

United States Senate

WASHINGTON, DC 20510

December 21, 2012

President Barack Obama
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. President:

The passage of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 was an historic step towards comprehensive access to mental health and substance use disorder services for insured Americans. In the four years since the passage of the law, many of us have signed onto letters to your administration or called members of your cabinet requesting timely and comprehensive implementation of the law. We think you agree that there has never been a more important time for all Americans to have access to the mental health and substance use disorder services that they need. Under the 2008 law, millions of Americans are entitled to access to a full range of mental health and substance use disorder services, but in the absence of a final rule, many people who need and have a right to these services may not have access to them. We urge you to act now to implement the law that will secure Americans' right to access the services they need.

We are enclosing three previous letters that we have sent to your administration regarding the implementation of the law. These letters detail the specific concerns that we have with the interim final rule released in 2010. Specifically, there are four issues that must be clarified in a final rule. First, the final rule must provide guidance as to whether plans must offer a comparable scope and range of medical and behavioral health services. Second, we believe plans must be required to disclose the criteria and policies they use to make benefit determinations on both medical and surgical conditions and behavioral health conditions. Third, the rule must provide greater clarity regarding quantitative and non-quantitative treatment limitations in order to allow for enforcement actions against inequitable treatment limitations, such as discriminatory prior authorization requirements. Finally, please provide guidance on the implementation of the law for Medicaid managed care plans.

Our prior letters clarify congressional intent on these critical issues. Please act now to enforce this statute that was signed into law four years ago and ensure that Americans have access to the mental health and substance use disorder services that they need.

Sincerely,



Al Franken
United States Senator



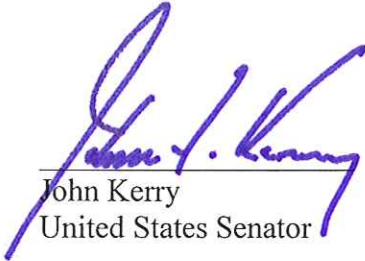
Tom Harkin
United States Senator



Barbara Mikulski
United States Senator



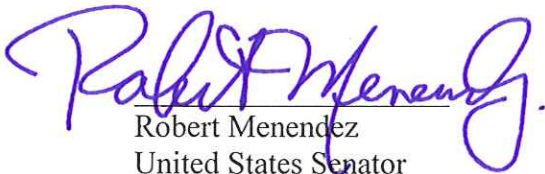
Jack Reed
United States Senator



John Kerry
United States Senator



Ron Wyden
United States Senator



Robert Menendez
United States Senator



Sherrod Brown
United States Senator



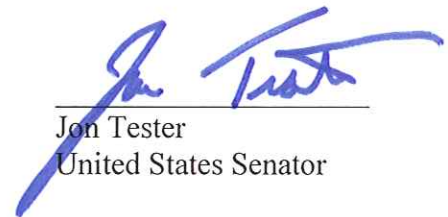
Mark Begich
United States Senator



Daniel Akaka
United States Senator




Barbara Boxer
United States Senator



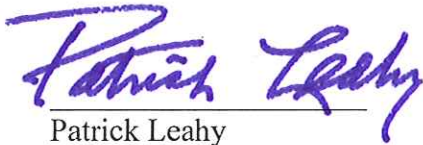
Jon Tester
United States Senator



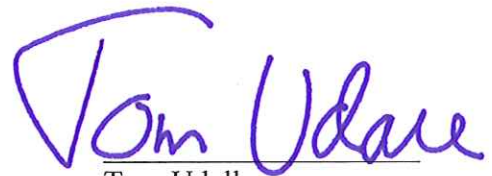
Debbie Stabenow
United States Senator



Richard Durbin
United States Senator



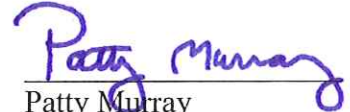
Patrick Leahy
United States Senator



Tom Udall
United States Senator



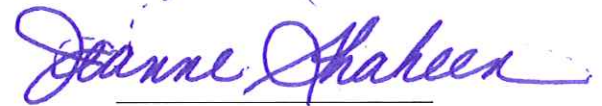
Sheldon Whitehouse
United States Senator



Patty Murray
United States Senator



Frank R. Lautenberg
United States Senator



Jeanne Shaheen
United States Senator



Bernie Sanders
United States Senator



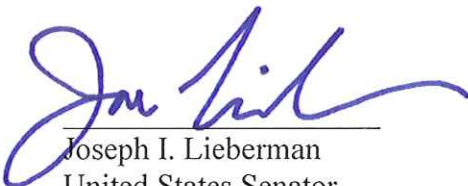
Amy Klobuchar
United States Senator



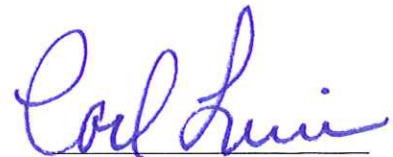
Richard Blumenthal
United States Senator



Tim Johnson
United States Senator



Joseph I. Lieberman
United States Senator



Carl Levin
United States Senator

cc: Secretary Sebelius, Secretary Solis, and Secretary Geithner

United States Senate

WASHINGTON, DC 20510

May 12, 2011

The Honorable Hilda Solis
Secretary
U.S. Department of Labor
200 Constitution Ave, NW
Washington, DC 20210

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Ave, SW
Washington, DC 20201

The Honorable Timothy Geithner
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Ave, NW
Washington, DC 20220

Dear Secretaries Solis, Sebelius, and Geithner:

We are writing to follow up on our previous correspondence requesting additional guidance regarding the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). As the Interim Final Regulations went into effect for plan years beginning on or after July 1, 2010, we ask that this guidance be released before plans make decisions on 2012 benefit packages in May or June of this year. We are concerned that allowing the law to be implemented without specific guidance on scope of service, disclosure of medical criteria, and non-quantitative treatment limitations is resulting in insurance plans offering only limited behavioral health benefits in 2011. While MHPAEA was not intended to be a mandate for coverage of mental health or substance abuse services, once a plan has chosen to provide coverage for a specific mental health or substance use disorder, the law requires that behavioral and medical benefits be equivalent.

With regard to scope of services, there are differing interpretations of the Interim Final Regulations. Its preamble states that no scope of services is conferred and solicits additional comments on this issue. The regulations themselves confer a scope of service by requiring that plans cover a minimum of six types of services. However, without clear guidance and clarification, health insurance plans are limiting the degree to which intermediate levels of behavioral health services are accessed.

We also believe that plans should be required to disclose the criteria and policies they use to manage medical and surgical conditions and behavioral health conditions. This information is necessary to assess whether medical management or other forms of cost containment techniques are applied to behavioral health conditions in a manner that is comparable to and not more stringent than the medical management applied to other medical conditions. Without access to both sets of criteria, regulators are unable to make the necessary comparison for effective enforcement of the law. While we thank the Department of Labor for releasing a 'Frequently Asked Questions' document on its website advising that plans must provide medical necessity criteria for both medical/surgical and mental health/addiction benefits. However, this guidance is non-binding and, to date, plans are still not complying.

Final regulatory or sub-regulatory guidance is also needed to enable proper enforcement of the law regarding non-quantitative treatment limitations, such as discriminatory pre-authorization requirements and geographic limitations. The statute and the Interim Final Regulations specify that treatment limitations include both quantitative and non-quantitative treatment limits. Without additional guidance on how agencies will enforce non-quantitative treatment limits, consumers and providers cannot know whether they will receive services or reimbursement for essential behavioral health care. We request that Departments of Labor and Health and Human Services provide guidance on non-quantitative treatment limitations with specific examples and the timetable for enforcement so that providers and consumers may plan for appropriate care.

We hope this clarifies congressional intent on these three important issues. We look forward to working with you to ensure that clarifying guidance is issued as soon as possible.

Sincerely,



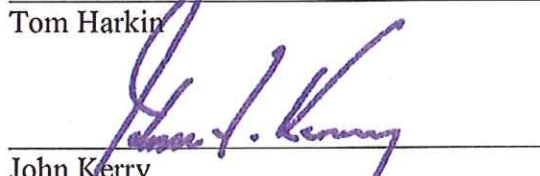
Al Franken



Tom Harkin



Patrick Leahy



John Kerry



Ron Wyden



Mark Begich



Sherrod Brown



Carl Levin



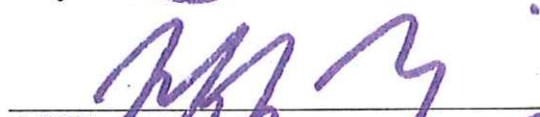
Sheldon Whitehouse



Amy Klobuchar



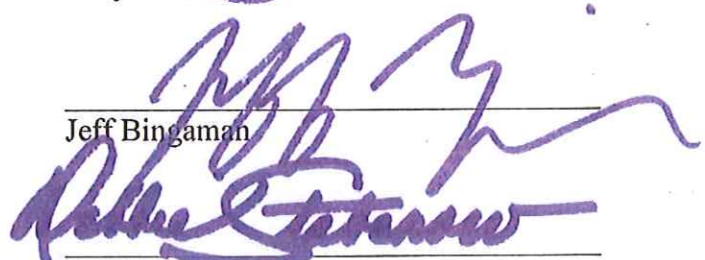
Barbara Boxer



Jeff Bingaman



Richard Durbin



Debbie Stabenow

Daniel X. Akaka

Daniel Akaka

Jack Reed

Jack Reed

Frank R. Lautenberg

Frank Lautenberg

Robert Menendez

Robert Menendez

Bernard Sanders

Bernard Sanders

Tom Udall

Tom Udall

Patty Murray

Patty Murray

Jeffrey A. Merkley

Jeff Merkley

United States Senate

WASHINGTON, DC 20510-2309

May 3, 2010

The Honorable Hilda Solis
Secretary
U.S. Department of Labor
200 Constitution Ave, NW
Washington, DC 20210

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Ave., SW
Washington, DC 20201

The Honorable Timothy Geithner
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Ave, NW
Washington, DC 20220

Dear Secretaries Solis, Sebelius, and Geithner:

Thank you for your work in promulgating regulations for the Wellstone-Domenici Mental Health Parity Addiction and Equity Act (MHPAEA). This law is an historic step forward for our country, and we are pleased that the regulatory process thus far seems to accurately reflect the intent of the law.

We appreciate that your departments share our view that discrimination against mental health and substance use benefits (regarding treatment limitations) may take a form beyond those limitations specifically described in the MHPAEA. Insurers have often found other ways to inappropriately limit mental health and substance use disorder benefits – beyond those that are imposed on medical/surgical benefits – through processes such as medical management, use of usual and customary charges, and restrictions on access to psychotherapy. We would like to highlight the fact that while the strategy of intensely managing care and limiting services has lowered short-term costs, it has also created unintended consequences. Both patients and providers have reported problems with access, quality of care, and unequal benefits including higher deductibles and co-payments compared to general healthcare services.

We are pleased that your departments address non-quantitative treatment limitations in the Interim Final Rule with the list of limitations that would violate the MHPAEA. However, we note that the regulators provide no examples for several of the non-quantitative treatment limitations in the illustrative list. While the examples in the rule regarding the use of medical management are useful, we believe that more examples are needed because mental health and substance use disorder benefits are so intensely managed. As your departments have indicated, additional descriptions and examples will provide useful information regarding unacceptable non-quantitative treatment limitations by health plans, particularly regarding medical management. We appreciate your attention in addressing these inequities in the final regulation, and further examples of plan management would be helpful to this end.

One of the non-quantitative treatment limitations listed in the Interim Final Rule describes health plan methods for determining usual, customary, and reasonable charges. The process by which a plan determines these charges can be complex and, if applied on a more restrictive basis, would violate the MHPAEA. Usual, customary, and reasonable charges are typically applied to out-of-network coverage and these charges determine the level of financial responsibility for the health plan and the patient. If a plan is allowed to use an unequal formula and process for determining charges for medical/surgical versus mental health/substance use benefits, it may create a greater financial requirement on out-of-network mental health/substance use benefits. It is this type of disincentive for mental health services that MHPAEA is meant to end, and an example of this practice in the rule would be helpful in clarifying what constitutes a violation of the MHPAEA.

Like health plan use of usual, customary, and reasonable charges, the other non-quantitative limitations listed in the Interim Final Rule involve concepts that may not be readily understandable to the average plan enrollee. These include use of fail-first policies or step therapy protocols, prescription drug formulary design, provider network participation, and exclusions based on a failure to complete a course of treatment. We believe these concepts deserve examples in the final regulation to provide a general understanding of compliance with the law.

Finally, we recommend a clarification on how the MHPAEA applies parity for scope of services – namely how a plan enrollee needing mental health or substance use disorder services is covered for scope of services and the duration of benefits compared to services for medical/surgical conditions. Your departments describe parity for non-quantitative treatment limitations, and we believe it is also important that the regulation addresses parity for scope of services. To fully address the spirit of the MHPAEA, the final rule should clarify this important aspect of parity for patients and providers.

Thank you for your careful consideration of these comments. We appreciate your efforts to ensure Americans have access to the mental health and substance abuse services they are entitled to under the MHPAEA.

Sincerely,



Tom Harkin
United States Senator



Christopher Dodd
United States Senator



Al Franken
United States Senator

United States Senate

WASHINGTON, DC 20510

August 4, 2009

The Honorable Hilda Solis
Secretary
U.S. Department of Labor
200 Constitution Ave, NW
Washington, DC 20210

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Ave, SW
Washington, DC 20201

The Honorable Timothy Geithner
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Ave, NW
Washington, DC 20220

Dear Secretaries Solis, Sebelius and Geithner:

We are writing to urge the timely issuance of regulations to implement the *Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008* (MHPAEA). Enacted on October 3, 2008, this landmark civil rights legislation will ensure that individuals and families with mental health and substance use disorders will receive health care on par with other medical conditions covered under group health insurance. Congress included a provision requiring the issuance of regulations by October 3, 2009.

With or without regulations, the effective date for the Act is the beginning of the plan year one year after date of enactment of the parity law. For most plans, this means the effective date will be January 1, 2010.

Congress considered this legislation for over twelve years prior to its enactment. At hearings of the four committees of jurisdiction in the House and Senate and at fourteen field hearings, we heard from patients and their families who could not access mental health and substance use disorder services.

Additionally, to avoid misinterpretation of the law and to ensure access to these critical services, it is imperative that you not only issue regulations according to clear Congressional intent but also address concerns submitted during the public comment period. In response to the


Request for Information, over 400 comments were filed. These comments highlighted the importance of the regulations in order to clarify several important issues:

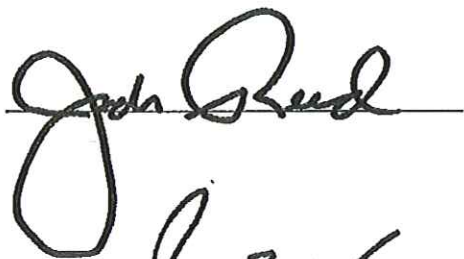
- Scope of services
- Medical management
- "Separate but equal" deductibles do not constitute parity
- Treatment limitations

Without timely issuance of regulations that clarify Congressional intent, it is likely that health plans will implement the law according to their proposed version of regulations as set forth in their public comments. Only with regulations can we ensure the end to discrimination against those with mental health and substance use disorders.

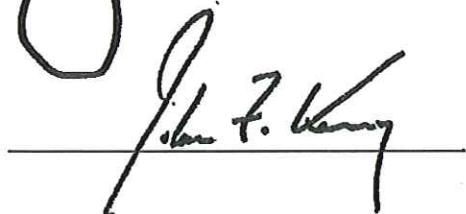
We urge your prompt attention to the implementation of these regulations and ask that you provide us with an update on the status of their promulgation by August 19, 2009. Thank you for your consideration and attention to this matter.

Sincerely,

 Edward M. Kennedy

 John R. Reed

 John P. White

 John F. Kerry

 Chris Dodd

 Patty Murray

 Carl Levin

Bach Bar

Sam Blake

Rebecca Stenow

Ang Klobuchar

Dick Durbin

Jeane Shaker

Joe T

Jim

Joe Lick

Ron Wyden

Blanche L. Lincoln

Von Vance

Robert A. Nicholas

Shirley Brown

Jeffrey S. Markley

Bob Carey, Jr

Mark Begeh

Bil Sanders

Em Boyl