December 14, 2021

The Honorable Janet Yellen
Secretary
U. S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Secretary Yellen and Commissioner Rettig,

We appreciate the tireless work of the Treasury Department and the Internal Revenue Service (IRS) to respond quickly to the COVID-19 pandemic, including your work to minimize the public health and economic ramifications of the pandemic on taxpayers. We remain especially grateful for the swift work of the Treasury Department and the IRS in the early days of the pandemic to provide guidance unequivocally stating that plans and employers could offer pre-deductible coverage of testing and treatment related to COVID-19 and reiterating that vaccinations are considered preventive care. Congress legislated additional flexibilities for Health Savings Account-eligible plans with passage of the Coronavirus Aid Relief and Economic Security (CARES) Act, which has helped to further ensure that Americans can access vital health care services throughout the pandemic period.

Notably, Congress took important steps to remove barriers to virtual care to mitigate the risk of exposure to COVID-19 infection, allowing millions of Americans to receive care while staying home. As you know, Americans with high-deductible health plans coupled with Health Savings Accounts (HDHP-HSAs) must meet minimum deductibles defined in statute before the cost of telehealth can be defrayed by their employer or insurer. The CARES Act provided employers with the temporary ability to provide telehealth without applying a deductible to employees with a Health Savings Account. This safe harbor will expire at the beginning of plans years starting after December 31, 2021 (so for calendar year plans, January 1, 2022).

The Alliance to Fight for Health Care represents businesses, patient advocates, employer organizations, unions, health care companies, consumer groups, and other stakeholders that support extending this critical flexibility. There is bipartisan, bicameral support in Congress to extend the flexibility to offer telehealth pre-deductible in Health Savings Account-eligible plans (H.R. 5981/S. 1704). While our efforts on this front in Congress continue, it appears increasingly unlikely that legislation will be enacted before year end. As such, ***we urge the Treasury Department and the IRS to provide a policy of non-enforcement while Congress considers legislative solutions to extend this important flexibility.***

The Alliance to Fight for Health Care

Advancing employer-provided coverage

For the reasons outlined below, we believe continued access to pre-deductible telehealth removes barriers to care during the pandemic and warrants a response similar to IRS guidance (Notice 2020-15), which disregarded health benefits associated with testing for and treatment of COVID-19 without a deductible for purposes of determining the status of the plan as an HDHP.[1] We thank the Treasury Department and the IRS for aiding plans in ensuring enhanced access to testing for and treatment of COVID-19, and hope you will consider our special request for similar treatment of pre-deductible telehealth while we work in earnest with Congress on a solution.

The ability to offer pre-deductible telehealth services enables enhanced access to care for millions of Americans, across the economic spectrum. According to unpublished estimates from the Employee Benefit Research Institute (EBRI), over 50 percent of individuals with an HSA live in zip codes where the median income is below $75,000 annually. The CARES Act provision enhanced access to care during the pandemic for individuals who may otherwise have avoided care due to out-of-pocket costs. In a recent Morning Consult National Tracking Poll sponsored by the Alliance to Fight for Health Care, seven in ten insured adults (71%) feel it is important that they are able to access telehealth services under their current health care plan and individuals reported that telehealth removes barriers to access such as transportation time or costs (62%), waiting time (61%), concerns with catching a new illness (45%), and taking time off work (40%).

This flexibility has been particularly critical for mental health care, an issue exacerbated by the pandemic and for which telehealth is particularly well suited. In a recent public advisory, Surgeon General Vivek Murthy noted that the pandemic intensified mental health issues – particularly for America's youth, citing significant increases in self-reports of depression and anxiety along with more emergency room visits for mental health issues.[2] He issued the advisory because, in his words, "it would be a tragedy if we beat back one public health crisis only to allow another to grow in its place." Among his recommendations for how to deliver an "all-of-society" effort in prioritizing mental health are removing regulatory barriers necessary to expand the use of telehealth for mental health challenges and offering health insurance plans that include no or low out-of-pocket costs for mental health services.

Employers are making great efforts to address the mental health crisis. This is borne out in the fact that in 2022, 75% of large employers are offering access to lower- or no-cost mental health support through their telemental health provider.[3] A fifth (20%) of Americans report using telehealth for mental health over the past year – which includes meeting with a therapist, counselor, psychiatrist, or primary care doctor virtually. Additionally, 8% report knowing someone in their family who has.[4]

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[1] Notice 2020-15, "High Deductible Health Plans and Expenses Related to COVID-19."
[2] The U.S. Surgeon General's Advisory, "Protecting Youth Mental Health," 2021.
[3] Business Group on Health, "2022 Large Employers' Health Care Strategy and Plan Design Survey," August 2021.
[4] Morning Consult National Tracking Poll, November 1-8, 2021.

Without continued flexibility for HDHPs, employees and families will be required to pay more upfront in their deductible to access this care, throwing up yet another barrier to potentially life-saving mental health treatment. Plan sponsors are interested in continuing to shoulder these additional upfront costs on behalf of American families because they know the value they provide and the urgent need.

Facing an expected surge in cases this winter and the emergence of the Omicron variant, we must ensure continued, uninterrupted access to these vital services. Barring an immediate legislative resolution, a temporary policy of nonenforcement is critical to ensuring employers and insurers can continue offering pre-deductible telehealth services. Although we continue to work with Congress to enact an extension of the CARES Act provision, because it appears a legislative change will not occur by year end, such an extension would have retroactive effect. The problem with retroactive relief in this case is that it cannot make up for lost visits with mental health care providers and delayed management of other health care conditions impacting millions of Americans. This is why we are coming to you with this special request.

Thank you for your consideration.

The Alliance to Fight for Health Care

The Alliance to Fight for Health Care is a broad-based coalition comprised of businesses, patient advocates, employer organizations, unions, health care companies, consumer groups and other stakeholders that support employer-provided health coverage. Together, we are working to ensure that employer-provided coverage remains an available and affordable option for working Americans and their families. The coalition, previously working as the Alliance to Fight the 40, led the successful effort to repeal the so-called 40% "Cadillac Tax" on health care coverage.