

LEGISLATION TO IMPROVE MENTAL HEALTH DURING CRISIS

EXECUTIVE SUMMARY

Earlier today, the House Energy & Commerce Health Subcommittee held a legislative [hearing](#) on over 20 bills aimed at improving mental health care access and parity. Witnesses included former Rep. Patrick Kennedy (D-RI), leading mental health experts, and a young community health leader from the Sandy Hook Promise Students Against Violence Everywhere Promise Club. Committee and Subcommittee leaders stressed the critical need for congressional action, as the COVID-19 pandemic has compounded mental health and substance abuse crises in the country. Although much of the legislation was bipartisan, Ranking Member Michael Burgess (R-TX) and Full Committee Ranking Member Greg Walden (R-OR) expressed frustration that Republicans were not given additional time to find compromise with Democrats on a few bills. They specifically opposed legislation focusing on the Medicare program over concerns that states may lose mental health funding if unable to meet new requirements and the opening of the Medicare definition of “physician” to include psychologists.

Members warmly welcomed former Representative Kennedy back and were particularly interested in his insight on the issue, as he authored the Mental Health Parity and Addiction Equity Act of 2008. The former representative declared the nation was “in denial” on the mental health and substance abuse crises, as they had failed to enforce parity statutes for insurers or provide adequate funding for mental health solutions. Witnesses called on Congress to pass mental health reform without considering the savings, and former Rep. Kennedy asked that the Government Accountability Office (GAO) and Office of Management and Budget (OMB) do “some long-term accounting” to recognize the impact of investing in mental health care. Members of both parties were supportive of permanently expanding telehealth flexibilities granted during the public health emergency but noted both telephone and video-conferencing capabilities needed to be supported on equal levels as physical visits due to comparable efficacy. Several members asked that Congress do more to support the mental health of front-line health workers, despite legislation not being considered at the hearing, and witnesses explained that health professionals often do not seek out care for fear of discrimination and losing their license to practice.

OPENING STATEMENTS

Chairwoman Anna Eshoo (D-CA) said that behavioral health is the neglected part of the nation’s health care system but that the “calamity” of the public health emergency was the perfect opportunity for Congress to correct the wrongs plaguing mental health and substance abuse care. She reported that mental health programs were struggling to treat an influx of patients due to the coronavirus

pandemic while awaiting congressionally appropriated relief funding and criticized the administration for its slow distribution of funds.

Ranking Member Michael Burgess (R-TX) ([statement](#)) stated that he appreciated that many of the solutions before the Subcommittee were bipartisan, but expressed frustration that Republicans had not been given the opportunity to find compromise on several bills regarding the Medicare program. He criticized the inclusion of legislation opening the Medicare definition of “physician,” as well as legislation to expand telehealth without evaluating appropriate guardrails. Additionally, he asked for congressional solutions targeting mental health care for front line health workers disproportionately impacted by the coronavirus.

Full Committee Chairman Frank Pallone (D-NJ) ([statement](#)) reported that less than half of those with mental health conditions get treatment with many citing the inability to pay for services as their primary reason for not seeking treatment, as well as stigma and fear of discrimination. He explained that the mental health crises felt by the national have been compounded by the pandemic, and said it is urgent Congress act to help those in need.

Full Committee Ranking Member Greg Walden (R-OR) ([statement](#)) noted that action on the issue could not come at a more pressing time and supported many of the bills before the subcommittee, but clarified that moving important public health bills should not be a “partisan exercise.” He said he wished the Majority had taken the time to work with Republicans on consensus language on some of the bills, stating that Minority staff had proactively reached out to try to find agreement on modifications that could have lead Republicans to support.

WITNESS TESTIMONY

Former Representative Patrick J. Kennedy ([testimony](#)), Founder of The Kennedy Forum, recounted his struggle with addiction, and explained that the mental health crisis impacts every family in the U.S. He noted that the nation was in denial on the mental health crisis, as Congress had failed to appropriate the necessary resources or fully enforce the parity act.

Dr. Arthur Evans, Jr. ([testimony](#)), Chief Executive Officer of the American Psychological Forum, noted that it was critical Congress pass solutions to strengthen enforcement for mental health parity, and advocated for permanent expansion of telehealth flexibilities granted during the pandemic. He commended the range of legislation aimed at tackling suicide, as well as legislation committed to tackling racial and ethnic disparities in mental health care.

Dr. Jeffrey Geller ([testimony](#)), President of the American Psychiatric Association and Professor of Psychiatry at the University of Massachusetts Medical School, said it was essential that the current expansion of telehealth services not end prematurely, and asked Congress to consider permanently exempting mental health providers from site of health and geographic exemptions in order to ensure telehealth as a solution for underserved populations. He noted his opposition for the Medicare Mental Health Access Act (H.R. 884), explaining that psychologists should not be recognized as “physicians”

under Medicare as they are already recognized to bill for the services they are trained to provide within the program.

Ms. Arriana Gross ([testimony](#)), National Youth Advisory Board Member of the Sandy Hook Promise Students Against Violence Everywhere (SAVE) Promise Club, explained her work with the SAVE Promise Clubs across the nation to empower youth to protect their friends, communities, and schools from all forms of violence, including suicide. She noted that despite youth being present in their communities in a myriad of ways, they are not given the tools to help themselves or their friends struggling with mental health. She advocated for Congressional solutions that create systems of mental health support within schools and supported the STANDUP Act ([H.R. 7293](#)) and Mental Health Services for Students Act ([H.R. 1109](#)).

DISCUSSION AND QUESTIONING

Medicare's Definition of "Physician"

- Ranking Member Burgess opposed the Medicare Mental Health Access Act, stating that he wished Republicans had been given the opportunity to find compromise on the legislation.
- Dr. Evans supported [H.R. 884](#), noting it would remove a roadblock that delays mental health treatment for Medicare beneficiaries by ending unnecessary physician sign-off and oversight of psychologists' services in facility-based settings, such as hospitals, nursing homes, and rehabilitation facilities. He explained that Medicare is the only health insurer that still has this unnecessary roadblock to behavioral care.
- Dr. Geller stated that psychologists are not physicians and should not be defined by the Medicare program as such. He opposed H.R. 884, saying that the goal of the legislation is "unclear" because Medicare already recognizes and allows psychologists to provide and bill for the services that they are trained to perform within the program. He called psychiatrist supervision of psychologists in inpatient and partial hospital settings essential due to comorbidities that require physician oversight.
- Dr. Evans explained that not all mental health services need to be provided by a trained clinician and advocated for increased training for mental health workers to provide these lesser services.

Telehealth

- Members of both parties advocated for permanent expansion of telehealth flexibilities granted during the public health emergency, noting the overwhelming success in this area of response. Ranking Member Burgess was cautious on permanent expansion, noting appropriate guardrails were needed against fraud, waste, and abuse.
- Dr. Geller reported that mental health providers reported a drop from 40 percent to 10 percent of "no-shows" for mental health appointments after switching to telehealth. He explained that telehealth conducted over the phone and video conferencing had expanded access to a huge population, including rural patients, and emphasized the importance of continuing to expand telephone capabilities. He noted that many utilize this service that have broadband issues or are unfamiliar with other technology.

- Former Rep. Kennedy said it is critical to reimburse telehealth visits at the same level as physical visits, as they have been deemed equally effective. He asked that Congress put pressure on CMS to do so.
- Dr. Evans explained that telehealth is important for urban migrant communities who may be unable otherwise to find a provider able to speak their language. He also advocated for long term congressional support and commitment to telehealth.
- Dr. Geller stated that the flexibilities should be extended at minimum to study the cost and access outcomes of the expansion and should include the ability for clinicians to work with one another through telehealth. He said it should also be expanded to account for the forthcoming mental health pandemic, which he estimated to last no less than five years.

Funding for Mental Health

- Former Rep. Kennedy noted that one of the “pillars” of mental health reform should be adequate funding. He reported that only .04 percent of CARES Act relief funding went towards mental health care. He advocated for payment models acknowledging the parity between mental health services and other health care, including treating behavioral health issues as a medical failing and not a just a moral failing.
- Dr. Geller explained that Congress has historically tied mental health reform to saving money and called on Congress to address the issue with adequate funding without worrying about saving money. Former Rep. Kennedy later added that the GAO and OMB need to do some “long-term accounting” to recognize the impact of investing in mental health care.
- **Rep. Doris Matsui (D-CA)** called for additional relief funding for community mental health centers, saying they had largely been excluded from COVID-19 relief funds.
- Dr. Evans explained that associations can do their part to train individuals to work with patients in underserved communities, but they needed adequate infrastructure to deliver these services.
- Former Rep. Kennedy explained that more individuals have died of mental health issues than COVID-19 in the U.S., yet mental health solutions had a fraction of the funding.

Mental Health Support for Front-Line Health Workers

- Ranking Member Burgess and others called for congressional solutions promoting mental health care for front-line health workers. They noted that there is no current legislation before the Subcommittee to address the issue.
- Dr. Geller explained that many health professionals fear they will lose their license to practice if they seek help, as they are often questioned by state boards and employers whether they have ever been or are “mentally impaired” or have sought treatment. He called on Congress several times to take action to remove this discrimination and advocated for a national education campaign addressing the stigma of mental health care for health professionals.
- Dr. Evans called for Congress to expand mental health services for health workers before a diagnosis, such as additional education on mitigating stress and self-care.
- Dr. Geller said that an ideal program for health workers would include on-site and immediately available services, access to telehealth services, and proactive wellness programs. Dr. Evans added peer support would also be needed.

Mental Health Support for Students and Youth

- Ranking Member Burgess advocated for his legislation, the Behavioral Health Intervention Guidelines Act ([H.R. 3539](#)), to develop best practices for schools to establish behavioral health intervention teams. Former Rep. Kennedy said it was shocking the nation does nothing to address mental health in the education system, explaining that children cannot learn when dealing with mental health issues as they impact the same organ.
- Ms. Gross advocated for increased community communication on establishing safe spaces for individuals to come with their mental health struggles, as well as trusted individuals for students to confide in.

Mental Health Supports in the Justice System

- Former Rep. Kennedy gave Ranking Member Burgess an example where a judge used bail funds to support mental health-focused housing for those who might otherwise be incarcerated for non-violent crimes. He explained that the program was so successful in reducing the jurisdiction's docket, they no longer needed to build a new jail to house additional offenders. He clarified that funding from justice systems could be redirected to mental health services to reduce the number of individuals in the justice system. Ranking Member Burgess agreed with redirecting some funding.
- Dr. Geller advocated for the removal of the Medicaid exemption for incarcerated individuals to receive mental health services, as well as increased federal support for the smaller providers that care for this population and help to break the cycle.

Enforcing Mental Health Parity

- Former Rep. Kennedy noted that greater transparency enforcement is needed around insurer practices to determine "medical necessity." He reported that insurers know most individuals are unlikely to appeal denied claims and use this method to reduce behavioral health care provided. **Rep. Joe Kennedy (D-MA)** stated that by law, insurers are required to disclose this information, but it is not enforced. He stated greater transparency could shame the industry into being less likely to openly discriminate.
- Former Rep. Kennedy explained that there is one enforcement inspector for over 1,500 plans, allowing enforcement of parity to "go to pieces." He said there could be no accountability with no oversight and asked for at least \$20 million for the Department of Labor to evaluate Health Resources and Services Administration (HRSA) health plans alone.

Other Mental Health Concerns

- Dr. Evans advocated for connections between emergency departments and local mental health systems for greater communication on at-risk individuals, including screening in emergency departments and surveillance.
- Dr. Geller called for increased graduate medical education spots in underserved communities and loan forgiveness programs for mental health professions to attract additional medical students to address the shortage of workers.

- Former Rep. Kennedy called on Congress to fix issues with the 42 CFR Part 2 privacy regulation, explaining that mental health faces less protection under health privacy laws than sexually transmitted diseases.