

EMPLOYER / PURCHASER ORGANIZATION RECOMMENDATIONS
FOR COVID RELIEF LEGISLATION

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

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, DC 20510

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

The Honorable Chuck Schumer
Minority Leader
United States Senate
Washington, DC 20510

Dec. 7, 2020

Dear Speaker Pelosi, and Leaders McConnell, McCarthy, and Schumer:

In May and July of this year, the nation's leading employer and health care purchaser organizations sent letters to Congressional leaders making recommendations for federal legislation to enable employers to support their employees and families during the continuing COVID-19 pandemic.¹ Since our last letter to you, dated July 21, nearly 10 million more people in our country have been infected by COVID-19, and at least 121,000 have died.² Today, we are in the middle of the largest spike in cases since the pandemic began, with 100,000 or more people contracting COVID each day.

The lack of congressional action has taken a toll on America's employers and employees. Millions of Americans remain out of work. The eventual deployment of successful vaccines provides a reason for hope, but population-wide inoculation is many months away, and our country is facing a long and difficult winter ahead. This is to say nothing of the downstream effects of the pandemic, including measurable increases in mental health needs and substance use disorders, as well as reduced childhood vaccinations and cancer screening.

We applaud the bipartisan, bicameral work of lawmakers to bring a COVID relief package to the floor this week. While the bipartisan bill coordinated by the Problem Solvers Caucus represents a strong start, we recommend a number of policies to enable employers and health care purchasers to continue to provide access to high quality health care to their employees and help bring the pandemic to an end.

To that end, the **undersigned organizations, representing many of the nation's leading private and public sector employers, offer our recommendations for forthcoming legislation.**

¹ [https://www.pbgh.org/storage/documents/commentary/Employer Organization COVID-19 Letter - FINAL 5.18.20.pdf](https://www.pbgh.org/storage/documents/commentary/Employer_Organization_COVID-19_Letter_-_FINAL_5.18.20.pdf)

² <https://covid.cdc.gov/covid-data-tracker/>

Our recommendations fall into four major priority areas:

- Strengthen Public Health and Prevent Price Gouging on COVID Items and Services
- Provide Affordable Health Care Coverage in the Immediate Term
- Ensure Access to Primary Care
- Protect Employers During the Pandemic

Strengthen Public Health and Stop Price Gouging on COVID Items and Services

We recognize that the economy will not fully recover until the public feels safe resuming normal economic activity and there is population-wide inoculation. Congress can take immediate steps to protect and strengthen public health during the pandemic.

Access to and Fair Prices for Vaccines, Testing, and Personal Protective Equipment (PPE)

We very much appreciate the unprecedented efforts of the Department of Health and Human Services (HHS) and private partners through Operation Warp Speed to bring safe and effective COVID-19 vaccines to market in record time. To date, Congress has appropriated nearly \$10 billion in taxpayer funding for this effort. We encourage Congress to take all necessary steps to ensure the vaccines are distributed quickly and equitably, and as look forward to working with federal, state, and local policymakers to assist in the distribution of vaccines to our workforces.

While the imminent availability of vaccines is welcome news, in the meantime, our experience as employers has revealed that widespread access to timely and accurate testing is vital. Inaccurate tests and delays in receiving a result pose a significant strain on businesses and employees. **We recommend Congress prioritize funding for the development and distribution of fast, accurate tests.**

We are also dismayed that some health care providers and essential workers are reporting that they lack access to adequate PPE.³ Now more than nine months into the pandemic, this is an unacceptable failure. **We urge Congress to provide sufficient funding and direct the Administration to develop a comprehensive PPE manufacturing and distribution strategy.** Like the rest of the country, America's employers and health care purchasers are heartened by the rapid development of accurate and safe vaccines for COVID-19. We look forward to doing our part in helping to distribute the vaccines to our workforces and providing accurate information about the necessity and safety of the vaccine.

A key part of access to vaccines, testing, and PPE is ensuring that those items are provided at fair prices to consumers and purchasers. Current law requires purchasers to pay literally any price requested by providers for COVID testing, regardless of speed or accuracy. This has led to continued price gouging on the part of some unscrupulous providers.⁴ We ask that Congress provide a cap on COVID test prices, and further recommend that purchasers not be forced to pay sometimes exorbitant rates for tests that

³ <https://www.ajc.com/news/nation-world/us-faces-another-shortage-of-ppe-including-masks-as-virus-surges/GOZYMR3GTRAWTMYLBZCEVCLNAU/>

⁴ <https://www.ahip.org/new-data-covid-19-test-price-gouging-continues/>

are found to be inaccurate or too slow to be of real value. **To ensure price gouging does not occur for vaccinations, and in recognition of the taxpayer funding already provided for vaccine research and development, we urge Congress to mandate fair and reasonable prices for vaccine doses and the administration of vaccines.**

Funding for Public Health Measures

We recognize the vital role state and local public health departments play in curbing the pandemic, including testing, contact tracing, public health awareness, and the distribution of an eventual vaccine. Previous COVID relief packages have included some funding in this regard. But more is needed, especially to support a nationwide testing, vaccine distribution, and virus mitigation strategy. This funding should be provided contingent upon inclusion of employers as partners in said strategy. **To facilitate a rapid end to the pandemic, we urge Congress to provide as much support as necessary to ensure public health authorities are able to successfully execute their vital public health missions.**

Congress should also direct executive branch agencies to expeditiously distribute the funds that Congress has previously appropriated to address this pressing need.

Provide Affordable Health Care Coverage in the Immediate Term

The pandemic has placed unprecedented strain on our country's health care payment and delivery systems. As Congress and the administration grapple with this rapidly evolving and highly destructive crisis, we urge policymakers to pass legislation that secures health care coverage.

Ensure sufficient COBRA subsidies to protect patients

Any short-term solution to ensure access to affordable employer-sponsored coverage through COBRA must also include **federal subsidies covering at least 90 percent of the cost** for those who have lost their jobs or have been furloughed. This subsidy should last through the duration of the crisis. Enabling people to maintain their current coverage is particularly beneficial for those in the middle of a course of treatment, people needing continued management of chronic conditions, pregnant women, and people who have been furloughed, but expect to return to work in the near future. This sensible policy also helps Americans who have already met their deductible in the current plan year to avoid being forced to pick a new plan with a new deductible – an especially important policy consideration given the devastating economic impact of COVID-19. Any COBRA subsidy must be sufficient to prevent cost-increases in employer-sponsored plans due to adverse risk. Requiring extended COBRA coverage without a subsidy, or with a subsidy insufficient to address adverse risk, could increase health care costs for Americans with employer-sponsored coverage, and should be avoided.

Increase access to telehealth coverage and care

Congress should also take immediate action to increase access to telehealth coverage and care for the duration of the crisis. This should include:

- Increasing the ability for telehealth to be offered as a stand-alone benefit to workers not enrolled in the company's full medical plan
- Eliminating state barriers to telehealth care (such as video-only rules, requirements that the patient already have a relationship with the doctor, or travel to a particular location to access telehealth)
- Allowing licensed providers to see patients via telehealth in other states without needing 50 different state licenses.

Given the long-term promise of telehealth as a care delivery method for many patients and conditions, we also support making permanent CARES Act provisions allowing High Deductible Health Plans (HDHP) to provide pre-deductible coverage of telehealth visits.

Telehealth is a particularly useful tool during the pandemic for patients seeking mental and behavioral health care. Today, mental, and behavioral health providers are grappling with surges in pandemic-related mental and behavioral health concerns, in a field where access to affordable and high-quality care was already in short supply⁵

While employers very much support the use of telehealth as a way to expand access to care and reduce costs, we **strongly oppose efforts to mandate that employer-sponsored plans pay for telehealth services at a rate equal to payment for in-person care, or pay for services that are not shown to be safe and effective via telehealth.** Such a mandate harms employers' ability to promote high value, clinically appropriate, telehealth at reasonable costs.

Enact a market-based solution to surprise medical billing

The COVID-19 pandemic has made the surprise billing problem even worse. With tens of thousands of people now seeking care for COVID-19, many are being forced to see out-of-network providers due to the overwhelmed health care system. It is more important than ever that Congress prioritize a permanent ban on surprise billing for all patients. This legislation should protect patients and hold down health care costs by **using a local, market-based payment rate for surprise medical bills. We strongly oppose a solution solely utilizing arbitration as the method to settle out-of-network surprise bills.**

Increase flexibility for health and dependent care FSAs

Congress should increase flexibility for health and dependent care flexible spending

⁵ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7387833/>

arrangements (FSAs) due to vastly different circumstances resulting from the pandemic than anticipated when elections were made.

Ensure Access to Primary Care

While some health care providers have fared well during the pandemic, many others have experienced significant financial strain. Primary care providers, in particular, saw a dramatic reduction in revenue during much of the year, and remain in a precarious position. We recommend Congress renew funding for the Provider Relief Fund, with special attention paid to the small and independent primary care practices that are in most need of help. **Congress should provide immediate financial assistance** to ensure primary care practices survive the significant loss of revenue, and can continue to serve their patients. To that end, Congress should:

- Require HHS **Provider Relief Funds to be dedicated to primary care** clinicians/clinical practices that most need financial assistance
- Allow HDHPs to **waive all or part of cost sharing for primary care visits**, at least for the duration of the public health emergency. Further, HDHPs should be allowed to provide pre-deductible coverage of more robust services, including primary care services and chronic condition management at on-site employer clinics.
- Mandate that health care provider organizations certify they **will not engage in mergers and acquisitions** of other provider organizations for 12 months as a condition of receiving COVID relief funds.

Protections for Employees and Employers During the Pandemic

As noted above, many Americans will continue to struggle financially until the COVID-19 pandemic is over – likely many months from now. It has been eight months since Congress enacted any significant economic relief legislation, the benefits of which have largely run out. Congress must take action to keep our struggling economy alive for the foreseeable future. In particular, we recommend:

Extension of the Paycheck Protection Program (PPP)

While most of the businesses represented by our organizations are too large to directly benefit from the PPP, our members often rely on smaller businesses as customers, suppliers, and clients. The PPP was successful in keeping afloat many smaller businesses around the country. With the end of the pandemic months away, those businesses continue to need financial support. While vital to the survival of many businesses, the previous round of PPP was found to disproportionately benefit the largest eligible businesses. When renewing the PPP, we recommend Congress establish mechanisms that level the playing field for smaller businesses and non-profits in the application process and which prevent banks from prioritizing their largest customers in processing applications.

Nationwide Liability Protection for Employers that Meet Federal Public Health Guidelines

For many employers to fully reopen their places of business, they must be protected from liability stemming from COVID-19 claims. Most of our member companies employ people in multiple states. To balance the need to promote public health, we recommend that Congress direct the Administration to publish clear and explicit national public health guidelines for places of business. Those businesses that meet such guidelines should then be afforded liability protection across all fifty states.

Conclusion

Thank you for working to address the devastating health care and economic consequences of the COVID-19 pandemic. The employer and purchaser looks forward to successful passage of legislation that makes workplace and communities safer, strengthens our economy and improves the affordability and accessibility of health insurance and care. To discuss further, please contact the following representatives of the signing organizations: Shawn Gremminger at the Pacific Business Group on Health, sgremminger@pbgh.org, Ilyse Schuman at the American Benefits Council, ischuman@abcstaff.org, James Gelfand at the ERISA Industry Committee, jgelfand@eric.org, and Mike Thompson at the National Alliance of Healthcare Purchaser Coalitions, mthompson@nationalalliancehealth.org.

Sincerely,

American Benefits Council
The ERISA Industry Committee
Pacific Business Group on Health
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