

November 1, 2021

The Honorable Ron Wyden
Chair
Senate Finance Committee
Washington, DC 20515

The Honorable Mike Crapo
Ranking Member
Senate Finance Committee
Washington, DC 20515

The Honorable Patty Murray
Chair
Senate Health, Education, Labor & Pensions Committee
Washington, DC 20515

The Honorable Richard Burr
Ranking Member
Senate Health, Education, Labor & Pensions Committee
Washington, DC 20515

The Honorable Frank Pallone
Chair
House Energy and Commerce Committee
Washington, DC 20515

The Honorable Cathy McMorris Rodgers
Ranking Member
House Energy and Commerce Committee
Washington, DC 20515

The Honorable Richard Neal
Chair
House Ways and Means Committee
Washington, DC 20515

The Honorable Kevin Brady
Ranking Member
House Ways and Means Committee
Washington, DC 20515

The Honorable Bobby Scott
Chair
House Education and Labor Committee
Washington, DC 20515

The Honorable Virginia Foxx
Ranking Member
House Education and Labor Committee
Washington, DC 20515

RE: Expanding Telehealth Options for Employees

Thank you for your on-going commitment to examining the lessons learned from the COVID-19 pandemic. Much attention has been given to the important role telehealth and remote care services have played in extending access to high quality care during the pandemic. As your committees analyze the full scope of temporary telehealth policies put into place during the current public health emergency (PHE), we urge you to consider making permanent the current regulatory flexibility extended by the Departments of Labor, Health and Human Services (HHS) and Treasury that allows telehealth and remote care services to be treated as an *excepted benefit*. Including standalone telehealth as an excepted benefit will help ensure hardworking Americans can access high-quality, cost-effective care when and where they need it most, regardless of employment status.

Without Congressional action, employers will be unable to offer basic virtual health services to millions of Americans in part-time and seasonal jobs or workers otherwise not participating in their employer's full medical plan.

Telehealth and remote care services offer access to high-quality, medical services that have proven to be an essential lifeline to U.S. workers during the COVID-19 pandemic. This access has emerged as a cost-effective solution to ensure that working Americans have access to medical care, including behavioral and mental health services, regardless of their coverage status or eligibility.

As Congress examines what policies are needed to transition to a post-pandemic economy, we ask that you consider targeted reforms to ERISA that would permanently allow employers to expand additional telehealth benefit options to many of our nation’s workers. While many employers want to provide telehealth or remote care benefits to employees, they are prohibited from doing so without exposure to penalties under ERISA.

Under current law, when telehealth or remote care services are provided by an employer, the benefit is considered a “group health plan” under ERISA, which triggers a number of mandates. If these mandates are not met, the employer is subject to per-day, per-violation penalties, unless otherwise specified. Neither telehealth nor remote care services are currently included among the excepted benefits under ERISA. This prevents the employer from offering these services to all employees, not just those full-time employees who elect coverage in an employer’s plan.

On June 23, 2020, the Labor, HHS and Treasury Departments jointly issued an FAQ pertaining to the Families First Coronavirus Response Act, the Coronavirus Aid, Relief, and Economic Security Act (CARES) and other health coverage issues.¹ Specifically, it stated that the agencies would take a non-enforcement position for employers wishing to provide telehealth or other remote care services to employees ineligible for any other employer-sponsored group health plan.

This temporary relief is just that: temporary. Uncertainty has driven employer hesitancy to offer telehealth benefits that will have to be taken away a short time later. A permanent solution is needed to ensure expanded, long-term access to these services. Permanently adding telehealth and remote care services as an excepted benefit would enable employers to provide access to safe, high-quality virtual care benefits to more employees.

Designating stand-alone telehealth and remote services as an excepted benefit *would not* affect an employer’s responsibility to offer minimum essential coverage to employees under the Affordable Care Act. Employers *would not* have the ability to swap out an employee’s full medical benefit for excepted stand-alone telehealth benefits, which are limited in scope and not considered a full medical plan.

The COVID-19 pandemic has illustrated the immense benefits of telehealth and remote care services. American workers want these benefits, and employers want to provide them. With temporary flexibilities that allowed employers to fill gaps in care set to expire, we urge you to consider making permanent the current policies that allow telehealth and remote care services to be treated as an excepted benefit.

Thank you for your continued leadership on this critical issue.

Sincerely,

98Point6
Alliance for Connected Care
American Rental Association
American Telemedicine Association
Auto Care Association

¹ <https://www.cms.gov/files/document/FFCRA-Part-43-FAQs.pdf>

Babylon
Business Group on Health
Business Roundtable
CAC Counseling LLC
Care Compass Network
Centerstone
CirrusMD
Curex Medical Group
Darbie Little-Cooper PLLC
DigitalOptometrics LLC
Digital Trust Networks Inc
Employers' Advanced Cooperative on Healthcare
Go2Care
Health Innovation Alliance
Healthcare Leadership Council
HR Policy Association
Kansas Business Group on Health
Midwest Business Group on Health
Moffitt Cancer Center
MorningStar Family Health Center
Multiple Sclerosis Center of Atlanta
National Alliance of Healthcare Purchaser Coalitions
National Association of Chain Drug Stores
National Association of Health Underwriters
National Association of Wholesaler-Distributors
National Association of Worksite Health Centers
One Medical
Partnership to Advance Virtual Care
Partnership for Employer-Sponsored Coverage
Pittsburgh Business Group on Health
Rhode Island Business Group on Health
Self-Insurance Institute of America
Silicon Valley Employers Forum
Spectrum Health
Teladoc Health
Telecare Anywhere
The ERISA Industry Committee
Thirty Madison
U.S. Chamber of Commerce
Vault Medical Services
VitalTech Affiliates LLC
VoCare, Inc
Walmart
Zipnosis