



AMERICAN BENEFITS COUNCIL

December 2, 2020

The Honorable Mitch McConnell
Majority Leader
U.S. Senate
Washington, DC 20515

The Honorable Charles Schumer
Democratic Leader
U.S. Senate
Washington, DC 20515

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Kevin McCarthy
Republican Leader
U.S. House of Representatives
Washington, DC 20515

Dear Speaker Pelosi, Leader McConnell, Leader McCarthy and Minority Leader Schumer:

On behalf of the American Benefits Council (“the Council”), I urge you to take action this year to support employer-sponsored health coverage and help employers and working families weather the continued challenges of the COVID-19 pandemic. Thank you for your earlier action to address the dual health and economic crises facing our country as a result of the pandemic. However, more remains to be done to protect and strengthen employee health coverage, an imperative that has become even more pressing as infections spike across the country and the need for high-quality, affordable health coverage becomes even more essential.

The Council is a Washington, D.C.-based employee benefits public policy organization. We advocate for employers dedicated to the achievement of best-in-class solutions that protect and encourage the health and financial well-being of their workers, retirees and families. Council members include over 220 of the world’s largest corporations and collectively either directly sponsor or administer health and retirement benefits for virtually all Americans covered by employer-sponsored plans.

We are committed to assist your continued efforts to protect the health and economic security of Americans. To that end we urge you to address the following vital legislative priorities before the year ends.

Support robust COVID-19 testing, contact tracing capabilities and vaccine distribution.

- The widespread testing needed for public health surveillance purposes and to facilitate returning employees to the workplace safely calls for dedicated federal funding commensurate with this critical task. Federal funding to support employer testing for COVID-19 is urgently needed.
- The remarkable advances toward the development of safe and effective vaccines give us hope that the end of this devastating pandemic may be in reach. Yet the promise afforded by the development of these vaccines will go unrealized without the vaccinations themselves. The distribution and administration of the vaccination for hundreds of millions of people across the country is a daunting task, and employers will play a critical role in the success of this endeavor for their workers and others. As such, we urge policymakers to recognize this important role that employers play and facilitate their efforts by ensuring that their needs are addressed in developing plans for vaccine distribution and administration. Furthermore, as the testing and vaccines that are needed to bring this crisis to an end become more readily available, protections against price gouging become even more important.

Protect all patients and consumers from “surprise” balance bills.

- The [recent report from the Government Accountability Office](#) offers yet another compelling reason for Congress to finally take action to address the market failures driving the practice of surprise medical billing. While all efforts should be made to support the health care system and providers who are on the front lines fighting COVID-19, we must also guard against excessive charges to patients and health plans by out-of-network providers exploiting this market failure. We urge Congress to stop this practice, protect patients and lower health care costs by passing comprehensive surprise billing legislation that prescribes the use of a transparent local, median in-network benchmark rate to reimburse out-of-network providers.

Lower health care costs, improve quality and enhance transparency.

- The twin public health and economic crises brought about by the COVID-19 pandemic has crystallized the need for Congress to take action to reduce health care costs and increase value for all payers. Employers are at the forefront of initiatives to lower health care costs and improve quality through various value-based strategies. Among the challenges to employer innovation are misaligned incentives that reward providers that pursue high volumes of services rather than high value, a lack of transparency, market consolidation and fundamental market failures that stifle competition and patient choice. The Lower Health Care

Costs Act (S.1895) is a bipartisan product of the Senate Health, Education, Labor and Pension's Committee's careful examination of health care costs. It represents a significant step forward in fixing at its core the problem of rising health care costs. In so doing, the legislation can truly deliver on the promise of its title and help employers bring affordable, high value health care to America's working families. We urge you to include the provisions of the Lower Health Care Costs Act in a legislative vehicle Congress passes before year-end.

Support continued employer sponsorship of health coverage and continued coverage for employees facing furlough, a reduction in wages or job loss.

- For the duration of the pandemic, provide a subsidy of no less than 90% of premiums for COBRA continuation coverage (and continuation of coverage for health plans not subject to ERISA, such as church plans), allowing those who lose their job to retain employer-sponsored health insurance.
- Help make it possible for financially distressed employers and multiemployer health funds to continue sponsorship of health coverage for workers still employed and for furloughed employees whose employers are continuing to pay the employees' share of premiums.

Expand telehealth and on-site clinic options for employers and employees to relieve pressure on overburdened hospitals and to promote social distancing.

- Many employers are making efforts to expand telehealth coverage during this crisis to help employees and their families practice social distancing and to protect public health. Congress should make permanent the CARES Act provision allowing Health Savings Account (HSA)-eligible high deductible health plans (HDHPs) to cover telehealth services on a pre-deductible basis. Codify guidance ensuring that an employer's offer of telehealth services does not result in a violation of the Affordable Care Act (ACA) market reforms to the extent the benefits provided give rise to an "ongoing administrative scheme" (i.e., an ERISA plan) and provide significant benefits in the nature of medical care.
- Allow HSA-eligible HDHPs to cover more robust services, including primary care services and management of chronic conditions, at on-site clinics without cost-sharing. Allow individuals with access to on-site clinics that provide more robust services (even if not part of the HDHP) to contribute to HSAs.

Provide additional flexibility for employers to offer more comprehensive coverage of chronic disease prevention measures.

- Those with chronic underlying conditions are at higher risk for severe illness related to COVID-19 and long-term complications. It is more critical than ever that individuals with chronic conditions have access to care. However, HSA-eligible HDHPs have limited ability to offer services and medications to manage chronic conditions on a pre-deductible basis for the full range of illnesses. As set forth in the bipartisan Chronic Disease Management Act (S. 3200), allow HSA-eligible HDHPs to provide access to health care services and medications that manage chronic conditions on a pre-deductible basis.

Given tremendously different health care needs than were anticipated when flexible spending arrangement elections were made, increase flexibility for health and dependent care flexible spending arrangements (FSAs)

- Allow employers to permit employees to reduce, suspend or increase their health FSA or dependent care FSA contributions at least one time, not only in the current plan year (as is allowed under IRS Notice 2020-29) but also in each plan year through 2021, at the discretion of the employer, to account for changing and uncertain health and childcare needs.
- To avoid forfeiture of substantial health and dependent care FSA amounts following the end of the current plan year and plan years through 2021, allow employers to permit: (1) additional carryover of funds for health FSAs, (2) carryover of funds for dependent care FSAs, (3) longer grace periods for health and dependent care FSAs and (4) a combination of carryover and a grace period for health and dependent care FSAs.

The time for Congress to act on these recommendations is now. For all the working families who rely on employer-sponsored health coverage, and for all the businesses that provide it, the 116th Congress cannot end without taking action to protect, strengthen and make more affordable this vital benefit during this critical time. We urge Congress to include these provisions in COVID-19 relief legislation, government funding or other legislative vehicle approved by Congress before year-end.

Sincerely,



Ilyse Schuman
Senior Vice President, Health Policy

CC: All members of Congress