November 12, 2021

The Honorable Ron Wyden
Chair
Committee on Finance
U.S. Senate
Washington, DC 20510

The Honorable Mike Crapo
Ranking Member
Committee on Finance
U.S. Senate
Washington, DC 20510

RE: Request for Information on Mental Health Care and Substance Use Disorder Services

Dear Chair Wyden and Ranking Member Crapo,

The American Benefits Council ("the Council") is writing in response to your request for information on mental health care and substance use disorder services ("behavioral health care"). We thank you for initiating a bipartisan process to examine behavioral health care needs, assess the factors contributing to gaps in care and identify potential policy solutions.

The Council is a national nonprofit organization dedicated to protecting employer-sponsored benefit plans. The Council represents more major employers – over 220 of the world's largest corporations – than any other association that exclusively advocates on the full range of employee benefit issues. Members also include organizations supporting employers of all sizes. Collectively, Council members directly sponsor or support health and retirement plans covering virtually all Americans participating in employer-sponsored programs.

The toll of the COVID-19 pandemic on the nation's public health and economy has been readily apparent. Less apparent but similarly devastating has been the mental health toll of the pandemic. Even before the COVID-19 pandemic, large employers recognized the value and importance of providing comprehensive benefits coverage for mental health and substance use disorders and were often frustrated by challenges in access to quality care for their employees and their families.

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THE EMPLOYER ROLE

Since the onset of the pandemic, employers have focused attention and resources on expanding access to behavioral and mental health care to help their employees get through these unprecedented times. Yet challenges to these efforts remain. Just as lawmakers have acted to address the public health and economic crisis brought about by the COVID-19 pandemic, so too must lawmakers focus on combating the behavioral and mental health crisis exacerbated by the pandemic. The physical health and economic threat of the pandemic will pass, but the mental health toll may be felt for years to come.

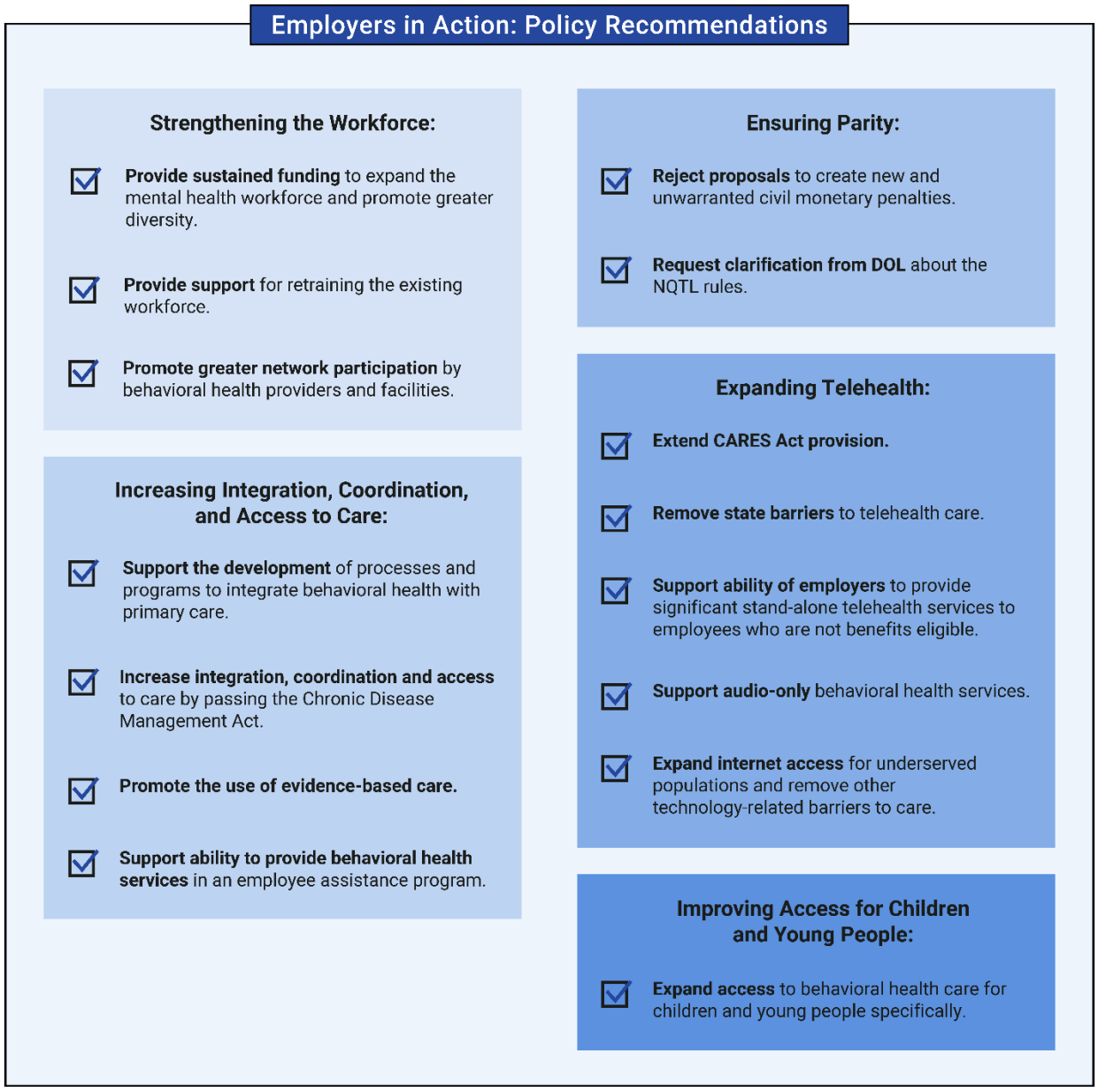
Employers play a critical role in the health care system, leveraging purchasing power, market efficiencies and plan design innovations to provide health coverage to approximately 177 million Americans.[1] Employer-sponsored health coverage played a critical role in combating the mental health crisis during the pandemic, and employers will be on the front lines of the battle in the years ahead.

You are particularly interested in evidence-based solutions and ideas to enhance behavioral health care in the following areas:

- strengthening the workforce
- increasing integration, coordination, and access to care
- ensuring parity between behavioral and physical health care
- furthering the use of telehealth
- improving access to behavioral health care for children and young people

The comments below respond to those questions you pose that are most relevant for employer-sponsored coverage. For most of the issues referenced below, the Council offers specific legislative or regulatory policy recommendations to expand access to affordable, quality behavioral health care during the COVID-19 pandemic and beyond. In other instances, we identify a problem and more generally describe what needs to be done. The Council looks forward to working with the Finance Committee to develop specific policy responses to these concerns.

[1] U.S. Census Bureau, Health Insurance Coverage in the United States: 2020, September 2021. *Available at* https://www.census.gov/content/dam/Census/library/publications/2021/demo/p60-274.pdf



THE IMPACT OF THE COVID-19 PANDEMIC ON BEHAVIORAL HEALTH

There are over 45 million confirmed cases of COVID-19 in the United States.[2] The stress and isolation of the pandemic have profoundly impacted millions more. To rapidly monitor recent changes in mental health care during the pandemic, the Centers for Disease Control and Prevention (CDC) partnered with the Census Bureau on a Household Pulse Survey. According to the Household Pulse Survey, during September

[2] https://coronavirus.jhu.edu/region/united-states

15, 2021, to September 27, 2021, 32% of adults experienced symptoms of an anxiety or a depressive disorder.[3] During this same time period, 22% of survey respondents reported taking prescription medication for mental health and/or receiving counseling or therapy.

A Kaiser Family Foundation (KFF) Health Tracking Poll from July 2020 also found that many adults are reporting specific negative impacts on their mental health and well-being, such as difficulty sleeping (36%) or eating (32%), increases in alcohol consumption or substance use (12%) and worsening chronic conditions (12%) due to worry and stress over the coronavirus.[4] The KFF report notes that "mental distress during the pandemic is occurring against a backdrop of high rates of mental illness and substance use that existed prior to the current crisis."[5] During the pandemic, about four in 10 adults in the U.S. have reported symptoms of anxiety or depressive disorder, up from one in ten adults who reported these symptoms from January to June 2019. As the KFF report notes, the pandemic has disproportionately affected the health of communities of color. Non-Hispanic Black adults (48%) and Hispanic or Latino adults (46%) are more likely to report symptoms of anxiety and/or depressive disorder than Non-Hispanic White adults (41%). Historically, these communities of color have faced challenges accessing mental health care.

In recent research from Mercer, "Inside Employees' Minds" – a study asking workers to rate their relative concerns among 16 items – mental health took the third highest spot, behind physical health and work-life balance, among workers overall. However, mental health was the top concern among workers aged 34 and younger, and it also jumps to the number two spot for women, low wage workers, and Black and African American workers. In another recent study from Mercer, "Health on Demand," 25% of employees reported feeling highly or extremely stressed in everyday life and another 34% felt somewhat stressed. In response, employers have stepped into action to help their employees through the pandemic of anxiety and depression.

The association between obesity and psychiatric disorders[6] is also noted with concern. As the Centers for Disease Control and Prevention states, "obesity is a common, serious,

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[3] https://www.cdc.gov/nchs/covid19/pulse/mental-health.htm

[4] https://www.kff.org/coronavirus-covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/

[5] According to estimates of mental health based on the January-June 2019 National Health Information Survey, 11% of adults had symptoms of anxiety disorder or depressive disorder. https://www.cdc.gov/nchs/data/nhis/earlyrelease/ERmentalhealth-508.pdf

[6] Simon, G. E., Von Korff, M., Saunders, K., Miglioretti, D. L., Crane, P. K., van Belle, G., & Kessler, R. C. (2006). Association between obesity and psychiatric disorders in the US adult population. *Archives of general psychiatry*, *63*(7), 824–830. https://doi.org/10.1001/archpsyc.63.7.824; Floriana S. Luppino, MD; Leonore M. de Wit, MS; Paul F. Bouvy, MD, PhD; et al. Overweigh Overweight, Obesity, and Depression:

and costly disease."[7] The cost of obesity on mental health as well as physical health must be considered.

EMPLOYER ACTION TO COMBAT THE MENTAL HEALTH CRISIS

Employer efforts to combat the mental health and substance use crisis predate the pandemic and are predicated on the recognition that mental health care coverage is vital to the health and productivity of their workforce. Even though neither the Affordable Care Act (ACA) nor the Mental Health Parity and Addiction Equity Act (MHPAEA) mandate that large employers offer such coverage, they voluntarily do so to improve employee well-being while simultaneously improving productivity and business performance. Mental health conditions and medical conditions are often co-morbidities, thus treating an employee's mental health will also support the employee's general health and well-being.

A McKinsey report, "Mental Health in the Workforce: The Coming Revolution,"[8] cited a 2015 study that estimated the total cost of major depressive disorders in the United States to be $210 billion, with about half of that amount attributable to costs of treatment and the rest attributable to absenteeism and presenteeism costs incurred in the workplace. The McKinsey report also highlighted that stress and depression increase not just the costs associated with treating behavioral health problems but also the incidence of other costly physical diseases. Notably, the report found that obtaining an antidepressant increased the odds of subsequently receiving a drug for diabetes by 30 percent, cancer by 50 percent and heart disease by almost 60 percent.

Long before the pandemic, Council member companies were embarking on innovative solutions to address the mental health and substance use disorder needs of their workforce. These strategies included collaborative care models that integrate behavioral health with primary care, removing the stigma associated with mental illness, enhancing Employee Assistance Programs (EAPs) and telehealth offerings, and combating the opioid crisis.[9] When the pandemic hit, employers recognized the toll that the isolation, stress and uncertainty was taking on their workers and built on these efforts to help working families across the country access the behavioral health care they needed to get through the crisis.

A Systematic Review and Meta-analysis of Longitudinal Studies. Arch Gen Psychiatry. 2010;67(3):220-229.

[7] https://www.cdc.gov/obesity/data/adult.html

[8] https://www.mckinsey.com/industries/healthcare-systems-and-services/our-insights/mental-health-in-the-workplace-the-coming-revolution

[9] https://www.americanbenefitscouncil.org/pub/?id=2f21fbaf-9ed0-db9b-4aab-ceed75ea80b0

The COVID-19 pandemic and its ensuing public health and economic crisis has underscored the importance of affordable, quality behavioral health care in every community across America. The pandemic, for all its devastation, has also been a testament to the resilience of the employer-provided health insurance system and the commitment of employers to the physical and mental health of employees and their families.

Employers have been leading efforts to protect the well-being of their employees both physically and emotionally throughout the pandemic. A recent informal survey of large employers conducted by the Council[10] ("the Council's recent survey") highlights the commitment of employers to helping their employees through the pandemic and their focus on expanding access to behavioral health and telehealth in doing so. **For an overwhelming percentage of respondents (87%), supporting and/or expanding access to mental health care for employees is a top priority for their organization.**

In the Council's recent survey, expanded access to behavioral health therapy through an EAP was among the actions taken by (55%) of respondents during the past 24 months. Approximately 45% of organizations reported expanding access for behavioral health therapy through an on-line or mobile application. More than two-thirds (70%) turned to telehealth to expand access to behavioral health therapy. More than one-third (38%) of respondents established a new behavioral health program or benefit in the last 24 months and roughly one-quarter (25%) reduced cost-sharing for behavioral health services. Expanded employee communications on behavioral health issues was an important component of employer efforts to address the behavioral health needs of their workforce, implemented by (78%) of respondents. One-fifth (20%) of respondents established internal and peer support groups for behavioral health.

A Mercer survey of employers taken from April to October 2020, found that employers are focusing on two areas of healthcare that have been in the spotlight during the pandemic.[11] Both areas of focus are closely linked with respect to the goal of increasing access to behavioral health care services. The first is explicitly in the area of behavioral health, with 71% of respondents saying this was a focus for 2021. As the Mercer report explains: "Already in short supply, behavioral health care is needed more than ever due to the stress and isolation of the pandemic, and employers have made it a priority to expand access to care and to promote it with their employees." The second

[10] From October 20-27, the American Benefits Council fielded a survey open to 858 benefits administrators at large employers with operations in the United States. The survey received 70 total responses (including seven partial responses), representing a cross-section of companies based on size and industry. While this survey is not scientific and the sample is not necessarily representative, we believe it is strongly indicative of employer sentiment and practice.

[11] https://www.mercer.us/our-thinking/healthcare/leading-through-the-surge-using-what-we-learned.html

focus is the area of telemedicine – a powerful tool to expand access to mental health care, with 59% of respondents saying this would be a focus for 2021.

For employers with 500 or more employees, going into 2021, behavioral health is employers' top priority for employee well-being by far, according to Mercer's 2020 National Survey of Employer Sponsored Health Plans. Almost half of employers with 500 or more employees increased utilization of EAPs and targeted behavioral health solutions in 2020, with 43% reporting an increase in utilization.

The efforts of employers to expand access to mental health care are highlighted in the Council's "Silver Linings Pandemic Playbook: Shining the Light on Employee Benefits Innovation and Action" (the "Playbook").[12] The Council reached out to many U.S. employers to learn how their health plans managed the unprecedented trials of the pandemic. Several shared their stories, which are described in the Playbook, and reflective of the priority employers place on the mental health and well-being of their employees. These stories from the pandemic include expanded EAPs and mental health offerings as well as telehealth offerings:

- When **eBay** saw that utilization of mental health services increased by 26% since the start of the pandemic, with many employees at high risk for mental and behavioral health conditions, the company took aggressive measures to provide access to therapy even beyond its significant EAP expansion. Because the EAP mental health providers and coaches do not participate in other health care networks, the company worked with its insurance carriers to integrate the EAP network of therapists with its existing health plan networks, allowing employees to continue seeing their familiar therapists for the cost of a traditional health care visit. Additionally, eBay has invested in "mental health first aid training," a program that teaches company leaders and human resources staff — and, now, workplace peers — to identify signs of employee distress and help stabilize their fellow employees. Aside from these actions taken it is a also critical to measure the results of these efforts. Over the last year eBay was able to reduce the median number of days from request for mental health services to first visit in their EAP from 7 days to 5.5 days a 22% improvement. In addition, they have increased the quality of the improvement in mental health for those using the EAP during this same period by 14%.

- Recognizing employees' need for support, **B. Braun**, a global medical device company with over 60,000 employees, expanded its suite of health services by adding Doctor on Demand — a 24/7 telehealth service including mental and behavioral therapy — and advertised its availability at open enrollment. The

[12] https://www.americanbenefitscouncil.org/pub/7DD9EBE9-1866-DAAC-99FB-6434BC09AA06

company's health plan participants can now access a professional therapist for $25 per visit throughout the year.

- Proactively and in consultation with the company's employee resource group, **Nordstrom** understood that the pandemic was creating anxiety within its workforce. The company added the myStrength feature to its EAP, allowing all employees to access self-guided learning tools for managing challenges like stress and insomnia, and has established a pilot on-site counseling program in some of its stores.

- In 2020, **Sony Corporation** of America became concerned about employees' potential deferral of care and the long-term impacts to both them and their families, so it launched an initiative to promote telehealth within the workforce. Initially the company provided telehealth services through Teladoc — including behavioral health — at no cost to employees (including HSA-eligible plans, once permitted by the CARES Act) and intends to continue this benefit going forward (including for HSA-eligible plans if the flexibility is extended by Congress). In addition to the Teledoc benefit, the company waived copayments for telehealth visits for all in-network office visits through 2020 and continued the waiver for behavioral health virtual office visits into the first half of 2021.

Behind these examples are many more employers committed to addressing the behavioral health care crisis laid bare and exacerbated by the pandemic. Among the employer actions are more education and frequent communications about the benefit in team meetings and conference calls and partnering with vendors to provide confidential webinars covering topics like COVID-19 anxiety, resilience, work-life balance, and mental health awareness. These efforts are designed to remove the stigma associated with mental illness and substance use disorders and address the lack of understanding about available resources that serve as barriers to care.

Barriers that constrain employer efforts to expand access to affordable, quality behavioral remain. Despite the actions employers have taken to expand access to behavioral health care, their efforts are hamstrung by barriers to accessing affordable, quality care. The increase in behavioral health needs has further strained the country's already overburdened mental health system. According to the Household Pulse Survey, among adults reporting symptoms of anxiety and/or depressive disorder, more than 25% reported needing but not receiving counseling or therapy in the past month.[13] Mental Health America reports that 57% of adults with a mental illness receive no treatment, which means that over 26 million individuals experiencing a mental illness are going untreated.[14] Barriers to accessing mental health and substance use disorder

[13] https://www.cdc.gov/nchs/covid19/pulse/mental-health-care.htm

[14] https://mhanational.org/issues/2021/mental-health-america-access-care-data

services predate and are magnified by the pandemic, notably the shortage of mental health providers in general and lack of in-network providers specifically.

DISCUSSION AND RECOMMENDATIONS

Strengthening the Workforce

For many of the individuals needing but not receiving the behavioral health care they need, a significant barrier to accessing mental health care is a shortage of mental health professionals. The Bureau of Health Workforce, Health Resources and Services Administration at the U.S. Department of Health and Human Services (HHS) estimates that 123 million people in the United States are living in "Mental Health Care Professional Shortage Areas." More than one out of three Americans reside in these so-called mental health deserts where patients were unable to access mental health care services because of a shortage of mental health providers in the area.[15] An additional 6,430 providers are needed to fill this gap nationwide. For patients with private insurance coverage, the provider shortage is compounded by a lack of in-network options for mental health and substance use care. The bottom line is that there are simply not enough mental health providers – this stems from either a shortage or unwillingness of mental health providers to participate in networks – which raises access issues and costs for employees and employers.

The Council's survey confirmed that these barriers to accessing affordable, behavioral health care remain significant. Nearly 45% of respondents identified an insufficient number of behavioral health providers as a barrier to their organization's ability to provide behavioral health care to employees. A similar percentage (48%) reported an insufficient number of behavioral health providers practicing in-network as a barrier. A lack of diversity of behavioral health providers was seen as a barrier by more than one-third (36%) of respondents.

Policy Recommendation: Provide sustained funding to expand the mental health workforce and promote greater diversity

We appreciate the efforts of Congress and the administration to address these gaps in access to mental health and substance use disorder services. However, sustained funding to support the mental health workforce, particularly in professional shortage areas, is needed and will bring much needed care to the mental health care deserts. Funding is also needed to specifically support programs that recruit diverse students into behavioral health professions.

[15] https://data.hrsa.gov/topics/health-workforce/shortage-areas

Policy Recommendation: Provide support for retraining the existing workforce

Increasing the mental health workforce can also come from policies aimed at retraining the existing workforce to provide behavioral health services, licensing flexibilities, promoting the availability of behavioral health services within primary care practices, supporting subclinical teams and resources to help people not yet clinically depressed manage stress and improve resiliency and supporting blended care (a mix of human and digital care options) for mild to moderate issues where appropriate.

Policy Recommendation: Promote greater network participation by behavioral health providers and facilities

The shortage of behavioral health care providers in general is compounded by the shortage of providers who participate in networks specifically. According to a 2019 report from Milliman, office visits to mental-health providers are more than five times more likely to be out of network than are visits to primary-care providers.[16] In 2017, the most recent year studied, 17.2% of mental-health office visits were out of network, compared with 3.2% of primary-care visits and 4.3% for medical/surgical specialist, the Milliman report found.

The difficult task of finding a behavioral health care provider who would accept insurance before the pandemic has been made even more challenging as the demand for care grew during the pandemic. When providers can so easily fill their schedule with patients, the impetus to join a network is diminished and greater reimbursement can be realized by remaining out-of-network. For a patient in the throes of dealing with a mental health issue, this is a frustrating, time consuming and expensive prospect. Employers share this frustration and are deeply concerned about the shortage of quality in-network behavioral health providers.

As policymakers focus on strengthening the workforce, they should explore what policies would encourage greater behavioral health care provider participation in the commercial market as well as in federal programs.

- Policies to expand access to telehealth in the commercial market, as described below in detail, serve to expand access to behavioral health care generally, and in-network providers specifically.

- Inaccurate information in health plans' mental health provider directories may be compounding this problem. According to national survey of privately insured patients who used outpatient specialty mental health services, 53% of participants who had used a mental health directory reported encountering

[16] https://www.milliman.com/-/media/milliman/importedfiles/ektron/addictionandmentalhealthvsphysicalhealthwideningdisparitiesinnetworkuseandproviderreimbursement.ashx

inaccurate information.[17] The most common problem was that a provider was incorrectly listed as taking new patients. Experiencing inaccuracies with the directory was significantly associated with use of out-of-network providers.

Requiring health care providers and facilities to notify the group health plan or issuer whether or not they are accepting new patients will help avoid such a result. We also note efforts that consolidate and reconcile provider data and send it back to plans and other multi-plan directories to populate their consumer-facing provider directories.[18]

Increasing Integration, Coordination, and Access to Care

Policy Recommendation: Support the development of processes and programs to integrate behavioral health with primary care

Lack of coordination of mental health care with primary care was cited by 28% of Council survey respondents as a barrier to their organization in providing mental health care to employees. Half (50%) of the respondents in the Council's recent survey said that development of processes and programs to integrate mental health care with primary care would improve their organization's ability to provide or expand mental health coverage. Fragmented behavioral health care and physical health care systems can result in poorer outcomes and less efficient care. For many patients seeking help for a behavioral health issue, their primary care doctor is frequently their first stop. Integration of behavioral health with primary care can better identify patients in need of behavioral care services, reduce its stigma, and better and more efficiently manage care.

Integrated care has demonstrated improved health outcomes and reduced costs. A Milliman report on the potential impact of integrated medical-behavioral health care estimated that a combined $38 billion to $68 billion could be saved in the commercial market, Medicare and Medicaid annually through effective integration of medical and behavioral services.[19]

As detailed in *Health Affairs* blog, Blue Cross and Blue Shield of North Carolina embarked on a long-term strategy to drive improvements in behavioral health access, quality, and efficiency, and integrating behavioral health treatment within primary care was a "natural first step" for addressing several limitations within the current system.[20]

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[17] https://www.healthaffairs.org/doi/10.1377/hlthaff.2019.01501

[18] See, for example, the Integrated Healthcare Association's Symphony Provider Directory in California. https://iha.org/provider-directory-management/symphony-provider-directory/

[19] https://www.milliman.com/-/media/milliman/importedfiles/uploadedfiles/insight/2018/potential-economic-impact-integrated-healthcare.ashx

[20] https://www.healthaffairs.org/do/10.1377/hblog20200618.440697/full/

Describing integrated care a "workforce multiplier" for behavioral health, integrated care also may "reduce stigma and improve access, as all health conditions are addressed in a coordinated manner with a trusted provider."

- Policymakers can support initiatives to integrate behavioral health treatment with primary care across the country by allocating funds to provide assistance, training and other resources that promote wider adoption of such initiatives.

- Policymakers can also provide funding for expanded research on integrated behavioral health and primary care models that can be useful in the commercial market as well as government programs and in multiple settings.

Policy Recommendation: Increase integration, coordination and access to care by passing the Chronic Disease Management Act

The Milliman report noted above found that the medical costs for treating those patients with chronic medical and comorbid mental health/substance abuse disorder (MH/SUD) conditions are two to three times higher on average compared to the costs of those beneficiaries who don't have comorbid MH/SUDs. Milliman projected that the additional costs in 2017 was $406 billion, most of that attributable to medical services.

As Congress considers policies to expand access to timely, quality and affordable behavioral health care, the connection between chronic medical conditions and comorbid MH/SUD conditions cannot be ignored. It is more critical than ever that individuals with chronic conditions – both medical and behavioral health – have access to the care and medications they need, including allowing plans and employers to offer more chronic disease preventive-care benefits pre-deductible. Health Savings Account (HSA) eligible High Deductible Health Plans (HDHPs) have a limited ability to offer services and medications to manage chronic conditions on a pre-deductible basis for the full range of illness. We urge Congress to pass the Chronic Disease Management Act (S. 1424/H.R. 3563) to allow HSA-eligible HDHPs to provide access to health care services and medications that manage chronic conditions on a pre-deductible basis or achieve the same result by expanding guidance provided by the U.S. Treasury Department and Internal Revenue Service.

Policy Recommendation: Promote the use of evidence-based care

Employers are innovators and are always looking for ways to increase employee access to high-value mental health services, holding down costs and improving quality.

The importance of quality and need for evidence-based care is critical to the value equation with respect to behavioral health as well as medical benefits. While there has been a great deal of focus on the reimbursement rates for behavioral health providers and facilities in the effort to expand access to care, there must be more focus on measuring the quality of such care.

The use of outcome measures has been limited by lack of provider adoption or technology infrastructure to measure and report outcomes at scale, according to an assessment by Blue Cross and Blue Shield of North Carolina describing their efforts to improve access and quality through value-based payment in behavioral health.[21] These efforts acknowledge that with "the increased need and potential dire consequences of behavioral health disorders" rapid change is critical. Yet, at the same time, Blue Cross and Blue Shield of North Carolina's strategy recognizes that implementing "a data-driven approach for identifying the most effective interventions for further dissemination, and modifying or terminating those of low value, is important." This approach changes financial incentives to drive improvements in behavioral health care access and quality. Employers can also play an important role in driving toward value-based behavioral health care. However, the development and adoption of appropriate measurement tools are critical in this effort.

We encourage policymakers to promote the use of evidence-based care by behavioral health providers, including funding to support its adoption and implementation across the country.

Policy Recommendation: Support ability to provide behavioral health services in an employee assistance program

EAPs allow employers to provide behavioral health support to employees, at no cost to employees, including those who are not enrolled in the employer's major medical plan. EAPs also allow employers to provide pre-deductible behavioral health care to employees enrolled in HSA-eligible high deductible health plans. While current guidance sets a general standard as to the amount of benefits that can be covered by an EAP (i.e. the, program "does not provide significant benefits in the nature of medical care"), questions exist as to the extent of services that may be provided through an EAP.

More than one quarter (26%) of respondents in the Council's survey cited limits on and lack of clarity regarding extent of care that can be provided through EAPs as a barrier to providing mental health care to employees. Fully 38% of respondents said that clarity on the ability to provide mental health services in an EAP would improve their organization's ability to provide or expand mental health coverage and nearly one-third (32%) of respondents said that expansion of this ability would improve their organization's ability to provide or expand mental health coverage.

We encourage the departments of Labor, Treasury and HHS to provide guidance clarifying the scope and amount of behavioral health services that can be provided in EAPs and to ensure such guidance supports the ability of employers to provide meaningful benefits through these important programs.

[21] https://www.healthaffairs.org/do/10.1377/hblog20200618.440697/full/

Ensuring Parity

Council members strongly believe in the value of mental health and substance use disorder benefits for employees and their families, recognizing that behavioral health care coverage is vital to the health and productivity of the workforce. Even though neither the ACA nor MHPAEA mandate that large employers offer such coverage, they voluntarily do so to improve employee well-being while simultaneously improving productivity and business performance. Mental health conditions and physical health conditions are often comorbidities. Thus, treating an employee's mental health will also support the employee's general health and well-being.

The Council has been, and continues to be, strongly supportive of mental health parity, as reflected in MHPAEA. Regrettably, the ambiguity and subjective nature of the rules related to non-quantitative treatment limitations (NQTLs) has been an ongoing challenge for group health plans. Most recently, the new requirement enacted in the Consolidated Appropriations Act, 2021 (CAA) that plans create an NQTL comparative analysis has raised many concerns.

Employers have spent a great deal of time and resources in a good faith effort to prepare the reports and believe that they are in compliance. According to the Council's recent survey, 45% of responding organizations expend at least "moderate resources" on mental health parity compliance. But based on reports regarding enforcement of this requirement thus far, and the perception that DOL is finding all reports to be insufficient, it is genuinely unclear what kind of report or analysis would meet DOL's approval. There are also concerns that the enforcement process for this new requirement is unclear, including the extent to which plans and insurers will have an opportunity to appeal a determination of noncompliance with an objective third party.

Only 16% of respondents in the Council's recent survey view the expectations of DOL with regard to the NQTL comparative analysis required by the CAA as clear, while 60% believe that it is not clear what DOL expects for a compliant NQTL comparative analysis.

Policy Recommendation: Reject proposals to create new and unwarranted civil monetary penalties

In the face of such lack of clarity, we urge lawmakers to reject proposals to create a new civil monetary penalty regime pursuant to mental health parity rules, as proposed in the Build Back Better Act. The proposed civil monetary penalty regime is unwarranted and ill-timed. Employers and plans need to be permitted to implement the new CAA requirements, which were first effective earlier this year. Moreover, DOL already has a robust enforcement structure for the mental health parity requirements, including by requiring retroactive and prospective plan changes. Employers and plans

are already making their best efforts to comply and over time, the mental health parity violations that DOL has found have steadily decreased.

Given the complexity of understanding mental health parity compliance obligations, creation of new civil monetary penalties will neither enhance compliance nor address any perceived shortcomings in enforcement. For all the foregoing reasons, it is extremely ill-advised and inappropriate to establish a new civil monetary penalty regime.

Policy Recommendation: Clarification from DOL about the NQTL rules

It seems very unlikely that additional enforcement tools will enhance compliance or address perceived shortcomings in enforcement. Instead, due to the complexity of the mental health parity compliance obligations and the lack of guidance regarding what DOL views as a sufficient NQTL report, it would be more productive for DOL to focus its efforts on clear guidance and compliance assistance.

It would be very helpful to stakeholders if DOL would provide additional detailed information on what it expects in terms of an NQTL report pursuant to the CAA. More than 69% of Council survey respondents said that additional guidance from DOL regarding what constitutes a compliant NQTL comparative analysis would be helpful. Examples from DOL of a compliant NQTL analysis and a uniform template from DOL for NQTL analysis would be deemed helpful by 81% and 77% of respondents, respectively. It is also important that DOL work to establish a clear process for its determinations related to the NQTL report under the CAA, including by providing employers and plans a meaningful chance to appeal a determination of noncompliance.

Expanding Telehealth

The COVID-19 pandemic has transformed telehealth from an innovative option for delivering services into a vital lifeline to care for millions of patients, including those needing access to behavioral health care. In the years before the pandemic, a growing number of employers were turning to telemedicine to improve access to value-driven care for employees and their families. With COVID-19, what may have been a slower march toward telehealth use became a sprint. The onset of the crisis sparked a dramatic rise in the utilization of telehealth services. The Council recently partnered with Mercer and the Catalyst for Payment Reform on a paper entitled "Telemedicine in the Post-COVID-19 World."[22]

Telemedicine utilization has increased more in a few months than was expected in five years. Employers recognize the important role of telehealth in caring for patients

[22] https://www.americanbenefitscouncil.org/pub/?ID=FDD5BCEA-1866-DAAC-99FB-73ABA53755E5 and https://www.americanbenefitscouncil.org/pub/?ID=FD5C9596-1866-DAAC-99FB-2BB0A37399A3

during the COVID-19 crisis by increasing access to mental health services for employees and their families while abiding by social distancing that is essential to containment of the pandemic. Many employers have made, and are continuing to make, efforts to expand access to telehealth during the COVID-19 crisis in order to protect the public health and safety of their employees while ensuring that they still receive the care they need, including for those with mental illness and substance use disorders. Indeed, 95% of employers are satisfied with their telemedicine provider's response time and member service during the pandemic.

Organizations have leveraged the power of telehealth to expand access to mental health services. Notably, employers reported adding mental health to telehealth services and provided free access to online services, adding new on-line mental health tools through the EAP, launching mental health virtual care visits through their onsite health clinic provider, and providing that telehealth for all mental health was covered by the plan at 100%. According to a national poll by Morning Consult, fielded from November 1-8, 2021, 21% of insured adults reported having personally had a telehealth appointment for their mental health in the past year. Nearly two-thirds (64%) of insured adults are willing to receive mental health care virtually through a telehealth system, the poll found.

Employers, already at the forefront of innovative strategies to pay for value, drive to quality and harness technology, will play a key role in realizing the full potential of telehealth to expand access to behavioral and mental health care. We applaud Congress and the regulatory agencies for taking initial action to expand access to telehealth services offered by employers during the pandemic. We ask Congress to build on these actions to bring greater access to telehealth, including for behavioral health, both during the pandemic and beyond.

The provision allowing Health Saving Account (HSA)-eligible high-deductible health plans to cover telehealth services without cost-sharing under the Coronavirus Aid, Relief, and Economic Security (CARES) Act is an important positive step in expanding access to telehealth services during the pandemic. This provision was effective as of March 27, 2020, and applies to plan years beginning on or before December 31, 2021.

Also helpful is guidance from the departments of Labor, Treasury and HHS (the "Tri-Agencies") providing for non-enforcement of Summary of Benefits and Coverage (SBC) advanced notice requirements during the COVID-19 public health emergency or national emergency for situations where a plan or issuer adds benefits, or reduces or eliminates cost sharing for telehealth and other remote care services. However, further action is needed to more fully support the efforts of employers to expand telehealth coverage, in the interest of employees and the public health.

Policy Recommendation: Extend CARES Act provision that allows telehealth pre-deductible

We also request Congress to look beyond the pandemic era and make permanent the CARES Act provision allowing HSA-eligible high-deductible health plans to cover telehealth services on a pre-deductible basis. The benefits of telehealth will extend beyond the pandemic, and so must the ability of HSA-eligible high deductible health plans to cover telehealth without cost-sharing. In the Council's recent survey, 69% of respondents said extending the ability to cover telehealth services pre-deductible in a health savings account compatible high deductible health plan for future years (i.e., an extension of the related CARES Act provision) would improve their organization's ability to provide or expand mental health coverage.

Policy Recommendation: Remove state barriers to telehealth care

We also call upon Congress to take prompt action to remove state barriers to telehealth care, such as removing the requirement that patients have a pre-existing relationship with the provider and allowing licensed providers to provide services to patients in other states via telehealth. Access to telehealth should not be stopped at state lines. Although some states have temporarily modified licensure requirements in limited circumstances, state-by-state variability of these waivers and gaps in waiver availability have led to uncertainty, complexity and lack of prompt access to care.

The federal government acted decisively to expand access to telehealth services for Medicare beneficiaries during the pandemic by removing state licensing barriers. However, for all too many patients covered by private insurance, state licensing barriers remain. This comes at a time when access to care, including behavioral health care, is more important than ever. During this mental health crisis exacerbated by the ongoing pandemic, telehealth can bring much needed mental health services to underserved communities and vulnerable populations. In the Council's recent survey, 46% of respondents said that increasing the ability of mental health providers to practice across state lines would improve their organization's ability to provide or expand mental health coverage.

We urge Congress to take action now to ensure that patients in private plans, wherever they live, are able to turn to telehealth to access the care they need. We call on Congress to pass the Temporary Reciprocity to Ensure Access to Treatment (TREAT) Act (S. 168/H.R. 708), which would provide temporary state licensing reciprocity for all licensed and certified practitioners or professionals (those who treat physical and mental health conditions) in all states for all types of services (in-person and telehealth) during the COVID-19 Public Health Emergency or other legislation that would increase the ability of behavioral health providers to practice across state lines.

Policy Recommendation: Support ability of employers to provide significant stand-alone telehealth services to employees who are not benefits eligible

Helpful guidance from the Tri-Agencies provided temporary flexibility for employers during the pandemic who wish to provide significant stand-alone telehealth services to employees who are not benefits eligible without running afoul of the ACA market reforms. In light of the value of telehealth, the Council requests that the Tri-Agencies consider extending this relief to allow employers to continue to provide stand-alone telehealth benefits to non-benefits eligible employees into the future.

Policy Recommendation: Support audio-only behavioral health services

Congress should take immediate action to support audio-only behavioral health services, as patients may be more comfortable and have greater access to audio-only rather than video counseling.

Policy Recommendation: Expand internet access for underserved populations and remove other technology-related barriers to care

Telehealth has transformed the delivery of health care, including behavioral care, making it more accessible for many patients in communities across the country. However, for those living in many rural and underserved areas, the lack of broadband connectivity and access to the right technology remains a significant impediment to leveraging telehealth to access care. According to a survey by the Bipartisan Policy Center and Social Sciences Research Solutions, overall, 45% of respondents reported some type of technical issue as an obstacle to accessing telehealth, with 42% of older adults and 35% of rural residents saying lack of access to high-speed internet broadband was an obstacle.[23] We urge Congress to take action to overcome this digital divide, including through funding to expand broadband connectivity.

Improving Access for Children and Young People

Even before the pandemic, there was a mental health crisis among children in the United States. On average, in the years 2018 and 2019, among children ages 3-17, 8% (5.2 million) had anxiety disorder, 4% (2.3 million) had depressive disorder, and 9% (5.3 million) had attention deficit disorder or attention deficit/hyperactivity disorder.[24] Limitations in access to children's mental health care predated the pandemic, with only

[23] https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2021/08/SSRS-Telehealth-Report_confidential_FINAL_08.02.21-1.pdf

[24] https://www.kff.org/coronavirus-covid-19/issue-brief/mental-health-and-substance-use-considerations-among-children-during-the-covid-19-pandemic/

one in five children with mental, emotional, or behavioral disorders were receiving mental health care from a specialized provider.[25]

The pandemic has worsened these challenges for children and for their parents. According to a January 2021 report from the JED Foundation, nearly two-thirds of U.S. parents report that their child has recently experienced a mental or emotional challenge. 31% of parents said their child's mental or emotional health was worse than before the pandemic.[26] The mental toll of the pandemic on children will be felt for years to come. As noted in a September 22, 2021, Issue Brief from the U.S. Department of Health and Human Services on Child and Adolescent Health during COVID-19, "Prolonged loneliness and social isolation have been associated with future mental health problems up to nine years later, which suggests that children and adolescents would be at risk for mental health conditions long after the social restrictions for the pandemic have ended."[27]

Employers are deeply concerned about the mental health of not just their employees, but their employee's children as well. Dealing with a mental health issue of their child and challenges with finding access to the care they need profoundly impacts the health, well-being and productivity of working parents.

Policy Recommendation: Implement the policies outlined above to expand access to behavioral health care for those with employer-sponsored health plans. This will benefit the many children and young people covered by such plans. In addition, the Council strongly supports efforts to improve access to behavioral health care for children and young people specifically. The acute shortage of inpatient mental health support for children and young adults is of particular concern, and we ask policymakers to explore public-private partnerships to expand access to this critical support.

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We share your belief that "every American must be able to access high-quality behavioral health care when they need it" and applaud your bipartisan process to reach this goal. The COVID-19 pandemic has shined a light on mental illness and substance use disorders. It has also shined a light on the role employers play in helping to remove

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[25] Id.

[26] https://www.jedfoundation.org/news-views/national-survey-youth-well-being-during-covid-19/

[27] https://aspe.hhs.gov/sites/default/files/documents/0bcc372f4755cca29ebc80a47cfe300e/child-adolescent-mh-covid.pdf, citing Loades ME, Chatburn E, Higson-Sweeney N, Reynolds S, Shafran R, Brigden A, Linney C, McManus MH, Borwick C, Crawley E. Rapid systematic review: The impact of social isolation and loneliness on the mental health of children and adolescents in the context of COVID-19. J Am Acad Child Adolesc Psychiatry, 2020 Nov; 59(11): 1218-1239.e3.

the stigma of mental illness and substance use disorders and helping working families acknowledge and address their need for care. However, the pandemic has also highlighted and magnified barriers to access that impede these employer efforts. As you work toward developing a bipartisan legislative package before the end of the year, we urge Congress to pursue policies that remove these barriers and better enable employers to lead the way in improving access to quality, affordable behavioral and mental health care not just during the pandemic, but beyond.

Thank you for your consideration of our comments. Please let me know how the Council can further assist in your important efforts.

Sincerely,

Ilyse Schuman
Senior Vice President, Health Policy