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# Don't Forget About Adolescence: How the *Braidwood* Litigation Can Shape Access to Mental Health Services and Adolescent Development

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## Abstract

Currently, the Affordable Care Act helps to provide inexpensive preventive care services to adolescents (10–19 years old) by preventing insurance companies from implementing cost-sharing measures. Some of these services can fall under the realm of mental health preventive care such as anxiety and depression testing. The lack of cost to a patient and their family encourages doctors to offer these services to their young patients. Furthermore, this Affordable Care Act provision - fosters doctor-patient communication because it normalizes mental health services as part of well-being. However, *Braidwood Management Inc. v. Becerra* threatens to have far reaching implications for preventive care policy and to disrupt health communication efforts to promote positive mental health. This Article uses structuration theory and a conceptual framework of adolescent development to examine the potential ramifications of cost-sharing on adolescent health. The implications of this change in cost-sharing include constraining doctors' communication behavior in primary care settings and stunting healthy adolescent development. Ultimately, if the *Braidwood* decision is upheld, it may pose a challenge to a doctor's ability to communicate with their young patient about mental health.

**Keywords:** mental health; adolescent development; doctor-patient communication; cost-sharing; health insurance; structuration theory

## Introduction

Adolescence, typically defined between the ages of 10 to 19 years old,<sup>1</sup> is a tumultuous time in an individual's life. This time is filled with growing independence, as an adolescent starts to have more freedom to interact with the world around them and to make decisions that can shape their life. Additionally, this time is associated with an influx of hormonal and psychological changes within the body. These environmental and bodily changes during adolescence can strain an individual's mental health.<sup>2</sup> Consequently, it is important for adolescents to develop strategies early on to effectively manage their mental well-being. Early development of these strategies builds a foundation that allows individuals to better address their mental health concerns both as adolescents and as adults.<sup>3</sup>

Policies that foster adolescents' knowledge about their mental health and management strategies are becoming increasingly important in the United States in response to the nation-wide youth mental

<sup>1</sup>Adolescent Health, WORLD HEALTH ORG., <https://www.who.int/health-topics/adolescent-health> [<https://perma.cc/4KHK-SGAN>].

<sup>2</sup>Mental Health of Adolescents, WORLD HEALTH ORG. (Nov. 17, 2021), <https://www.who.int/news-room/fact-sheets/detail/adolescent-mental-health> [<https://perma.cc/AR6R-UT8Q>]; Sarah-Jayne Blakemore, *Adolescence and Mental Health*, 393 LANCET 2030, 2030-031 (2019).

<sup>3</sup>Adolescent Health, *supra* note 1.

health crisis.<sup>4</sup> This age group is currently facing events that create risks to their mental health such as: the COVID-19 pandemic,<sup>5</sup> global conflicts,<sup>6</sup> and national economic instability.<sup>7</sup> These different events create a sense of uncertainty for those experiencing them, and is one force behind the adolescent mental health crisis.<sup>8</sup> However, such events over the last several years are not the sole cause of this crisis, because mental health concerns such as anxiety and suicidal thoughts, were increasing for years before the COVID-19 pandemic.<sup>9</sup> Pre-pandemic contributors to the mental health crisis included increased academic pressure in school and the presence of social media.<sup>10</sup> The pandemic only amplified these mental health concerns as teens were isolated from their peers due to stay-at-home orders.<sup>11</sup> Given the range of contributors to the crisis, it is important to craft solutions that help healthcare providers work with adolescents to manage their mental health.

Proposed approaches to addressing the youth mental health crisis include both investment in a national strategy<sup>12</sup> and more narrow city-specific initiatives.<sup>13</sup> One suggested measure is to routinely screen adolescents for mental health issues such as depression and anxiety during visits with their primary care physicians.<sup>14</sup> The integration of mental health services, such as screenings, into primary care visits (can help to increase dialogue around mental health among primary care physicians, adolescents, and their parents.<sup>15</sup> The U.S. Preventive Services Task Force (USPSTF) further bolstered efforts to provide these screenings to adolescents by recommending their usage in 2022.<sup>16</sup> These screenings are affordable to adolescents and their families because the Affordable Care Act (ACA) includes a provision that requires no co-pays or deductibles for patients, otherwise known as cost-sharing.<sup>17</sup> Unfortunately, the ongoing *Braidwood* case threatens the viability of these screenings to remain free to individuals who use private insurance.<sup>18</sup> The potential of cost-sharing may have negative

<sup>4</sup>Matthew Stone, *Why America Has a Youth Mental Health Crisis, and How Schools Can Help*, EDUC. WK. (Oct. 16, 2023), <https://www.edweek.org/leadership/why-america-has-a-youth-mental-health-crisis-and-how-schools-can-help/2023/10> [https://perma.cc/SDA9-PSFZ].

<sup>5</sup>The Lancet, Editorial, *An Age of Uncertainty: Mental Health in Young People*, 400 LANCET 539, 539 (2022).

<sup>6</sup>*Mental Health During Global Conflict*, MENTAL HEALTH AM., <https://www.mhanational.org/crisis/global-conflict> [https://perma.cc/SE34-CH23].

<sup>7</sup>Thomas Insel, *America's Mental Health Crisis*, PEW CHARITABLE TRS.: TREND MAG. (Dec. 8, 2023), <https://pew.org/3R3ugL0> [https://perma.cc/2BH6-3MT2].

<sup>8</sup>Susanne Schweizer et al., *Uncertainty as a Driver of the Youth Mental Health Crisis*, 53 CURRENT OP. PSYCH. 1, 1, 4-5 (2023).

<sup>9</sup>Zara Abrams, *Kids' Mental Health Is in Crisis. Here's What Psychologists Are Doing to Help*, AM. PSYCH. ASS'N: MONITOR ON PSYCH., Jan. 2023; Matt Richtel, *'It's Life or Death': The Mental Health Crisis Among U.S. Teens*, N.Y. TIMES (May 3, 2022), <https://www.nytimes.com/2022/04/23/health/mental-health-crisis-teens.html>.

<sup>10</sup>Eric Levitz, *3 Explanations for the Teen Mental-Health Crisis*, INTELLIGENCER (Mar. 27, 2023), <https://nymag.com/intelligencer/2023/03/4-explanations-for-the-teen-mental-health-crisis.html> [https://perma.cc/EE9Y-RSGL]; Kira E. Riehm et al., *Associations Between Time Spent Using Social Media and Internalizing and Externalizing Problems Among US Youth*, 76 JAMA PSYCHIATRY 1266, 1266-67, 1271 (2019).

<sup>11</sup>Abrams, *supra* note 9, at 63; Richtel, *supra* note 9.

<sup>12</sup>*Fact Sheet: President Biden to Announce Strategy to Address Our National Mental Health Crisis, As Part of Unity Agenda in His First State of the Union*, WHITE HOUSE (Mar. 1, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/01/fact-sheet-president-biden-to-announce-strategy-to-address-our-national-mental-health-crisis-as-part-of-unity-agenda-in-his-first-state-of-the-union/> [https://perma.cc/Y55T-N6SC].

<sup>13</sup>THE U.S. CONF. OF MAYORS, *THE MENTAL HEALTH CRISIS IN AMERICA'S CITIES AND THEIR RESPONSES TO IT: A 117-CITY SURVEY 7-13* (2023).

<sup>14</sup>OFF. OF THE SURGEON GEN., *PROTECTING YOUTH MENTAL HEALTH: THE U.S. SURGEON GENERAL'S ADVISORY 21* (2021).

<sup>15</sup>Evelyn Berger-Jenkins et al., *Effect of Routine Mental Health Screening in a Low-Resource Pediatric Primary Care Population*, 51 CLINICAL PEDIATRICS 359, 363-64 (2012); Anne M. Gadomski et al., *Integrating Mental Health into Adolescent Annual Visits: Impact of Pre-Visit Comprehensive Screening on Within-Visit Processes*, 56 J. ADOLESCENT HEALTH 267, 270-71 (2015).

<sup>16</sup>*List of Published Recommendations*, U.S. PREVENTIVE SERVS. TASK FORCE, [https://www.uspreventiveservicestaskforce.org/uspstf/topic\\_search\\_results?topic\\_status=P](https://www.uspreventiveservicestaskforce.org/uspstf/topic_search_results?topic_status=P) [https://perma.cc/D4FE-WRGX].

<sup>17</sup>42 U.S.C.A. § 300gg-13.

<sup>18</sup>*Free Preventive Services at Risk in the Braidwood Decision*, U.S. OF CARE (Sept. 14, 2023), <https://unitedstatesofcare.org/fact-sheet-no-cost-preventive-services-at-risk-by-braidwood-decision/> [https://perma.cc/7R4X-5HQJ].

implications beyond increased financial costs, such as the under-utilization of vital services,<sup>19</sup> changes to how the doctor-patient relationship is formed,<sup>20</sup> and increased racial and ethnic healthcare disparities partially resulting from poor doctor-patient communication.<sup>21</sup>

This Article examines how cost-sharing for adolescent preventive care may shape access to mental health screenings and adolescent development. Part I provides an overview of the doctor-patient communication landscape and examines barriers to effective communication. Part II analyzes how a decision for the plaintiffs can shape adolescent access to preventive care and threaten healthy adolescent development. Specifically, I employ two frameworks to understand how a judgment for the plaintiffs may impact doctors and patients. First, I use structuration theory, a sociology meta-theory that is utilized by communication scholars, to understand how structure (e.g., a decision stating the rules around cost-sharing for adolescent preventive care services) can constrain doctors' communication behaviors, thereby making them less likely to suggest mental health screenings to adolescents. Second, I use a conceptual framework of adolescent development to show how a lack of screenings can threaten the goals of healthy adolescent development. Part III explores how doctors, parents, and adolescents can work together to overcome the barriers that the potential *Braidwood* decision for the plaintiffs can have on mental health prevention services. Ultimately, while *Braidwood* may have implications for how healthcare interactions are organized, adolescents and those who care for them still have opportunities to exert agency in their healthcare interactions.

## I. Overview of Doctor-Patient Communication

Communication between a patient and their doctor is the bedrock of the primary care relationship and is tied to constraints of the institutional setting—the medical office. The communication behavior during a doctor-patient interaction can differ significantly based on the type of visit and the associated assumptions with each type of visit. For example, an annual wellness visit carries the assumption that there are no pre-existing health issues or that the doctor may be hearing about new symptoms from the patient, while an acute care visit is for a specific health problem that is troubling the patient.<sup>22</sup> In the case of wellness visits, the questions asked by the doctor are designed, often in a checklist manner, to be able to assess the patient's well-being<sup>23</sup>

Although the USPSTF's recommendation for mental health screenings makes it more likely for doctors to offer these screenings to their young patients,<sup>24</sup> there are still barriers to effective mental health communication in clinical settings. For example, patients may think that they only should speak about their physical, rather than mental health concerns, given that the doctor may not have expertise on mental health.<sup>25</sup> Additionally, a patient needs to trust their doctor and believe that the doctor will take their concerns seriously.<sup>26</sup> From the doctor's perspective, barriers include: limited amounts of time with

<sup>19</sup>Sherry Glied, *Managed Care*, in 1A HANDBOOK OF HEALTH ECONOMICS 713 (A.J. Culyer & J.P. Newhouse eds., 2000).

<sup>20</sup>Christopher T. Robertson, *Should Patient Responsibility for Costs Change the Doctor-Patient Relationship?*, 50 WAKE FOREST L. REV. 363, 367-69 (2015).

<sup>21</sup>Ana I. Balsa et al., *Clinical Uncertainty and Healthcare Disparities*, 29 AM. J.L. & MED. 203, 210 (2003).

<sup>22</sup>JOHN HERITAGE & STEVEN CLAYMAN, TALK IN ACTION: INTERACTIONS, IDENTITIES, AND INSTITUTIONS 104 (2010); Jeffrey D. Robinson, *Soliciting Patients' Presenting Concerns*, in COMMUNICATION IN MEDICAL CARE: INTERACTION BETWEEN PRIMARY CARE PHYSICIANS AND PATIENTS 22, 22-23 (John Heritage & Douglas W. Maynard eds., 2006).

<sup>23</sup>John Heritage, *Questioning in Medicine*, in WHY DO YOU ASK?: THE FUNCTION OF QUESTIONS IN INSTITUTIONAL DISCOURSE 42, 57 (Alice Freed & Susan Ehrlich eds., 2009).

<sup>24</sup>U.S. PREVENTIVE SERVS. TASK FORCE, *supra* note 16; Praveena Somasundaram, *Anxiety Screening May Happen at Your Child's Next Doctor Visit. Here's Why*, WASH. POST (Oct. 21, 2022), <https://www.washingtonpost.com/wellness/2022/10/20/anxiety-screening-children/> [https://perma.cc/597R-MDYS].

<sup>25</sup>Rebecca Appleton et al., *Perspectives of Young People Who Access Support for Mental Health in Primary Care: A Systematic Review of Their Experiences and Needs*, 72 BRIT. J. GEN. PRAC. e161, e164-65 (2022).

<sup>26</sup>See *id.* at e165.

patients to discuss mental health concerns given other screenings to be completed during the appointment, lack of confidence to ask probing questions about mental health, and lack of training regarding the nuances of different mental health matters.<sup>27</sup>

The medical profession has been impacted by forces that have reshaped how doctor-patient communication occurs in the United States. One force that has shaped doctor-patient communication is an increased emphasis on patient-centered care. Patient-centered care was developed in the 1970s as an alternative to the “traditional, paternalistic, medical model,”<sup>28</sup> and it is a central priority of the United States’ health care system after the passage of the ACA.<sup>29</sup> While patient-centered care has had different meanings throughout the years, the concept focuses on:

an individual’s specific health needs and desired health outcomes [being] the driving force behind all health care decisions and quality measurements. Patients are partners with their health care providers, and providers treat patients not only from a clinical perspective, but also from an emotional, mental, spiritual, social, and financial perspective.<sup>30</sup>

Patient-centered care has spurred dialogue about improving doctors’ communication skills to understand how to facilitate patient-centered communication<sup>31</sup> and the effectiveness of communication within specific medical interactions.<sup>32</sup> This shift to patient-centered care attempts to move doctors away from paternalistic care in which a doctor makes decisions about a patient’s care without any shared decision-making.<sup>33</sup> However, patient-centered care has not conclusively improved patients’ health outcomes.<sup>34</sup> Nevertheless, the ideal of patient-centered care has changed perceptions of how doctors should communicate with their patients.

The second force that shaped doctor-patient communication is the COVID-19 pandemic and the associated regulatory changes to telehealth. The highly contagious nature of COVID-19 meant that most individuals were required to stay in their homes to reduce the spread.<sup>35</sup> Consequently, the Department of Health and Human Services temporarily removed restrictions to telehealth access for Medicare recipients,<sup>36</sup> and states, as well as some private insurance companies, followed suit by relaxing their

<sup>27</sup>Doireann O’Brien et al., *Barriers to Managing Child and Adolescent Mental Health Problems: A Systematic Review of Primary Care Practitioners’ Perceptions*, 66 BRIT. J. GEN. PRAC. e693, e699-e703 (2016); Samantha M. Imfeld et al., *Primary Care Pediatrician Perceptions Towards Mental Health Within the Primary Care Setting*, 90 PEDIATRIC RSCH. 950, 953-55 (2021); Taslina Eisner-Fellay et al., *Adolescent Behavioural Risk Screening in Primary Care: Physician’s Point of View*, FAM. PRAC. 1, 8 (2023).

<sup>28</sup>Tara Latimer et al., *Patient-Centredness and Consumerism in Healthcare: An Ideological Mess*, 110 J. ROYAL SOC. MED. 425, 425 (2017).

<sup>29</sup>Barbara Cliff, *The Evolution of Patient-Centered Care*, 57 J. HEALTHCARE MGMT. 86, 86 (2012).

<sup>30</sup>*What Is Patient-Centered Care*, NEJM CATALYST, (Jan. 1, 2017).

<sup>31</sup>Barbara Maatouk-Bürmann et al., *Improving Patient-Centered Communication: Results of a Randomized Controlled Trial*, 99 PATIENT EDUC. & COUNSELING 117, 117 (2016).

<sup>32</sup>Ronald M. Epstein et al., *Effect of a Patient-Centered Communication Intervention on Oncologist-Patient Communication, Quality of Life, and Health Care Utilization in Advanced Cancer: The VOICE Randomized Clinical Trial*, 3 JAMA ONCOLOGY 92, 92 (2017); Somnath Saha & Mary Catherine Beach, *The Impact of Patient-Centered Communication on Patients’ Decision Making and Evaluations of Physicians: A Randomized Study Using Video Vignettes*, 84 PATIENT EDUC. & COUNSELING 386, 386 (2011); Linda C. Zandbelt et al., *Medical Specialists’ Patient-Centered Communication and Patient-Reported Outcomes*, 45 MED. CARE 330, 330 (2007).

<sup>33</sup>Lee H. Igel & Barron H. Lerner, *Moving Past Individual and “Pure” Autonomy: The Rise of Family-Centered Patient Care*, 18 AMA J. ETHICS 56, 56 (2016).

<sup>34</sup>ALISON PILNICK, RECONSIDERING PATIENT CENTRED CARE: BETWEEN AUTONOMY AND ABANDONMENT 14-15 (2022).

<sup>35</sup>Jennifer Kates et al., *Stay-at-Home Orders to Fight COVID-19 in the United States: The Risks of a Scattershot Approach*, KFF (Apr. 5, 2020), <https://www.kff.org/policy-watch/stay-at-home-orders-to-fight-covid19/> [https://perma.cc/8J2F-AAKT].

<sup>36</sup>Heather Landi, *Trump Administration Opens up Access to Telehealth Services During Coronavirus Outbreak*, FIERCE HEALTHCARE (Mar. 17, 2020), <https://www.fiercehealthcare.com/payer/trump-administration-opens-up-access-to-telehealth-services-during-coronavirus-outbreak> [https://perma.cc/R8QR-ASAM].

restrictions on telehealth implementation.<sup>37</sup> While doctor-patient communication is similar between virtual visits and in-person visits,<sup>38</sup> adolescents have noted both positives and negatives to telehealth usage. One positive of telehealth usage is that adolescents perceive their care to be more personalized from their doctor.<sup>39</sup> However, some adolescents noted that they felt a lack of privacy discussing sensitive matters with their doctor because their parent may learn of the discussion's contents.<sup>40</sup> While parents may often accompany their children to in-person doctor's appointments, adolescents noted that their privacy concerns around telehealth were slightly more present than in-person visits.<sup>41</sup> Adolescents worried that their parents may overhear a confidential conversation or monitor their electronic communication with a doctor.<sup>42</sup> Given that advocacy efforts are occurring to keep telehealth accessible,<sup>43</sup> it is important to keep in mind how adolescents will respond to discussions about sensitive topics such as mental health, as well as how the type of environment, physical or virtual, can shape those discussions.

Within mental health communication, these forces have created unknowns for doctors regarding how they should communicate with their young patients and vice versa. These doctors are trying to balance patient-centered communication, changes in the environment in which they are communicating with their patients, and the recommended topics that they should discuss with their patients. The potential elimination of cost-sharing following *Braidwood* creates more uncertainty for doctors, because it creates another challenge in the health care system that doctors must manage.

## II. *Braidwood* as a Barrier to Adolescent Mental Health Services

### A. Impacts of Cost-Sharing on Doctors' Communication Behavior

To better understand the potential impacts that cost-sharing can have on access to mental health care and adolescent development, I first use structuration theory as a lens to examine possible ways doctor-patient communication can be restructured post-*Braidwood*, from the perspective of a doctor. Structuration theory is a sociology meta-theory credited to Anthony Giddens that highlights how the structure of a social system can enable and constrain an individual's actions.<sup>44</sup> In this case, "Structures are the rules and resources that agents can draw upon in their social action. Rules are principles or guides to social action such as routines or procedures."<sup>45</sup> A legal decision can be a rule under structuration theory because it can provide guidelines for how members and organizations of civil society must behave. Previously, the *Chevron* deference governed how administrative agencies were able to interpret the law in ambiguous situations, in effect shaping how administrative agencies could operate in the United

<sup>37</sup>JoAnn Volk et al., *States' Actions to Expand Telemedicine Access During COVID-19 and Future Policy Considerations*, COMMONWEALTH FUND (June 23, 2021), <https://www.commonwealthfund.org/publications/issue-briefs/2021/jun/states-actions-expand-telemedicine-access-covid-19> [https://perma.cc/4DYW-E2ZQ].

<sup>38</sup>Joseph Ford & Markus Reuber, *Comparisons of Communication in Medical Face-to-Face and Teleconsultations: A Systematic Review and Narrative Synthesis*, 38 HEALTH COMM'N 1, 6 (2023).

<sup>39</sup>Lisa Mikesell et al., *Exploring the Connectivity Paradox: How the Sociophysical Environment of Telehealth Shapes Adolescent Patients' and Parents' Perceptions of the Patient-Clinician Relationship*, 38 HEALTH COMM'N 2854, 2857 (2023).

<sup>40</sup>Bianca A. Allison et al., *Adolescent and Parent Perceptions of Telehealth Visits: A Mixed-Methods Study*, 70 J. ADOLESCENT HEALTH 403, 408 (2022); see also Samantha Rea et al., *Exploring the Complexity of Telehealth Privacy Through a Lens of Adolescent Development*, 33 QUALITATIVE HEALTH RSCH. 220, 221 (2023).

<sup>41</sup>Allison et al., *supra* note 41, at 410.

<sup>42</sup>*Id.* at 408; Jacquelin Rankine et al., *Adolescent Perspectives on the Use of Telemedicine for Confidential Health Care: An Exploratory Mixed-Methods Study*, 73 J. ADOLESCENT HEALTH 360, 363 (2023).

<sup>43</sup>*Advocacy in Action: Supporting Telehealth*, AM. MED. ASS'N (Dec. 8, 2023), <https://www.ama-assn.org/practice-management/digital/advocacy-action-supporting-telehealth> [https://perma.cc/Z7PV-XP3R].

<sup>44</sup>ANTHONY GIDDENS, *THE CONSTITUTION OF SOCIETY: OUTLINE OF THE THEORY OF STRUCTURATION* 1-37 (1984); Heather E. Canary & Carlos A. Tarin, *Structuration Theory*, in *THE INTERNATIONAL ENCYCLOPEDIA OF ORGANIZATIONAL COMMUNICATION* (Craig R. Scott & Laurie Lewis eds., 2017) (ebook).

<sup>45</sup>Joel Iverson et al., *Structuration Theory and Health and Risk Messaging*, OXFORD RSCH. ENCYCLOPEDIA COMM'N (Aug. 22, 2017), <https://doi.org/10.1093/acrefore/9780190228613.013.520> (emphasis omitted).

States.<sup>46</sup> However, uncertainty looms now that the Supreme Court has overturned *Chevron* deference in *Loper Bright Enterprises v. Raimondo*.<sup>47</sup>

Communication scholars regularly draw on structuration theory to highlight how communication choices can be both enabled and constrained by rules within an organization.<sup>48</sup> For example, Olufowote examined how informed consent laws impact the way radiologists interact with their patients when discussing medical procedures.<sup>49</sup> Additionally, health behavior researchers employed structuration theory to examine how the structure of health services can shape healthy behaviors (i.e., alcohol consumption) and individuals' understanding of health information.<sup>50</sup>

Structuration theory provides a framework for understanding how the conditions that govern health-care organizations can constrain a doctor's communication and behavior with their patients. Within the context of *Braidwood*, upholding the verdict for the plaintiffs means that the federal government cannot require insurers to provide no-cost services recommended by the USPSTF.<sup>51</sup> In effect, this creates a new rule that will guide doctors' communication and behavior in medical interactions with their young patients. Specifically, doctors may not conduct these recommended screenings because their patients may not be able to pay for these services. Additionally, given that primary care doctors practice in one of the lowest paid specialties<sup>52</sup> and are pressured to be efficient in their appointments with patients, this new rule can have a downstream effect of reducing adolescent screenings because doctors will be worried about compensation for performing these screenings. Prior research shows that primary care physicians vary in their likelihood of offering preventive care screenings depending on the compensation model used in their organization,<sup>53</sup> and this variance could increase following the *Braidwood* decision.

### ***B. Impacts of Cost-Sharing on Access to Screenings and the Goals of Healthy Adolescent Development***

While adolescents may be exposed to the subject of mental well-being through their school or the media they consume, the lack of mental health screenings in primary care settings can create an unnecessary barrier to healthy adolescent development. The potential for negative impacts to adolescent development is why I employ a second theoretical framework to understand the impacts of cost-sharing on adolescents. Specifically, I employ the conceptual framework created by Blum and colleagues that was designed to understand the necessary goals for healthy adolescent development including (1) engagement with learning; (2) emotional and physical safety; (3) positive sense of self or self-efficacy; (4) and acquisition of life and

<sup>46</sup>*Chevron Deference*, LEGAL INFO. INST., [https://www.law.cornell.edu/wex/chevron\\_deference](https://www.law.cornell.edu/wex/chevron_deference) [<https://perma.cc/C25N-5K57>] (last updated June 2022).

<sup>47</sup>*Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2273 (2024) (overturning 40 years of precedent requiring courts to defer to agencies in certain circumstances); *West Virginia v. EPA*, 597 U.S. 697, 706 (2022) (the most recent significant major questions doctrine in recent years).

<sup>48</sup>Robert D. McPhee et al., *Structuration Theory*, in *THE SAGE HANDBOOK OF ORGANIZATIONAL COMMUNICATION: ADVANCES IN THEORY, RESEARCH, AND METHODS* 75, 79 (Linda L. Putnam & Dennis K. Mumby eds., 2014); Iverson et al., *supra* note 46.

<sup>49</sup>James Olumide Olufowote, *Informed Consent to Treatment's Sociohistorical Discourse of Traditionalism: A Structural Analysis of Radiology Residents' Accounts*, 25 *HEALTH COMMUN* 22, 23, 29 (2010).

<sup>50</sup>RB. Soemanto & T.A. Gutama, *The Relations of Structuration in the BPJS Health Program and the Changing of Health Behavior*, 5 *J. HEALTH POL'Y & MGMT.* 121, 124-25 (2020); Anna M. Leddy et al., "You Already Drank My Beer, I Can Decide Anything": *Using Structuration Theory to Explore the Dynamics of Alcohol Use, Gender-Based Violence, and HIV Risk Among Female Sex Workers in Tanzania*, 20 *CULTURE, HEALTH & SEXUALITY* 1409, 1419-20 (2018).

<sup>51</sup>U.S. OF CARE, *supra* note 18.

<sup>52</sup>Andrew Smith, *Low Pay Is Driving Primary-Care Doctors from New Jersey, Endangering State Residents*, *RUTGERS HEALTH* (Feb. 9, 2024), <https://rutgershealth.org/news/low-pay-driving-primary-care-doctors-new-jersey-endangering-state-residents> [<https://perma.cc/7MRV-QWS7>]; Nathan Kohrman, *Why the Most Important Doctors Are the Least Well Paid*, *MOTHER JONES* (Sept.-Oct. 2023), <https://www.motherjones.com/politics/2023/09/why-the-most-important-doctors-are-the-least-well-paid/> [<https://perma.cc/TX2D-P4WJ>].

<sup>53</sup>Cuneyt Ozkardes & Jeffrey S. Harman, *Physician Compensation Method Effects on Preventive Service Delivery*, 37 *J. GEN. INTERNAL MED.* 480, 480-81 (2022).

decision-making skills.<sup>54</sup> Although this framework<sup>55</sup> was designed for early adolescence development, researchers have employed this framework to understand adolescents' experiences beyond early adolescence.<sup>56</sup> Within the context of *Braidwood*, these goals allow researchers and policymakers to understand the specific ways that the legal decision's implementation of cost-sharing can harm adolescent development when access to care is reduced because doctors may be less incentivized to use this type of care.

Engagement with learning focuses on the ways adolescents can be actively involved in acquiring knowledge.<sup>57</sup> Adolescents can work towards this goal during visits with their doctors by problem-solving or watching their parents interact with the doctor.<sup>58</sup> Further, mental health screenings allow adolescents the opportunity to engage in problem-solving by asking questions about the subject of mental health using concrete language (from the screener to frame their questions to their doctor.<sup>59</sup> This opportunity to ask questions helps to normalize mental health discussions because the topic is not being treated as stigmatized, but rather as an aspect of an individual's overall health. Additionally, if an adolescent chooses to discuss the screening process with their parent or guardian present, the screening becomes an opportunity for the adolescent to see how their parent views mental health, especially if conversations about mental health are not occurring within the home. For example, if a parent discourages a doctor from discussing certain questions during a screener, an adolescent is able to appreciate that information and learn that their parent may not be open to discussing mental well-being. Conversely, if a parent encourages the doctor to discuss the screener questions during the visit, an adolescent may be excited to learn more about mental health and how to effectively communicate about the topic. In essence, the screening provides adolescents an opportunity to learn about mental health in the primary care setting, allowing them to be open to further engagement around mental health.

Emotional and physical safety focuses on providing adolescents secure environments that provide them the opportunity to communicate their identity and weather the stressors of life.<sup>60</sup> Today, adolescents are dealing with extraordinary stressors that can negatively impact their mental health.<sup>61</sup> Adolescents may not realize that they are experiencing symptoms associated with anxiety or depression, so they may not know how to ask for help.<sup>62</sup> Mental health screenings offer a space where conversations about mental health can be broached. For instance, a doctor administering a screener for anxiety in addition to assessing an adolescent's physical health, helps to create the impression that a primary care office is a space to talk about all types of health, including mental health. In essence, adolescents feel emotionally safe discussing their mental health when their doctor has created an environment where any health concern is validated. While not all adolescents may use the primary care office to engage in conversations about mental health, the screenings increase the likelihood that the office will be used for mental health communication.

Positive sense of self refers to how an adolescent views themselves<sup>63</sup> while positive sense of self-efficacy refers to an adolescent's confidence in their ability to manage their emotions and actions.<sup>64</sup> Identity

<sup>54</sup>Robert W. Blum et al., *A Conceptual Framework for Early Adolescence: A Platform for Research*, 26 INT'L J. ADOLESCENT MED. & HEALTH 321, 323 (2014).

<sup>55</sup>*Id.* at 321.

<sup>56</sup>Rea et al., *supra* note 41, at 221-22.

<sup>57</sup>See *id.* at 221; see also CLEA MCNEELY & JAYNE BLANCHARD, *THE TEEN YEARS EXPLAINED: A GUIDE TO HEALTHY ADOLESCENT DEVELOPMENT* 2-3, 21-24 (2009); Blum et al., *supra* note 54, at 323.

<sup>58</sup>See Rea et al., *supra* note 41, at 221, 227-28; see also MCNEELY & BLANCHARD, *supra* note 57, at 34.

<sup>59</sup>See Gadomski et al., *supra* note 15, at 270 (finding that "[t]eens engaged in significantly more psychosocial dialogue and offered more psychosocial information after completing [the mental health screening].").

<sup>60</sup>See Rea et al., *supra* note 56, at 221, 224; see also MCNEELY & BLANCHARD, *supra* note 57, at 45-53 (discussing formation of adolescent identity); Blum et al., *supra* note 54, at 323.

<sup>61</sup>The Lancet, *supra* note 5.

<sup>62</sup>Caroline Miller, *Signs of Depression During the Pandemic*, CHILD MIND INST. (Oct. 30, 2023) <https://childmind.org/article/signs-of-depression-during-coronavirus-crisis/> [<https://perma.cc/X6BY-FAGL>].

<sup>63</sup>MCNEELY & BLANCHARD, *supra* note 57, at 44.

<sup>64</sup>*Teaching Tip Sheet: Self-Efficacy*, AM. PSYCH. ASS'N (2009), <https://www.apa.org/pi/aids/resources/education/self-efficacy#:~:text=Self%2Defficacy%20refers%20to%20an,%2C%20behavior%2C%20and%20social%20environment.> [<https://perma.cc/LM7W-MUWE>].

formation is a critical aspect of adolescence and the way in which adolescents manage their emotions is a key aspect in positive identity formation.<sup>65</sup> During adolescence, individuals may unintentionally ignore problematic mental concerns as simply a part of growing up.<sup>66</sup> This disregard for legitimate mental health concerns can lead to adolescents having a negative sense of self-efficacy because they feel that they cannot tackle stressful situations. The use of mental health screenings at the start of adolescence can help doctors direct adolescents who are experiencing mental health challenges to the proper follow-up care. By providing effective care as soon as mental health concerns start to emerge, these individuals can get the necessary tools to feel confident in managing their mental health in a healthy manner.

Acquisition of decision-making skills focuses on the tools necessary to make rational decisions. Mental health screenings aid in the acquisition of decision-making skills because they bring adolescents directly into the medical decision-making process in a safe and supportive environment in which adults can help make rational decisions. The screening questions directly rely on the experiences of the adolescent being screened, which helps to legitimize the adolescent's experiences. However, the answers are analyzed in part by the doctor and their medical expertise and impacted by the parent's knowledge of their adolescent. These different forms of knowledge are weighed in the decision-making process to arrive at a collective solution, and in the process, the adolescent gets to practice their decision-making skills.

### III. An Alternative Approach to Reducing Mental Health Screening Costs

While it is currently unclear if *Braidwood* will be upheld, it is important for doctors and policymakers to be proactive in devising solutions to counteract the negative impacts that cost-sharing can have on health care delivery. Specifically, a two-tiered approach that focuses both on the interpersonal communication and organizational constraints can help to address the barriers to effective doctor-patient communication within adolescent health care.

#### A. Organizational Tier

If the *Braidwood* decision states that it is unconstitutional to require private insurance companies to prevent cost-sharing, then health care costs may be passed on to consumers who have private health insurance.<sup>67</sup> However, this potential ruling does not mean there are not alternatives that organizations could employ to reduce the financial barriers to mental health screenings for adolescents. One such alternative could be value-based payment.<sup>68</sup> Value-based payments are grounded in the idea that doctors are paid for their services by the value and quality they provide to the patient, which stands in contrast to the doctor being paid for each service they perform for the patient.<sup>69</sup> The Commonwealth Fund found that doctors who used a value-based payment approach were more likely to engage in efforts to improve the quality of care for their patients.<sup>70</sup> Within the context of adolescent mental health, these alternatives to traditional payment for primary care doctors can incentivize them to perform mental health

<sup>65</sup>See MCNEELY & BLANCHARD, *supra* note 57.

<sup>66</sup>Miller, *supra* note 62.

<sup>67</sup>Natasha Murphy & Sam Hughes, *Fact Sheet: Braidwood v. Becerra Case on Preventive Services*, CTR. FOR AM. PROGRESS (May 4, 2023), <https://www.americanprogress.org/article/fact-sheet-braidwood-v-becerra-case-on-preventive-services/> [<https://perma.cc/AS6D-3FYD>].

<sup>68</sup>SOPIA JAVED ET AL., CTR. FOR HEALTH CARE STRATEGIES, ADDRESSING ADOLESCENT HEALTH CARE AND WELL-BEING THROUGH FINANCIAL INCENTIVES 2 (2021), [https://www.chcs.org/media/Addressing-Adolescent-Health-Care-and-Well-being-Through-Financial-Incentives\\_111721.pdf](https://www.chcs.org/media/Addressing-Adolescent-Health-Care-and-Well-being-Through-Financial-Incentives_111721.pdf) [<https://perma.cc/A5SP-2X96>].

<sup>69</sup>Celli Horstman & Corinne Lewis, *Engaging Primary Care in Value-Based Payment: New Findings from the 2022 Commonwealth Fund Survey of Primary Care Physicians*, COMMONWEALTH FUND (Apr. 13, 2023), <https://www.commonwealthfund.org/blog/2023/engaging-primary-care-value-based-payment-new-findings-2022-commonwealth-fund-survey> [<https://perma.cc/E3TL-A7GB>].

<sup>70</sup>*Id.*



screenings, while being appropriately paid. Steadily over the past ten years, insurance companies have been switching to value-based payment models<sup>71</sup> and to help spur these changes more rapidly across the healthcare industry, federal and state governments can further incentivize primary care doctors and insurance companies to switch to a value-based payment model.

### B. Interpersonal Communication Tier

Even with the organizational changes that could occur to counteract *Braidwood*, policymakers and doctors must make sure that these mental health screenings are effective at eliciting the necessary information about a patient's well-being. To do so, patients must be active participants in their conversations with doctors. Rather than advocating for a patient-centered approach to these mental health conversations, I argue that doctors should implement Pilnick's<sup>72</sup> alternative to patient-centered care. Her alternative is that doctors should balance their medical expertise alongside patient expertise.<sup>73</sup> When it comes to mental health, doctors do have some clinical knowledge on the subject, even if they do not feel that they are always qualified to speak to their patients about mental health concerns. However, patients do have information about their symptoms, which is vital for doctors to know in order to provide the proper diagnosis. By balancing both types of expertise, young patients can feel that their perspective is validated in the interaction, while doctors can state that mental health screenings are providing value because necessary health information was provided during the screening.

### Conclusion

Adolescence is both an exciting and terrifying time in an individual's life. Unfortunately, this time of development is being disrupted by a national mental health crisis that threatens adolescents' ability to grow up into adults who can weather the emotional storms of life. One potential solution is to provide preventive care screenings to adolescents to help them identify their mental health concerns and receive timely care. However, the ongoing *Braidwood* case threatens the accessibility of these screenings due to the potential reimposition of cost-sharing. Cost-sharing measures would reduce the likelihood of doctors administering mental health screeners, thereby reducing adolescents' access to preventive care, and negatively impacting their development. Ultimately, while efforts to mitigate the country's mental health crisis are being threatened by *Braidwood*, it is still vital to provide preventive screenings to adolescents at a low cost in order to help them get access to mental health treatment in a timely manner.

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<sup>71</sup>Aparna Atluru & John Bracaglia, *An Outcomes-Focused Approach to Mental Health Care*, HARV. BUS. REV. (Mar. 3, 2023), <https://hbr.org/2023/03/an-outcomes-focused-approach-to-mental-health-care> [<https://perma.cc/N7ZF-WN2Z>]; Horstman & Lewis, *supra* note 69.

<sup>72</sup>Alison Pilnick, *Reconsidering Patient-Centred Care: Authority, Expertise and Abandonment*, 26 HEALTH EXPECTATIONS 1785, 1785 (2023).

<sup>73</sup>*Id.* at 1787.