



## AMERICAN BENEFITS COUNCIL

March 20, 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”), thank you for your action to address the urgent crisis facing our country because of the novel coronavirus/ COVID-19 pandemic. Much has already been accomplished and a great deal more needs to be done quickly. We are committed to assist in your continued efforts to protect the health and economic security of Americans and to provide recommendations on Congress’s ongoing response to the crisis.

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.

As Congress considers additional legislative measures to help workers, families and businesses through this crisis, the Council strongly urges Congress to consider the following paid leave, health and retirement policy recommendations.

## PAID LEAVE

Employers value their employees and, as such, the majority of large, multistate employers already offer generous paid leave benefits.<sup>1</sup> Many of our members are going beyond their standard benefits to help employees navigate the COVID-19 crisis. Ensuring access to paid leave is an important component of a rapid, coordinated and practical response to the pandemic. As Congress considers expanding the emergency paid leave requirements of the Families First Coronavirus Response Act to larger employers, it is imperative – just as is the case for health and retirement benefits – that any policy enacted permit employers to offer paid leave to their employees on a uniform and consistent basis nationwide.

The Council's March 12, 2020, letter<sup>2</sup> explains in greater detail why adherence to any federal requirement must deem employers to be in full compliance with any state or local paid leave laws. This is necessary both to avoid exacerbating what already is a tremendously complex situation for employers and to ensure that a company's workers are treated equitably wherever they may live or work. Uniformity is particularly important in light of the swift action needed and the inefficiencies created by complying with numerous, and potentially conflicting, state and local laws.

Simply stated, the pandemic is a national crisis that demands a national response, rather than validating a patchwork of inconsistent and often contradictory state and local requirements.

## HEALTH POLICY

### Telehealth Benefits

Expanding access to telehealth services improves access to appropriate care for all Americans and provides necessary medical care in a manner designed to support the practice of social distancing, thereby helping prevent the further spread of the coronavirus. 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 and other containment efforts could significantly contribute to containment of the epidemic. Further, it would allow employees and their families to avoid medical facilities if at all possible, which is essential for public health and safety.

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<sup>1</sup> Eighty-nine percent of employers with 500 or more employees offered paid sick leave benefits. See Bureau of Labor Statistics, Leave Benefits Table *available at* <https://www.bls.gov/ncs/ebs/benefits/2019/ownership/private/table31a.pdf>

<sup>2</sup> [Council Letter to Congress Recommending Uniform, Consistent Approach to Coronavirus Legislation Addressing Paid Leave Programs](#) available at <http://bit.ly/covid-leave>

The Council supports legislation (S. 3539) recently introduced by Senator Steve Daines that amends the Internal Revenue Code to allow employers and health plans to cover telehealth services on a pre-deductible basis in Health Savings Account (HSA)-eligible High Deductible Health Plans (HDHPs) during this health care crisis. We urge you to include this bill in the next COVID-19 legislation that Congress advances.

### **Direct Primary Care Arrangements**

The Council supports legislation that permits enrollees in HSA-eligible HDHPs to also have coverage under a direct primary care arrangement, and use the HSA to pay for those services without losing HSA eligibility. These arrangements typically provide more remote care, including telehealth. We urge you to include this flexibility in the next COVID-19 legislation that Congress advances.

### **Vaccine Coverage**

The Council supports legislation providing coverage of any approved COVID-19 vaccine without imposing cost-sharing.

### **Surprise Billing**

The Council strongly believes that patients must be protected from surprise balance bills, especially during this crisis, to ensure that patients have access to necessary, life-sustaining medical care and to prevent worsening the current economic turmoil caused by the pandemic. The Council supports a market-based benchmark approach based on the local median in-network negotiated rate, best embodied by the version of S. 1895 approved by the U.S. Senate Health, Education, Labor and Pensions (HELP) Committee. The Council urges you to include the surprise balance billing provisions of S. 1895 in the next COVID-19 legislation.

All efforts should be made to support the health care system and providers who are on the front lines of fighting COVID-19. We should also seek to guard against any potential for excessive charges to patients and health plans by out-of-network providers during this crisis. At a minimum, legislation should not require employers to reimburse a provider's "cash price" or "billed charge" for COVID-19 testing, treatment or vaccination. Rather, reimbursement should be based on the local median in-network negotiated rate or a percentage of what Medicare is reimbursing for the same service. Patients and other payers should not have to worry about surprise medical bills during this global crisis.

## **Continued Support for Employer-Provided Health Care Coverage**

As employers face enormous uncertainty and challenges about the economic impact of this crisis, they are deeply concerned about the health and financial impact on their workers. We urge Congress to consider actions to help shore up the employer-sponsored system to assist businesses and workers through the public health and economic crisis, including helping furloughed or terminated employees have access to affordable health coverage.

The Council believes that a number of policies will support this goal and encourages action by Congress to support employers in continuing to offer health coverage to their furloughed and laid-off employees as well as their current employees. The Council encourages you to provide additional flexibility to plans to offer coverage to these employees both in terms of plan design and governmental support. While a number of solutions may be feasible, the focus should be on limiting disruption to existing coverage (e.g., not forcing these employees to change deductible and out-of-pocket maximum accumulations) and promoting uptake of any coverage options. Options to achieve these goals include federal subsidies for COBRA continuation coverage or creating a reinsurance program designed to share the claims experience of affected employees between the government and employers.

## **RETIREMENT POLICY**

The Council's March 18, 2020, talking points document<sup>3</sup> offers numerous specific recommendations to assist participants and sponsors of 401(k) and other types of defined contribution retirement savings plans as well as defined benefit pension plans. We urge Congress to address these matters in the next version of legislation responding to the COVID-19 pandemic.

For retirement plan participants (and Individual Retirement Account owners as well), the most pressing issues are (1) limitations on access to their savings, which are needed to help them pay bills and provide for their families, and (2) avoiding unnecessary burdens and onerous taxes at this especially challenging time.

For employer sponsors of retirement savings and pension plans, the key issues are (1) helping their employees in the ways described above in an efficient and workable way and (2) relief from the pressures of large defined benefit plan funding obligations, which has been exacerbated enormously in just the past two weeks due to steep declines in the equity markets and historically low interest rates.

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<sup>3</sup> [Legislative Issues for Consideration in Connection With Helping Retirement Plan Participants, IRA Owners, Plans and Plan Sponsors Address Crisis-Related Challenges](https://bit.ly/cv19-retirement031820), available at <https://bit.ly/cv19-retirement031820>

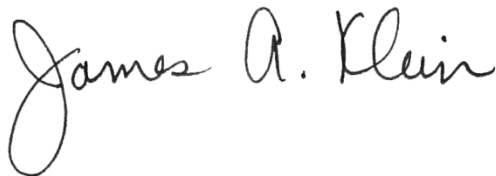
With regard to the second item, the funding obligations will be devastating for some company sponsors of pension plans – and a serious challenge for the vast majority of the rest – at the very moment when they are facing unprecedented pressures on their business. These companies often provide products or services critical to the battle against COVID-19 and to support the economy, generally. If this is not addressed through a deferral of contributions (at least until December 31, 2020) *and*, very critically, more fundamental funding stabilization, the consequences will not just be borne by the companies but also by employees, current and future retirees and by the Pension Benefit Guaranty Corporation, the federal government pension insurance agency.

For retirement plans and the system of enterprises that support them, the key issues relate to filing deadlines, notice and reporting obligations that inevitably will be delayed by the current state of disruption.

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Our country is facing unprecedented challenges now and in the weeks and months ahead. We offer our commitment to assist Congress at this critical time in bringing America's families, workers and employers through this crisis. Thank you for considering our recommendations. As always, please contact us to let us know how we can best assist you.

Sincerely,

A handwritten signature in black ink that reads "James A. Klein". The signature is written in a cursive style with a large, looping initial "J".

James A. Klein  
President

cc: All Members of the U.S. Senate  
All Members of the U.S. House of Representatives