EMPLOYERS HEALTH®

SUMMER 2020
A publication of Employers Health Coalition, Inc.

EHCONNECT

CLIENT SPOTLIGHT:
FIGHTING COVID-19

IN THIS ISSUE

Minimize spend, maximize benefits with CVS Health® Point Solutions Management

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Available to clients upon request in Quarter 2, 2020.

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Register now at **employershealthco.com/events** to stay informed and learn more.

MESSAGE FROM CHRIS

Christopher V. Goff
CEO & General Counsel

WELCOME TO OUR NEWEST MEMBERS

Account Control Technology

Affinitiv Inc.

AQR Capital LLC

Central Ohio Primary Care

Community College of Philadelphia

Comprehensive Medical Management

Denier Electric Co

Energy Harbor Corp.

GEON Performance Solutions

Midwest Public Risk

Montaplast of North America

Nixon Peabody LLP

Nvr, Inc.

Ohio University

Paterson Public Schools

Symphony Diagnostic Services No. 1 LLC

Tucson Unified School District

Best-selling author John C. Maxwell regularly reminds his readers, "Change is inevitable. Growth is optional." No matter who or where you are, there is no shortage of change taking place. To remain market leaders, we must be intentional in our response to these changes; growing and innovating so that we can deliver exceptional results to clients today and in the future.

Many of our clients have stepped up during this pandemic to assist in our national response. On pages 17 and 18, we highlight some of those clients and their contributions. From donating material and making masks to innovations in sanitation technology for PPE, we are proud of the work of our clients and their employees in the fight against COVID-19. We are also appreciative of the efforts of our suppliers that made a host of changes in both operational and financial processes. Each of the PBMs made changes to refill thresholds to ensure patients had medication on hand. Delta Dental of Ohio provided its customers with a month free of premium or ASO fees.

I am equally impressed by our team members at Employers Health and their ability to quickly adjust to a remote working environment while continuing to meet and exceed client expectations and organizational goals. We've started 2020 off strong and continue to grow our client base, providing additional purchasing power for our new and existing clients. Our business development team has worked diligently to add six new clients and over $70 million in projected spend year-to-date.

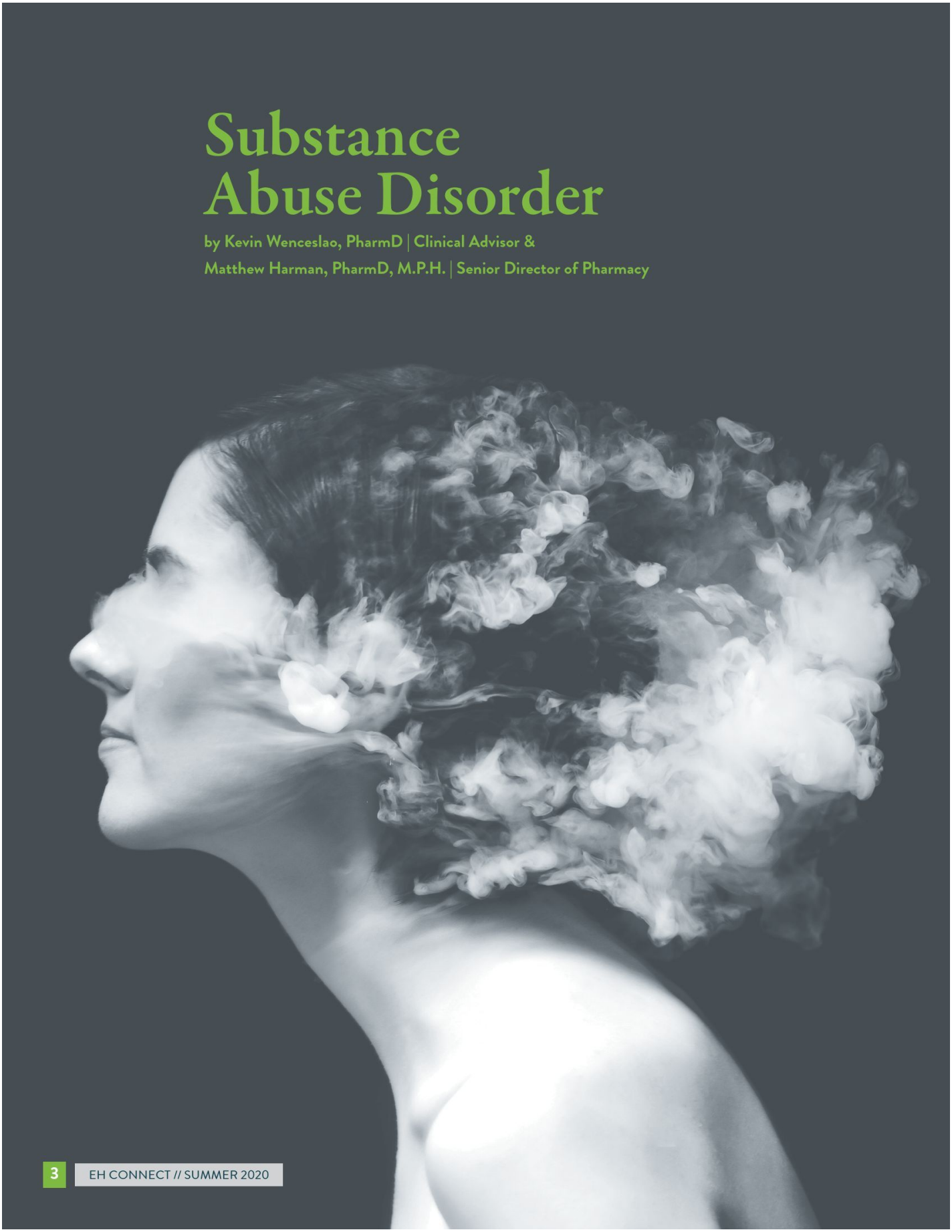
The change of pace also includes continued industry consolidation, resulting in less competition, fewer choices and less innovation. Our clients discovered that through collaboration they can maintain leverage in a shrinking marketplace and push suppliers to perform beyond expectations. Since our founding, Employers Health clients have worked together and with our team to ensure maximum value for their benefit dollars.

On the regulatory front, we recently filed an amicus brief to the US Supreme Court in support of protecting ERISA preemption and the ability of employers to provide consistent and affordable benefits on a national basis; learn more about Employers Health's efforts on page seven. On page 11, Madison Evans and Garrett Brown from our legal team cover the numerous state legislative efforts to expand regulation of PBMs and what those efforts mean for plan sponsors. Finally on page three, our clinical team discusses substance abuse disorder and the associated costs.

Our team continues to look for and develop new cost-savings initiatives that allow our clients throughout the country to reinvest in their organizations and put more money directly in their employees' pockets at a time when it is needed most. We are honored and humbled by the trust you place in our team and look forward to adapting and growing together.

Substance Abuse Disorder

by Kevin Wenceslao, PharmD | Clinical Advisor &
Matthew Harman, PharmD, M.P.H. | Senior Director of Pharmacy



According to the National Survey on Drug Use and Health (NSDUH), 19.7 million American adults struggled with a substance use disorder (SUD) in 2017[1]. In terms of cost, the American Addiction Centers estimate that drug abuse and addiction cost American society more than $740 billion each year in lost workplace productivity, health care expenses and crime-related costs. While there has been a great deal of progress in recent years with educating the public and removing the stigma surrounding substance abuse and addiction, employers still struggle to find ways to openly and effectively deal with the issue within their companies.

With alcohol and opioid pain relievers being two of the most abused substances, it is no surprise that many affected adults can be found in the workforce. Both products have legitimate and safe uses, but dependence on them can develop after either misuse or prolonged use. This can lead to absenteeism, turnover and increased health care costs. The following will explain SUD from a clinical disease perspective in order to better understand addiction and why it should be considered a chronic disease rather than a result of a lifestyle choice. Lastly, the article will cover SUD's impact on employers and employees alike and discuss available opportunities to develop effective policies and plan designs to help patients.

What is Substance Use Disorder?

Two common types of SUDs encountered in the workforce are alcohol use disorder (AUD) and opioid use disorder (OUD). AUD affects about 14 million[1] people in the U.S., and it can be difficult for people to distinguish social and binge drinking from alcohol dependence and addiction. The same goes for OUD, which impacts about 2 million Americans[2]. While opiates are commonly prescribed to help treat acute and chronic pain, people can develop a physical and mental dependence on these products. Together, alcohol and opioid misuse cost about $200 billion[3] in lost workplace productivity and about $50 billion[4] in health care costs.

From a clinical standpoint, it is important to realize that both AUD and OUD involve addiction, which is a chronic disease. With addiction, there is an uncontrollable urge to seek and use these substances despite the mental, physical and social problems that come with their use. Unfortunately, people with addiction cannot simply just stop using and be cured. Ongoing care and treatment are needed to successfully cure a SUD. The reason behind this is that alcohol and opioids change how the brain works, specifically targeting areas that are responsible for reasoning, decision-making, basic drives, urges, pleasures and rewards. Over time, both substances stimulate the reward system in the brain which causes people to repeatedly seek this feeling of pleasure despite the negative effects.

Physically, people with SUD are at risk of a range of health problems. For alcohol users, this could lead to brain damage, liver disease, cancer and increased risk of heart disease[5]. Opioids can worsen breathing, exacerbate mental illness and in cases of overdose, can lead to death[6]. Regrettably, the feelings of euphoria that come with substance abuse supersede the potential risks. People with SUD develop tolerance over time which means they require increased amounts of the substance to gain the same effects they are seeking. Once they discontinue the medication, they may undergo withdrawal symptoms which include anxiety, nausea, vomiting, depression and even seizures which makes stopping abruptly difficult. This is a vicious cycle which drives people to seek these substances to avoid both the short-term mental and physical problems they experience by not using.

How is SUD Treated?

Consequently, treatments for SUD usually require both a chemical (drug) and a behavioral (counseling) component for optimal results known as medication-assisted treatment (MAT). Drugs are specifically developed to attach to the same receptors that alcohol and opioids target. This means that some of these products may also be controlled substances or opioids as well, which may be counterintuitive to many people[7].

So how does giving more of a controlled substance help with SUD? These chemicals are designed to compete or block the same sites that alcohol and opioids target to help reduce the symptoms of withdrawal, dampen the rewarding feeling and lower the dependence on the products over time[8], all without the negative health effects. These less potent versions have little to no abuse potential and have been evaluated by the Food and Drug Administration (FDA) to be safe and effective. Due to the chronic nature of SUD, patients will typically have to take these medications over a prolonged period, and for some patients treatment may be ongoing indefinitely to reduce the risk of relapse. Doctors will work closely with patients and other appropriate health care members to ensure that the right dosing and amounts are prescribed based on individual needs.

The other key component of MAT is the behavioral counseling. Specialized counseling and psychotherapy can help with changing behavior, thoughts, emotions and how affected people see and understand situations. By improving their mental health, this allows people a better chance to use other strategies to aid their recovery, such as being adherent to the MAT medications. Early treatment can be very beneficial, so it is important to offer options for both medications and therapies from the start.

Examples of FDA-approved MAT medications

Opioid Use Disorder	
Generic	**Brand**
Buprenorphine	Subutex® Suboxone® Zubsolv®
Methadone	Dolophine® Methadose®
Naltrexone	ReVia® Vivitrol®

Alcohol Use Disorder	
Generic	**Brand**
Acamprosate	Campral®
Disulfram	Antabuse®
Naltrexone	ReVia® Vivitrol®

What Can Employers do?

The first step is education. Informing all levels of your company on substance abuse helps reduce the stigma and ensures people understand that this is a chronic disease. The goal of educating employees is to help them recognize SUD both in themselves or loved ones. Not all employees are aware of the plan benefits surrounding SUD and some may be afraid to seek them out. Being open with this health topic can help workers feel they are cared for and may hopefully encourage them to explore SUD resources such as counseling through employee assistance programs (EAPs).

Involving key stakeholders and decision makers in this process can greatly enhance the policies and plan designs within the company. While a clear drug-free policy is essential, it is also important to review how your company provides access to SUD resources, how and what MAT options are covered and how return-to-work and fitness-for-duty policies work for those undergoing treatment.

In terms of resources, benefits professionals can help connect affected employees and plan participants to a host of community options:

- **inpatient/outpatient treatment,**
- **detoxification centers,**
- **mental health services and**
- **support groups.**

For a more comprehensive approach, some employees may benefit from being referred to a center of excellence (COE)[9]. COEs allow for a holistic approach which involves counseling, primary care and medications all provided by a coordinated health care team.

Employers can work with both medical and pharmacy insurance providers to ensure there is comprehensive coverage for the different settings of care that may be involved in treating people with SUD. Removing or reducing patient cost share for MAT medications can be very beneficial in supporting patients with initiation and adherence to treatment. Nonadherent members incur significantly greater health care costs and are more likely to relapse[10]. Some plans have taken the option to remove patient cost sharing with generic MAT options, like buprenorphine and naltrexone, to address this issue. Reviewing your claims data for metrics such as opioid prescription claims[11], high dosage opioids, alcohol- and opioid-use disorder diagnoses from your health plan or pharmacy benefit manager (PBM) can help identify possible trends and provide insight on your current population. Comparing these metrics over time to industry or peer benchmarks can indicate if the implemented strategies are effective.

Lastly, always feel free to consult experts who advise on AUD and OUD policies to identify best practices for your plan. This is an ongoing issue, and employers are tackling it in many innovative ways based on their industry and size. Employers Health is always listening and working with our clients and PBM partners to discover best ways to manage SUD from a clinical, legal and operational standpoint. For additional resources, feel free to reach out to the clinical team at Employers Health.

TO LEARN MORE CONTACT:

Kevin Wenceslao
kwenceslao@employershealthco.com

Matt Harman
mharman@employershealthco.com

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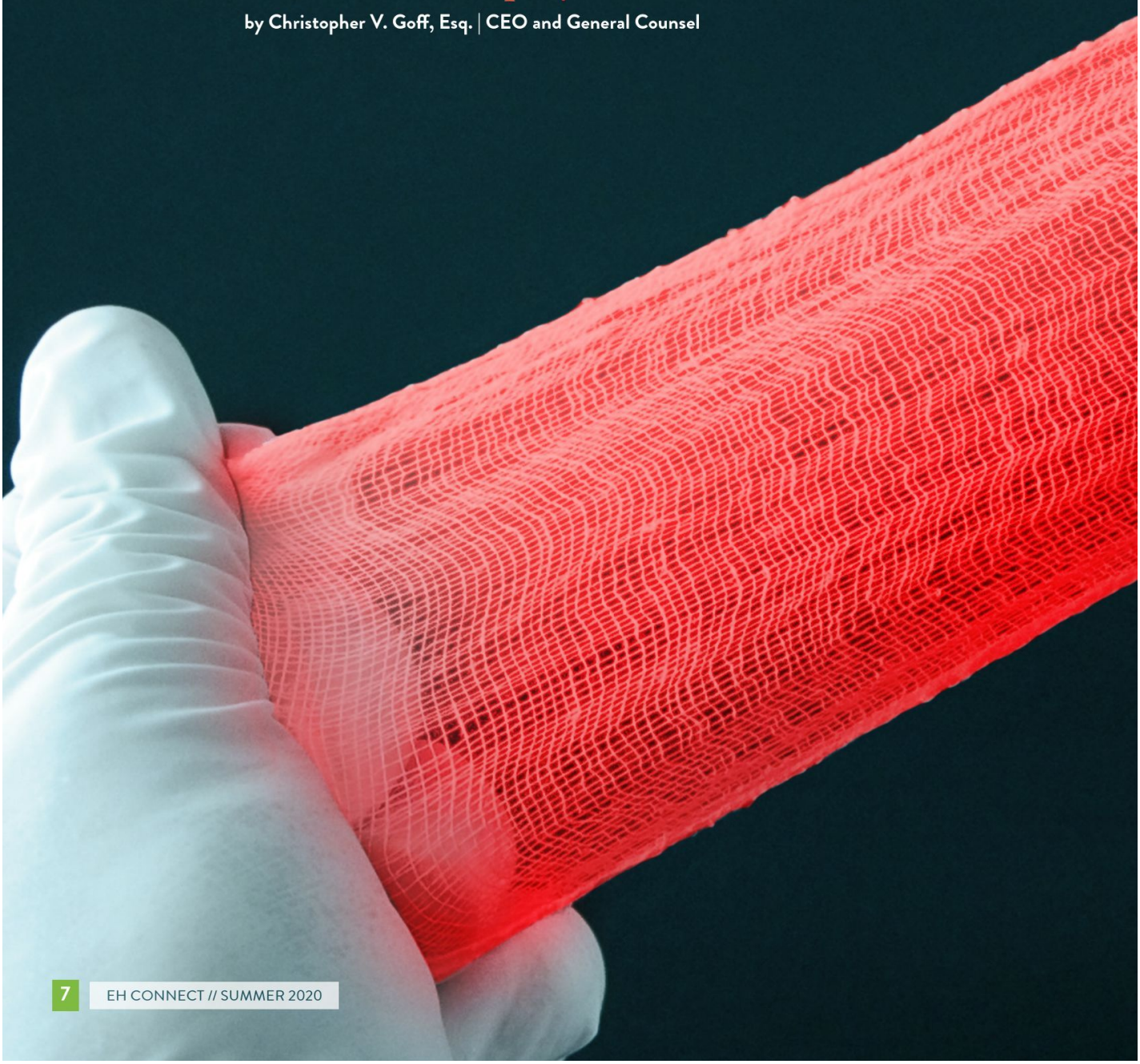
Upcoming Supreme Court Case Could Mean More Red Tape,

Higher Costs, Fewer Health Care Benefits for Employees and Families

by Christopher V. Goff, Esq. | CEO and General Counsel



Every American family deserves quality, accessible, affordable health care, regardless of where they live. That is what employers, labor unions and other groups that provide benefits work to deliver for employees and their families. Plan sponsors try to keep administration costs low, provide the same high-quality care to all employees and use their full bargaining power to negotiate savings for employees on prescription drugs and beyond.

At Employers Health, we see how much effort goes into this as we work with companies to make quality, affordable care a reality for millions of families across the country. But now, as we all face an unprecedented public health and economic crisis, Arkansas officials are asking the Supreme Court to upend an important protection for employers that provide health care benefits to their employees.

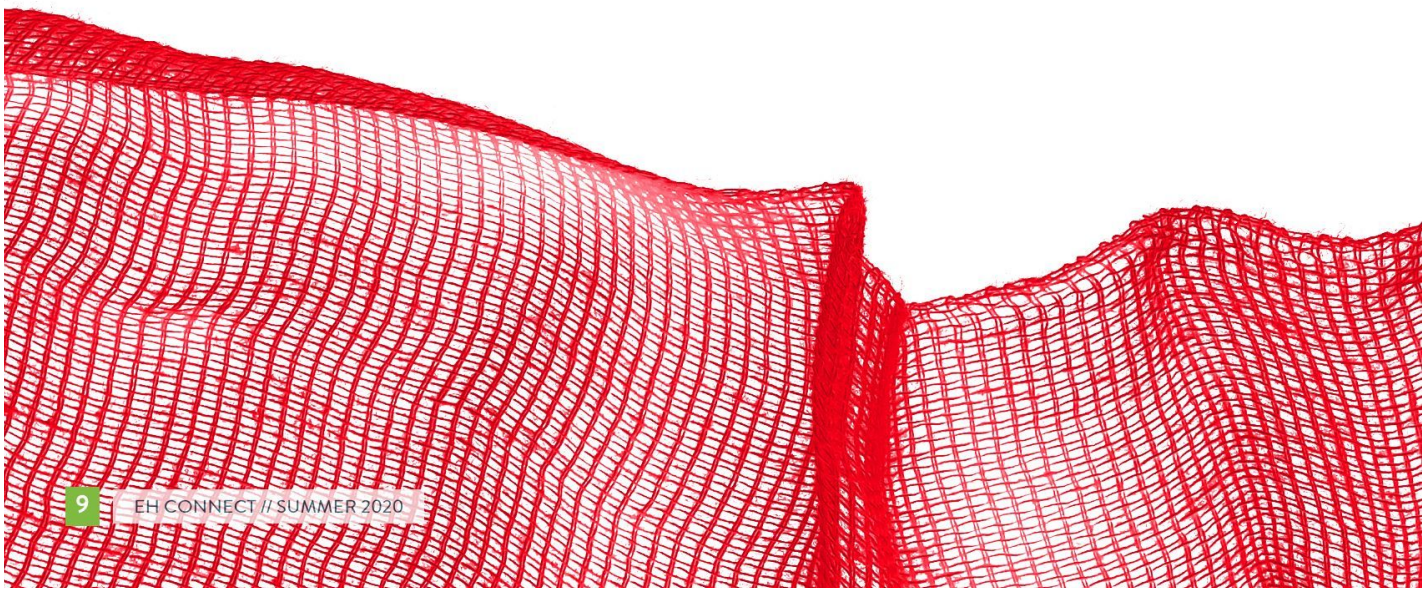
What's at stake when the Court hears Rutledge v. PCMA in October is a fair and equitable health care system for employers and patients. This case hinges on whether or not the Court will allow individual states to chip away at federal protections, and in doing so threaten the ability of employers to deliver consistent, affordable and high-quality health benefits programs for their employees.

Think about it: do workers who happen to live in Arkansas deserve less access to quality care and the prescriptions they need, while their colleagues, doing the exact same job at the exact same company, get access to better care simply because they happen to live 20 miles up the road in Missouri? No. But that's exactly what could happen if the Supreme Court overturns the 8th U.S. Circuit Court of Appeals in favor of the state of Arkansas in this case.

Congress, back in 1974, foresaw this challenge. So, in order to protect employees and ensure they received the full value of the benefits their employers offered, Congress passed the Employee Retirement Income Security Act (ERISA). This law created protections around employer-sponsored benefit plans — meaning employers would not have to waste resources dealing with unpredictable state-based systems that could create disparities among employees and inefficiencies for employers.

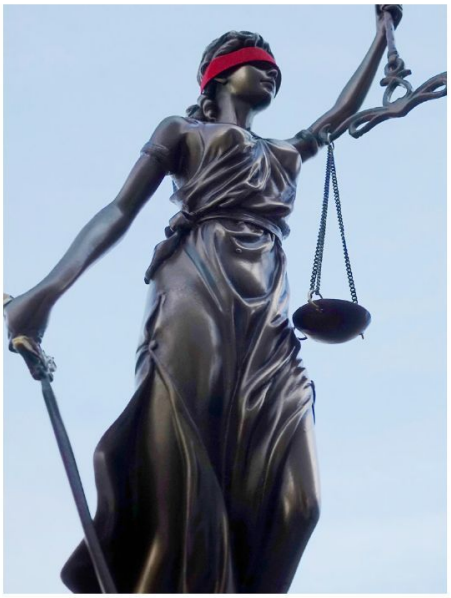
Under ERISA, employers who provide health care benefits to employees are legally required to be financially responsible with employee health care dollars. They seek out the best available benefits at the lowest available cost. Covering all employees under one plan — regardless of geographic location allows employers to take advantage of economies of scale and their full bargaining power to negotiate the highest-value health care benefits possible.

Federal courts, including the Supreme Court, have upheld federal protections and preemption in the face of legal challenges. If the Court decides to upend precedent and hand power over to the states, the impact on employers and patients will be far-reaching.



First, health care costs for employers and employees will increase even more. Period.

Second, employers' administrative burdens will become untenable. At Employers Health, we work with plan sponsors every day to cut through red tape and help them deliver quality benefits at a reasonable cost. Our complex health care regulatory system makes this hard enough already — and this would make it exponentially more difficult. Instead of implementing innovative, strategic solutions to lower the cost of care for employees, employers will need to allocate new resources to comply with a patchwork of regulations and an unending variety of red tape.



Finally, there will not be a centralized jurisdiction over employee health benefit plans and policies, making it a regulatory wild west for employers. This slippery slope will result in decades of complicated, overlapping powers and court cases — all paid for with taxpayers' dollars.

When Arkansas passed a law that would raise costs and keep employers from delivering high-quality, uniform benefit plans for all employees, without regard to what state they're in, the Pharmaceutical Care Management Association (PCMA) challenged it, noting it interfered with federal protections under ERISA. The 8th Circuit agreed with PCMA, but the state of Arkansas, determined to make health care even more complicated and expensive, challenged the case in the United States Supreme Court.

If the Supreme Court decides to depart from its precedent and reverse the ruling of the 8th Circuit, Arkansas and states like it will begin dismantling a system that has allowed employers to provide equitable and affordable health care benefits for employees and their families for 40 years.

As an advocate for employers throughout the country, Employers Health filed an amicus curiae, or friend of the court, brief on behalf of its more than 215 clients throughout the country. For more specifics on this case and other pending legislation affecting pharmacy benefit managers, please see Madison Evans' and Garrett Brown's article on the next page.

Legislative Trends in State Regulation of PBMs

by Madison Evans , J.D. | Legal Associate &
Garrett Brown, J.D., CEBS | Assistant General Counsel

In recent years, nearly 40 states have passed a multitude of laws that regulate pharmacy benefit managers (PBMs) and, by extension, employer-sponsored health plans. The most prevalent topics of state legislation occurred in the areas of drug price transparency and reimbursement, pharmacy audit standards and copay accumulator programs. Employers Health recognizes the challenges that plan sponsors face in light of these regulations and recently filed an amicus curiae brief with the Supreme Court of the United States to protect the interests of its plan sponsors.

Certainly, non-Employee Retirement Income Security Act (ERISA) groups must take heed of state regulatory efforts, but ERISA groups that have long benefited from ERISA's shield from state regulatory efforts must keep a watchful eye on existing and proposed regulations given the mechanisms of application and recent legal challenges. Success of such legislation may give rise to a patchwork of state regulation that undermines consistent national plan design and negatively disrupts the economic model that a plan sponsor's pharmacy benefit is based upon. One such state law, Rutledge v. PCMA, has made it all the way to the Supreme Court of the United States.

State Regulation of Pharmacy Reimbursement by PBMs

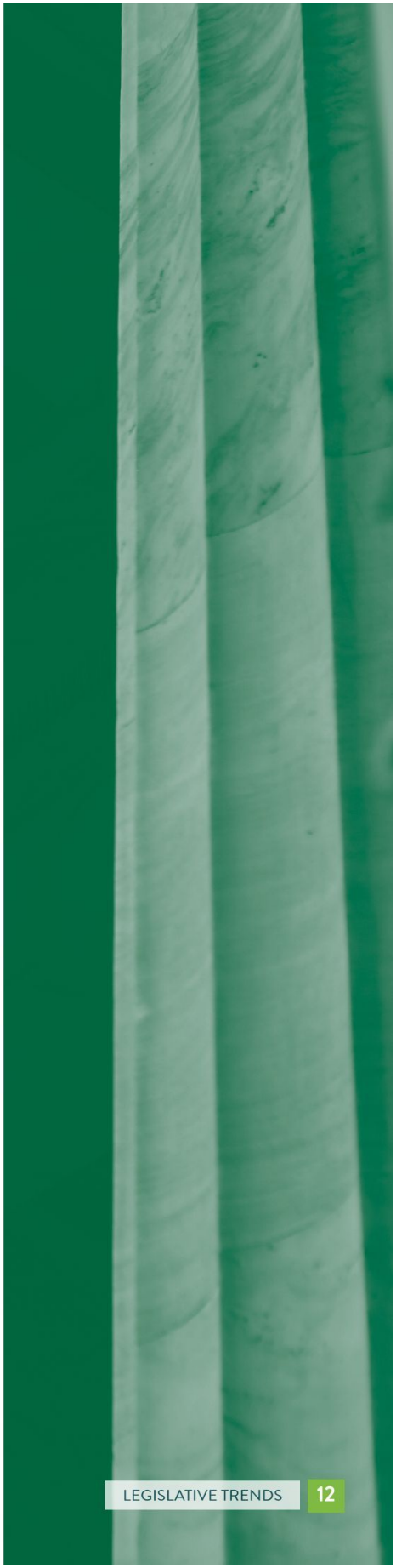
Rutledge v. PCMA involves an Arkansas statute (Act 900) that prohibits negative reimbursement by requiring PBMs to reimburse pharmacies at or above pharmacies' drug acquisition costs. Additionally, the statute requires PBMs to:

- **update maximum allowable cost (MAC) lists within 7 days of an increase in a pharmacy's acquisition cost,**
- **establish an appeal process for pharmacies to challenge and re-rebill claims at a higher rate and**
- **allow a pharmacy to decline to dispense prescriptions at the point of sale, if the pharmacy believes that it would lose money on the transaction.**

The Pharmaceutical Care Management Association (PCMA) challenged this law as violating ERISA. On June 8, 2018 the U.S. Court of Appeals for the Eighth Circuit ruled that Act 900 was preempted and thus unenforceable as applied to ERISA covered health plans. The Arkansas Attorney General appealed the Eighth Circuit's decision on whether Act 900 is preempted by ERISA. The Supreme Court agreed to hear the case this term.

As ERISA is a federal law that regulates employer-sponsored benefit plans and provides express federal preemption of state laws that relate to an employee benefit plan, ERISA is essential to protecting plan sponsors from having to comply with an irregular patchwork of state laws that create disparities and administrative inefficiencies.

TO THAT END, ON APRIL 1, EMPLOYERS HEALTH FILED AN AMICUS CURIAE, OR FRIEND OF THE COURT, BRIEF SUPPORTING THE EIGHTH CIRCUIT'S HOLDING THAT ACT 900 IS PREEMPTED BY ERISA.



Employers Health believes it is vitally important that ERISA plans continue to be protected from state laws that interfere with benefit plan administration. State specific pricing and reimbursement legislation that override network contracts create inconsistency within the benefit plan. The ability for an in-network pharmacy to decline to dispense a participant's medication creates access issues. Moreover, the ability to reverse and rebill below-cost transactions if the pharmacy concludes that the MAC rate is below the pharmacy's acquisition cost is especially concerning for participant and plan cost sharing. If laws like Act 900 are upheld, ERISA plans would be forced to comply with the laws of every state in which participants and their beneficiaries fill prescriptions. In order to ensure plan viability, these extra hurdles will force plans to reevaluate plan design such as benefit coverage and participant cost sharing.

With similar laws pending in many states, the Supreme Court's decision will have important legal and practical implications for ERISA plans and the employees they cover. This case is the Supreme Court's first opportunity to consider the scope of ERISA preemption since its decision four years ago in Gobeille v. Liberty Mutual Insurance Company, where the Court took a helpfully broad approach to ERISA preemption. Oral arguments are expected to occur later this year.

AT LEAST 38 STATES HAVE ENACTED LAWS REGULATING THE CONDUCT OF PBMS IN A VARIETY OF WAYS.

State Regulation of PBM Operations

Another development in state legislation is that some states are considering requiring PBMs to act as fiduciaries in their administration of pharmacy benefits. Nevada has implemented a law specifying that a PBM has a fiduciary duty to a third party with which it has entered into a contract to manage that party's pharmacy benefit plan. This legislation means that the PBM must act in the best interest of the consumers it serves, rather than the underlying health plan. Similar legislation is being considered in Florida, Hawaii and Illinois.

A majority of states have enacted some form of a fair pharmacy audit bill, which subjects PBMs to audit standards by placing guidelines on when and how pharmacy audits are conducted by PBMs. These standards may include:

- **providing a pharmacy at least 10 days' notice of a PBM's intent to audit,**
- **allowing PBMs to recoup costs from pharmacies only if errors are substantive and not merely typographical or clerical in nature and**
- **limiting audit look-back periods.**

As states face rapid growth in prescription drug spending, transparency in the pharmacy supply chain is increasingly seen as an approach to mitigate cost. Many state laws attempt to mandate transparency by requiring PBMs to report certain cost information about rebates and pricing methodology.

TO DATE, 36 STATES AND COUNTING HAVE ENACTED LEGISLATION REGULATING PBMS' PHARMACY REIMBURSEMENT PRACTICES.

Copay Accumulator Regulation

Many states drafted bills similar to the Department of Health and Human Services' (HHS) proposed federal rule regarding the prohibition of copay accumulator programs. As readers may recall, the HHS proposed rule was finalized April 25, 2019, but a few months later, the Department of Labor (DOL), HHS and Department of the Treasury (USDT) collectively announced that the Departments would not enforce the regulation in 2020 amid confusion about the rule's application. The rule, as originally drafted, would have potentially required drug manufacturer coupons for drugs without a generic equivalent to accumulate toward a participant's annual out-of-pocket spending requirements.

On May 14, 2020 HHS finalized the Notice of Benefit and Payment Parameters for 2021. Effective July 13, 2020, this new finalized notice revises the 2019 proposed rule and clarifies that direct support offered by a drug manufacturer for specific prescription drugs may be counted toward an enrollee's annual limitation on cost sharing provided the support does not conflict with any state law. Thus, at the objection of manufacturers and certain advocacy groups, the language does not require the coupon be counted towards participant cost sharing and removes the language narrowing the application of the notice to brand drugs with a generic equivalent.

The intersection with state law contemplated in this notice must be noted. To that end, several states such as Arizona, Illinois, Virginia and West Virginia have passed laws banning certain copay accumulator programs while many other states have followed suit with pending legislation. However, Rhode Island and Kentucky have pending bills that would enforce the opposite; these bills prohibit manufacturer cost assistance from being applied toward any cost sharing owed by the plan participant.

The impact and applicability of such regulations varies based on the mechanism of regulatory action. Legislation specifically regulating insurance and plan design should be viewed very differently than legislation governing PBMs and how claims are adjudicated. For example, many stated have passed legislation or have existing laws that cap insulin cost sharing. As such laws regulate insurance and benefit design, these laws generally do not impact self-funded ERISA plans. However, to the extent states seek to accomplish their aims by regulating the PBM or the PBM-pharmacy relationship, ERISA plan sponsors must take notice.

Final Thoughts

Given the complexity of the pharmacy benefit ecosystem, there are a myriad of different components that states may seek to regulate. Prudent plan sponsors should continue to monitor state regulatory efforts and proceed with the knowledge that these efforts will only increase. Employers Health will continue to advocate for its plan sponsors and will continue to monitor developments as they arise.

TO LEARN MORE CONTACT:

Garrett Brown
gbrown@employershealthco.com

Madison Evans
mevans@employershealthco.com

Noteworthy News

Employers Health at Early Childhood Resource Center

Client Solutions Specialist Brett Pinson recently joined the Steering Committee for the United Way of Greater Stark County Young Leaders Society.

Chris Goff, CEO and general counsel, was re-elected to a four-year term on the Jackson Local Schools Board of Education. He has served on the school's board since 2008. He was also recently elected to the Board of Directors at the Canton Regional Chamber of Commerce.

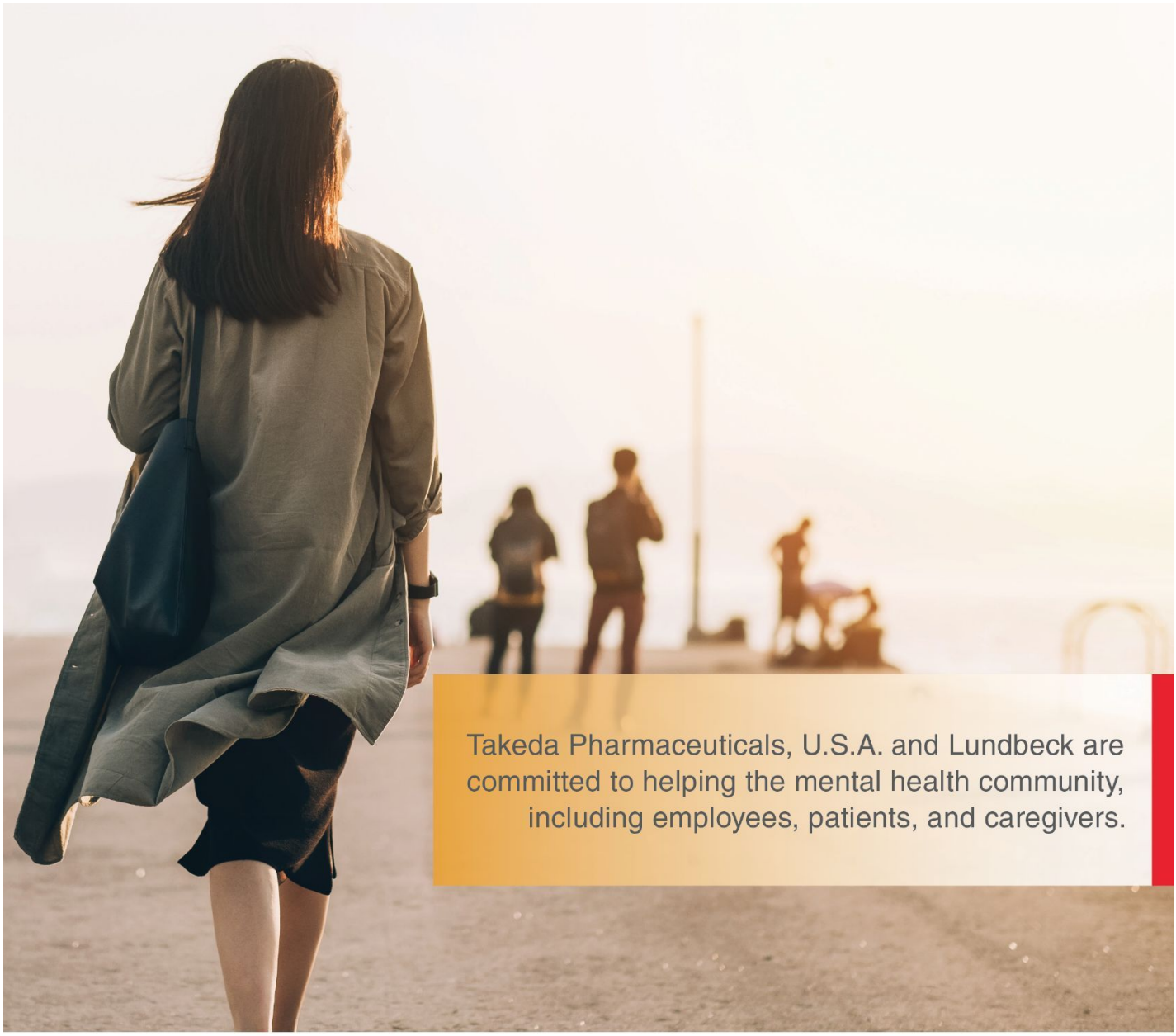
An avid supporter of United Way, Chris Goff is chairing this year's United Way of Greater Stark County campaign.

Director of Business Development, Eric Dublikar was selected to serve as vice-chair of the Stark County Catholic Schools Board of Directors.

Taylor Nervo, client solutions executive, recently joined the Canton Regional Chamber of Commerce's yStark Leadership Committee.

Earlier this year, the Employers Health Canton team volunteered at the Early Childhood Resource Center preparing kindergarten readiness packages for preschool-age children. *(pictured above)*

Kudos to the following Employers Health team members who recently obtained advanced degrees and or certifications: Whitney Burkhalter, Master of Business of Administration in human resource management, Mount Vernon Nazarene University; Travis Johns, Master in Healthcare Administration focusing on human resources from Colorado State University and Society for Human Resource Management – Certified Professional (SHRM-CP); Josh Pedrozo, Master of Business Administration from Fitchburg State University; and Sean Godar, Global Executive Master of Business Administration from Duke University.



Takeda

Lundbeck

To learn more, visit **www.takeda.com** or **www.lundbeck.com**

Client Spotlight

Fighting COVID-19

As our country comes together during these unordinary times, Employers Health is honored by the noble actions of its clients in the battle against COVID-19. Employers Health, its team members and their families are truly thankful for the service and dedication of all clients that have done their part in the fight against this coronavirus. The following are just a few of the many examples of clients helping to combat the virus.

Shortly after the coronavirus pandemic took the world by storm, Zappos launched its one-of-a-kind Customer Service for Anything, through which its associates virtually aided callers with anything from finding PPE for medical professionals to being there for someone who is lonely and wanting to talk. Zappos Customer Service for Anything can be reached at 1-800-927-7671 (Ext 3).

JOANN Stores worked with a national bridal shop to provide fabric and patterns to make 50,000 non-surgical masks a week for hospital systems and senior living facilities throughout the country. The store also made headlines providing free materials, online classes and more for citizens to make masks.

NCH Corporation originally opened in 1919 during the heart of the Spanish Flu epidemic. Today they have disinfected buildings, donated sanitizing cleaner and increased production of cleaners and disinfectants for corporations all over the world.

Routinely making national news, in just a few weeks Battelle developed innovative technology, called Critical Care Decontamination Systems, to decontaminate tens of thousands of N95 masks for health care workers throughout the country.

The team at Hillrom, a global medical technology leader, worked around the clock to produce ventilators, hospital beds and other health care equipment.

In addition to going the extra mile to care for its employees who manufacture PURELL® hand sanitizing products, GOJO donated $100,000 to various funds to increase the awareness and education on the importance of hand hygiene.

At Diebold Nixdorf's Canton, Ohio corporate headquarters, 3D printers were used to make parts for face shields for Operations Shields Up, and employees have assembled full face shields for deployment to national hot spots.

Rudolph Libbe Group assisted an auto manufacturer by installing new equipment in a manufacturing plant enabling workers to build respiratory equipment out of seat blowers.

As university laboratories closed due to the stay at home order, Miami University in Southwest Ohio donated more than 100,000 gloves, goggles and other personal protective equipment (PPE) to local hospitals.

Have a story to share? Contact us at info@employershealthco.com

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