



August 7, 2020

The Honorable Mitch McConnell
United States Senate
Washington, DC 20510

The Honorable Charles Schumer
United States Senate
Washington, DC 20510

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

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

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

On behalf of the nation's large employers, Business Group on Health thanks all members of Congress for their leadership in response to the COVID-19 pandemic. The Business Group represents [436 primarily large employers](#), including 74 of the Fortune 100, who voluntarily provide health, disability, leave, and other benefits to over 55 million American employees, retirees, and their families. As employers and employees continue to respond to the unprecedented public health and economic conditions of COVID-19 and ensure safe workplaces, ensuring access to affordable, high-quality health coverage will be critical to the nation's recovery. Therefore, we urge Congress to continue its support for working families by:

- Easing employees' health coverage transitions;
- Funding a COVID-19 testing infrastructure that supports employees' long-term return to the workplace; and
- Ensuring access to medications.

We detail our recommendations below.

I. Supporting Employees Health Coverage and Transitions

Business Group members are committed to providing affordable, comprehensive health coverage and other benefits to their employees. However, the unprecedented public health and economic conditions of COVID-19 require employers to look toward all types of health coverage—public and private—as critical potential supports for the working population. Robust

health coverage options, whether offered through employers, the individual market, or governmental entities, will ensure that working families and employers recover from the COVID-19 pandemic as quickly as possible.

While overall health care spending has declined since the beginning of the pandemic, many patients are deferring necessary care and the long-term costs of COVID-19 remain unknown. As a result, accurately projecting health care spending into 2021 has become increasingly challenging, and costs may substantially exceed current projections.

We also note that telehealth has enhanced access to care for employees during the pandemic, and its role in health care delivery has long been supported by our members. In response to the unique challenges presented by the pandemic, employers and their partners have voluntarily expanded telehealth coverage. Examples of this expansion include: reducing or eliminating cost sharing for telemedicine; expanding coverage of telehealth benefits; allowing more services, patient locations (e.g., home), and modalities (e.g., phone) to qualify for coverage; expanding telehealth provider networks; and contracting with specific telehealth vendors. Because employers, employees, and providers are still developing the infrastructure for expanded telehealth, we believe that prescriptive reimbursement rules for telehealth—including parity with reimbursement for in-person care—would be premature. Our members are committed to providing fair, market-based reimbursement rates for all health care services. Prescribing reimbursement rules could, at this point, undermine plan designs that promote high value, clinically appropriate patient care; promote unnecessary utilization; and minimize potential savings to the health care system as a whole.

Therefore, we recommend the following:

- Financial support and regulatory flexibility to ensure a stable individual health insurance market. For example, expanded premium assistance and enrollment periods for individual insurance marketplaces would increase access to health coverage for individuals and families during the pandemic, especially if they transition between private and publicly-funded coverage.
- Ensuring that employees (and their families) entering individual health insurance markets mid-year receive credit toward deductibles for out-of-pocket expenses already incurred that year.
- Financial support and regulatory flexibility to bolster state Medicaid programs and expand enrollment options, including consistent eligibility criteria and simplified enrollment processes.
- Providing direct financial assistance specifically for the purpose of maintaining or providing employer-sponsored health coverage. Because the pandemic affects all sectors of the economy, we recommend that this funding be made available to employers of all sizes.

- Amending the Internal Revenue Code to increase employers' options when offering health reimbursement arrangement (HRA) funds to purchase individual market coverage. We recommend that employers have latitude to provide funds and assist employees with individual market enrollment without risk of liability under ERISA or the employer shared responsibility provisions of the Affordable Care Act.
- Permitting health flexible spending arrangement (FSA) and dependent care assistance program (DCAP) participants to carry over their full balances from 2020 to 2021.
- Making permanent the current rules expanding access to telehealth while maintaining flexibility in the design of telehealth benefit and reimbursement policies.

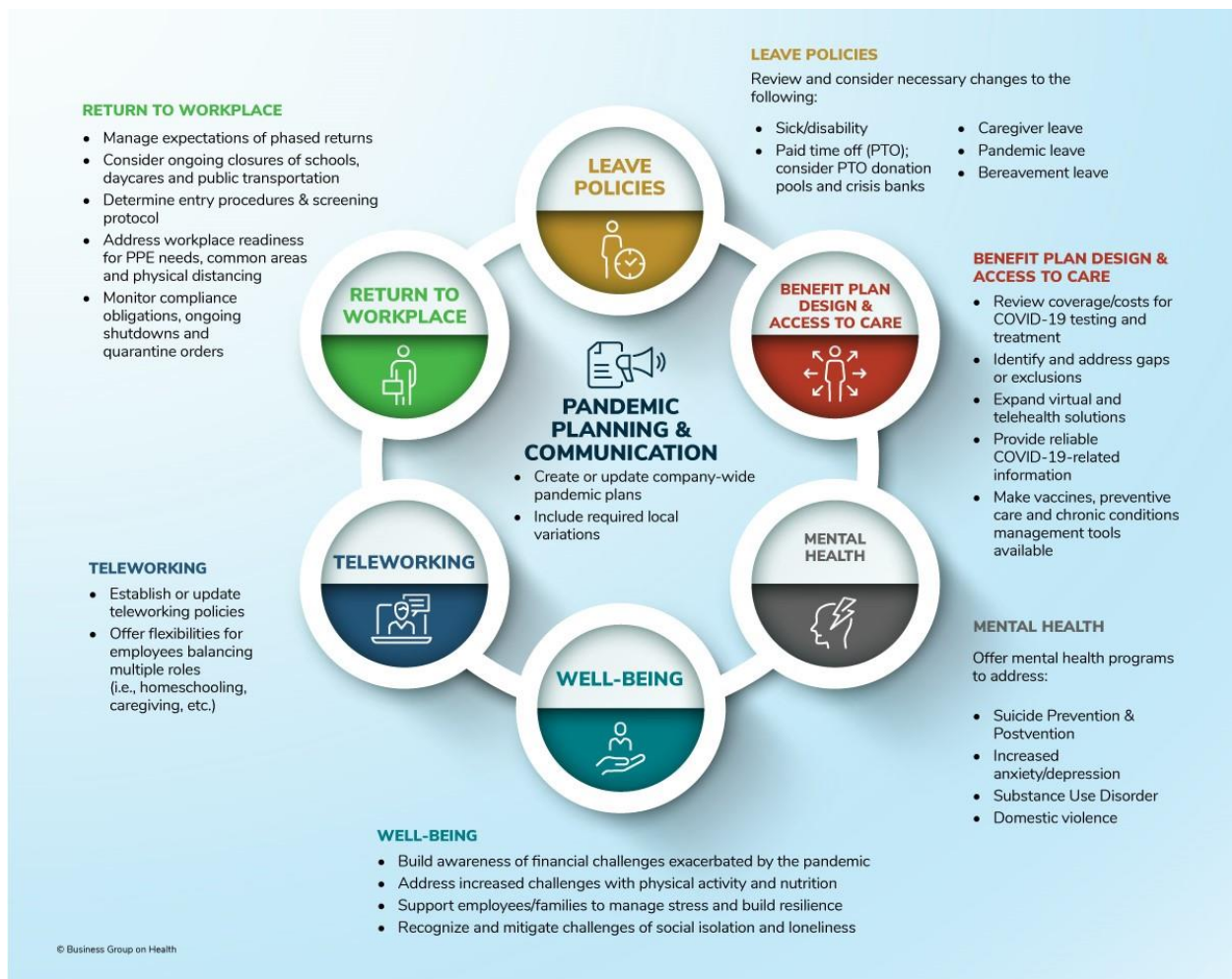
We note that to the extent a subsidy for COBRA continuation coverage is being considered, we recommend:

- A subsidy of 100% of premiums; and
- Stabilizing premiums by establishing risk corridors or a reinsurance program that would cover claim costs exceeding a certain threshold.

II. COVID-19 Testing and Return to the Workplace

The Business Group supports the Families First Act's provisions ensuring individuals' access to COVID-19 testing without cost sharing. As the pandemic continues and coverage costs for COVID-19 related conditions remain uncertain, employers' task of balancing comprehensive coverage with affordability will be all the more difficult. Employer-sponsored group health plans have a legal duty to consider plan design effects on their entire covered populations, including effects on future premiums and cost sharing. Cost sharing structures are based on extensive actuarial analysis of quality, utilization, covered populations, and cost. Therefore, we support the Families First Act's approach to cost sharing for COVID-19 treatment, which acknowledges employer-sponsored plans' obligation to balance access, quality, affordability, and benefit design flexibility—for COVID-19 and all other treatments—for their employees.

In addition to group health plan coverage—designed to cover individuals based on medical necessity—employers are also grappling with the availability, administration, and costs of COVID-19 testing for purposes of employees' safe return to the workplace. Testing and returning to the workplace must also coincide with adapting leave policies, telework arrangements, and employee mental health programs in response to new circumstances brought on by COVID-19. Below is a summary of the many efforts our members have made to support their workforces throughout the pandemic.



Employers continue to have concerns about coverage of tests and treatments that may not have a sufficient evidence base such as serological tests used to detect antibodies against the SARS-CoV-2 virus. Requiring no cost sharing for tests tends to drive higher utilization, but at this point, many tests, no matter how frequently administered, cannot ensure a safe to return to the workplace.

We also note that, despite actions to-date to ease regulatory burdens on pharmacists testing for COVID-19, a statutory barrier still prevents widespread uptake of these services, including by individuals covered by employer-sponsored plans. To ensure appropriate and timely access to critical services--including testing, immunization, and other services related to COVID-19-- Congress should allow pharmacists and pharmacies to bill Medicare directly for testing and immunization services as Part B providers.

Therefore, employers and employees would benefit from:

- Independent, up-to-date information about the benefits and risks of the many tests and treatments currently on the market and coming to market;

- Funding for a consistent, uniformly available COVID-19 testing infrastructure that supports public health and employees' safe return to the workplace; and
- Designation of pharmacists as providers under Medicare Part B for COVID-19, influenza, and RSV testing and immunization.

III. Ensuring Access to Medications

Ensuring the safe and expeditious development of a vaccine and treatment for COVID-19 is, of course, of utmost national priority, but these developments will only be effective if treatment and vaccine prices do not present a barrier to access. As drug developers enter the final stages of COVID-19 vaccine trials, we urge members of Congress to closely watch pricing decisions. At a July 21 hearing of the House Energy and Commerce Oversight and Investigations Subcommittee, manufacturers with promising vaccine candidates revealed that they would not agree to tie prices of potential approved therapies with development costs, while other companies have made public commitments to forego profit on COVID-19 therapies. While manufacturers should be rewarded for their advancements toward ending this unprecedented public health emergency, all potential vaccine recipients would be best served if Congress:

- Avoided implementation of any policies that would shift the cost of treatment and vaccination disproportionately to private payers;
- Considered adaptations to the policy structure related to the development, pricing, and payment for new vaccines and treatments, as more fully discussed by the Institute for Clinical and Economic Review (ICER);
- Explored options that may be better able to achieve the overall goal of fostering rapid development and equitable distribution of effective vaccines and treatments;
- Evaluated the potential advantages and disadvantages of alternative pricing approaches; and
- Explored how pricing will be managed within an overall platform to develop treatments for COVID-19 while achieving affordable access and rewarding innovation.

Finally, we encourage Congress to continue support for employer-sponsored health coverage, as further detailed in our [May 4, 2020 letter](#), by:

- Increasing employers' flexibility to limit COVID-19 related out-of-pocket costs for individuals enrolled in high-deductible health plans (HDHPs) paired with health savings accounts (HSAs) by amending the Internal Revenue Code to allow pre-deductible

coverage of mental and behavioral health medications and services, telehealth services, chronic condition care, and direct primary care;

- Increasing flexibility in cafeteria plan rules for emergency situations by eliminating health flexible spending account (FSA) contribution limits and rollover limits;
- Protecting patients from surprise billing; and
- Supporting employer-sponsored paid leave benefits by establishing a safe harbor whereby employers currently offering leave benefits are deemed in compliance with state and local leave requirements.

Thank you for considering our recommendations. We would be happy to provide additional details and look forward to continuing work with Congress to support employers and employees through the COVID-19 crisis. Please feel free to contact me to discuss (kelsay@businessgrouphealth.org).

Sincerely,

A handwritten signature in black ink that reads "Ellen Kelsay". The signature is written in a cursive, flowing style.

Ellen Kelsay
President & CEO