

# Health Policy and Legislation

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## An Opportunity for Bipartisan Action: Congress and the Biden-Harris Administration Respond to Growing Mental Health and Substance Use Challenges

March 1, 2022

In October of 2018, Congress passed the SUPPORT for Patients and Communities Act (P.L. 115-271). The comprehensive opioid treatment law passed both chambers of Congress with large bipartisan support and tackled many aspects of the epidemic, including treatment, prevention, recovery and enforcement. The bill was a model of bipartisan support for a popular set of policies addressing a national crisis. Based on recent actions, Congress seems poised to reprise this successful effort to deliver both parties a legislative win ahead of the November midterm elections.

The COVID-19 pandemic has only exacerbated America's addiction and mental health crises. Mental health and substance use disorder (SUD) statistics show increasing rates of anxiety, depression, substance use and suicide. Between January 2019 and May 2021, emergency department visits by people aged 12-25 for suspected suicide attempts rose 31 percent. For girls aged 12-17 in particular, such visits soared 51 percent. These disturbing statistics follow an even longer trend of increase in deaths from suicide among children, especially Black children. Deaths resulting from drug overdoses have also risen steadily since the pandemic began. Preliminary data from the Centers for Disease Control and Prevention (CDC) show, at the time of this writing, a 15.9 percent increase in drug overdose deaths from September 2020 to September 2021 amounting to 104,288 lives lost.

The statistics indicate ample rationale for the administration and Congress to focus on mental health and substance use legislation, and action on mental health in 2022 is reasonable from a political perspective, as well. Congressional work on mental health and SUD legislation has been underway for several months, but because negotiations on Democrats' Build Back Better bill have stalled, at least for now, congressional Democrats can now look to a mental health package for a legislative win. Today, as part of his State of the Union policy announcements, President Biden unveiled that his administration will pursue mental health and SUD policies, both with and without Congress.

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For their part, Republicans have had few opportunities early in President Biden's term to work in a bipartisan fashion, so they are likely interested in any chance to pass their priorities. Additionally, Republicans have pursued **messaging and related policies** regarding schools and the deleterious mental health effects of pandemic restrictions on children. As Democrats look ahead to a likely Republican Congress in 2023, they are likely engaging in a bipartisan approach now while they have majorities in Congress to forestall Republican action next year, taking the wind out of those political messages.

This alert will discuss administration and congressional action on SUD and mental health policies and identify key policy areas to watch over the next year.

## Work is Already Underway

Work on mental health policy priorities is ongoing in both chambers of Congress, and has been for some time. In September 2021, Sens. Michael Bennet (D-CO) and John Cornyn (R-TX) **released a policy white paper** titled, "A Bold Vision for America's Well-Being: It's Time to Redesign the U.S. Mental & Behavioral Health System." The paper called for the development of a national strategy "founded on the principles of smart planning and funding allocation" to better integrate mental health services into the health care system. Also in 2021, the Biden-Harris administration **distributed** \$3 billion in American Rescue Plan funding for SUD-related block grants through the Substance Abuse and Mental Health Services Administration (SAMHSA), the largest amount of funding to date for such uses.

On Capitol Hill, congressional committees have been at work. They have held a flurry of hearings exploring various aspects of mental health and substance use. Last year, the Senate Finance Committee **held a hearing** to explore mental health and addiction services during the pandemic and **solicited input** "on Addressing the Mental Health Care Crisis." On February 1, 2022, the Senate Health, Education, Labor, & Pensions (HELP) Committee **held a hearing**, "Mental Health and Substance Use Disorders: Responding to the Growing Crisis." The following day, on February 2, 2022, the House Ways & Means Committee **held a hearing** on "America's Mental Health Crisis." On February 8, 2022, the Senate Finance Committee **held a hearing**, "Protecting Youth Mental Health: Part I – An Advisory and Call to Action." On February 15, 2022, the Committee **held the second part of that hearing**, "Protecting Youth Mental Health: Part II – Identifying and Addressing Barriers to Care." On March 1, 2022, the House Education & Labor Committee will **hold a hearing**, "Improving Retirement Security and Access to Mental Health benefits."

While hearings are being held, various news reports have quoted House and Senate aides indicating that almost every committee of jurisdiction is in some stage of legislative drafting. The Senate even announced the initiation of its drafting initiatives. Specifically, Sen. Ron Wyden (D-OR), Chairman of the Senate Finance Committee, announced he **has tasked** a bipartisan group of Committee members to draft discrete portions of a bill to be released in the summer of 2022:

- Sens. Ben Cardin (D-MD) and John Thune (R-SD) will draft provisions to extend the use of telehealth beyond the end of the COVID-19 public health emergency.
- Sens. Debbie Stabenow (D-MI) and Steve Daines (R-MT) will focus on the needs of the mental health care workforce.

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- Sens. Catherine Cortez Masto (D-NV) and John Cornyn (R-TX) will draft legislation pertaining to the integration of mental health care into primary care settings.
- Sens. Michael Bennet (D-CO) and Richard Burr (R-NC) will handle parity between mental and physical care.
- Sens. Tom Carper (D-DE) and Bill Cassidy (R-LA) are responsible for youths' access to mental health services.

The Biden-Harris administration has also taken steps in the mental health and substance use space. In January 2022, the administration **released a list of actions** it has taken to address the overdose epidemic. Among other things, the administration's **Fiscal Year 2022 budget proposal** requests \$41 billion for national drug agencies and, in October 2021, the Department of Health and Human Services (HHS) **unveiled a four-part "overdose prevention strategy"** focused on primary prevention, harm reduction, evidence-based treatment, and recovery support. On February 10, 2022, the White House **hosted a roundtable** on Black individuals' mental health and wellness. Hosted by Susan Rice, Domestic Policy Advisor to President Biden, the roundtable participants discussed several issues, including culturally competent care, promoting diversity in the health care workforce, and self-care.

Ahead of his State of the Union address, President Biden **announced** an array of provisions designed to address the rising mental health and SUD challenges, with a particular focus on equity. Some of the provisions entail expansions of existing programs with existing funding, while others may require Congress to appropriate new funds and are likely to be included in the President's forthcoming budget request.

## Issues to Watch

The mental health and SUD space is expansive, and Congress and the administration could legislate on numerous issues. This section represents only some of the issues stakeholders can expect to see addressed.

### Telehealth Expansion

During the pandemic, the Centers for Medicare & Medicaid Services (CMS) temporarily **relaxed** many of Medicare's current-law restrictions on telehealth services. Beneficiaries now are currently able to access telehealth services in a wider variety of circumstances thereby allowing lower acuity patients to stay home rather than present in health care facilities, where they may infect others, or be infected, with SARS-CoV-2 (the virus that causes COVID-19). These flexibilities included the expansion of which services Medicare covers, and allowing beneficiaries to receive telehealth services outside of a so-called "originating site," which is typically a health care facility, and allowing telehealth in places other than rural areas.

Congress has already taken steps to permanently expand telehealth. As required by the Consolidated Appropriations Act (CAA) of 2021, signed into law in late December 2020, CMS finalized policies that removed geographic restrictions for the diagnosis or treatment of a mental health disorder, and paved the way for the use of audio-only communications between a beneficiary and practitioner for mental health services, which includes treatment of SUDs.

There seems to be considerable congressional appetite for further extending telehealth flexibilities. On January 28, 2022, Sen. Brian Schatz (D-HI) and Rep. Mike

Thompson (D-CA) (who have in previous years introduced the [CONNECT for Health Act \(S. 1512\)](#), a comprehensive telehealth bill) led more than 40 members of the House and Senate in a [letter to congressional leadership](#), indicating their strong support for “permanently expanding Medicare coverage of telehealth” and called for an extension of the current flexibilities so as to provide certainty to industry, given “significant costs and resources” to implement telehealth. On February 7, 2022, Sens. Cortez Masto (D-NV) and Todd Young (R-IN) [introduced](#) the Telehealth Extension and Evaluation Act (S.3953). This bill would extend Medicare’s telehealth flexibilities for two years beyond the current public health emergency and require the HHS Secretary to conduct a study regarding telehealth flexibilities and privacy concerns, fraud, expenditures and savings, and recommendations regarding the permanency of the flexibilities.

As of the writing of this alert, it appears some sort of extension of telehealth authorities may be under consideration for inclusion in an omnibus appropriations bill for FY 2022.

### **Mental Health Parity**

The term “mental health parity” refers to the legal requirement that insurers offer mental health benefits that are equivalent to those benefits they offer for medical or surgical benefits. Insurers are generally prohibited from imposing limits on mental health benefits that are more stringent than limitations imposed on their other offerings. This includes limitations that can be measured quantitatively (e.g. actual dollar limits) and non-quantitatively (e.g. step therapy).

At issue recently have been the non-quantitative limitations (NQTLs) on mental health and substance use benefits. In 2021, approximately one year into the pandemic, the Government Accountability Office (GAO) [released a report](#) regarding access to mental health services. Among other things, the report identified a lack of consumer knowledge of parity laws, and recommended the Departments of Labor (DOL) and HHS reconsider their oversight of insurers with respect to mental health parity.

In response to concerns about NQTLs, Congress included in the CAA a requirement that insurance plans and issuers provide to the DOL an analysis of their NQTLs to demonstrate NQTLs for mental health and substance use are no more strict than for other benefits. However, in their 2022 [report to Congress](#) on mental health parity, DOL and the Departments of Treasury and HHS indicated all initial submissions under the CAA were “insufficient.” To ensure compliance with mental health parity laws, the Departments recommend Congress provide DOL the ability to levy civil monetary penalties for violations.

For their part, insurers have expressed concerns about the complexity of analysis required by the CAA, a lack of clarity from DOL regarding its expectations for the reporting requirements, and the quick timeline between the law’s passage and the submission deadline. America’s Health Insurance Plans, a health insurance industry trade association, [called on Congress](#) to defer further legislation until clarity is provided regarding these reporting expectations.

Looking ahead, Congress may pursue any number of policy changes regarding mental health parity. It may elect to provide DOL with authority to assess CMPs on insurers failing to provide adequate analysis of NQTLs. Alternatively, Congress may choose to blend this “stick” approach with a “carrot,” in the form of additional grant money. In 2021, Sens. Chris Murphy (D-CT) and Cassidy – authors of the CAA NQTL reporting

provision – introduced the **Parity Implementation Assistance Act** (S.1962), which would authorize \$25 million in grants for states to fund mental health parity oversight activities provided that states collect insurers’ analyses with respect to parity. Finally, Congress may also choose not to act, on the basis that DOL has not yet exhausted all of its enforcement tools. For example, current law provides DOL authority it has not yet employed, including the authority to “name and shame” noncompliant insurers, compelling them to send enrollees a notice informing them of the noncompliance.

### **Substance Use Disorder**

The Senate Finance Committee, Senate HELP Committee, and House Energy and Commerce Committee are expected to evaluate and consider reauthorization of expiring SUD programs that were enacted in the 21st Century Cures Act, CARA, and the SUPPORT Act.

In 2021, several members of the House merged an existing Bipartisan Opioid Task Force and Freshman Working Group on Addiction to create the Bipartisan Addiction and Mental Health Task Force to “promote policies to combat the addiction and mental health crises in America.” The group’s **legislative agenda** for the 117th Congress includes legislation addressing a variety of SUD-related topics including prevention, treatment and recovery, medical education, and workforce development. The Task Force members will continue to advocate for inclusion of these bills as part of Congress’ mental health package.

The administration also remains **committed** to addressing the increase in drug overdose deaths. Last year, HHS released Practice Guidelines for the Administration of Buprenorphine for Treating Opioid Use Disorder, which removed barriers to buprenorphine prescribing to expand access to evidenced-based treatment. In recent months, the administration has announced new grants to address SUD, including \$13 million from the Health Resources and Services Administration to increase access to behavioral health care services with an emphasis on addressing health inequities in rural areas; and **\$10 million** through the SAMHSA to “provide pregnant and postpartum women and their children with comprehensive substance abuse treatment and recovery support services across residential and outpatient settings.” The program has also been extended to fathers and other family members.

It is expected that the FY 22 Omnibus spending package currently being negotiated will maintain funding for HRSA’s Rural Communities Opioid Response Program, which supports centers of excellence focused on recovery housing, synthetic opioid-related overdoses, and addiction treatment and prevention in rural communities.

Finally, in late 2021, HHS announced a \$30 million harm reduction grant program through SAMHSA designed to reduce the harm to individuals struggling with SUD. This program recently became the target of Republican concern. In response to concerns that SAMHSA-funded harm reduction kits might include pipes for smoking illicit substances, Sen. Marsha Blackburn (R-TN) placed a “hold” on a must-pass continuing resolution, **only dropping the hold** after extracting from HHS a commitment that the funding would not go to entities providing pipes in harm reduction kits. While this situation might seem to some a political distraction, it reflects very real policy fault lines. As the Democratic administration faces the potential for more Republican representation in Congress next year, policy makers focused on harm reduction and

safer use will be navigating a spectrum of policy preferences, including those focused on complete abstinence and preventing substance use altogether.

## Youth Mental Health

In December 2021, Surgeon General Vivek Murthy **issued** an advisory on the youth mental health crisis. In aforementioned hearings on the issue of youth mental health, Surgeon General Murthy **indicated** that youth experience a delay lasting an average of 11 years between the onset of mental health issues and the beginning of treatment for the symptoms. In his opening statement at one of the recent hearings, Senate Finance Committee Chair Ron Wyden (D-OR) appeared to **lay out** a series of principles for youth mental health legislation: earlier screenings and interventions, including earlier discussions with primary care providers, as well as increased mental health efforts in schools; improved crisis care beyond emergency rooms; partnership between the public and private sector, including innovation through the Children's Health Insurance Program and Medicaid.

## Conclusion

The Biden-Harris administration and Congress have a considerable amount of work in front of them as they respond to the current addiction and mental health crisis. As policy makers unpack how the COVID-19 pandemic has exacerbated the crisis, they will undoubtedly gain insight into how responding to, and living through, a public health emergency affects mental health, and the steps that should be taken to better prepare for both of these public health priorities. Executive action and a legislative package of mental health and SUD policies may take one of any number of forms, and stakeholders should use this opportunity to weigh in with administration officials and members of both chambers.

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