

September 10, 2021

The Honorable Patty Murray
Chair, U.S. Senate Committee on Health, Education, Labor & Pensions
428 Senate Dirksen Office Building
Washington, DC 20510

Dear Chair Murray,

The undersigned organizations that support health coverage parity for mental health and substance use disorders write to ask you to support a critical legislative provision to enforce the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Federal Parity Act). In its budget reconciliation language released this week, the House Education and Labor Committee included language (Section 21005) that would give the U.S. Department of Labor (USDOL) the power to assess civil monetary penalties for violations of the Federal Parity Act. The Committee also included \$195 million over five years for the Employee Benefits Security Administration (EBSA) for enforcement. We respectfully ask the HELP Committee to do the same.

The inclusion of the civil monetary penalties authority provision would correct a significant gap in USDOL's oversight authority by amending the Employee Retirement Income Security Act (ERISA) to give USDOL the authority to levy penalties against health insurers, plan sponsors, and administrators for parity violations. Under current law, USDOL lacks the ability to assess civil monetary penalties for violations of the Federal Parity Act, the landmark law that prohibits discrimination in the coverage of mental health and substance use disorder care.

The HELP Committee recently took an important step by requiring health plans to conduct and share their analyses of their parity compliance efforts and to make adjustments when those efforts fall short. Adding authority for civil monetary penalties would build on the Committee's efforts by adding an additional, powerful tool to deter parity violations *before* they lead to Americans being denied mental health and substance use disorder benefits and treatment at a time of unprecedented need. The ongoing COVID-19 pandemic has had deep negative impacts on our nation's mental health¹; overdose deaths increased a shocking 30 percent last year², and inequities in health plans' coverage of mental health and substance use disorder treatment, including low reimbursement and grossly inadequate networks, has grown in recent years.³

¹ Audrey Kearney, Liz Hamel, and Mollyann Brodie, "Mental Health Impact of the COVID-19 Pandemic, Kaiser Family Foundation, April 14, 2021, <https://www.kff.org/coronavirus-covid-19/poll-finding/mental-health-impact-of-the-covid-19-pandemic/>.

² CDC, "Drug Overdose Deaths in the U.S. Up 30% in 2020," July 14, 2021, https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2021/20210714.htm.

³ Steve Melek, Stoddard Davenport, and T.J. Gray, "Addiction and mental health vs. physical health: Widening disparities in network use and provider reimbursement," Milliman, November 19, 2019, https://assets.milliman.com/ektron/Addiction_and_mental_health_vs_physical_health_Widening_disparities_in_network_use_and_provider_reimbursement.pdf.

This power will position USDOL – which has 1 investigator for every 12,500 plans⁴ – 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 the Federal Parity Act 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 the Federal Parity Act has enjoyed bipartisan support in the past. President Obama’s Mental Health and Substance Use Disorders Parity Task Force strongly recommended providing this authority⁵, as did President Trump’s Commission on Combating Drug Addiction and the Opioid Crisis.⁶ 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 needs to 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 on Health and Disability

American Association for the Treatment of Opioid Dependence

American College of Emergency Physicians (ACEP)

The American College of Medical Toxicology (ACMT)

American Foundation for Suicide Prevention

American Psychiatric Association

American Psychological Association

American Society of Addiction Medicine

Association For Ambulatory Behavioral Healthcare (AABH)

Association for Behavioral & Cognitive Therapies

⁴ 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>.

⁵ 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>.

⁶ 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>.

Carter Center Mental Health Program
College of Psychiatric and Neurologic Pharmacists
Community Catalyst
Eating Disorders Coalition
EMDR International Association
Families USA
Inseparable
International OCD Foundation
Legal Action Center
McShin Foundation
Meadows Mental Health Policy Institute
Mental Health America
NAADAC, the Association for Addiction Professionals
National Alliance on Mental Illness
The National Alliance to Advance Adolescent Health
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 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
Stop Stigma Now (SSN)
Suncoast Harm Reduction Project
Treatment Advocacy Center
The Voices Project
Well Being Trust

Cc: The Honorable Chuck Schumer, Senate Majority Leader
The Honorable Bernie Sanders, Chair, Senate Budget Committee