June 17, 2020

Written Statement for the Record:

U.S. Senate Committee on Health, Education, Labor and Pensions Hearing on Telehealth: Lessons from the COVID-19 Pandemic

The American Benefits Council ("the Council") thanks the Senate Committee on Health, Education, Labor and Pensions for your efforts to address the COVID-19 pandemic. We commend the committee for holding a hearing focusing on telehealth and the lessons from the COVID-19 pandemic. The pandemic has transformed telehealth from an innovative option for delivering services into a vital lifeline to care for millions of patients. Even after the immediate crisis passes, telehealth and its role in the health care system will be forever changed.

The Council is a Washington, D.C.-based employee benefits public policy organization. The Council advocates 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.

In the years before the pandemic, a growing number of employers were turning to telehealth to improve access to value-driven care for employees and their families. A 2018 study from the Council in partnership with Mercer, Leading the Way: Employer Innovations in Health Coverage, is a playbook of innovative employer strategies for reducing health care costs. The report also serves as a testament to the critical role employers play in transforming health care in America to a more value-driven system – and foretells of the profound way in which telehealth is now transforming health care delivery. In describing how employers were embracing change to pioneer strategies for reducing the cost and improving the quality of health care, the report noted that:

Rapid advances in technology, along with changing consumer preferences and higher expectations, have led to an explosion of new entrants to the healthcare system. Embracing disruption means leveraging constant changes in the system — with internal stakeholders and external partners — to the best advantage of your employees and your organization….New technologies and the rapidly increasing adoption of telemedicine services by health plans are affecting how care is delivered."

At the time of the report, the number of employers with 500 or more employees offering telemedicine services had grown from 18% in 2014 to 71% in 2017.[1] By 2019 that figure grew to 88% of employers,[2] confirming that, even before the COVID-19 crisis, telemedicine was becoming widely available. Utilization of telemedicine by employees, however, was rising more slowly. Among employers with a telemedicine program in use in 2018, utilization averaged 9% of eligible employees, up from 8% the prior year.[3]

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. According to the FAIR Health monthly regional telehealth tracker, telehealth claim lines increased 4,347% nationally, from 0.17% of medical claim lines in March 2019 to 7.52% in March 2020.[4] A recent report by McKinsey[5] details the massive acceleration in the use of telehealth in the wake of COVID-19 and the opportunity thereby created for modernizing the care delivery system. Consumer adoption has increased from 11% of US consumers using telehealth in 2019 to 46% of consumers now using telehealth to replace cancelled healthcare visits. Providers have rapidly scaled offerings and are seeing 50 to 175 times the number of patients via telehealth than they did before with 57% noting that they now view telehealth more favorably.

Employers recognize the important role of telehealth in caring for patients during the COVID-19 crisis. Although the visit itself to the health care provider may not relate to COVID-19, the ability of employees and their families to abide by social distancing 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 those with chronic disease.

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[1] 2017 Mercer National Survey of Employer-Sponsored Health Plans. *See news release at* https://www.mercer.com/newsroom/mercer-national-health-survey-employers-finding-new-ways-to-hold-the-line-on-health-benefit-cost-growth.html

[2] 2019 Mercer National Survey of Employer-Sponsored Health Plans. *See news release at* https://www.mercer.com/our-thinking/national-survey-of-employer-sponsored-health-plans.html

[3] Id.

[4] FAIRHealth Monthly Telehealth Regional Tracker, March 2020. https://s3.amazonaws.com/media2.fairhealth.org/infographic/telehealth/mar-2020-national-telehealth.pdf

[5] McKinsey report, *Telehealth: A quarter-trillion-dollar post-COVID-19 reality?* May 29, 2020. https://www.mckinsey.com/industries/healthcare-systems-and-services/our-insights/telehealth-a-quarter-trillion-dollar-post-covid-19-reality

We applaud Congress and the regulatory agencies for taking initial action to expand access to telehealth services offered by employers during the pandemic. 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 is effective March 27, 2020, and applies to plan years beginning on or before December 31, 2021. Also helpful is guidance from the U.S. departments of Labor, Treasury and Health and Human Services ("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. We have requested guidance from the tri-agencies[6] that provides flexibility for employers during the pandemic who wish to provide telehealth services to employees who are not benefits eligible or who opted out of the employer's group health plan. A number of employers have done so on a limited basis consistent with the current "excepted benefits" regulations. However, others wish to provide more comprehensive telehealth coverage than may otherwise currently be considered an excepted benefit. Such robust standalone telehealth programs covering non-benefits eligible employees may run afoul of the Affordable Care Act (ACA) market reforms. The Council requests legislative or regulatory action to ensure that an employer's more robust offer of telehealth services does not result in a violation of the ACA's 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. The Council has requested that this relief be provided at least for the current plan year and any plan year that begins before the end of the COVID-19 related public health emergency.

In addition, to expand access to telehealth services Congress should take immediate action to remove state barriers to telehealth care, such requiring that patients have a pre-existing relationship with the provider, and allow licensed providers to provide services to patients in other states via telehealth. Access to telehealth should not be stopped at state lines.

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

[6] American Benefits Council Request for Guidance Regarding the Families First Act, the CARES Act and Telehealth, March 27, 2020. https://www.americanbenefitscouncil.org/pub/?id=25289C8B-1866-DAAC-99FB-5C65E859450E

beyond the pandemic, and so must the ability of HSA-eligible high deductible health plans to cover telehealth without cost-sharing.

With the acceleration of consumer and provider adoption of telehealth and extension of telehealth beyond virtual urgent care, the McKinsey report estimates that up to $250 billion – or 20% – of current US healthcare spend could potentially be virtualized. "The current crisis has demonstrated the relevance of telehealth and created an opening to modernize the care delivery system," the report states. "Actions taken by healthcare leaders today will determine if the full potential of telehealth is realized after the crisis has passed." The report identified five models for virtual or virtually enabled non-acute care:

- on-demand virtual urgent care
- virtual office visits with an established provider, including for primary care, behavioral health and management of chronic conditions
- near virtual office visits with "near home" sites for testing and immunizations, such as worksite clinics or retail clinics
- Virtual home health services
- Tech-enabled home medication administration

Embedding telehealth within the health care delivery system not only protects public health for the duration of the pandemic. As the report notes, it can increase access to care where critical shortages exist, such as behavioral health, improve the patient experience, improve health outcomes, better manage chronic patient and make health care more efficient. Telehealth solutions deployed for chronic populations were shown to improve total cost of care by 2-3% percent, with the potential for greater savings, according to the report.

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. The McKinsey report lays out a set of recommendation for payers to consider in shaping this opportunity. Among the recommendations is for payers to define a "value-backed virtual health road map" and to "optimize provider networks and accelerate value-based contracting to incentivize telehealth."

This committee has already taken a significant step in helping employers pursue value-backed care and accelerate value-based contracting by approving the Lower Health Care Costs Act. The legislation includes important provisions to enhance health care transparency and restrict anti-competitive contracting terms, thereby giving employers potent tools to pursue such value-based care. These provisions take on even more relevance in the effort to shape the potential for telehealth, and we urge Congress to pass this legislation.

We also caution Congress against imposing any mandates relating to telehealth that would impede employers' flexibility to innovate and pursue value-based care. The Healthcare at Home Act (H.R. 6644) would do just that by requiring group health plans and health insurance issuers to provide coverage for services furnished via telehealth if such services would be covered if furnished in-person during the COVID-19 emergency and requiring plans and issuers to pay the same amount for those services. Such "parity" requirements fail to acknowledge the broad spectrum of services encompassed by the term "telehealth" – from virtual visits with a patient's existing provider to telemedicine services by unknown providers. Furthermore, payment parity requirements ignore the value equation in using telehealth to drive higher-quality, lower-cost care. We urge Congress to reject this approach.

We commend you for your efforts to address the COVID-19 pandemic and look ahead to how telehealth can shape the post-COVID-19 health care system. 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

Ilyse Schuman
Senior Vice President, Health Policy
American Benefits Council