



September 27, 2021

The Honorable Charles Schumer (NY)
Majority Leader
U.S. Senate
S-221 The Capitol
Washington, D.C. 20510

The Honorable Nancy Pelosi (CA-12)
Speaker
U.S. House of Representatives
H-232 The Capitol
Washington, D.C. 20515

Dear Majority Leader Schumer and Speaker Pelosi:

As members of the Partnership for Employer-Sponsored Coverage, we write with opposition to the enactment of civil monetary penalties for mental health parity violations. Employers work tirelessly to provide quality mental health and substance use disorder coverage for our employees and their families, innovating and investing in significant new programs and benefits during the COVID pandemic. Addressing the current mental health crisis will require significant efforts in partnership between employers, providers, government, patient groups, and other stakeholders – and we believe punitive legislative provisions will poison these efforts and serve only to hurt patients.

Employers and mental health care providers worked together to build the compromise that became the Mental Health Parity and Addiction Equity Act of 2008. Employers worked closely with the late former Senators Edward Kennedy (D-MA) and Pete Domenici (R-NM) to build compromise language that balanced financial parity in coverage with the retained ability to medically manage that coverage. It is this latter element – particularly as regards noneconomic factors, such as network adequacy, formulary design, and step therapy – that is at issue now.

Civil monetary penalty enforcement could be a tool to impose network adequacy requirements, by penalizing employers based on the raw number of mental health or substance use disorder providers in network. Yet, employer networks consistently report that these providers refuse to bargain in good faith and decline to participate in our networks at reasonable rates. Provider shortages – inside- as well as outside-networks – are rampant. Imposing penalties on plan sponsors cannot solve provider shortages. The federal government should not put its thumb on the scale in private negotiations between providers and employers. In keeping with the spirit of the mental health parity law, employers should be treated on par with providers.

We oppose civil monetary penalties for the myriad reasons cited above. Further, providers should be required to let employers and carriers know that they are:

1. Enrolled in at least one Preferred Provider Organization (PPO) network;
2. Accepting new patients within seven days of requesting an appointment;
3. Have implemented measurement-based care model; and,
4. Participate in telehealth assessment and treatment programs.

In addition, full regulatory guidance for noneconomic parity and network adequacy is still pending. Further yet, the recently enacted No Surprises Act will also affect the dynamics between plans, plan sponsors, and in- and out-of-network providers of all varieties. Civil monetary penalties are premature and inappropriate when the Departments of Labor, Health and Human Services, and the Treasury have failed to provide clarity, and significant new regulations are currently pending.

As a coalition representing businesses of all sizes, the Partnership for Employer-Sponsored Coverage has the unique ability to provide operational input across the full spectrum of the employer system – from the smallest family-owned business to the largest corporation. Employers have a significant stake in developing and implementing health care policies. We look forward to working with you to ensure employer-sponsored coverage continues to thrive.

Sincerely,

American Hotel & Lodging Association
American Rental Association
Associated Builders and Contractors, Inc.
Associated General Contractors of America
Auto Care Association
Business Group on Health
The Council of Insurance Agents & Brokers
The ERISA Industry Committee (ERIC)
FMI – The Food Industry Association
HR Policy Association
National Association of Health Underwriters
National Association of Wholesaler-Distributors
NFIB – National Federation of Independent Business
National Restaurant Association
National Retail Federation
Retail Industry Leaders Association

Cc:
Senate Budget Committee
House Budget Committee
Senate Health, Education, Labor, and Pensions Committee
Senate Finance Committee
House Education and Labor Committee
House Ways and Means Committee
House Energy and Commerce Committee