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COMMITTEE ON
EDUCATION AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
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August 1, 2024

The Honorable Xavier Becerra
Secretary
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

The Honorable Julie A. Su
Acting Secretary
Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

The Honorable Janet L. Yellen
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Becerra, Secretary Yellen, and Acting Secretary Su:

Nearly two decades ago, Congress enacted legislation ensuring that coverage for mental health and addiction treatment is no more restrictive than coverage for physical illnesses. This requirement, known as mental health parity, carries an exceptional promise for the millions of Americans facing mental illness or living with substance use disorder. Ensuring mental health parity for patients depends on the Department of Health and Human Services, the Department of the Treasury, and the Department of Labor (Tri-Agencies) promulgating rules that are aligned with congressional intent. However, the Biden-Harris administration has proposed mental health parity rules that fail to align with congressional intent and will instead limit patients' ability to access necessary mental health services.¹ I urge the Tri-Agencies to work with Congress and stakeholders to ensure that any mental health parity rules are workable and actually improve patient care. The current proposed rules do not meet those goals and should not be finalized.

Congress has enacted several laws that require parity in coverage for mental health and substance use disorder benefits. These include the *Mental Health Parity Act of 1996* (MHPA), the first federal mental health parity law, and its expansion in the *Paul Wellstone and Pete Domenici*

¹ Requirements Related to the Mental Health Parity and Addiction Equity Act, 88 Fed. Reg. 51,552 (proposed Aug. 3, 2023).

Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). Subsequently, five additional laws amended MHPAEA to expand parity requirements in private health insurance.²

Despite employers' and health plan sponsors' best efforts, there have been varying levels of success in complying with the applicable laws governing mental health parity. Unfortunately, this largely stems from the Biden-Harris administration's failure to provide employers and plan sponsors with clear direction for implementing these laws. For instance, the MHPAEA requires that employers and sponsors be provided with clear instructions regarding certain parity requirements (such as illustrative, deidentified examples of Non-Quantitative Treatment Limitations (NQTLs)), but the Tri-Agencies did not provide adequate examples.³ Instead, the Tri-Agencies' proposed rules amend the NQTL definition to state that any provided list of NQTLs is "non-exhaustive," creating further uncertainty for employers and health insurance issuers about how to comply with these requirements.⁴ Despite this lack of clarity, the Biden-Harris administration threatens to shame employers and plan sponsors publicly if they are not in compliance with the administration's unclear requirements, as they did in the MHPAEA Comparative Analysis Report to Congress, July 2023.⁵

Rather than provide the clarity needed for compliance with statutory requirements, the Tri-Agencies' proposed rules add requirements, such as collection of outcomes data, to determine compliance with mental health parity. These additional requirements are not only burdensome but also contradict the Tri-Agencies' long-held position that outcomes are not indicative of compliance.⁶ Notably, the proposed rules fail to consider the multitude of factors affecting outcomes data which is outside the control of the plan or issuer, such as challenges impacting the supply of the mental health workforce and the quality of care provided.

Further, I remain concerned that the proposed rules far exceed statutory authority under MHPA and MHPAEA, concerns which are affirmed by the Supreme Court's *Loper Bright* decision.⁷ Under *Loper Bright*, the Tri-Agencies do not have the authority to create new tests for NQTLs that Congress did not intend. Furthermore, the proposed rules' requirements that plans measure outcomes and vary reimbursement rates are without basis in law. The Tri-Agencies must faithfully reflect the law and congressional intent in any future rulemaking regarding mental health parity requirements.

² Laws amending MHPAEA include the *Patient Protection and Affordable Care Act*, the *Helping Families in Mental Health Crisis Reform Act of 2016*, the *Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act of 2018*, the *Consolidated Appropriations Act, 2021*, and the *Consolidated Appropriations Act, 2023*.

³ The *21st Century Cures Act* references "illustrative and de-identified examples" at section 13001(a) and section 13001(b). *Consolidated Appropriations Act, 2021* § 203(a)(2).

⁴ Requirements Related to the Mental Health Parity and Addiction Equity Act, 88 Fed. Reg. at 51,574.

⁵ EMPLOYEE BENEFITS SEC. ADMIN., MHPAEA COMPARATIVE ANALYSIS REPORT TO CONGRESS, JULY 2023, <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/mental-health-parity/report-to-congress-2023-mhpaea-comparative-analysis>.

⁶ EMP. BENEFITS SEC. ADMIN., SELF-COMPLIANCE TOOL FOR THE MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT (MHPAEA), www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/publications/compliance-assistance-guide-appendix-a-mhpaea.pdf.

⁷ *Loper Bright Enterprises v. Raimondo*, 144 S.Ct. 2244 (2024).

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Access to mental health benefits is essential for employees. Over the past year, 77 percent of large employers reported an increase in mental health needs in their workforce.⁸ However, the Biden-Harris administration's heavy-handed regulatory actions will make it harder for plan sponsors and employers to offer mental health benefits to their employees. Employers are not required to offer mental health and substance use disorder benefits to their employees, but many employers voluntarily choose to offer such benefits and are therefore subject to MHPAEA. The Tri-Agencies must be mindful that the high costs and administrative burdens of complying with the proposed rules could result in employers and plan sponsors no longer offering these benefits.

To be clear, the goal of providing parity between mental health benefits and other medical benefits has long been championed by Congress and the Committee on Education and the Workforce (Committee). However, the current proposed rules fail to meet the goals of improving mental health parity and expanding access to mental health services for patients. As the Tri-Agencies review comments on the proposed rules, the Committee stands ready to aid them in revising this proposal prior to the promulgation of final rules to ensure alignment with congressional intent and to improve access to mental health care for patients.

Sincerely,



Virginia Foxx
Chairwoman

⁸ Ryan Golden, *Large Employers See 'Dire Need' for Mental Health Services*, HR DIVE, Aug. 24, 2023, <https://www.hrdive.com/news/large-employers-see-dire-need-mental-health-services-burnout/691772/>; BUSINESS GROUP ON HEALTH, 77% PERCENT OF EMPLOYERS REPORT INCREASE IN WORKFORCE MENTAL HEALTH NEEDS, SAYS BUSINESS GROUP ON HEALTH'S 2024 HEALTH CARE STRATEGY SURVEY (Aug. 22, 2023), <https://www.businessgrouphealth.org/en/newsroom/news%20and%20press%20releases/press%20releases/2024%20lehcss>.