June 20, 2024

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

The Honorable Lisa M. Gomez
Assistant Secretary, Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20002

The Honorable Douglas W. O'Donnell
Deputy Commissioner, Internal Revenue Service
U.S. Department of the Treasury
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Secretary Becerra, Assistant Secretary Gomez, and Deputy Commissioner O'Donnell:

On behalf of the 40 undersigned organizations dedicated to improving the lives of people with substance use and mental health disorders, we write to thank you for proposing rules last summer that will strengthen the Mental Health Parity and Addiction Equity Act (Parity Act) of 2008. We urge the Departments of Health and Human Services, Labor, and the Treasury to finalize these strong parity rules as soon as possible, which will make a significant difference in improving access to the substance use disorder (SUD) and mental health (MH) treatment that people need and deserve.

Approximately 17.3% of adults in the U.S. have a SUD, yet less than 1 in 4 individuals (24%) received SUD treatment who needed it. While the number of deaths from overdose in the U.S. fell slightly last year for the first time since 2018, we still lost an estimated 107,543 lives to the ongoing overdose crisis in 2023. Although data by race is not available for this most recent year, 2022 saw increases in the rates of overdose fatalities among American Indian and Alaska Native, Black, Hispanic, and Asian individuals.

Yet, more than 15 years after the bipartisan Parity Act was enacted, the Departments noted in their Report to Congress that insurance companies have failed miserably in conducting complete, detailed, and accurate compliance analyses under the existing Parity Act standards and continue to discriminate against individuals with SUD and MH conditions. A recent report found that Americans are forced to go out-of-network 3.5 times more often for SUD and MH office visits than for medical/surgical office visits, with more drastic disparities when comparing psychiatrists (8.9 times) and psychologists (10.6 times) to medical/surgical specialist physicians. The data also demonstrated that the average reimbursement rate for medical/surgical clinician office visits was 21.7% higher than for SUD and MH clinician office visits, with even more significant

differences among reimbursement rates at the 75th and 95th percentile. Together, these findings show that provider shortages do not account for the disparities in treatment access, but that insurance companies are continuing to impose discriminatory practices that limit access to SUD and MH care. Strong enforcement of the Parity Act is necessary to ensure equitable access to lifesaving SUD and MH treatment and prevent these devastating losses in our communities.

We commend the Departments for proposing comprehensive standards to root out ongoing discriminatory insurance practices and those that impose a greater burden on access to SUD and MH care. We are particularly supportive of the Departments' proposals to improve definitions, put a more comprehensive focus on network composition and the related factors that affect access to care, establish two new tests to measure compliance with non-quantitative treatment limitations (NQTLs), and require analysis and reporting of outcome data for NQTLs including construing disparate outcome data for network composition as dispositive evidence of a Parity Act violation.

We also urge the Departments to rescind its proposal to embed two exceptions in the NQTL violation tests: application of generally recognized independent professional medical or clinical standards and standards designed to detect or prevent and prove fraud, waste and abuse and instead to retain the regulatory status quo in which both factors are appropriately considered in relevant NQTL analyses. If finalized without these exceptions, we believe the 2023 Proposed Rules will close existing loopholes in the law and help to improve access to affordable and comprehensive SUD and MH treatment and save countless lives.

The objections from the ERISA Industry Committee that the proposed standards are "so burdensome and unworkable" that they will result in increased costs, decreased access to providers, and the decision to drop MH and SUD coverage altogether are self-interested and completely unfounded. The Parity Act regulations have consistently barred insurers from offering policies or contracts that fail to comply with the NQTL and other regulatory provisions (26 C.F.R. § 54.9812-1(h); 29 C.F.R. § 2590.712(h); 45 C.F.R. §146.136(h)), and thus insurers should already be conducting these analyses and providing coverage at parity. To the extent they have been violating the law and not doing so, we agree with the Departments' analysis in the proposed rule that the new requirements would, at most, increase health insurance premiums between 0.01 and 0.04%. At the same time, the resulting improved access to life-saving care and cost savings to individuals and families with SUD and MH who no longer have to pay the exorbitant price for out-of-network and non-covered care would be truly significant. SUD and MH treatment should not be a privilege reserved for those who can afford to pay out-of-pocket; they must be meaningfully available and accessible for all.

We are grateful to the Biden Administration and your Departments for all of your work to reduce the stigma around SUD and MH, to improve enforcement of the Parity Act, and to improve health equity. We urge you to finalize the rules as soon as possible to ensure that all Americans have access to the SUD and MH treatment they need and deserve.

Please contact Deborah Steinberg, Senior Health Policy Attorney, Legal Action Center, at dsteinberg@lac.org if you have any questions or would like additional information.

Sincerely,

Legal Action Center
Addiction Policy Forum
American Academy of Addiction Psychiatry
American Association of Child and Adolescent Psychiatry
American Association on Health and Disability
American Association of Psychiatric Pharmacists
American Association for Psychoanalysis in Clinical Social Work
American Association for the Treatment of Opioid Dependence, Inc.
American Counseling Association
American Psychiatric Association
American Psychiatric Nurses Association
American Psychological Association Services
American Society of Addiction Medicine
Anxiety and Depression Association of America
Association of Maternal & Child Health Programs
Bowman Family Foundation
Clinical Social Work Association
Community Catalyst
Inseparable
International OCD Foundation
International Society of Psychiatric-Mental Health Nurses
The Kennedy Forum
Lakeshore Foundation
Mental Health America
Mental Health Treatment and Research Institute LLC
NAADAC, the Association for Addiction Professionals
National Alliance on Mental Illness
National Association of Addiction Treatment Providers
National Association for Behavioral Healthcare
National Association of Social Workers
National Council for Mental Wellbeing
National Disability Rights Network (NDRN)
National Health Law Program
NHMH - No Health without Mental Health
Partnership to End Addiction
Psychotherapy Action Network
TASC, Inc. (Treatment Alternatives for Safe Communities)
Technical Assistance Collaborative, Inc.
Tree of Hope Counseling, PLLC
Vibrant Emotional Health