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Enforcing Legal Compliance for Covering of Services Promoting Family Mental Health

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INTRODUCTION

The coronavirus disease 2019 (COVID-19) pandemic exacerbated a growing children's mental health crisis in the U.S. Mental health–related emergency department visits rose by 31% during COVID-19 onset compared with the same 7-month time period in 2019.[1] This sudden increase built on a pre-existing trend of worsening mental health issues among children, as children experienced a 329% increase in visits for deliberate self-harm between 2007 and 2016.[2] Absent intervention, these childhood mental health challenges will have long-term health and economic consequences that propagate disparities.

To address these needs, mental health treatment will be needed, but treatment alone will not be effective. Families need coordinated services and supports that prevent children from reaching the point where they need specialized treatment or crisis intervention.[3] A range of varied interventions in primary care, schools and early care, and community settings have demonstrated effectiveness in building on positive family processes to improve long-term mental health outcomes and even prevent the onset of mental health conditions.[4] For example, an adaptation of Incredible Years—a program that supports parents of young children to implement evidence-based practices for healthy mental development—integrated into primary care can reduce child behavioral challenges and shows promise for impact across culturally and linguistically diverse populations.[5,6] These interventions also demonstrate greater impacts where families face more stressors by preventing adverse childhood experiences and promoting positive childhood experiences, ultimately advancing lifecourse health equity. Unfortunately, these mental health promotion interventions are not accessible to all families.

While the children's mental health crisis developed, the stability of the Affordable Care Act (ACA) increased. With the election of President Biden and his commitment to the ACA, it will likely be strengthened in the coming years.[7] The ACA contains critical policies related to children's mental health, but this has not been a major focus of ACA implementation.[8] This creates a unique opportunity for the Biden–Harris Administration to leverage existing law to address the children's mental health crisis. This paper analyzes the requirements of existing federal health policy as it relates to interventions to promote children's mental health and recommends how the Administration could improve children's mental health by fully implementing these policies.

REQUIREMENTS OF EXISTING FEDERAL HEALTH POLICY

State Medicaid plans, Medicaid managed care, and many commercial health insurance plans are regulated by federal laws that require certain minimum services and prohibit discrimination against mental health coverage. One of the most well-known laws is the Early and Periodic Screening, Diagnostic and Treatment requirement in Medicaid, which requires that all states cover regular screenings, health education (or "anticipatory guidance"), and services to address needs identified in the screenings—even if those services are not covered in the state plan. The ACA requires certain commercial health insurance plans to cover "essential health benefits," including preventive and wellness services, which incorporate those services recommended by the American Academy of Pediatrics' Bright Futures Periodicity Schedule. Further, the mental health Parity and Addiction Equity Act and ACA together require that many

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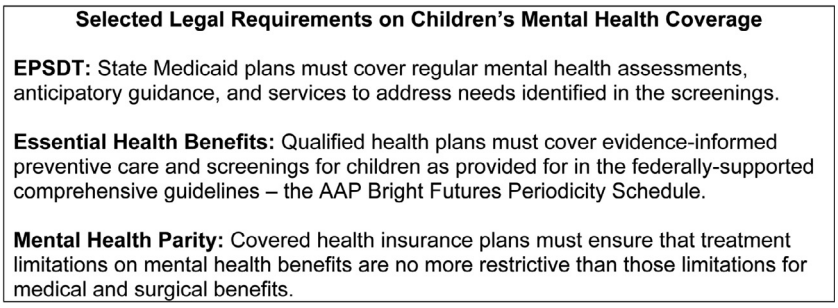

Figure 1. Selected federal law related to requirements for family mental health promotion.
AAP, American Academy of Pediatrics; EPSDT, Early and Periodic Screening, Diagnostic and Treatment.

commercial and Medicaid managed care plans cannot restrict their mental health benefits more than their medical and surgical benefits—which also applies to mental health promotion for children. Figure 1 summarizes these selected policies, which were chosen to illustrate how laws can apply to both Medicaid and commercial plans and how they can involve mandates to cover certain services or requirements for fairness in the coverage provided.

These federal laws and others interact to guarantee millions of children and families in the U.S. access to certain mental health services.[9,10] But what is the specific scope of these services as they relate to mental health promotion? Several of the laws and their regulations reference "reasonable standards of medical practice" as defining the required scope of coverage. Although this issue has not been interpreted judicially across all the relevant laws in ways that are precedential across jurisdictions, it is likely that clinical practice guidelines from national medical societies and recommendations from federal agencies would be found to indicate reasonable standards of medical practice because they represent expert consensus, which is generally used in deciding issues (related issues are the subject of current litigation, as in the civil action Ga et al. versus Bimestefer, 1:21-cv-2381 filed on September 3, 2021 in federal court in Colorado).[11,12] Reviewing these guidelines and recommendations thus offers a credible approach to determining which specific services the health laws may cover.

A total of 9 sources of current clinical practice guidelines were reviewed, and the recommendations from the 4 sources with relevant recommendations as of October 31, 2020 are summarized in Table 1.[13–19] Across the 9 sources, the following services related to prevention for

Table 1. Current Recommendations From Clinical Guidelines for Preventing Children's Mental Health Conditions

Source/Recommended intervention	Age range
Bright futures periodicity schedule[13]	
Psychosocial/behavioral assessment	All
Depression screening	12–21 years
Maternal depression screening	1 month–6 months
Anticipatory guidance	All
Bright futures guidelines[14]	
Identifying social needs and connecting to community resources, including violence in the home and caregiver behavioral health	All
Connecting to home visiting and/or group-based caregiver supports	Prenatal – 18 months
Anticipatory guidance to caregivers – mental health promotion	All
Anticipatory guidance to children – mental health promotion	5–21 years
Connecting to early childhood service system, child care, preschools, and schools	2–8 years
AAP clinical practice guidelines[15]	
Depression screening	12–21 years
USPSTF recommendations	
Interventions to prevent perinatal depression[16]	Perinatal
Depression screening[17]	12–21 years
Maternal depression screening[18]	Perinatal
Maternal intimate partner violence screening[19]	All

AAP, American Academy of Pediatrics; USPSTF, U.S. Preventive Services Task Force.

children's mental health were recommended: anticipatory guidance to caregivers and children on promoting family mental health[13,14]; psychosocial interventions to prevent postpartum depression[16]; assessment of behavioral health and social needs for caregivers and connection to providers, programs, and community-based resources that can meet those needs[13,14,18,19]; and assessment of developing psychosocial needs in children and provision of services to address those needs—including before they rise to the level of a diagnosable condition.[13−15,17]

The specific services offered should also be evidence-based to align with reasonable standards of medical practice. It would not adhere to guidelines if a family received nominal education about mental health but not an anticipatory guidance intervention that was empirically demonstrated to improve child mental health. For example, many tiered evidence-based preventive interventions, such as Triple P Positive Parenting Program or Positive Family Support−Family Check-up, contain universal components with demonstrated efficacy that could be covered, rather than an untested and arbitrary amount of brief education.[20] Thus, the federal health laws generally require that families have access to each of these guideline-indicated services, including coverage of services for a sufficient duration and intensity to align with the evidence.

RECOMMENDATIONS TO IMPROVE COMPLIANCE

The preceding sections make the case that existing federal policies require that families have access to a set of preventive mental health interventions, as indicated by clinical guidelines, under most state Medicaid, Medicaid managed care, and commercial health insurance plans. However, there is widespread evidence that most families do not obtain access to these services. Almost none of the evidence-based practices for preventing children's mental health conditions or addressing family social needs report being sustainable through current healthcare payment policies in most places in the country.[20]

Unless states and health insurers can demonstrate that they fairly reimburse for evidence-based services for family mental health promotion, they are not in compliance with federal law. Although states differ considerably in the extent to which they have implemented the provisions of the ACA, the relevant requirements for children remain consistent and relatively independent of state decisions about coverage. States and health insurers must revise their payment policies to explicitly and transparently cover evidence-based mental health promotion, ensuring that this includes an array of interventions that have been tested in relevant developmental, cultural, and linguistic populations. To compensate for years of underinvestment, states and health insurers should invest in training diverse community providers that can make these services accessible to children and families across the state.

As the regulator, the Biden−Harris Administration should faithfully execute its duties under the law. The Administration should analyze claims, quality, and administrative data collected by states and insurers as heuristics to identify where gaps in access may exist for children and partner with youth and families in determining how the data relate to actual experiences of access. In doing so, Black, Indigenous, and people of color; children with disabilities; and rural families should be prioritized so that oversight achieves its goal of advancing equity, because research has begun to identify specific barriers to access for various communities and how to most effectively engage families.[21,22] When these efforts identify likely gaps in access, the Administration should work with states and insurers to determine the appropriate remedial actions, which can include payment policy and reimbursement changes but also provider training, support for integration of in-person or virtual providers, coordination to improve access in schools, or increased recruitment and integration of paraprofessionals, such as family peer support specialists or family advocates. Progress toward stated goals and objectives should be measured and when entities fail to make good faith efforts toward compliance, the Administration should implement sanctions, giving meaning and content to children's rights under the law.

Prevention in the early years of life is also reliant on effective coordination with community-based organizations to address identified family stressors. Other federal programs, such as the Maternal, Infant, and Early Childhood Home Visiting program or Head Start, build community-based organization capacity to provide critical support for family mental health. As noted, clinical practice guidelines recommend helping families to address social needs, but if primary care and social services are poorly coordinated or if social services are not well targeted to the needs of the family, clinical intervention would likely have little impact. By building on the lessons learned in interagency collaboration during the Obama−Biden Administration, the new administration can align payment, reporting, and operational policies across funding streams to enable community partners and healthcare systems to partner and holistically meet the needs of families. If the relevant social services are adequately funded and well-coordinated, then primary care will be better equipped to prevent children's mental health conditions and promote whole-family well-being.

With strong federal leadership and collaboration from states and health insurers, America can provide families

the mental health services to which they are already entitled. This will help to heal children after the pandemic, better prepare for the next crisis, and advance health equity in the nation.

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