

# National Association for Behavioral Healthcare



Access. Care. Recovery.

Fall Board Meeting  
October 2, 2019  
Minutes

## Roll Call

Present: Members: Pat Hammer, Board Chair; Sam Bastien, Annetta Caplinger, Bob Denev, Frank Fortunati, Marcia Fowler (for Jim Dredge), Michele Gougeon, Scott Gressett (for Stuart Archer), Jeff Hillis (for Michael Cartwright), Bob Maha, Marsha Medlin, Jameson Norton, Don Parker, Dominic Sirianni, John Stupak, Dwight Willingham

Staff: Mark Covall, Shawn Coughlin, Scott Dziengelski, Maria Merlie, Sarah Wattenberg, Jessica Zigmund

Absent: Jennifer Ziccardi-Colson, Eric Kim, Eric Paul, Julia Richardson, Harsh Trivedi

## I. Introductions

NABH Board Chair Pat Hammer began the meeting at 8:20 a.m. Pat said it's good to remember our roles, our members, and making decisions in the best interest of our patients across America.

## II. Minutes Approval

A motion was made and seconded to approve the minutes from the March 2019 Board Meeting, and Executive Committee Calls from May, June, August, and September 2019.

## III. New Member Ratification

A motion was made and seconded to ratify new members Addiction Campuses in Tennessee; Bellin Psychiatric Center in Wisconsin; CleanSlate Centers in Tennessee; and Community Medical Services in Arizona.

## IV. President and CEO's Report

Mark discussed his president and CEO report, saying that the association is positioned to move to the next level. He added that there is still no level playing field and that's something we as an association needs to work on.

Mark said he what he values most is that mental health and addiction treatment is a people business. The most rewarding part has been the people he has met. He said it has been a privilege to serve the reorganization.

## V. Board Priorities Update: Access to Care Initiative

Shawn gave an update on the Managed Care Committee's work throughout 2019.

Since the Board adopted the *Access to Care* resolution in March 2019, the management team has distributed it in personal meetings and briefings to U.S. representatives, senators, and federal administration agency officials. NABH has also shared it with members of the news media.

House Energy and Commerce Committee Republican staff members have asked the majority to include oversight of managed care plans on the committee schedule following the *Wit v. UBH* decision. NABH is watching this closely and is prepared to provide supporting materials for these oversight efforts.

The NABH Managed Care Committee held its first meeting in January and its second meeting in June. At the June meeting, NABH consultant Meriam Bendat, also a plaintiff attorney in the *Wit* case, provided an update on the class action lawsuit as it moves into the remedy phase. Plaintiffs asked the court to appoint a special monitor to oversee UBH compliance with the court orders; require formal fiduciary training for all UBH leaders; and issue an injunction prohibiting UBH from using its own internally developed clinical criteria.

In addition, the committee outlined priorities in each of the broad issue areas that the Board resolution identifies: Medical Necessity, Utilization Management, and Network Adequacy. These include:

- **Medical Necessity**

Ask NABH members to endorse specific standards and criteria to use as models (outlined in the resolution: ASAM/LOCUS/CALOCUS/etc.) and explore the idea of NABH developing educational materials for their adoption/use across NABH member organizations.

- **Utilization Management**

Identify the most egregious practices that Managed Care Organizations (MCOs) use. The committee separated these practices into four categories:

1. Medical Necessity: approved days, observation level of care, and peer-to-peer review
2. Credentialing of providers and facilities
3. Payment levels, rate increases, timely payment and failure to pay correctly
4. Tricare-Mission-Choice

- **Network Adequacy**

The committee asserted that an adequate and accurate network is the MCO's obligation and that providers should not be penalized for shortcomings of an MCO's network; instead, insurers should cover cost-of-discharge delays during periods of determination.

NABH was successful in helping ensure that the *Mental Health Parity Compliance Act* (S. 1737) was included in the Senate Health Education Labor and Pensions (HELP) Committee mark-up of the *Lower Health Care Costs Act* (Section 310), which the Senate HELP Committee passed on July 8, 2019. That legislation awaits Senate floor action, which is expected to occur in the early fall.

Following the Board's lead, the NABH management team has been engaged in an ongoing dialogue with Optum Behavioral Health. The NABH team held a personal meeting on June 26 with Martin Rosenzweig, Optum Behavioral Health's chief medical officer, and Anjlee Joshi, Optum's vice president of strategy and business development.

NABH and Optum identified next steps, including Optum's commitment to convene a small scientific advisory committee to discuss implementing LOCUS/CASII/ECSII/ASAM criteria system-wide, and potential changes to other utilization-management techniques. The NABH team will invite certain NABH members to participate. NABH and Optum also discussed improving data-sharing efforts. The NABH management team is also pursuing similar meetings with other large MCOs, such as Anthem and Centene.

Pat Hammer asked if there are any updates on the remedy phase. Shawn said that process is ongoing. He reiterated the three requests: fiduciary responsibility, LOCUS/CALOCUS. He said he doesn't know about a timeframe.

Mark said the litigation will have a significant impact on the marketplace, and organizations such as NABH will continue to press these companies on these issues.

Bob Deney said the main question is will they follow the criteria that is set. It's one thing to have criteria, but the question is whether these companies will actually adhere to the criteria.

Mark asked Board members for their feedback on this issue.

Sam Bastien said they are seeing a move toward Milliman's criteria. He said MCOs are using the Milliman criteria and won't share that criteria with providers. Milliman is "playing both sides of the fence," he added, because Milliman has offered to sell the criteria it is using to providers.

Mark said the push should be to push on LOCUS and CALOCUS and ASAM for addiction, rather than the proprietary criteria that some MCOs want to use.

John Hollinsworth said reviews are just as frequent. He has seen no real change, although he acknowledged the remedy phase is ongoing.

Dominic Sirianni said he's seen a little positive change with New Directions Behavioral Healthcare, not Optum. Bob Deney said he thinks the criteria isn't going to change a lot.

Don Parker said health systems understand that the 80% of the highest users of health plans have mental health issues. So in some big systems, many hospitals are telling insurers: we will drop you from our network if you don't include behavioral healthcare. Maybe there is a way to maximize this strategy, he said. He suggested that the association consider how we can share risk.

Jameson Norton said what Vanderbilt finds is that health plans want them out of the network. He mentioned PsychHub—part of the model is to have a more standardized approach to CBT. There is a big challenge in shaping care pathways.

Bob Deney said the connection with medical is going to change things.

Michele Gougeon said throughout this challenge, the segment can't lose sight of workforce issues. Things like this explain why people don't want to enter the behavioral healthcare segment.

Mark talked about integration: many of the plans have "carve out" plans, but while those plans are embedded, they are not integrated. Annetta agreed, saying there are only a few—such as Kaiser—that are truly integrated.

Bob said UHS has hired Matt Peterson, who came from Optum. He's also former Military. So he brings a different perspective. Peterson will join the NABH Board.

Annetta said our members need to be more accountable on how we measure progress. Dominic said the data is there, but insurers aren't ready to use it. Mark said Martha Temple of

Optum said utilization is increasing and therefore we need control of that. But, he added, Optum is using the same techniques and hasn't changed.

John Stupak said they fought an MCO on unfair practices and Sequel won fairly. But then the MCO found a new way to deny coverage: it won't certify clinicians.

Shawn said he and Scott had discussions with the White House's economic team and domestic policy council about NABH's High Cost of Compliance report.

He added there has been progress: new guidance from CMS on ligature risk, and on EMTALA.

### **CMS/Joint Commission Surveys**

Members said they are in a worse position than they had been previously on surveys. Mark suggested we ask for specific case examples from members.

Scott said our regulatory report looks at the increasing rate of immediate jeopardy.

Mark said in many cases state surveyors, CMS contracts with the state. Bob Deney said now state surveyors are coming with the CMS representative.

Frank Fortunati said take it a step further: what if that money was spent in another way. What if we used it for patient navigators that help patients. How can we spend that money differently. Frank suggested NABH ask Manatt to consider this.

Don Parker mentioned an alternative to CMS survey, a Norwegian company called DNV (Det Norske Veritas) that focuses on a collaborative activity with staff. He said this company has deemed status.

Jameson Norton reiterated that none of these surveys are adding value and improving care processes. When we see a problem, what are we doing to help a hospital do well.

Michele Gougeon said it's important to know that providers incur these costs **every year**.

Members shared some stories about the amount of reviews and follow-ups that do not add value. Sam Bastien said historically CMS has been more Draconian than Joint Commission. Disparity rating: 75% disparity between CMS and Joint Commission. He remembers a perfect Joint Commission survey and then a month later CMS wanted to close the hospital.

1. This latest level of scrutiny was based on false data, based on a study in England that was inaccurate. So has this had an impact on patient safety.
2. It used to be that certain instances had to rise to a "finding" after a while. Now every single thing rises to the level of a finding.

Bob Deney said when you consider the rise in post-discharge suicide rates have gone through the roof; the money is going to the wrong place.

Mark said he's talked recently with an Associated Press reporter and explained that the more highly regulated hospitals are, the more prison-like they are.

Pat Hammer asked what approach NABH should take to follow up with the Joint Commission on this. Mark said we might consider a supplement to Manatt's report. Scott emphasized the role of Members of Congress. He added that NABH should take a two-fold approach: 1) Getting to Joint Commission, and 2) Familiarizing Members of Congress on the issue.

## **VI. 2020 Election Activities**

Shawn provided an update on NABH's 2020 Engagement Strategy, which includes the following Washington-based activities:

- Website Updates
  - Advocacy Page updates
  - Government Relations Database updates
    - Internal- and External-facing uses
- Engage with Government Relations Listserv
- Fly-Ins
  - CEOs and/or GR staff
- Host candidate fundraisers during Annual Meeting, Board meetings and fly-ins
- Engage NABH Committee Members in issue-specific, D.C. Advocacy Meetings

Shawn emphasized that Members of Congress prefer hearing from providers rather than lobbyists.

NABH's 2020 Engagement Strategy also includes the following NABH Champions PAC activities:

- Targeted Site Visits with our Champions
- Host Roundtables in districts of key Congressional Members
- Host Nashville-based Fundraisers
- Develop message points for our members for Town Hall Meetings and Candidate Forums
- Engage NABH Committee members in issue-specific roundtables and meetings

PAC: Shawn said NABH is now the 11<sup>th</sup> largest healthcare trade association. He added that Julia will continue to work on site visits. He mentioned Legislative Fly-Ins, and Nashville is a potential area for this.

Shawn said he would like to visit Board member facilities next year as NABH's president and member asked about the ranking (NABH is 11<sup>th</sup>), and Shawn said it's based on dues revenue.

Jeff Hillis suggested setting targeted goals for the PAC.

John Stupak said a few years ago the association hosted dinners with champions, which he found useful for the personal time. He thought these events were very useful for getting to know the Member of Congress and also the Member's staff. Mark said that will be part of the plan, adding that one idea might be to coincide with a Board meeting.

## **VII. Medicare Opioid Provider (OTP) Coverage/Remedy Partners Analysis**

Sarah Wattenberg reported that CMS released its proposed rule related to Medicare coverage for opioid treatment programs (OTPs). The rule proposed a much more intensive model. CMS built in about 12 services, including individual and group psychotherapy services a week. Sarah said this changed the service model in a big way.

Mark said the only place you can get Methadone covered is an OTP. Until now, Medicare didn't cover it. It will now after this regulation.

Sarah said NABH engaged Remedy Partners, a firm that has experience on bundles. It modeled—even within CMS' own fee schedule—that CMS doesn't come close to covering everything.

NABH submitted a comment letter to CMS on Sept. 27, which is posted on the association's website. CMS will release a final rule by Nov. 1.

#### **VIII. AHA/NABH Collaboration Action Plan**

Mark said that AHA conducts its annual survey of hospitals, which is one of the main sources of hospital system data in the country. NABH has its annual survey of our members. AHA's survey does some behavioral health data, but it's limited.

AHA's members are looking for help, resources, and guidance on behavioral healthcare. AHA could build this structure, or partner with another organization. NABH Board member Harsh Trivedi is also an AHA Board member. He suggested there might be an opportunity to collaborate here.

Mark said we have outlined a list of public policy issues. Then there is the issue of data. AHA's research arm is the Health Research and Educational Trust (HRET). We're considering sharing our data with AHA, and AHA would share its data, and we would co-brand a supplement. NABH plans to hold a meeting with AHA's chief data strategist.

Jameson Norton said we could leverage our Unit Committee members to help with this effort. Mark said of the health systems that have a significant behavioral health presence, we have about 100 members.

Jeff Hillis asked if AHA has a behavioral health subcommittee. Mark said AHA has a council on this and is changing its name. It's an advisory group, and NABH Board member Annetta Caplinger is NABH's representative. AHA President and CEO Rick Pollack said the association is reviewing how to give this advisory group more of a presence.

Mark said NABH doesn't want AHA to replicate what we do. AHA recognizes that and is willing to work together and leverage the strengths of both associations.

Mark said he thinks the likelihood of Congress appropriating funds for behavioral health IT is low. As Scott Dziengelski said, Congress' perspective is: we gave hospitals \$20 billion for health IT and all you did was complain about it.

Jameson said if there is one area that behavioral healthcare needs data, health IT is it.

#### **IX. Annual Meeting**

Maria Merlie said that for the past few years, Annual Meeting expenses have gone up while revenue has plateaued. For 2020, we increased all levels by about 10 percent. This is the first increase in 10 years. Mark said we expect this to generate an additional \$60,000 in revenue.

Mark said when you talk to our exhibitors, they don't like large exhibit halls. So we still want to keep it within the ballroom. At the Mandarin, NABH has a presence at the hotel. If we go to a

larger hotel, you run the risk of getting pushed back. For our size, there are very few hotels that accommodate size.

Bob Denev suggested what if we charged more for exhibitors to have space outside the ballroom and, if necessary, have the exhibitors bid on it. Mark said this won't happen for the 2020 meeting, and it's something to consider for 2021. Dwight Willingham said he wouldn't wait until next year.

Dominic said offer the option for 2020 and then upcharge for this placement for 2021.

Jessica Zigmond said NABH expects to send the Save-the-Date mailers on Wednesday, Oct. 3.

## **X. Youth Services**

*Family First Prevention Services Act* created a new type of treatment facility: there is now a Qualified Residential Treatment Program, which created higher standards of care, but no funding mechanism for it.

NABH has worked on a policy paper that details the issues regarding the decline in residential treatment and potential solutions to QRTPs. CMS released an FAQ regarding QRTPs. The issue for funding is whether these facilities qualify as IMDs. If so, then can they use extending waivers for reimbursement? Some can use 1115 waivers.

Youth Services Committee said look at existing regulations for PRTFs. Those have not been modernized since the 1970s. One area is to evaluate these in relation to QRTPs. Scott said the Youth Services Committee strongly supports this.

Sam said the likelihood that these kids will complete their education and have a future is better in residential treatment programs than in foster care.

Jameson Norton asked if home support opportunities came up in the Youth Services committee? Mark said this legislation is about more support at home. He added that a lot of states have had waivers to do more in-home care to keep families intact. The money in the child welfare system will be re-directed to in-home care.

## **XI. Updates**

### **Scientology:**

Scott Dziengelski discussed the open letter to Congress from NABH, Mental Health America, and the National Alliance on Mental Illness that refutes the anti-psychiatry platform from the Scientology community.

Don Parker asked if there are any Scientologists in Congress, and Scott replied that there are not. Mark said this community has a lot of money and has caused a lot of disruption. The letter is not an attack on this community, but rather than opportunity to dispels some myths.

### **LegitScript:**

Sarah Wattenberg gave an update on LegitScript. NABH contacted Joint Commission, CARF, and ASAM, along with Verisk G2, which does business with Google, Bing, and Facebook. We are making the case to set up a third-party. We have mapped LegitScript's requirements to these organizations' requirements, and LegitScript doesn't offer anything new. And this is all to advertise.

By the end of this week, we expect a letter that we will move through Verisk, which will start with Bing. The Joint Commission and CARF are on Board with us. Mark said 12 or 13 criteria needed to be met, and nine of those are handled by Joint Commission and CARF. Mark said most of our members have signed up with LegitScript for the advertising, but it's a pain in terms of time and resources.

**Site-Neutral Payments:**

Any new facility off site from a hospital must be paid at the physician fee schedule.

**IMD "Clawback":**

Board members had access to a letter that the law firm Foley Hoag wrote on behalf of NABH to the deputy general counsel at CMS about interpretations of the 15-day IMD policy in the 2017 Medicaid managed care final rule.

**Traumatic Events:**

Jessica Zigmond reported that the association is considering a "Traumatic Events" section on the association's webpage.

John Stupak said he doesn't know how this issue can be mentioned without mentioning gun violence. He said there should be some dialogue about it. He said it takes some courage to come out on this.

Frank said how do we talk about this without talking about guns. We have to find a way to address this without talking about the second amendment.

Dominic Sirianni said he's a lifetime NRA member and that he said he's foolish to think we can go down

Michele Gougeon said it's good to include the other events: having a platform on that and with recovery.

Sam Bastien said we should research the issue; Mark and Shawn highlighted Rep. Isakson's legislation to research this issue.

Frank Fortunati cautioned that there is no way to predict these events even when people are in treatment.

John Stupak suggested we review what other associations are doing. Also, is this something we would want to partner on?

Jessica Zigmond asked for Board members to send any research, ideas, and questions to her.

**XII. Adjournment**

The meeting adjourned at 1:40 p.m.