

United States Senate
WASHINGTON, DC 20510

April 16, 2018

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

The Honorable R. Alexander Acosta
Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

The Honorable Steven T. Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Azar, Secretary Acosta, and Secretary Mnuchin:

We write to urge action and request information on efforts by the Department of Health and Human Services (HHS), the Department of Labor (Labor), and the Department of the Treasury (Treasury) to enforce federal mental health parity laws (parity), including the parity provisions of the 21st Century Cures Act of 2016 (Cures), to improve behavioral health coverage.

As Chairman and Ranking Member of the Senate Committee on Health, Education, Labor and Pensions (HELP Committee), Senators Alexander and Murray wrote to governors and state insurance commissioners in December 2017 asking for their advice on how the federal government should help to address the opioid crisis. A number of governors and commissioners responded that a federal effort to improve parity compliance and enforcement would be a necessary component of a successful federal response. Congress has demonstrated a bipartisan commitment to parity in behavioral health benefits over time, which is why, in response to feedback from patients, state regulators, health care providers, and others, Congress required improvements in parity compliance and enforcement in Cures in 2016.

To enhance compliance, Cures required that HHS, Labor, and Treasury issue guidance by December 13, 2017, to help employers and insurers implement parity, improve coordination

between HHS, Labor, Treasury and the states, and provide recommendations to Congress to improve compliance. The guidance has not yet been issued.

Cures also required that HHS, Labor, and Treasury create and implement an action plan for enhanced enforcement by December 13, 2017. The plan must identify specific strategic initiatives to facilitate collaboration between the various federal and state agencies charged with parity enforcement, and provide recommendations for Congress regarding parity enforcement. HHS held a required public meeting and accepted public comment for the formation of the plan last summer. To date, an action plan has not been issued. Additionally, the Government Accountability Office (GAO) is required to conduct a report on parity due three years after the passage of Cures. One of the main components of the GAO report is to evaluate the effect of the agencies' action plan. If HHS, Labor, and Treasury do not act in a timely manner, the GAO report will be an evaluation of the status quo rather than of the impact of the Cures' parity reforms and the action plan.

Cures created reporting mechanisms so that Congress could track the effects of existing legislation. The Assistant Secretary of Labor of the Employee Benefits Security Administration (EBSA), in collaboration with the Administrator of the Centers for Medicare & Medicaid Services (CMS) and the Secretary of the Treasury, must report to the HELP Committee and the House Committee on Energy and Commerce on the number of federal parity investigations conducted during the reporting period, the benefit classification examined, the subject matter of the investigation, and a summary of the basis of the final decision. The first report was due December 13, 2017, but has not yet been received by the committees. These reports are essential to evaluating the efficacy of current law at ensuring access to behavioral health services.

Lastly, Cures clarified that coverage for eating disorder benefits must be provided in parity with medical and surgical benefits. The Secretary of HHS was encouraged to create model programs to provide early intervention and prevention, and promote education and awareness of eating disorders and treatments. We commend the Departments for issuing a "Frequently Asked Questions" document on eating disorders and a public request for comment.

We urge swift action to implement the remaining parity provisions in Cures. We respectfully ask that you provide written answers to our questions below by May 1, followed by a briefing on implementation for the staff of the members of the HELP Committee.

1. When will the Departments release the compliance program guidance required by section 13001(a) of Cures?
 - a. Will the guidance include the examples of previous findings of compliance and non-compliance, including examples involving non-quantitative treatment limitations, a full description of the criteria involved for approving medical and surgical benefits and the criteria involved for approving mental health and substance use disorder benefits?
 - b. Will the guidance include recommendations to advance compliance with parity requirements?
 - c. Will the guidance be updated every two years after publication, as required by section 13001(a)?

- d. Will the guidance have details on the agreements to share findings between HHS, Labor, and Treasury and their inspectors general, pursuant to section 13001(a) of Cures?
2. Have HHS, Labor, and Treasury sought, or successfully entered into, an agreement with any state to share information of findings of compliance and noncompliance with section 2726 of the Public Health Service Act, section 712 of the Employee Retirement Income Security Act, and section 9812 of the Internal Revenue Code, pursuant to Cures section 13001(a)? If so, which state(s)?
3. Section 13001(b) required that additional guidance on disclosure requirements and non-quantitative treatment limitations be published for 60 days of public comment and finalized by December 13, 2017. HHS, Labor, and Treasury have sought comment on disclosure requirements, but have not taken action on non-quantitative treatment limits. When will the Departments release final guidance on disclosure requirements and proposed and final guidance on non-quantitative treatment limits?
4. When will the Departments release the finalized action plan for enhanced enforcement, which was due December 13, 2017? Will the action plan include the required recommendations to Congress to improve enforcement of mental health parity and addiction equity requirements?
5. Have HHS, Labor, or Treasury utilized the authority from section 13001 of Cures to audit a health plan that violated parity requirements at least five times?
6. Section 13003 of Cures required a report from EBSA, in collaboration with CMS and Treasury, summarizing the results of all closed federal investigations with findings of any serious violation regarding compliance with the parity requirements, by December 13, 2017 and annually for the following five years.
 - a. When will EBSA release the report?
 - b. Have HHS, Labor, and Treasury found any trends in compliance or non-compliance from the results of their investigations that they will use to inform future work?
7. According to the October 2016 Final Report of the President's Mental Health and Substance Use Disorder Parity Task Force, EBSA conducted 1,515 investigations related to mental health parity and addiction equity law and cited 171 violations for non-compliance from 2010 to 2015.
 - a. For each year from 2010 through 2017, how many investigations did Labor conduct related to parity requirements, and what was the number of cited violations for non-compliance?
 - b. In years 2010 through 2017, were there any instances in which Labor was unable to achieve compliance with either a group health plan or health insurance issuer?
 - c. When Labor has reason to believe that a health insurance issuer may be in violation of parity requirements, does it work with the plan on a voluntary basis to bring the plan into compliance? Does Labor notify the insurance commissioners for the affected states and HHS when Labor has reason to believe a plan may be in violation of parity requirements? If so, how many times has Labor referred cases to the states or HHS each year from 2010 to 2017?
 - d. The Task Force Report noted that a shortage of behavioral health providers can lead to network adequacy problems in some areas. To what extent are these

deficient networks responsible for reports of non-compliance? Have the agencies assessed whether the corresponding region suffers similar deficiencies?

8. Do HHS, Labor, and Treasury plan to take any additional steps to exercise the authorities from sections 13005, 13006, and 13007 of Cures regarding eating disorder awareness, education and training on eating disorders, and to clarify the existing parity rules as they relate to eating disorders?

We are committed to working with you to improve compliance with, and enforcement of, federal mental health parity laws. We appreciate your prompt response to these questions. If you have any questions, please have your staff contact Virginia Heppner or Kristi Thompson with Chairman Alexander's staff at (202) 224-0623, Elizabeth Letter with Ranking Member Murray's staff at (202) 224-0767, Mary Moody with Senator Cassidy's staff at (202) 334-5824, Joe Dunn with Senator Murphy's staff at (202) 224-4041, Garrett Boyle with Senator Murkowski's staff at (202) 224-3185, and Alex Graff with Senator Stabenow's staff at (202) 224-4822.

Sincerely,

Lamar Alexander
Chairman

Patty Murray
Ranking Member

Bill Cassidy, M.D.
United States Senator

Chris Murphy
United States Senator

Lisa Murkowski
United States Senator

Debbie Stabenow
United States Senator