

Healthy Futures Task Force  
Modernization Subcommittee

March 4, 2022

Dear Healthy Futures Task Force Modernization Subcommittee,

Thank you for the opportunity to submit comments to the subcommittee regarding the expansion of telehealth and other modernization efforts across the U.S. health care system. The Alliance to Fight for Health Care welcomes the opportunity to provide information to the subcommittee about the promise of telehealth and virtual care offerings in enhancing access to high-value care across a full spectrum of physical and mental health care for working Americans and their families.

The Alliance 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. We believe Alliance members can bring insight and expertise to the discussion, especially regarding actions employers took to help maintain and improve employee health through virtual health care, before and during the pandemic period, and solutions to ensure a smooth transition in the post-pandemic period and beyond.

### **Investing in virtual health care**

One true silver lining to the pandemic is the significant investment and uptake in virtual health care from employers, insurers, providers, and beneficiaries. Access to enhanced virtual care allowed American workers and their families to continue to access essential medical services while reducing unnecessary exposure and bolstering support for mental health amid pandemic stressors.

Not surprisingly, telehealth, mental health, emotional well-being and health and lifestyle coaching are among the most prevalent virtual services offered by employers. The pandemic fueled this adoption, driving employers to increase virtual health offerings across the board. In 2021, 84% expanded their virtual health services. This is even more than did so in 2020, when 76% of employers made changes to allow for more virtual services and 71% accelerated telehealth and virtual health options. Employers also view many of the changes they made in response to the pandemic as permanent. Currently, 97% of large employers offer telehealth to employees, and 76% of employers that accelerated telehealth or virtual health during the pandemic are planning to keep these changes in place. A majority of employers (59%) also waived or reduced telehealth costs in 2021, removing even more barriers to accessing high-value telemedicine.<sup>1</sup>

In a November 2021 Morning Consult National Tracking Poll sponsored by the Alliance to Fight for Health Care, seven in ten insured adults (71%) said it was important to access telehealth services under their current health care plan and individuals reported that telehealth removes barriers to care access such as transportation time or costs (62%), waiting time (61%), concerns with catching a

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<sup>1</sup> Business Group on Health, "2022 Large Employers' Health Care Strategy and Plan Design Survey," August 2021.

new illness (45%), and taking time off work (40%).<sup>2</sup> In a January 2022 follow-up poll, three quarters of insured adults said they supported keeping telehealth affordable. A majority of Democrats, Independents, and Republicans all agreed that Congress should extend a law that provides flexibility for employers to offer telehealth visits to employees without having to pay their deductible.<sup>3</sup>

Employers are also utilizing telehealth as a key tool to address the mental health crisis in part through enhanced access to virtual care. The same January poll found that more than half of insured adults would seek virtual/online mental health care if it were free. Telemental health is currently offered by 93% of employers, which can bridge access gaps for employees having difficulty finding providers within their communities or close to work. In 2022, 75% of large employers are offering access to lower- or no-cost mental health support through their telemental health provider.<sup>4</sup> 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 used telehealth for mental health.<sup>5</sup>

### **Continuing pandemic telehealth flexibilities**

Throughout the pandemic period, 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. Critically, the CARES Act provided employers with the temporary ability to provide telehealth without applying a deductible to employees with a Health Savings Account (HSA). This safe harbor expired at the beginning of plan years starting after December 31, 2021 (so for calendar year plans, January 1, 2022) and must be extended. **We support the Telehealth Expansion Act (S. 1704/H.R. 5981), which makes permanent the flexibility for HSA-eligible plans to offer telehealth pre-deductible, ensuring equitable access to low- or no-deductible care via telehealth.** Allowing more patients to receive services in their homes will bring vital care to people who need it when and where they need it most.

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% of individuals with an HSA live in zip codes where the median annual income is below \$75,000. 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.

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 related to mental health.<sup>6</sup> He issued the advisory because, in his words,

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<sup>2</sup> Morning Consult National Tracking Poll, November 1-8, 2021.

<sup>3</sup> Morning Consult National Tracking Poll, January 14-16, 2022.

<sup>4</sup> Business Group on Health, “2022 Large Employers’ Health Care Strategy and Plan Design Survey,” August 2021.

<sup>5</sup> Morning Consult National Tracking Poll, November 1-8, 2021.

<sup>6</sup> The U.S. Surgeon General’s Advisory, “Protecting Youth Mental Health,” 2021.

“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. We believe this is a common-sense, bipartisan solution we can all get behind.

Without continued flexibility for high-deductible health plans with an HSA (HDHP-HSA), 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. Every day the Telehealth Expansion Act is not passed, employees are faced with lost visits with mental health care providers and delayed management of other health care conditions, such as management of chronic conditions, impacting millions of Americans.

We support the extension of temporary pandemic telehealth flexibilities, such as through the Telehealth Extension and Evaluation Act, which would extend Medicare payments for a broad range of telehealth services for an additional two years. This extension will enable Congress to assess the value, impact, and promise of telehealth flexibilities as they consider more permanent solutions. We ask that in any telehealth package, the Telehealth Expansion Act (S. 1704/H.R. 5981) be included to ensure American workers and their families continue to have access to low- or no-cost, equitable care via telehealth.

Giving providers flexibility to work across state lines also should be a part of any forward-looking legislation. In this vein, **we also support the TREAT Act (S. 168/H.R. 708), to allow temporary licensing reciprocity for health care professionals for any type of services provided to a patient located in another state during the COVID-19 pandemic.** We believe these flexibilities are critical to fully leveraging the power of telehealth to provide access to high-quality care to all who need it, regardless of where they live. We urge Congress to re-consider the 180-day post-pandemic phase out period currently in the TREAT Act and consider a longer-term bump out to fully assess the impact of this policy.

Current licensure laws often limit the geographic footprint of providers while giving patients access only to those providers who live in artificial state boundaries. Legislation like the TREAT Act is a step in the right direction, and we also applaud states like Florida that have passed laws to authorize out-of-state health care professionals to deliver telehealth services to local patients.<sup>7</sup> Other states are taking steps such as signing the Interstate Medical Licensure Compact, which streamlines the process for physicians applying for licensure in other member states. However, this still limits telehealth practice based on state licensure. Congress should consider other solutions, such as a federal law that designates the provider’s location as the location in which care takes place for the purposes of licensure and payment. This is especially true in areas like mental health care, where we

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<sup>7</sup> CCHP, “State Telehealth Laws and Reimbursement Policies Report, Fall 2021,” October 2021.

are facing a stark shortage of providers to deliver life-saving care that lends itself well to the virtual format given the nature of the care provided. **The Alliance supports reforms that enable mental health care providers to see more patients, specifically through enhanced telehealth options and flexibility in licensing. This includes legislation that allows mental health providers licensed in one state to treat — either in person or via telehealth — patients in any other state.**

### **Enabling continued employer innovation**

We hope Congress will work together with employers as we continue to innovate in ways that lower costs, increase access, and bolster satisfaction for employees and their families. Recent studies on pandemic flexibilities point to the ability of telehealth to do just that. According to a recent study from the *Telemedicine Journal and e-Health*, telehealth not only significantly reduced no-show rates, reducing waste in the system, but retained satisfaction for patients who experienced telehealth visits compared with those who attended in-office visits. There was also no significant difference in satisfaction between those performed on video versus audio only phone calls.<sup>8</sup> Additionally, in a recent *JAMA* study, while COVID-19 caused in-person visits to decline and virtual services to increase, there was no significant change in the overall volume of health care utilization, suggesting that virtual care was substitutive, rather than additive in the ambulatory care setting.<sup>9</sup>

Another analysis by Mercer FOCUS, which warehouses the claims of over one million health plan members, found that the portion of total outpatient behavioral health care encounters conducted via telebehavioral health jumped from just 1% prior to Q1 2020 to more than 50% in Q2 2020 – where it has stayed for more than a year (through Q3 2021). This change was driven by both a decrease in traditional office visits and an increase in telebehavioral health visits.<sup>10</sup>

We urge Congress to build on these successes while also considering the need for flexibility in order for employers to truly innovate and iterate on our offerings to best meet the needs of working Americans. For example, any national telehealth standard under ERISA must ensure there are no burdensome requirements that limit the future potential for virtual health care and are forward-looking in nature. For example, we urge Congress to ensure flexibilities such as the use of audio-only telehealth where necessary and not include requirements around in-person visits to establish a relationship with providers. Setting a similar standard to in-person care could be too prescriptive as we are still learning how to fulfill the full promise of telehealth. We also urge caution in defining “telehealth” or similar terms too narrowly, which could result in cutting off vital virtual health care to patients in the future. Additionally, as a cost saver, virtual services should be treated as such and not encumbered by expenses that deter patients from their use, especially if they are subjected to the same cost structure as coming into a facility.

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<sup>8</sup> Drerup B, Espenschied J, Wiedemer J, Hamilton L. Reduced No-Show Rates and Sustained Patient Satisfaction of Telehealth During the COVID-19 Pandemic. *Telemed J E Health*. 2021 Dec;27(12):1409-1415. doi: 10.1089/tmj.2021.0002. Epub 2021 Mar 4. PMID: 33661708.

<sup>9</sup> Zachrison KS, Yan Z, Schwamm LH. Changes in Virtual and In-Person Health Care Utilization in a Large Health System During the COVID-19 Pandemic. *JAMA Netw Open*. 2021;4(10):e2129973. doi:10.1001/jamanetworkopen.2021.29973

<sup>10</sup> Mercer, “Telebehavioral Healthcare: A Post-Pandemic View,” 20 January 2022.

While fully embracing telehealth both at the federal and state levels should be a priority, policies must also address the changing reimbursement landscape, as well as licensing laws. We should ensure that any policies do not hinder the adoption of payment models that reward value in the remote delivery of services and encourage providers to adopt telehealth as part of a full spectrum of care delivery offerings. Telehealth legislation and regulations must be drafted with an eye toward the future, ensuring flexibility to incorporate existing and emerging modalities, payment models, and patient needs to fulfill its promise in offering enhanced access to cost-effective care to employees and their families when they want it, where they want it, and how they wish to receive it.

We look forward to discussing more and welcome additional questions and dialogue. Thank you again for the opportunity to comment.

Sincerely,  
The Alliance to Fight for Health Care