and Neurologic Pharmacists (CPNP)
Community Catalyst
Eating Disorders Coalition for Research, Policy & Action
EMDR International Association
Families USA
First Focus on Children
Inseparable
International OCD Foundation
Lakeshore Foundation
Legal Action Center
Meadows Mental Health Policy Institute
Mental Health America
NAMI - National Alliance on Mental Illness
National Association for Behavioral Healthcare
National Association for Children's Behavioral Health
National Association for Rural Mental Health
National Association of Addiction Treatment Providers
National Association of Clinical Nurse Specialists
National Association of County Behavioral Health and Developmental Disability Directors
National Association of Social Workers
National Autism Law Center
National Council for Mental Wellbeing
National Education Association
National Federation of Families
NHMH - No Health without Mental Health
Parity Enforcement Coalition
Partnership to End Addiction
Project HEAL
Psychotherapy Action Network
REDC Consortium
Shatterproof
SMART Recovery
Steinberg Institute
Suncoast Harm Reduction Project
Treatment Advocacy Center
The Carter Center Mental Health Program
The Council of Autism Service Providers (CASP)
The National Alliance to Advance Adolescent Health
The Voices Project

Cc: The Honorable Patty Murray, Chair, Senate Committee on Health, Education, Labor, and
Pensions
The Honorable Bernie Sanders, Chair, Senate Committee on the Budget
The Honorable Bobby Scott, Chair, House Committee on Education and Labor
The Honorable John Yarmuth, Chair, House Committee on the Budget