



September 27, 2022

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
The Capitol H-232
Washington, DC 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
The Capitol H-204
Washington, DC 20515

Dear Speaker Pelosi and Leader McCarthy:

We write to share our strong concerns regarding legislation included in H.R. 7780, the *Mental Health Matters Act of 2022*; provisions from H.R. 7740, the *Employee and Retiree Access to Justice Act* and H.R. 7767, the *Strengthening Behavioral Health Benefits Act*. These bills threaten to disrupt management of employer health plans, add unnecessary litigation costs to the already high cost of coverage for employees and employers, and reduce access to coverage. We urge your opposition to these bills.

Employers rely on federal law under ERISA to efficiently administer benefits to employees and their families. Employers do not make a profit from health benefits, but self-insured employers directly pay high costs for the medical care employees and dependents receive. Fully-insured employers also pay high medical costs through insurance premiums. All employers have a fiduciary responsibility under ERISA to our employees as to their benefits and take that responsibility seriously.

H.R. 7740 would upend benefit administration for millions of employees by prohibiting discretionary clauses that allow many different types of employers who appropriately rely on expert vendors and other professionals to assist with complexities of health plan administration. Further, H.R. 7740 subverts well-established patient appeals procedures from the Patients' Bill of Rights Act of 1999 and the Affordable Care Act of 2010 in favor of private litigation. The trial bar may profit as a result, but quality health benefits will inevitably suffer.

We have also long expressed concern about the inappropriate use of civil monetary penalties as well as the unprecedented and unnecessary expansion of ERISA Section 502 to enforce ill-defined mental health parity provisions, as called for in H.R. 7767. Civil monetary penalty enforcement and ERISA litigation could be used as brute force tools in a myriad of unpredictable ways that would ultimately harm plans and plan sponsors who are earnestly trying to comply.

Among other challenges, for example, employers consistently report that many providers refuse to bargain in good faith and decline to participate in our networks at reasonable rates. Some refuse to participate at any rate. Provider shortages – inside as well as outside networks – are

rampant. No employer should be penalized for network inadequacies without reciprocal penalties for mental health and substance use disorder providers who refuse to participate in-network.

We note that full regulatory guidance for noneconomic parity and network adequacy is still pending. Enforcement of civil monetary penalties by the Employee Benefit Security Administration (EBSA) on a "we-will-know-it-when-we-see-it" basis will not provide helpful guidance to other employers to improve coverage. Absent full guidance from EBSA addressing these issues, this legislation is premature at best. Full guidance and compliance assistance is a better pathway toward improved coverage.

Again, thank you for your attention to our concerns on these important issues. If you or your staff would like to meet to discuss this legislation, please have your staff contact P4ESC's Executive Director Neil Trautwein at neil@trautweinstrategies.com.

Sincerely,

Partnership for Employer-Sponsored Coverage

cc: Members, U.S. House of Representatives