

Summary of Recommendations for Financing and Delivering Health Care

Compiled and edited by the Editorial Committee

The editors asked the authors to provide their best recommendations for legal action in response to COVID-19. Recommendations for *Financing and Delivering Health Care* address private and public insurance, as well as matters of patient and provider safety and care for mental health and substance use disorder. Recommendations include both calls for urgent action now, as well as longer term changes that reflect the way the pandemic has highlighted deeper problems in American law and policy. We have organized the recommendations into federal, state and local guidance.

Each recommendation is referenced back to its author(s). Please refer to specific chapters for a complete list of recommendations on a particular topic.

Action at the Federal Level

- To maximize impact of private insurance plans
 - o Congress should pass legislation waiving cost-sharing obligations and prohibiting balance-billing for out-of-network charges to self-insured plans
 - o HHS should clarify that federal coverage mandates and fee waivers are retroactive to the beginning of 2020 and will continue for the duration of the public health emergency
 - o Congress should extend fee waivers for COVID-19 screening and provide that screening may be conducted by an out-of-network provider as long as the member makes a good faith effort to see an in-network provider
 - o Congress should authorize COBRA subsidies to help workers and their families maintain continuous, comprehensive coverage
 - o Congress should establish a federal vaccination fund, which would allow the federal government, rather than insurance companies or Medicaid programs, to negotiate prices with vaccine manufacturers in order to equitably distribute free virus and serological testing to all Americans as well as reimburse providers for administering these tests based on Medicare rates (Weeks, Private Insurance)
- To maximize the impact of Medicaid, Congress should
 - o Increase the enhanced FMAP by several percentage points and extend it for the duration of the COVID-19 related economic downturn; any enhanced FMAP should condition the extra money on states' implementation of maintenance of effort requirements that prevent cutting eligibility and enrollment
 - o Provide a financial incentive of a 100% FMAP for the first three years of Medicaid expansion to encourage remaining states to adopt the ACA's Medicaid expansion
 - o Offer states an enhanced FMAP for administrative costs
- for outreach and enrollment efforts to communicate with newly uninsured people who have lost coverage because of COVID-19 (Huberfeld and Watson, Medicaid)
- To provide coverage for the uninsured, the federal government should increase its support for health care safety net providers by better targeting federal emergency provider grants, giving states greater Medicaid flexibility to help safety net providers, and helping uninsured patients gain access to the Provider Uninsured Claims Fund
 - o HHS should increase the targeted Medicaid Fund and lift restrictions against assisting high-Medicaid-reliant providers that qualify for limited help from the General Fund
 - o Rather than attempting to control distribution, HHS should allocate targeted Medicaid Funds directly to states in order to better ensure a more coordinated strategy with additional state reforms
 - o The HRSA Uninsured Claims Fund should be reformed to operate with greater transparency in terms of which providers receive funding and accessible help for patients in need of financial assistance, including help in languages spoken by the community
 - o HHS should lift restrictions that prevent use of the fund by certain safety net providers. Specifically, there should be no bar against receipt of funding by Ryan White Care Act (RWCA) clinics that also receive RWCA funding for costs associated with HIV/AIDS treatment
 - o Congress should appropriate additional direct payment funding to providers
 - o Congress should instruct HHS to open the targeted Medicaid Fund to health care providers obligated under federal, state, or local law to provide free and low-cost care to the uninsured, regardless of whether providers also have received help through the General Fund
 - o Congress should direct HHS to administer the uninsured

- claims fund with greater transparency to patients while restricting access to such funding to hospitals that are deemed DSH hospitals and tax-exempt hospitals that can demonstrate that they maintain a published and accessible financial assistance policy as required under the Internal Revenue Code
- o Congress should give state Medicaid programs the flexibility to make retainer payments to Medicaid providers that furnish elevated levels of health care to medically underserved populations and communities (Rosenbaum and Handley, Caring for the Uninsured)
- To protect patients, staff and visitors in nursing homes,
 - o Congress should
 - Significantly expand OSHA's enforcement resources for effective follow-up on complaints from nursing home and long-term care staff
 - Not pass a federal law granting nursing homes immunity from liability during COVID-19
 - Include the proposed Quality Care for Nursing Home Residents and Workers During COVID-19 Act of 2020 in the next coronavirus relief package or similar legislation that links regulatory oversight with funding to improve quality care and health outcomes
 - o CMS should
 - Mandate adequate staffing ratios in nursing homes and long-term care facilities
 - Withdraw its proposed rule entitled, Requirements for Long-Term Care Facilities: Regulatory Provisions to Promote Efficiency and Transparency
 - Expand the nursing home dataset to include racial demographics of residents
 - o OSHA should pass legally binding regulations that make employer compliance with PPE and other CDC safety measures compulsory under the General Duty clause
 - o The president should extend the National Guard deployment of assistance to nursing homes and their residents (Skar, Will the Coronavirus Make Us Rethink Quality Care)
- To reap the benefits of telehealth during the COVID-19 pandemic and after
 - o Congress should enact legislation
 - Permitting Medicare and Medicaid reimbursement for patient training and education relating to telehealth digital literacy and encourage providers to target populations with known disparities in telehealth services
 - Permanently extending the telehealth Medicare expansion permitting patients to receive telehealth from new locations, including rural health clinics, Federally Qualified Health Centers and patients' homes
 - Permanently extending Medicare coverage of telehealth services that can be delivered to the same standard of care as comparable in-person services
 - Permanently reducing or eliminating copayments and other out-of-pocket expenses for telehealth services that have demonstrated cost-savings compared to their in-person equivalent service
 - Establishing mechanisms and funding for improving access to telehealth-capable devices for underserved and vulnerable populations
 - o CMS should reduce or eliminate copayments and other out-of-pocket expenses for appropriate telehealth services during the COVID-19 response
 - o HHS and CDC should monitor telehealth policy changes for inequitable outcomes, especially in vulnerable populations (Schmit et al, Telehealth; see also Krueger, Mental Health)
- To assure access to effective care for Substance Use Disorder
 - o Congress should
 - Amend 21 USC § 829(e) to permit clinicians to prescribe buprenorphine for OUD treatment without an initial in-person evaluation, including through audio-only interactions where necessary
 - Amend 21 USC § 823(g)(2) to permit all prescribers registered with the DEA to prescribe buprenorphine for OUD treatment without first obtaining a "waiver"
 - Amend 21 USC § 823(g)(2)(B)(iii) to remove or increase the cap on the number of patients a waived provider may treat with buprenorphine
 - o The Secretary of Health and Human Services (HHS) should
 - In coordination with the Attorney General, use the statutory authority provided by 21 USC § 54(D) to waive the Ryan Haight Act's in-person examination requirement for the duration of the federally-declared opioid emergency
 - Remove restrictions on which patients may receive methadone for OUD by repealing 42 CFR § 812(e)
 - Repeal the requirement in 42 CFR § 812(f)(2) that a prospective OTP patient undergo a "complete, fully documented physical evaluation" before admission
 - Repeal 42 CFR § 812(h)(3)(ii) to remove initial dosing limitations on methadone treatment
 - Modify 42 CFR § 812(i) to liberalize limitations on take-home methadone dosing
 - Modify 42 CFR § 811(a)(1) to permit facilities such as pharmacies that do not meet all the requirements of 42 CFR § 812 to dispense methadone for OUD treatment
 - o The Attorney General should comply with the requirements of 21 USC § 831(h)(2) and promulgate regulations that permit all waived clinicians to prescribe buprenorphine without conducting an in-person examination of the prospective patient
 - o Federal agencies that provide funding to graduate medical education, particularly the Centers for Medicare and Medicaid Services, should condition federal funding of

residency programs on clinicians having received evidence-based instruction in OUD prevention, care, and treatment (Davis and Lieberman, Access)

- To address critical mental health needs, Congress should
 - o Amend the Stafford Act to authorize the Crisis Counseling Assistance and Training Program under public health emergencies when appropriate, and remove the limitation of assistance to nine months following the disaster
 - o Significantly increase funding for providing and marketing for the Crisis Counseling Program in every state
 - o Increase funding for research and culturally competent training in Psychological First Aid
 - o Require regular training in Psychological First Aid as a condition of receipt of emergency preparedness funds, such as Healthcare Preparedness Coalitions
 - o Increase funding for maternal, infant, and early childhood home visiting programs
 - o Increase funding for suicide prevention programs funded through the Garrett Lee Smith Act (Krueger, Mental Health)
- To assure access to abortion services,
 - o The FDA should stop enforcing the outdated Mifepristone REMS protocol so that
 - Physicians no longer have to certify in a written form submitted to the drug sponsor that they have certain required qualifications
 - Mifepristone can be dispensed outside of a hospital, clinic, or medical office, by or under the supervision of a certified healthcare provider
 - o The FDA should issue guidance confirming the results of studies demonstrating medication abortion's safety and efficacy, allowing mifepristone to be ordered through mail-order prescription services and at retail pharmacies
 - o Congress should enact legislation that medical abortion can be a health service appropriately included in plans for telemedicine's expansion
 - o Congress should not exclude funding for teleabortion care in future appropriations COVID-19 relief (Rebouche, Assuring Access)

Action at the State Level

- To maximize the impact of private insurance
 - o States regulators should open Special Enrollment Periods and extend their end-dates for state-operated Marketplaces in all states
 - o Legislatures should enact individual health insurance mandates to stabilize risk pools and provide access to timely and appropriate preventive care and other treatment, rather than allowing individuals to delay and seek care once conditions become acute, as originally intended under the ACA

- o In the event of wholesale repeal of the ACA, legislatures should enact comprehensive reforms, including prohibitions on health-status underwriting and ratemaking
- o Legislatures should enact legislation providing for a "public option," publicly funded health insurance, for those who do not qualify for Medicare, Medicaid, other government health care programs, or ESI, that would be included along with private plans offered on the ACA's state-based marketplaces (Weeks, Private Insurance)
- To maximize the impact of Medicaid, states should
 - o Continue to use the flexible waiver and SPA options offered during the public health emergency to maintain or expand eligibility and streamline application and enrollment processes
 - o Take advantage of the SPA options that allow them to expand eligibility, at least during the public health emergency, to additional uninsured adults and children. These options including raising income eligibility levels and eliminating the five-year waiting period so that immigrant children and pregnant women lawfully residing in the United States can qualify (Huberfeld and Watson, Medicaid)
- States should provide Medicaid and CHIP to all otherwise eligible non-citizens. States should also use their own funds to provide coverage to additional classes of non-citizens (Parmet, Immigration)
- State Medicaid Agencies should adopt the following strategies to help safety net providers
 - o Adjust payment rules rates to recognize extraordinary investment and operational costs incurred in adapting to COVID testing and treatment
 - o Add payment for services furnished in nontraditional care settings and payment for telemedicine care, both of which are permitted under § 1135 of the Social Security Act and through regular state Medicaid plan amendment process
 - o Pursue demonstrations under HHS's Social Security Act § 1115 special research and demonstration authority that enable states to expand eligibility and benefits on an experimental basis
 - o Use Medicaid managed care to expand safety net provider relief, including moving to partial capitation payment methodologies for primary care services furnished by network safety net providers in order to improve revenue flow
 - o Take advantage of an existing federal option to make additional stabilization payments (known as retainer payments) for habilitation and personal care services, even though the administration has barred retainer payments for other types of providers
 - o Instruct their managed care plans to speed the credentialing of out-of-state COVID testing and treatment providers serving residents living in border areas and streamline utilization and medical management requirements (Rosenbaum and Handley, Caring for the Uninsured)

- States should expand and strengthen the duties of tax-exempt hospitals, particularly those with net revenue that exceeds the statewide average
 - o States should supplement tax-exempt hospitals' financial assistance obligations under § 501(c)(3) by setting targeted dollar assistance levels pegged to hospitals' net revenue and should ensure that all tax-exempt hospitals offer accessible application assistance patients, adapted to the languages spoken in the community (Rosenbaum and Handley, Caring for the Uninsured)
- To protect patients, staff and visitors in nursing homes
 - o Nursing home regulators should mandate adequate staffing ratios in nursing homes and long-term care facilities
 - o State administrations should amend or reverse any executive orders that require nursing homes to accept COVID-19 positive patients if they do not have the PPE supplies and ability to adequately isolate them
 - o State governors or legislators should not grant nursing homes immunity from liability during COVID-19
 - o Legislators should significantly expand state OSH agency enforcement resources (Skar, Will the Coronavirus Make Us Rethink Quality Care)
- To reap the benefits of telehealth during the COVID-19 pandemic and after
 - o Legislatures should
 - Lift restrictions on telehealth locations to permit both providers and patients to use telehealth from a safe location, including their homes
 - Limit out-of-pocket expenses by restricting or reducing cost-sharing (eg, co-pays, deductibles) for telehealth services
 - Expand coverage of telehealth services provided by Medicaid and private health plans
 - o Governors and state agencies should use their emergency powers during COVID-19 to
 - Permit new modes of telehealth, including asynchronous, store-and-forward, audio-only (eg, telephone), and secure messaging/email
 - Permit any health care provider to use telehealth for health care services if those services can be delivered to an acceptable level of care
 - Permit out-of-state health professionals that are licensed and in good standing in their home states to practice telehealth within their jurisdiction
 - o Governors and state agencies should vigorously implement telehealth parity laws to support health care providers with falling patient volumes during the COVID-19 response (Schmit et al, Telehealth; see also Krueger, Mental Health)
- To support better access to mental health services
 - o Legislators should
 - Adopt and enforce mental health parity requirements that are at least as strong as federal requirement
 - Increase funding for maternal infant and early childhood home visiting programs
 - Fund mental health education and services in public universities and community colleges
 - Expand funding for trauma informed care and suicide prevention, including targeted efforts to support African-American, Native American, and LGBTQ youth, and other groups at heightened risk
 - o Governors and appropriate state agencies should
 - Consider joining the Psychology Interjurisdictional Compact
 - Require and facilitate education about mental health in K-12 schools, including providing Mental Health First Aid training for teachers and addressing mental health as an aspect of health in K-12 health education courses
 - Require and facilitate education and practice in social and emotional learning skills for all adults involved in school settings, including online learning, and integrate social and emotional learning and skills practice in preschool-12 instruction
 - Incorporate information and skills related to mental health assessment and suicide prevention in continuing education requirements for health care providers (Krueger, Mental Health)
- To assure access to effective care for Substance Use Disorder
 - o Legislators and regulatory agencies should
 - Remove restrictions on OTP siting and forbid localities from imposing such restrictions
 - Authorize the provision of buprenorphine via telehealth where applicable
 - Remove prior authorization and other payment barriers to OAT
 - Require state and local correctional facilities to screen for OUD and offer OAT as appropriate
 - Require all newly licensed physicians to obtain a waiver to prescribe buprenorphine for OAT
 - o Legislators should reform criminal and child protection laws that serve as barriers to treatment access
 - o Regulatory agencies should enable individuals with OAT to access a waived prescriber by calling a single, toll-free number (Davis and Lieberman, Access)
- To assure access to abortion services
 - o Legislators should
 - Repeal cumbersome abortion regulations, such as waiting periods and ultrasound requirements, so that patients can avoid unnecessary visits to clinics and decrease the risk of COVID-19 exposure

- Repeal penalties for self-managed abortion including criminal penalties for extralegal abortion
 - Repeal restrictions on telemedicine as applied to abortion, such as in-person and physician-only administration of medication abortion
 - Include medication abortion among the healthcare services subject to state efforts to expand telemedicine or to relax restrictions on telemedicine
- o Governors and authorized officers should remove restrictions on telehealth modes (include telephone, audio-only communications), locations (permit use at home), delivery (allow any health care provider operating across jurisdictions) from state emergency orders (Rebouche, Assuring Access)
- Governors and other authorized officers should clarify in emergency orders that LGBT-focused services—including access to HIV medication and gender confirmation services—remain essential (Konnoth, Supporting LGBT Communities)

Action at the Local Level

- To remove barriers to effective care for Substance Use Disorder, local governments should modify zoning and licensing laws that create barriers to the establishment of and access to methadone treatment facilities (Davis and Lieberman, Access)