

**NABH Board of Trustees Meeting**

**Tuesday, Nov. 15, 2022**

**Minutes**

**Roll Call**

**Present (In person or by phone):**

Members: Matt Peterson, Board Chair; Stuart Archer, Pat Connell, Mark Covall, Frank Ghinassi,

Pat Hammer, Tess Hughes (substituting for Tom Kenny), Eric Kim, Richard Kresch, Dwight Lacy, Drew Martin, Hank Milius, Jameson Norton, Eric Paul, Ethan Permenter, Joe Pritchard, Jim Shaheen, Harsh Trivedi, Hyong Un, Deborah Weidner, David White, Jeffrey Woods, Susan Wright

Staff: Shawn Coughlin, Maria Merlie, Julia Richardson, Sarah Wattenberg, Emily Wilkins, Jessica Zigmond

Absent: Thomas Britton, Eric Foushee, John Hollinsworth, Tom Kenny, Michael Radosta,

Scott Rauch, Sean Walsh

1. **Introductions**

Shawn Coughlin started the meeting at 9:18 a.m. ET and provided brief administrative details for the meeting. Shawn introduced Rochelle Archuleta, NABH’s new executive vice president for government relations and policy. Rochelle started at NABH in September and spent more than 20 years at the American Hospital Association.

Shawn turned the meeting over to NABH Board Chair Matt Peterson of UHS. Board members introduced themselves and spoke briefly about their system organizations.

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1. **Minutes Approval**

Shawn asked for a motion to approve the minutes. A motion was made and seconded to approve the Board of Trustees (BOT) and Executive Committee (EC) calls from June 2022 through October 2022. Board members approved the minutes unanimously without discussion.

1. **New Member Ratification**

Shawn provided brief descriptions of three new system members for the board of trustees to ratify as new members: BayMark Health Services (Texas), Center for Behavioral Health (Missouri), and Listeners on Call (Texas).

Matt Peterson asked for a motion to approve. A motion was made and seconded. Board members approved the new members unanimously without discussion.

1. **Midterm Election Results**

Shawn reported that Democrats have retained control in the Senate. For the House: as of Thursday morning, Nov. 15, the make-up of the new House included 205 Democrats and 217 Republicans.

Republicans are leading by somewhat comfortable margins in the remaining races, so Republicans are likely to take control of the House.

Shawn said there will be leadership elections in the Senate and House, with a little talk of challenging Sen. Mitch McConnell (R-Ky.), although Shawn said that doesn’t appear likely. Shawn said House Minority Leader Kevin McCarthy (R-Calif.) is likely to lead the House as Speaker if, as expected, Republicans take control of the lower chamber. The full House will ratify the new Speaker of the House in the New Year.

Shawn also said members are jockeying for positions on congressional committees. Shawn said the make-up means that it will continue to be difficult for Congress to govern; he added that President Biden will likely use executive orders in the next two years.

Shawn reported that Reconciliation is now off the table. He also said the Biden administration has engaged in NABH’s issues. Also, the administration is expected to extend the Covid-19 Public Health Emergency (PHE) when it expires in April.

Shawn said earlier this year, Sens. Ron Wyden and Mike Crapo asked stakeholders for essential information about behavioral healthcare challenges and needs. The working group for this effort was bipartisan and the committees introduced four legislative discussion drafts. NABH is working with members of these committees. NABH will emphasize that efforts to integrated primary care and mental health/substance use disorder care needs to be a “two-way street.”

In the House, members have not outlined a healthcare agenda, Shawn said.

Shawn said the Biden administration is committed to NABH’s issues, as we saw earlier this year when the U.S. Labor, Justice, and Treasury Departments released[*2022 Report to Congress on the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008*](https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/report-to-congress-2022-realizing-parity-reducing-stigma-and-raising-awareness.pdf)*,* which found U.S. insurers were non-compliant with parity.

EBSA has contacted NABH as the agency updates its regulations regarding parity because this administration

Eric Paul said at HCA, behavioral healthcare parity violations are four times worse than insurance violations are the medical-surgical side.

Shawn said the following NABH champions in the Senate due to retirement or the recent elections, including Sens. Roy Blunt (R-Mo.), Richard Burr (R-N.C.), Lisa Murkowski

(R-Alaska), and Rob Portman (R-Ohio).

In the House, several retiring members were also champions: Eddie Bernyce Johnson (D-Texas), John Katko (R-N.Y.), Markwayne Mullen, the Oklahoma Republican who was elected to the Senate after serving in the House.

Shawn said the House Ways and Means Committee introduce legislation that suggested the IPF PPS is a system that is not working. NABH worked on a process with CMS, which completed a technical analysis of the IPF PPS and found that it is working, though certain areas of that system could use improvement.

The House Energy & Commerce Committee focused mainly on reauthorizing healthcare agencies and programs.

**V. Legislative Outlook**

A.Lame Duck Congress

Shawn said Job #1 is federal appropriations. Currently, the federal government is operating on a continuing resolution (CR) that expires on Dec. 16. Shawn said as of Nov. 14, he has heard that appropriators are coming close to agreement on top-line numbers for these bills. From there, the committees determine how the money will flow to the 13 cabinet departments.

HRSA, SAMHSA, state block grants, and other programs need to be re-authorized. Shawn said the reauthorization of these bills is likely to be the most action behavioral healthcare will see in this lame duck Congress.

Medicare cuts: Shawn reported there was a Senate letter led by Sens. Paul and Warren that supports waiving PAY-GO and statutory sequester cuts.

Senate Finance Committee drafted legislation related to youth services was included in the *Safer Communities Act,* which provides services to schools.

Congress has appropriated more funding CCBHCs, suicide prevention, add-on payment for hospitals that we expect will continue with PHE extension. Shawn said he expects telehealth services to be the most bipartisan issue for Congress to agree on.

Harsh Trivedi said part of the PHE extension means states don’t have to reauthorize Medicaid rules and asked if this topic has come up. Shawn said the administration has actively worked with states prepping them for this process.

The PHE expires in mid-January, and Rochelle Archuleta added that it’s expected for the new extension to last until mid-April 2023.

1. **Regulatory Update**

Rochelle Archuleta discussed recent activity to reform the IFF PPS. Rochelle provided an update to members about the types of issues that have happened throughout 2022 and are expected in 2023. These include:

* **CMS FY 2023 IPF PPS Proposed Rule:**
	+ April: FY 2023 Proposed Rule included a technical report on IPF PPS payment adjustments.
* **House Ways & Means Committee:**
	+ September: Draft legislation advises the HHS secretary to revise and improve Medicare payments directed to inpatients psychiatric hospitals and units.
* **Senate Finance Committee:**
	+ October: Staff signaling that an IPF PPS reform proposal is likely in 2023.
* **Medicare Payment Advisory Committee:**
	+ Summer 2022: NABH met with MedPAC staff. Shawn added here that some NABH members have engaged in this process. Harsh Trivedi said some of the Sheppard Pratt teams knows some of the MedPAC commissioners, and he emphasized that Congress will listen to MedPAC. Harsh added that this is an important process for NABH members to engage with MedPAC and perhaps influence the conversation.
	+ October 2022: Public meeting on IPF PPS; presented IPF profile through 2019.
	+ In Process: MedPAC staff site visits to IPFs
	+ June 2023: Will publish a IPF PPS chapter on trends through 2021; policy recommendations are possible.

**Pending Joint Data Analysis with the Federation of American Hospitals**

* + The goal is to provide staff with tools to support advocacy with the Hill and other policymakers.
	+ Current status: potential consultants reviewing project specifications
* **Compare IPF Subgroups and Identify patterns for Most Recent 4 Years**
* **Detailed provider profile**
	+ Payment and cost analyses
	+ Margin analysis (inpatient and outpatient, other)
	+ Breakouts by subcategories; as a sample: units vs freestanding, ownership category, all-inclusive, high-cost outlier payments, telehealth volume/payments, DRG and weight breakouts
* **Patient Profile**
	+ Dual Medicare/Medicaid status (Already under consideration for future risk adjustment)
	+ Clinical acuity (CCI)
	+ DRG and comorbidities distributions
	+ ALOS
	+ Readmissions
	+ Race/ethnicity
* **Possible Deeper Dive in 2023**
	+ Case examples of admission criteria; denials rates
	+ Medicare Advantage data (MedPAC reported MA data from 2019)
	+ 190-day lifetime limit

Jim Shaheen asked how the discussion of eliminating the 190-day lifetime limit will play into these discussions. Rochelle said in its technical report on the IPF PPF, CMS had data regarding the percentage of beneficiaries have tapped out of the 190 days. She added that NABH will talk with our contracts on this research process so we can gather that data.

Sarah Wattenberg said the *Ryan Haight Act of 2008* prevents the illegal dispensing of controlled substances via the Internet. The act requires an in-person evaluation to prescribe substances; there is an exception to this rule when the provider is engaged in telehealth services. This happens when the provider has special registration with the DEA. There are concerns that with the telehealth extensions that without this regulation there will be a disruption to treatment.

Sarah said advocates have written to DEA to release its rules on telehealth special registration and to transfer authority to the other PHE that HHS declared in 2017: the opioid crisis.

Sarah said advocates also want DEA to propose a solution to gap in prescribing.

Sarah reported that earlier this month SAMHSA approved take-home flexibilities for methadone with the intention of making these flexibilities permanent beyond the Covid-19 PHE.

28-day take- homes for stable clients and 14 days for less-stable patients.

Sarah said NABH one provision NABH continues to advocate for and has had no success is allowing methadone induction via telehealth in which the patient is in the clinic and the physician prescriber users audio-visual prescribing. NABH is considering a draft protocol for this because NABH is hearing this could be a bandwidth issue and perhaps SAMHSA needs something to react to regarding this issue.

Joe Pritchard said take-home methadone is an example of an issue that needs to be taken to the states. So one idea is for NABH to form a working group that helps determine and recommend how to we take the federal guidance and make that work at the state level.

Regarding methadone induction, Joe said he believes NABH needs some legislative advocates on this issue.

Jim Shaheen asked if NABH has a historical example of having done this before. Mark said we don’t have state associations, which takes a lot of resources; however, NABH has worked with our members in numerous ways on issues for which NABH and the states are aligned. In these instances, Mark would participate in calls to provide a national perspective.

Mark added that through the years NABH has worked with members to develop guidelines for states.

Joe added that for the states, we can look at which states are not wanting to support these guidelines and then draft a plan of what we (NABH) can do. He also recommended the governors’ association where NABH can draw influence, and Mark Covall suggested the National Association of State Legislatures.

Shawn said this is an area in which NABH can work with our members’ government relations teams.

Joe asked if there is a liaison at NABH to work with states.

Sarah reported that she learned from a fellow stakeholder association that there will be a report in early December about state opioid settlement activity. Sarah said this effort has been messy because sometimes the authority is at the county level, rather than the state level—which can make it harder to track the money.

David White said ATOD has does on advocacy in recent years and has focused on the state level, which could provide an opportunity for NABH and ATOD to work together. He added that take-home methadone is another area of alignment, and Joe Pritchard added that parity is also.

Harsh Trivedi said there will likely be surplus cash from the opioid funds and the states that don’t know what to do with it. What would be helpful is something from a national association saying how those funds should be used.

**VI. 188th Congress: NABH Priorities**

Shawn said NABH team will discuss priorities for the coming year at a two-day staff meeting in early December. For this reason, NABH asks that members fill out and submit NABH priority sheets that members can find in their folders.

Shawn also asked for members to identify the government relations teams at their systems for NABH, if they have not done so already.

1. **Member Update Information**

Shawn showed and described new information that new and existing members will be required to submit. NABH added these additional fields to enhance advocacy efforts with policymakers and regulators.

1. **Denial-of-Care Portal**

Shawn said DOL is very interested in our data to help the administration enforce parity regulations and call out insurers that have violated the 2008 parity law.

Henry Harbin and Beth Ann Middlebrook, consultants in this area, recently presented to NABH’s Managed Care Committee.

Rochelle presented briefly about the association’s denial-of-care portal. She said NABH needs higher engagement for this data-collection effort to be effective.

Rochelle discussed some presentation slides—which provide confidential data—to offer a snapshot of what NABH has analyzed from the denial-of-care portal data.

Matt Peterson said it might be difficult, but we need to get very specific about types of plans denying care (private, Medicaid, Medicare, etc.) For instance, Matt said, one reason Humana’s approval data seems positive is because of Human’s TRI-CARE contracts.

Rochelle said we want more data; however, submitting to the portal becomes more involved. Then later, after we have more data, we can get more specific.

Drew Martin said additional information is also beneficial for states to see which insurers are denying care to state residents.

Shawn said we have advocated that insurers should not submit only denials, but specific data on those denials: how many, for what, etc. We have a very receptive presidential administrative that is receptive to this.

Hank Milius said we have an opportunity with the national sentiment being pro-behavioral health. He said there will be an outcry if we put pressure on the payors.

Shawn said the managed care committee said in a way providers are “masking” denials in that providers still provide care.

Joe asked if we’re also looking at denials for telehealth; if not, this is an area that we need to pay attention to.

Harsh asked if we could push legislation that mandates insurers send denial letters to the federal government that shows when denials are made.

Rochelle said there is legislation regarding prior authorization as well as plan transparency. Then Rochelle said NABH is looking to our members for more specific data that are members are collecting already. One area could be the date between prior authorization request and prior authorization approval.

Shawn noted that 2023 will mark the 15th anniversary of the 2008 mental health parity act. NABH hopes to use this as an opportunity to make a push against insurers that have not complied.

1. **Ad Council: CEO Alliance Partnership Agreement**

CEO Alliance will act as an advisory board for the Ad Council in the development of the new $65 million initiative for mental health awareness.

Frank Ghinassi said that in New Jersey there is a bifurcation of the field: you have a large number of community providers that don’t participate in in a health plan. What happens is you have a group of “haves” getting care and then you have systems that deal with insurers that are predominantly seeing Medicaid patients. It’s a rate issue; we’re not going to persuade young residents and psychiatrists to take a job in which they earn 70% less than their counterparts.

Shawn said there was a report that came out about four years ago from Milliman that highlighted the rate differential. That report is being updated, and the question is: has the rate issue worsened?

1. **Board Priorities and Board Meeting Assessment**
2. **Break (5 minutes)**
3. **NABH Education & Research Foundation**

Jim Shaheen said the NABH Education and Research Foundation have worked on a few issues, including payers pulling back on covering for telehealth because, they say, the efficacy isn’t there.

The Foundation has engaged Manatt to develop an issue brief on this topic. Jim emphasized member participation. He said our participation in these data-collection efforts is critical. Jim cited the low participation in the NABH denial-of-care portal as an example. He urged all board members to tell their organizations: we will participate in this.

Jim also said the Foundation has helped craft the new system member information and member update questions that NABH has sent to members this year. Jim said one of the reasons that the Foundation chose the questions it did is because then NABH can show the pure volume of data on specific issues.

Jim added that NABH donated $200,000 to re-start the Foundation. He said we will need to start a campaign to raise money for the Foundation to work on other projects.

Jim said the whole goal of the Foundation is to give voice and real data and research to what we’re doing as an industry. Traditional the behavioral healthcare industry has not been good at providing data, and that’s why the Foundation was restarted.

Dr. Hyoung Unsaid payors will not cover telehealth services for partial hospitalization. He also said it would better to learn directly from patients how satisfied they are with those services.

Jim Shaheen said this is something Manatt will consider in the Issue Brief that Manatt is developing for the Foundation.

Tess said it will be interesting to see the data not only on telehealth versus in-person, but also the data on telehealth versus no treatment at all.

A motion was made and seconded to approve the slate. Members approved the slate unanimously.

**XIV. Adjournment**

Harsh Trivedi made a motion to adjourn the meeting and it was seconded. Members approved the motion and the meeting adjourned at 11:56 a.m. ET.