



September 29, 2022

To the Members of the U.S. House of Representatives:

While the U.S. Chamber of Commerce is strongly committed to expanding coverage for mental health care, particularly for America's youth, the Chamber must oppose H.R. 7780 due to unnecessary unrelated provisions that would fundamentally alter the fabric of the Employee Retirement Income Security Act (ERISA) – America's cornerstone law for companies that offer retirement and healthcare plans. These problematic provisions unconnected to mental health care would make employer-provided benefit plans more expensive for businesses and workers, encourage more litigation against companies, and provide funding to target companies that offer health care plans for punitive action and audits.

Mental health coverage is a priority for the American business community. In a recent survey, 87% of employers reported that enhancing mental health benefits will be a top priority over the next two years.<sup>1</sup> Health insurance providers are improving access to mental health care by bringing more high-quality providers into their networks, training and supporting primary care physicians to care for patients with mild to moderate behavioral health conditions, and helping patients find available behavioral health appointments. For example, survey data also indicate:

- All respondents provide coverage for tele-behavioral health services.
- The number of in-network behavioral health providers has grown by an average of 48% in 3 years among commercial health plans.
- 89% of health plans are actively recruiting mental health care providers, including practitioners who reflect the diversity of the people they serve (83%), and 78% have increased payments to providers in efforts to recruit more high-quality professionals to their plan networks.
- The number of providers eligible to prescribe Medication Assisted Therapy or substance use disorder, including opioid dependence, has more than doubled – growing 114% over 3 years.
- A strong majority (72%) of plans are training and supporting PCPs to care for patients with mild/moderate behavioral health conditions.
- A large majority (83%) of plans report they assist enrollees with finding available mental and behavioral health appointments.
- A large majority (78%) use specialized case managers for follow-up after emergency room and inpatient care and/or starting new medications.<sup>2</sup>

H.R. 7780 has several significant flaws:

**Punitive audits:** The legislation would provide \$275 million to Department of Labor for audits, investigations, enforcement actions and litigation expenses intended for Department of Labor to punish plan sponsors over Mental Health Parity and Addiction Equity Act (MHPAEA)

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<sup>1</sup> [Employers boost mental wellness benefits amid the Great Resignation \(cnbc.com\)](https://www.cnbc.com)

<sup>2</sup> [AHIP July 2022 Mental Health Survey - AHIP](#)

concerns. It is inappropriate to expand DOL's enforcement authority given the lack of clarity that remains as to DOL's interpretation of MHPAEA and its implementing regulations. DOL has increased enforcement activity despite the absence of examples of acceptable comparative analyses or proposed regulations to implement new requirements. More robust tools and templates that include examples of complex benefit analyses would be welcomed by our members, as would releasing the de-identified examples of MHPAEA violations, as required by law.

**Arbitration:** Title VII of the bill would effectively prohibit arbitration in ERISA plans. Such a change would limit employee recovery amounts. Arbitration clauses are included in many plans in part to deter an onslaught of class action lawsuits aimed at attorney fee recovery and profits rather than protecting participants' rights. A cottage industry has grown around these cases, with several firms filing cookie cutter cases against plan sponsors in hopes of a quick settlement that provides them with large attorneys' fees but with plan participants receiving little in the way of awards.

Limiting arbitration may harm individuals in the employment context. Arbitration is often cheaper and more favorable for employees. A recent study found that employees were more likely to win in arbitration (almost 38 percent) than in court (almost 11 percent). Also, on average, employees won more money through arbitration (around \$444,000) than in court (about \$408,000). Finally, arbitrations were resolved on average faster (659 days) than litigation (715 days).

**Discretionary clauses:** Similarly, Title VII would eliminate the deference courts give to plans in deciding claims for benefits by eliminating "discretionary clause" protections. The current ERISA process is intended to resolve claims inexpensively and expeditiously at the early administrative level and long before courts would step in. Furthermore, for claims that do head to court, claims can be resolved quickly because a robust administrative record has already been created, which cuts down on expensive and time-consuming discovery.

By eliminating discretionary clauses, this legislation could dismantle ERISA's administrative process. This would add significant time and expenses to resolving claims for benefits because of endless discovery in the already backed up court system, including time sensitive claims such as disability and severance. More suits and more attorneys will not lead to better outcomes or results for businesses or the workers they provide coverage to.

While the Chamber urges you to reject H.R. 7780, we stand ready to work with Congress to continue efforts by the business community to expand mental health care support.

Sincerely,



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U.S. Chamber of Commerce