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August 2, 2024

The Honorable Larry Bucshon, M.D.
2313 Rayburn House Office Building
Washington, DC 20515

The Honorable Diana DeGette
2111 Rayburn House Office Building
Washington, DC 20515

Dear Doctor Bucshon and Representative DeGette,

On behalf of the American Psychological Association Services (APA Services), I would like to thank you for the opportunity to provide an update on federal efforts to modernize the American behavioral health system, as well as identify remaining gaps in these efforts. APA Services is the companion organization of the American Psychological Association, which is the nation's largest scientific and professional nonprofit organization representing the discipline and profession of psychology, as well as over 157,000 members and affiliates who are clinicians, researchers, educators, consultants, and students in psychological science. APA Services also offered [comments](#) to the draft 21st Century Cures 2.0 language circulated in 2021, so please accept this response to your June 6th Request for Information (RFI) as an update to our earlier comments.

In the years since the COVID-19 pandemic, the mental and behavioral health system has evolved in ways that were inconceivable only a few years prior. A major expansion of telehealth services and the advent of digital forms of behavioral health treatment, for example, have aided in the expansion of access to mental and behavioral health treatment, particularly to those in rural and underserved communities that have long struggled to access such treatment. At the same time, however, multiple challenges remain ahead to ensure that the hard-fought gains achieved over the past few years are not undone.

APA Services stands ready to work with your staff on crafting language to effectuate our recommendations, which include:

- Facilitating mechanisms for adoption of treatment delivered via FDA-cleared electronic devices;
- Attracting an adequate workforce of behavioral health clinicians to the Medicare program;
- Continuing recent progress on expanding access to behavioral health care furnished via telehealth;
- Incentivizing adoption of evidence-based models of integrated primary and behavioral health care;
- Funding research on new behavioral health innovations;
- Ensuring adequate access to substance use disorder treatment;
- Supporting the recruitment and training behavioral health clinicians; and
- Ensuring adequate enforcement of mental health parity laws.



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Digital Therapeutics

APA Services thanks members of Congress who joined the effort to encourage the Centers for Medicare and Medicaid Services (CMS) to adopt a pathway for Medicare coverage of mental health treatment furnished via evidence-based digital devices or software. Thanks to their efforts, CMS outlined such a proposal in the CY 2025 Medicare Physician Fee Schedule proposed rule. Specifically, it creates three new reimbursement codes to provide reimbursement not only for the supply of a digital mental health treatment device, but also for practitioners' time spent monitoring the patient's use of the device and providing services in conjunction with the device. Together, these policies will aid in both the creation of new innovations in digital treatment that meet the FDA's safety and efficacy standards, as well as facilitate practitioner adoption of these innovations.

Medicare

Despite the forward-thinking provisions in this year's Physician Fee Schedule (PFS) proposed rule, CMS cannot on its own fix a central problem contributing to declining provider participation in the Medicare program. Reimbursement for providers in the Medicare program declined by 26% since 2001, when accounting for inflation. Currently, the PFS is updated each year using a single, global update factor, which does not account for inflation. There is a statutory freeze on increases in the annual update factor for PFS payments until 2026, and future annual updates will be limited to no more than 0.25%. To activate an adequate provider workforce in the Medicare program, APA Services urges Congress to take up and pass the **Strengthening Medicare for Patients and Providers Act (H.R. 2474)**. Instead of the current approach to provider reimbursement, H.R. 2474 would tie the annual update to the Medicare Economic Index (MEI), a measure that is reflective of changes in both provider expenses and broader economic trends.

APA Services also calls on Congress to rethink its approach to incentivizing quality mental and behavioral health care services. The current approach to calculating the threshold for Merit-Based Incentive Payment System (MIPS) penalties, for example, unfairly disadvantages psychologists and other behavioral health clinicians. Of the 198 existing MIPS Quality Measures available for 2023, only 21 measures are applicable to mental health providers; of those, only 12 measures have been benchmarked, 6 of which have a maximum score of only 7 points. Additionally, psychologists are limited in their ability to report on the Promoting Interoperability (PI) measure due to their exclusion from funding provided under the HITECH Act for the 'meaningful use' of electronic health records technology. This leaves psychologists with less of an opportunity to accumulate points compared to clinicians. APA Services shares Congress' goal of ensuring quality care and welcomes an opportunity to work with your offices on an alternative proposal.

Telehealth

During the COVID-19 pandemic, Congress looked to expanding telehealth as a practical means of complying with social distancing rules while ensuring continuity of care for patients already receiving care for a chronic medical or mental health condition. Although the pandemic and social distancing mandates are behind us, the acceptance and use of telehealth for treatment of



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mental and behavioral health services remains a popular option for patients and practitioners alike.¹ In some cases, the decision of patients and providers to use telehealth may have superior clinical benefits over their in-person counterparts; for example, psychologists treating patients via telehealth may gain insights into the patient’s personal living environment or patients may feel more comfortable accessing treatment from the psychological safety of a setting more familiar to the patient.

Congress is faced with critical decisions before the end of this year on whether to continue this forward momentum on access to tele-mental and tele-behavioral services. Fortunately, Congress decided to permanently allow Medicare beneficiaries to receive mental health services via telehealth from their own homes in the Consolidated Appropriations Act of 2021; however, it also imposed a requirement that Medicare beneficiaries must be seen in-person by the provider for continued coverage of their telehealth services.

Congress must reconsider and repeal the “in-person visit” requirement. Patients seeking mental health services already face several obstacles to treatment, including but not limited to social stigma, labyrinthine insurance coverage policies, and practical difficulties like transportation, including over impossible distances in rural and frontier states. Imposing an arbitrary and uniform in-person visit requirement increases the likelihood that patients will simply discontinue treatment altogether. Rather than discouraging fraudulent claims, this policy will instead discourage many more legitimate claims for treatment. Additionally, the fact that the in-person visit only applies to mental health services further perpetuates a bias against coverage of mental health treatment in Medicare and other insurance coverage programs.

Additionally, the statutory flexibilities for Medicare coverage of “mental health” services furnished via telehealth do not apply to tele-behavioral health services. While those terms are often used interchangeably, in some cases there is a significant difference between them—namely, when the patient does not have a primary “mental health” diagnosis. For example, Health Behavior Assessment and Intervention (HBAI) services are provided to help understand and address a patient’s noncompliance with a prescribed medical regimen for management of diabetes or obesity; however, under the current statute, those services cannot be provided to the patient in their own homes because the patient’s primary diagnosis is the underlying medical condition. This undermines the goals that can be achieved with integrated care.

APA Services calls on Congress to adopt a permanent solution, such as the **Telemental Health Care Access Act (H.R. 3432)**, that would ensure Medicare beneficiaries’ continued access to the broad range of mental and behavioral health services via telehealth without unnecessary and arbitrary barriers to treatment. APA Services acknowledges that a two-year extension of the current Medicare coverage rules, such as that offered in the Energy & Commerce Committee’s forthcoming markup of the **Telehealth Modernization Act (H.R. 7623)**, may be necessary as a

¹ See, e.g., Bartelt K, Piff A, Allen S, Barkley E. Telehealth Utilization Higher Than Pre-Pandemic Levels, but Down from Pandemic Highs. Epic Research. <https://epicresearch.org/articles/telehealth-utilization-higher-than-pre-pandemic-levels-but-down-from-pandemic-highs>. Accessed on July 12, 2024.



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short-term solution. However, we ask Congress to make a longer-term decision by the end of that extension; patients need stability in their access to mental and behavioral health treatment. It is in no-one's interest for telehealth policy to become another "extender" that Congress must periodically address.

Integrated Care

There are several innovative and evidence-based models of integrating behavioral health treatment into primary care practices. These include the Primary Care Behavioral Health (PCBH) model and the Collaborative Care model (CoCM), as well as models that blend different features of PCBH and CoCM based on the resources available in their local community. There is ample evidence that integrated care can result in cost savings across the health system, since behavioral comorbidities can lead to medical costs for physical conditions that are two to three times higher than incurred for patients without behavioral health conditions.² However, despite their potential, a number of barriers exist to practitioner adoption of integrated care.³ These include additional clinical and administrative staffing costs, adequate reimbursement for increased interprofessional consultation, education, and training, changes to primary care practices' operating procedures, upgrades or modifications to physical office spaces, and investments in information technology systems.

To help practitioners overcome these barriers, APA Services urges Congress to enact the **COMPLETE Care Act (H.R. 5819 / S. 1378)**. This bill would temporarily boost Medicare reimbursement rates for certain integrated care codes to help defray the up-front adoption costs, require CMS to provide technical assistance to primary care practices seeking to adopt evidence-based behavioral health integration models, and require CMS to establish quality measurement reporting requirements for behavioral health integration services within existing Medicare alternative payment models. Last December, the Senate Finance Committee voted 26-0 to approve key provisions of the COMPLETE Care Act as part of the Better Mental Health Care, Lower-Cost Drugs, and Extenders Act of 2023. We call on both chambers of Congress to recognize the value of integrated care and pass this bill before the end of the year.

Congress can also support adoption of evidence-based integrated care models by updating its approach to alternative payment models. APA Services is deeply concerned that hybrid payment models for primary care provider services will impede adoption of integrated primary and behavioral healthcare if reimbursement for behavioral health integration (BHI) services is restricted solely to the hybrid payment, and the hybrid payment is based only on historic averages of primary care spending, as behavioral health integration is still in its infancy. The

² See, e.g., Ross, K. M., Klein, B., Ferro, K., McQueeney, D. A., Gernon, R., & Miller, B. F. (2019). The cost effectiveness of embedding a behavioral health clinician into an existing primary care practice to facilitate the integration of care: A prospective, case-control program evaluation. *Journal of Clinical Psychology in Medical Settings*, 26, 59-67 (finding that integrating a psychologist into a primary care practice resulted in cost savings of \$860 per member per year).

³ Hartnett, T., Loud, G., Harris, J., Curtis, M., Hoagland, G.W., Serafini, M., Glassberg, H., Chung, H. (2023). *Strengthening the Integrated Care Workforce*.

Bipartisan Policy Center. <https://bipartisanpolicy.org/report/strengthening-the-integrated-care-workforce/>



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current approach will deprive primary care providers of the financial resources needed to both adopt and sustain integrated care practices. Instead, APA Services recommends a tiered approach to integrating behavioral health services, with higher reimbursement for increased scope of services, incentivizing a greater degree of integration and ability to address social needs. This kind of model has ample precedent; the National Committee for Quality Assurance (NCQA), for example, has a behavioral health distinction for its primary care patient-centered medical home model that could serve as an example for requirements that merit higher reimbursement.

Medical Research

APA Services encourages Congress to refrain from pressuring the FDA to phase out the use of non-human animals in safety and efficacy testing. Many procedures intended to reduce animal tests are still in various stages of development. Adjunct and complementary tests have a purpose, but ultimately testing must progress to a whole intact, living system, including a rodent and non-rodent species during preclinical drug trials. Not conducting animal tests, when necessary, would likely subject humans and other animals to unreasonable risks. APA Services does not oppose the use of alternative models to animal testing when scientifically feasible and when scientifically validated. The association remains confident in the process of FDA scientific review to determine the best data that should be submitted in new drug applications. Animal testing followed by human clinical trials currently remains the best way to examine complex physiological, neuroanatomical, reproductive, developmental and cognitive effects of drugs to determine if they are safe and effective for market approval.

APA Services also encourages Congress to maintain its authorization via CURES for the NIH *Brain Research Through Advancing Innovative Neurotechnologies*[®] (BRAIN) Initiative. The BRAIN Initiative seeks to better understand how our brain cells and neuron relate to our behavior, which can unlock innovative treatments for illnesses like Alzheimer's disease and stroke. This program has grown due to supplemental funding from the CURES bill, and as the CURES funding expired, the funding for the initiative has been much reduced. BRAIN's total allocation for FY 2023 reflected a \$60 million increase, from \$620 million to \$680 million (\$450 million from 21st Century Cures Act plus \$230 million in base funding). In FY 2024, the base allocation remained flat at \$230 million and the 21st Century Cures Act funds dropped to \$172 million (as determined in advance), resulting in a total allocation of \$402 million for BRAIN, or 40% less than the FY 2023 budget.

The reduction in funding limits the advances this high-priority program can generate. As you know, ten NIH institutes participate in the program and contribute staff time to make richer collaborations. Current priority NIH projects will continue to focus on resources that will accelerate discovery across the NIH neuroscience portfolio. Looking ahead, APA Services is particularly supportive of establishing the [Brain Behavior Quantification and Synchronization \(BBQS\)](#) program, which aims to define how the brain controls behavior.



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Substance Use Disorders

In 2022, over 107,000 Americans died of a drug overdose, and the overall rates of overdose deaths quadrupled from 2002-2022 with the rates slowing between 2021-2022.⁴ The sudden surge of overdose deaths amongst adolescents is especially alarming, with overdose deaths among youth aged 10-19 increasing by 109% between 2019 and 2021.⁵ While Congress made great strides to expand access to treatment via the SUPPORT Act, unfortunately many of the programs created under that landmark legislation are at risk of sunset and efforts to renew them have stalled in Congress this year. APA Services urges Congress to swiftly pass a **reauthorization of the SUPPORT Act**. APA Services also reiterates its earlier calls to: (1) expand Medicare coverage of substance abuse treatment in freestanding facilities offering community-based care, in intensive outpatient and partial hospitalization programs, and in residential programs; and (2) establish clear pathways to accessing contingency management services in treating methamphetamine and cocaine use, and as a component of treatment for other substance use disorders.

Pain is also widely recognized as a biopsychosocial phenomenon. Non-pharmacological pain interventions, such as cognitive behavioral and self-regulatory therapies, have been shown to be effective treatments for pain.⁶ Psychological interventions for pain are safe, effective, and cost effective, but are generally underutilized, despite research showing they are as effective as surgery.^{7,8} Much of this underutilization can be attributed to psychologists' exclusion from recent bundled pain management codes, as well as low reimbursement for HBAI services, which are currently the primary mechanism for coverage and reimbursement of these treatments. APA Services calls on Congress to support efforts to be more inclusive of psychologists in this effort to curb the proliferation of opioids as a means of pain treatment.

Workforce

Despite some progress in recent years, the workforce of mental and behavioral health clinicians, including clinical psychologists, continues to lag behind the demand for their services. According to the results of SAMHSA's, 2022 National Survey on Drug Use and Health, 2.1 million adolescents and 8.7 adults with a major depressive episode in the past year did not

⁴ Spencer MR, Garnett MF, Miniño AM. Drug overdose deaths in the United States, 2002–2022. NCHS Data Brief, no 491. Hyattsville, MD: National Center for Health Statistics. 2024. DOI: <https://dx.doi.org/10.15620/cdc:135849>.

⁵ Tanz LJ, Dinwiddie AT, Mattson CL, O'Donnell J, Davis NL. Drug Overdose Deaths Among Persons Aged 10-19 Years – United States, July 2019-December 2021. MMWR Morb Mortal Wkly Rep 2022; 71:1576-1582.

⁶ Hoffman, B. M., Papas, R. K., Chatkoff, D. K., & Kerns, R. D. (2007). Meta-analysis of psychological interventions for chronic low back pain. *Health Psychology*, 26, 1-9.

⁷ Robbins, H., Gatchel, R. J., Noe, C., Gajraj, N., Polatin, P., Deschner, M., et al. (2003). A prospective one-year outcome study of interdisciplinary chronic pain management: Compromising its efficacy by managed care policies. *Anesthesia & Analgesia*, 97, 156-162.

⁸ Bruns, D., Mueller, K., & Warren, P.A. (2012). Biopsychosocial law, health care reform, and the control of medical inflation in Colorado. *Rehabilitation Psychology*, 57, 81-97.



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receive any form of treatment, with the burden of unmet needs disproportionately falling on racial and ethnic minority communities.⁹

To help address these workforce shortages, APA Services applauds Congress for its continued support of key programs such as the Minority Fellowship Program, the Graduate Psychology Education program, and the Behavioral Health Workforce Education and Training Program that help ensure a continued pipeline of culturally competent mental and behavioral health professionals. APA Services also urges members of Congress to support the **Accelerating the Development of Advanced Psychology Trainees Act (S. 2511 / H.R. 9138)**, which authorizes Medicare coverage of services provided by advanced psychology trainees under the supervision of a licensed psychologist. APA Services also recommends further support for the **Increasing Mental Health Options Act (S. 669 / H.R. 8458)**, which allows psychologists to claim certain bonus payments for practicing in health professional shortage areas and alleviates unnecessary administrative burdens on psychologists practicing in certain Medicare settings. Lastly, Congress should also pass the **Mental Health Professionals Workforce Shortage Loan Repayment Act (H.R.4933/S.462)**, which aims to recruit mental and behavioral health care professionals to serve in federally designated mental health professional shortage areas.

Parity

The Biden Administration and U.S. Departments of Labor, Health and Human Services, and Treasury released a proposed rule to the 2008 Mental Health Parity and Addiction Equity Act (Federal Parity Act) in July 2023. The initial 2013 regulations were groundbreaking and important but have proven not to be strong enough to ensure that health plans comply with the Parity Act's statutory requirements. Strengthening the existing regulations is critical to holding health plans accountable, helping Americans get needed care, and decreasing the enormous health care and social costs of undertreated mental health conditions and addiction. We hope that the Administration accomplishes that by promptly issuing a final parity rule that incorporates advances from the July 2023 proposed rule, as well as further suggestions from APA Services calling for more robust enforcement of the parity law.

APA Services urges Congress to enact the **Parity Enforcement Act of 2023 (H.R. 3752)** to provide for civil monetary penalties for violations of MHPAEA requirements. The release of the proposed rule last year was aimed at improving compliance with the MHPAEA, but additional supports and mechanisms are needed to ensure that insurance plans and third-party administrators (TPAs) comply with MHPAEA. These penalties should bolster the capacity of the Employee Benefits Security Administration (EBSA) to enforce compliance with MHPAEA.

⁹ Substance Abuse and Mental Health Services Administration. (2023). Key substance use and mental health indicators in the United States: Results from the 2022 National Survey on Drug Use and Health (HHS Publication No. PEP23-07-01-006, NSDUH Series H-58). Center for Behavioral Health Statistics and Quality, Substance Abuse and Mental Health Services Administration.
<https://www.samhsa.gov/data/report/2022-nsduh-annual-national-report>.



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Related to parity, major impediments to accessing mental health and behavioral health services are inadequate networks and inaccurate provider directories. Several bills aimed at addressing the obstacles patients encounter in securing life-saving services are **S. 3059, the REAL Health Providers Act**, and **S. 4023, the Behavioral Health Network and Directory Improvement Act**. In the previous (117th) Congress, the Behavioral Health Coverage Transparency Act of 2022 (S. 4616) was introduced to facilitate audits of plans and TPA's, establish a complaints process and document disparities in the delivery of mental health services versus medical/surgical services. APA Services endorsed these initiatives and encourages the inclusion in any new iteration of the CURES Act.

Thank you again for the opportunity to update you on the modern behavioral health landscape. APA Services welcomes an opportunity to partner with your offices to devise impactful solutions to expand the nation's mental and behavioral health system. Please contact Andrew Strickland, Senior Legislative and Regulatory Counsel at astrickland@apa.org if our organization or members can assist your offices in any way.

Sincerely,

Katherine B. McGuire
Chief Advocacy Officer
American Psychological Association Services, Inc.