

*Purvi Maniar, Norton Rose Fulbright US LLP*

*A Pandemic Within a Pandemic.* Already one of the most active sectors in health care mergers and acquisitions for a number of years, behavioral health was propelled to the forefront by the challenge to our collective mental health and wellbeing posed by COVID-19. During the pandemic, about four in ten adults nationwide have reported symptoms of anxiety or depressive disorder—a four-fold increase from pre-pandemic levels.<sup>21</sup> While rates of childhood mental health concerns and suicide have been rising steadily since 2010, the pandemic also intensified this crisis. Following dramatic increases across the country in emergency department visits for pediatric mental health emergencies, including suicide attempts, the American Academy of Pediatrics, the American Academy of Child and Adolescent Psychiatry, and the Children’s Hospital Association recently jointly declared a National State of Emergency in Children’s Mental Health, issuing a call to action to policy makers.<sup>22</sup>

*Increased Market Activity.* The increase in demand led to several significant behavioral health transactions in 2021. For example, Lyra Health, which provides comprehensive mental health services through employee assistance programs, raised \$200 million in its latest funding round (bringing its valuation to over \$2 billion) in order to accelerate delivery of mental health benefits for companies with employees around the world.<sup>23</sup> In June 2021, global investment giant, KKR announced the launch of Geode Health, which intends to build a new platform to offer in-person and virtual outpatient mental health across the United States. Overall, by the second quarter of 2021, there were already 119 behavioral health transactions, on track to more than double the 179 transactions completed in all of 2020.

*Regulatory Advances.* On the regulatory side, the federal Consolidated Appropriations Act, 2021 (CAA) amended the federal Mental Health Parity and Addiction Equity Act, including new reporting and oversight requirements focused on strengthening mental health parity requirements applicable to group health plans. The CAA as well as the American Rescue Plan Act of 2021 continued and expanded telehealth funding and reimbursement due to the COVID-19 public health emergency.<sup>24</sup> These funding and reimbursement expansions, as well as regulatory flexibility implemented in 2020 related to physician state licensure, prescribing controlled substances, and HIPAA compliance related to the provision of telehealth (including telebehavioral health) services, are limited to the duration of the public health emergency at the time of this writing. However, they have helped prove the effectiveness of health care services via telemedicine, particularly in behavioral health. Given the national shortage in behavioral health

providers, as well as the fact that, because a physical exam is usually not required, behavioral health services can generally be provided remotely much more often than general telemedicine services, key stakeholder groups are pushing to make these changes permanent. In light of the growing pediatric mental health crisis, several bills have been introduced in Congress that are intended to improve students’ access to mental health services and provide funding for suicide awareness and prevention.<sup>25</sup> The outlook for additional helpful legislative changes is bright given the broad bipartisan support for improving behavioral health in the country.

*Current Market and Consolidation.* Despite the increase in behavioral health transactions, the behavioral health market remains highly fragmented. Aside from a handful of established players, most behavioral health providers are small or solo practices or operators of one to two facilities. The behavioral health market is now more ripe for consolidation than ever before driven by the wider awareness and increased prevalence of mental health and substance use disorders during the pandemic, awareness of the significant improvement in outcomes and overall cost savings that can be achieved through better integration of behavioral health care with physical health care in primary care, inpatient settings and emergency room visits, increasing progress towards overall parity of reimbursement for behavioral health services, and the relaxation of regulations related to telebehavioral health.

Consolidation of health practices and facilities by private equity and traditional health care players (such as large nonprofit behavioral health providers and hospitals and health systems) will permit consistent implementation of best practices and professional management across this sector. This consolidation will also accelerate the movement towards better integration of behavioral health with traditional health care, including collaborations and joint ventures between behavioral health providers and hospitals and health systems. Further, the increased market power brought about through the consolidation, combined with increasing awareness and demand will likely lead to higher reimbursement rates. Although the behavioral health provider shortage will remain a challenge in the near term, these market forces will attract more talent to the profession in the longer term to help bridge the gap.

*Heightened Scrutiny.* While generally good news, the expansion of reimbursement will like bring greater regulatory scrutiny and enforcement. Smaller behavioral health facilities and providers, many of which were largely dependent on self-pay, often flew below the



**Purvi Maniar** is a member of Norton Rose Fulbright's health care transactions team and is a partner based in the firm's St. Louis and New York offices. She is a health care business lawyer who focuses on bringing together hospitals, health systems, medical group practices, behavioral health organizations, private equity clients, and emerging health care companies in mergers, acquisitions, joint ventures, and other strategic business arrangements. Purvi focuses on both domestic and international health care transactions and helped lead the expansion of the global law firm's high caliber domestic health system practice to include international health care transactions. Purvi is passionate about improving access to and quality of behavioral health. She represents private equity companies and prominent nonprofit behavioral health providers in connection with their mergers, acquisitions, strategic partnerships, and clinically integrated networks. She also advises hospitals in connection with restructuring their inpatient behavioral health programs, as well as tele-behavioral health providers and other clients focused on the behavioral health space. She is the Chair of AHLA's Behavioral Health Practice Group.

radar, but large, private equity-backed players and other deep-pocketed consolidators that receive significant governmental and commercial reimbursement will become attractive targets for federal enforcement of the False Claims Act (FCA). Since 2013, at least 25 private equity-backed health care companies have paid settlements in excess of \$570 million for allegedly violations of the FCA. Behavioral health companies may be at greater risk for enforcement (compared to other health care services companies) given the availability of legislative tools specific to behavioral health, such as EKRA, the Eliminating Kickbacks in Recovery Act of 2018. However, larger players in behavioral health, which have both the resources and incentives to invest in appropriate pre-acquisition diligence and maintain sound compliance programs and practices post-acquisition, have the opportunity to raise the bar for quality across the behavioral health industry as a whole.

*Silver Linings.* These recent market and regulatory advances in behavioral health represent significant overall progress towards closing the gap in an area of health care that has been historically misunderstood and neglected. Improving behavioral health through greater access and closer integration with physical health care represents a significant opportunity to improve health care outcomes, patient satisfaction and achieving efficiencies that will improve the bottom line. Much like the overall acceleration in telemedicine trends that resulted from the pandemic, the progress we have recently seen in behavioral health, including increased access to telebehavioral health and early attention to pediatric mental health, and will continue to see in 2022 and beyond represent some of the silver linings of a tumultuous period for health care in the United States.