



May 17, 2022

The Honorable Bobby Scott
Chairman
House Education and Labor Committee
2176 Rayburn House Office Building
Washington, DC 20515

The Honorable Virginia Foxx
Ranking Member
House Education and Labor Committee
2176 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Scott and Ranking Member Foxx:

We write to share our strong concerns regarding the substitute amendment to be offered to H.R. 5407 - *the Enhancing Mental Health and Suicide Prevention Through Campus Planning Act* during Wednesday's Committee Markup. The Partnership for Employer-Sponsored Coverage (P4ESC) is a coalition of employment-based organizations and trade associations representing businesses of all sizes and the more than 181 million American employees and their families who rely on employer-sponsored coverage every day. We are committed to ensuring that employer-sponsored coverage is strengthened and remains a viable, affordable option for decades to come.

Employers need a healthy workforce and are committed to ensuring that our employees can access the health care they need, including mental health care. We are concerned that this markup is addressing the wrong problem. The bigger barrier to access to care comes from shortages of mental health care providers and mental health care providers who are unwilling to enter our networks.

Employer plan networks consistently report that many existing mental health providers are unwilling to participate in networks at any rate. Provider shortages – inside- as well as outside-networks – are rampant. According to HHS, 129.6 million Americans live in areas designated as Mental Health Professional Shortage Areas.^[1] There are 6,559 additional BHC providers^[2] needed to fill these provider gaps.^[3] Provider shortages, in conjunction with limited in-network providers, make it difficult for patients to find affordable in-network providers.

^[1] Bureau of Health Workforce Health Resources and Services Administration, U.S. Department of Health & Human Services, "Designated Health Professional Shortage Areas Statistics," September 30, 2021, available at: <https://data.hrsa.gov/Default/GenerateHPSAQuarterlyReport>.

^[2] Behavioral health providers are health care practitioners or social and human services providers who offer services for the purpose of treating mental disorders including: psychiatrists, clinical social workers, psychologists, counselors, credentialed substance use specialists, peer support providers, and psychiatric nurse providers.

^[3] Bureau of Health Workforce Health Resources and Services Administration, U.S. Department of Health & Human Services, "Designated Health Professional Shortage Areas Statistics," September 30, 2021

Employers have repeatedly and earnestly urged the Department of Labor's Employee Benefits Security Administration (EBSA) to provide adequate guidance regarding the applicable mental health parity standards. As evidenced from the DOL's recent [2022 MHPAEA Report to Congress](#) in which no plans were without findings under agency review, EBSA has failed to provide sufficient implementing guidance for any plan to adequately comply. While we believe that employers and other payers wish to comply, there is and will continue to be no way to do so without additional rulemaking and time to come into compliance.

Two proposals in the substitute amendment to H.R. 5407 (to encourage individual and DOL/EBSA enforcement of parity standards; and to ban arbitration and other discretionary clauses) essentially weaponizes the relationship between employers that sponsor health coverage and their covered employees as regards mental health care and substance abuse disorder coverage. Litigation will add to the cost of coverage for employees and employers without meaningfully improving coverage.

At best, it will create a patchwork approach to coverage that would have better been served by voluntary compliance with even marginally adequate rulemaking and guidance. It will undercut ERISA, the backbone of coverage for millions of Americans. ERISA, and its uniformity, allow multi-state employers to provide common benefits among all their covered employees. These proposals are hostile to ERISA uniformity and the millions of workers with ERISA plans.

We encourage the Committee to consider changes to these proposals to help mitigate their adverse effect on employer-sponsored coverage and the employees we cover. For example, employer plan sponsors should be able assert as an affirmative defense their good faith effort to comply with parity standards in their plan design. They should also have an affirmative defense for their good faith effort to build a network that encompasses mental health care and substance use disorder providers in accordance with parity requirements.

Further, we encourage the Committee to preserve the targeted plan clauses if the plan provides covered beneficiaries a prompt opportunity to appeal a denial of coverage based on a lack of medical necessity or availability of in-network providers. Again, we do not believe that additional litigation will expand access to coverage. It will add greatly to the cost of coverage and price many out of medical and mental health care coverage entirely. We oppose the substitute amendment's litigious approach.

While we believe the changes that we have outlined will improve the substitute amendment before the Committee, P4ESC continues to oppose this section of H.R. 5407. Imposing penalties on plan sponsors and exposing them to frivolous litigation cannot solve provider shortages.

In keeping with the spirit of the mental health parity law, employers should be treated on par with providers. EBSA should provide additional rulemaking and guidance to help further needed coverage.

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We would welcome the opportunity to discuss these issues with you or your respective staff. If such a meeting would be of interest to you, please have your staff contact P4ESC's Executive Director Neil Trautwein at eneiltrautwein@gmail.com.

Sincerely,

Partnership for Employer-Sponsored Coverage

www.p4esc.org