

July 13, 2022

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

Dear Majority Leader Schumer,

As leading New York and national organizations that support health coverage parity for mental health and substance use disorders (MH/SUD), we 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 the Senate includes it in any final package. Providing USDOL this authority will make recent MH/SUD investments (e.g., those contained in the Bipartisan Safer Communities Act) go much further by ensuring that insurance companies are meeting their parity responsibilities and are not the unintended beneficiaries of taxpayer funds that effectively displace insurance reimbursement.

In a damning January 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."<sup>1</sup> 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 MH/SUD crisis – with overdose deaths now exceeding 107,000 in the latest 12-month period<sup>2</sup> and with leading national children's organizations<sup>3</sup> and the U.S. Surgeon General<sup>4</sup> sounding the alarm on youth mental health – Congress should not miss this opportunity to close a glaring loophole that undermines parity. In New York State alone, overdose deaths increased 45 percent between December 2019 and December 2021, according to CDC data.

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<sup>1</sup> 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>

<sup>2</sup> Provisional Drug Overdose Death Counts, National Center for Health Statistics, January 2022.

<https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>

<sup>3</sup> 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/>

<sup>4</sup> 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>

Civil monetary penalty authority will position USDOL – which has one investigator for every 12,500 plans<sup>5</sup> – to step in more aggressively when necessary to change plans’ coverage practices, make parity a reality, and increase access to life-saving treatment. While New York State regulators and Attorney General Letitia James have been stepping up parity enforcement, USDOL’s lack of this basic enforcement authority leaves the millions of New Yorkers in self-funded ERISA plans with comparatively little protection, because USDOL (the sole agency able to protect them) has one hand tied behind its back.

The civil monetary penalty provision contained in previous reconciliation packages carefully balances the interests of Americans seeking MH/SUD 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 authority<sup>6</sup>, as did President Trump’s Commission on Combating Drug Addiction and the Opioid Crisis.<sup>7</sup> 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,

*New York State Organizations*

Addiction Treatment Providers Association of NYS  
Callen-Lorde Community Health Center  
Citizens' Committee for Children of New York  
Coalition for the Homeless, Inc.  
Community Healthcare Network

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<sup>5</sup> 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>

<sup>6</sup> 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>.

<sup>7</sup> 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>.

Community Service Society of New York  
COMPA-NY  
Families Together in NYS  
Horizon Health Service  
Horizon Village  
Mental Health Association in New York State, Inc. (MHANYS)  
New York Association of Alcoholism and Substance Abuse Providers (ASAP)  
New York Association of Psychiatric Rehabilitation Services  
New York State Council for Community Behavioral Healthcare  
New York State Psychiatric Association  
New York State Psychological Association  
NYTC – Stay’n Out Programs  
North Shore Child & Family Guidance Center  
TCA NY  
Treat Me Please  
Value Network, IPA  
Value Network IPA, BHCC

*National Organizations*

The Kennedy Forum  
Legal Action Center  
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  
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  
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