

April 23, 2018

The Honorable Lamar Alexander
Chairman
U.S. Senate Committee on Health, Education,
Labor and Pensions
428 Senate Dirksen Office Building
Washington, DC 20510

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

Dear Chairman Alexander and Ranking Member Murray,

On behalf of the employer community, we write to urge you to reject proposals to create a new civil monetary penalty regime pursuant to mental health parity (MHP) rules. Employers continue to be committed to providing quality benefits – both medical/surgical and mental health benefits. We feel strongly that creating a new penalty regime at this time is unwarranted, and may in fact result in a decline in, rather than an improvement in, mental health benefits for patients.

We thank you for your recent letter to Secretary Azar, Secretary Acosta, and Secretary Mnuchin urging action and requesting information on efforts by their Departments to enforce federal mental health parity laws. As you are aware, MHP is not a mandate, and employers voluntarily offer high-quality mental health benefits to employees and their families, to ensure employee health, productivity, recruitment and retention, and because it's the right thing to do. Given the complexity of understanding MHP compliance obligations, issuance of the compliance program guidance mandated by the 21st Century Cures Act (Cures) is critical. Creation of new civil monetary penalties will neither enhance compliance nor address perceived shortcomings in enforcement.

While it is imperative that Congress take further action to address the opioid crisis, there is not sufficient evidence to suggest that new enforcement authority for the Department of Labor (DOL) of MHP rules would be an effective solution. Instead, Congress should first ensure that other steps called for in the Cures Act have been completed and fully explored, such as:

- DOL, the Department of Health and Human Services and the Department of Treasury were required to issue MHP guidance, including clear examples, to help employers and insurers comply with the rules. To date, the Departments have not yet completed their public notice-and-comment process.
- The Government Accountability Office was directed to issue a study on MHP compliance. It makes little sense to change MHP rules before we have a full accounting of any problems.
- DOL, in cooperation with the Departments of Health and Human Services, and Treasury, was tasked with creating a joint action plan for MHP enforcement.
- DOL's Employee Benefits Security Administration was required to report to Congress on their MHP enforcement investigations and related activities.

Today, the Administration appeared to partially comply with some of the above Cures requirements. However, Congress still needs a clear and thorough explanation and understanding of any current problems with MHP compliance and enforcement to inform its actions. Particular care must be taken

not to undercut employer plans' medical management of benefits, including network participation. This is necessary to ensure both quality and affordable benefits.

There are a number of efforts already underway to discern whether there are problems with MHP enforcement, and what those problems might be. We strongly urge Congress to ensure the Administration fully carries out its duties under Cures and take into account all of the facts and findings therein before considering new penalty regimes.

As such, should any amendment be offered that would impose new mental health parity civil monetary penalties, we urge members to vote "**NO.**"

Thank you for this opportunity to weigh in as you continue to work to address the opioids epidemic. We hope to be partners in implementing solutions, and in ensuring that tens of millions of Americans continue to have access to comprehensive health and mental health benefits.

Sincerely,

American Benefits Council
H.R. Policy Association
National Association of Health Underwriters
National Association of Wholesaler-Distributors
National Retail Federation
The ERISA Industry Committee
U.S. Chamber of Commerce

CC: All members of the Senate Health, Education, Labor and Pensions Committee