

June 9, 2022

The Honorable Christopher Murphy  
U.S. Senator  
136 Hart Senate Office Building  
Washington, DC 20510

The Honorable Bill Cassidy  
U.S. Senator  
520 Hart Senate Office Building  
Washington, DC 20510

The Honorable Tony Cárdenas  
U.S. Representative  
2438 Rayburn House Office Building  
Washington, DC 20515

The Honorable Brian Fitzpatrick  
U.S. Representative  
271 Cannon House Office Building  
Washington, DC 20515

Dear Senators Murphy and Cassidy and Representatives Cárdenas and Fitzpatrick:

On behalf of NAIC's members—the chief insurance regulators in 50 states, the District of Columbia, and U.S. territories—thank you for your continued commitment to improving care and coverage for individuals living with mental health or substance use disorders. We write to express our support for federal grants to states to assist their ongoing efforts to enforce mental health parity laws in health insurance. Federal law has required parity in mental health benefits for more than a decade: states and federal agencies have made strides in enforcing the parity provisions of the Public Health Service Act. Offering federal funding would recognize that a significant investment of resources is necessary for states to undertake this complex work. Bipartisan legislation such as S. 1962, H.R. 3753, and H.R. 7232 would provide such grants. We support this legislation and urge that grants to states build in appropriate flexibility for states to set their own priorities for parity enforcement.

Recognizing the value in our state-based system of insurance regulation, Congress has repeatedly turned to states to enforce federal health insurance requirements, including those in the Health Insurance Portability and Accountability Act, the Affordable Care Act and the Mental Health

Parity and Addiction Equity Act. This approach has worked well as state regulators can closely monitor their markets, respond as needed, and extend the capacity of federal regulators. State enforcement, though, requires resources and funding that is not automatically attached to the enforcement authority granted in these federal laws.

The time is right to provide states with funds to support mental health parity enforcement. The need for mental health services has grown considerably since the passage of MHPAEA in 2008 and has accelerated rapidly over the years of the Covid-19 pandemic. Both states and federal agencies are stepping up their enforcement activities to ensure the promise of parity is met. Mental health parity enforcement is complex and resource intensive. It requires review of a vast amount of information by staff with very specialized knowledge. The complexity of parity enforcement has increased as the focus has shifted from more-easily measurable quantitative treatment limits to non-quantitative treatment limits (NQTLs), which requires in-depth analysis to determine parity.

State enforcement of parity laws allows state regulators to choose the enforcement activities that will be of greatest benefit to consumers. Some states have already requested comparative analyses from insurers under the provisions of the Consolidated Appropriations Act, 2021. Some states routinely review parity compliance during annual form reviews, while others use market conduct reviews to follow up on complaints. A growing number of state legislatures have required health insurers to report on their parity compliance to their state insurance regulators.

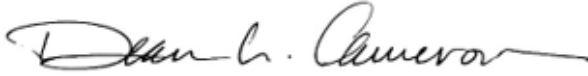
Among the states, some have developed robust staff capacity for parity compliance work, but many have limited staff resources to devote to parity and may use contractors to assist in parity reviews while they also work to build staff capabilities. Federal grants will help all participating states enhance their parity compliance efforts, but the grants should recognize that states are starting from different places and should provide flexibility to all states to build upon their current enforcement efforts.

The provisions of S. 1962, H.R. 3752, and H.R. 7232 allow states to use the funds “to implement the mental health and substance use disorder parity provisions of section 2726.” This broad reference to any implementation of the parity section of the Public Health Service Act is appreciated, as it would give states appropriate latitude to use the funds in accordance with state priorities. The bills would make the grants available for five years, and this multi-year commitment would create a reliable funding source for states.

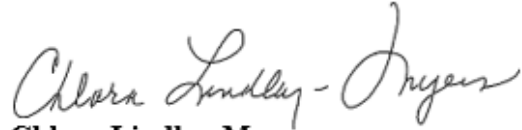
However, the bills would also require that, to be eligible for grants, states request and review comparative analyses under a specific subsection of section 2726. Since states have taken varying approaches to enforcing parity compliance, we believe this language would limit the usefulness of the grants. We urge you to allow states to qualify for the grants with implementation activities that further the intent and purpose of section 2726, not just the review of NQTL comparative analyses—this would allow states to choose their most pressing and impactful enforcement priorities. Through development and submission of proposed project plans, federal agencies administering the funding would have assurances that the funds would be used effectively.

Any of these three bills or similar legislation would provide needed resources to states as they work to implement critical federal parity requirements. State insurance regulators would appreciate the opportunity to work with you and your staff to move this legislation forward. Thank you for your continued leadership on this legislation.

Sincerely,



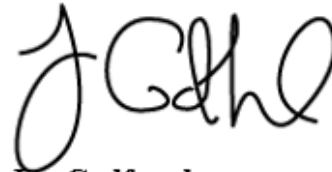
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