

**Executive Committee Call**

**Monday, Feb. 13, 2023**

**Minutes**

**Roll Call**

Present: Members: Harsh Trivedi, Board Chair; Mark Covall, Frank Ghinassi,

Dwight Lacy, Jameson Norton, Eric Paul, Deborah Weidner

Staff: Shawn Coughlin, Jessica Zigmond

*\*Other NABH team members did not join the February Executive Committee call;*

*NABH Communications Director Jessica Zigmond participated to take minutes for auditing purposes. Both Shawn Coughlin and Jessica Zigmond left the call before the EC’s executive session started.*

Absent: Members: John Hollinsworth, Eric Kim, Matt Peterson

1. **Minutes Approval: Dec. 12 Executive Committee Call**

Mark Covall moved, Frank seconded, and all EC members approved the Dec. 12 EC call minutes unanimously.

1. ***Wit v. UBH* Update**

Shawn reminded members that a three-judge panel in the 9th U.S. Circuit Court of Appeals issued a new ruling in *Wit v. United Behavioral Health* (UBH) in late January that replaced its March 2022 ruling. This new ruling affirms parts of the trial court decision and reverses key other parts, including retrospective relief for individuals denied coverage. Here are the details:

The new panel ruling holds that UBH violated its fiduciary duty to plan members by creating flawed medical necessity criteria that were infected by its financial interest. This ruling is consistent with NABH’s position.

The panel also reinstated the State Mandate Class, composed of class members in four states where UBH violated the law that required specific medical necessity criteria. This also aligns with NABH’s position.

The panel’s ruling, however, is very harmful in other respects:

* First, it found that the **plaintiffs who were denied care have no right to have their claims reprocessed**. This is contrary to longstanding precedent and the views of the U.S. Labor Department (DOL) that reprocessing is absolutely the correct remedy under ERISA.
* Second, the panel ruled that **all class members, not just the named plaintiffs, must have exhausted all their internal appeals to pursue a claim for benefits**. It is well recognized that most people do not appeal denied claims, so this holding could preclude most of the current class members from being able to pursue claims to challenge the benefit denials. Again, this is contrary to precedent, and we anticipate that DOL will agree with our position.
* The panel also **reasserted its holding from its initial decision that UBH is free to use medical necessity criteria for making coverage determinations that are inconsistent with generally accepted standards of care**, a position that threatens the ability of ERISA beneficiaries to get coverage for all the health care services they need.

If the ruling is allowed to stand, these holdings will severely damage Americans’ rights to not only mental health and addiction coverage, but also to any health coverage, retirement, or other benefits under ERISA.

The plaintiffs will file another petition for *en banc*review (a rehearing before the full Ninth Circuit). That petition is due by early March. Another round of amicus briefs are needed to support the request for a rehearing.

NABH will submit an amicus brief in support. We do not anticipate another PR campaign in support; however, we will use our social media platforms to support a rehearing.

1. **NABH Education and Research Foundation-Manatt Telehealth Issue Brief**

Shawn reminded members that on Feb. 1, the NABH Education and Research Foundation and Manatt released the foundation’s first resource, a telehealth issue brief highlighting how telehealth services effectively augment traditional partial hospitalization programs and intensive outpatient programs.

NABH members provided data and interviews for the study, which showed that using telehealth services improved access to care and optimized the reach of existing personally. In addition, the initial findings from several NABH members also indicated that, relative to in-person services, telehealth delivery-of-care produced similar or better outcomes for PHP and IOP patients.

NABH issued a news release on Feb. 1 and promoted the new resource on social media. NABH also produced a social media toolkit for members to share and help build awareness about the issue brief, which is posted on the new “Resources” section of the updated NABH Education and Research Foundation webpage.

Manatt will host a webinar featuring Shawn Coughlin and three NABH members on Wednesday, March 1.

1. **Legislative Update**

Shawn reported that all the key congressional committees have announced their rosters. NABH will review these assignments with our Behavioral Healthcare champions.

The NABH team is updating its legislative and regulatory priorities document to focus on 2023 priorities.

The House Energy and Commerce Committee has alerted NABH that it intends to re-authorize the SUPPORT Act this September. The NABH team has discussed IMD repeal and BHIT incentives as part of the process to re-authorize this legislation.

Shawn reminded members that HHS recently updated the COVID-19 public health emergency (PHE) for the final time through May 11. NABH is paying close attention to learn how CMS will unwind the PHE process for providers.

Behavioral healthcare access remains a critical access—as does parity benefits and payment—for the Biden administration. Shawn said NABH expects new guidance from the U.S. Labor Department.

NABH sent members an NABH Alert on Feb. 7 to preview President Biden’s prepared remarks for his State of the Union address that night. The Biden administration remains focused on behavioral health, including parity in both benefits and payment.

Shawn reported that NABH is supporting an update to a previous Bowman Foundation study that shows payment differentials and parity violations.

1. **Regulatory Update**

NABH has been working on a host of public comment letters, including:

* NABH will send CMS comments about Medicare Advantage today, Feb. 13.
* NABH will send SAMHSA comments about opioid treatment programs on Feb. 14.
* NABH will send CMS comments about prior authorization in March.
1. **Executive Session**

**\* 2022 Bonuses**

EC members moved to Executive Session at 3:21 p.m.