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**Executive Committee Call**

**Nov. 8, 2021**

**3 p.m. ET**

**Minutes**

**Roll Call**

Present: Members: Jameson Norton, Board Chair; Frank Ghinassi, Matt Peterson, Pat Hammer, Eric Kim, Mark Covall,

Staff: Shawn Coughlin, Kirsten Beronio, Maria Merlie, Julia Richardson,

Sarah Wattenberg, Emily Wilkins, Jessica Zigmond

Absent: John Hollinsworth, Tom Kenny, Dominic Sirianni

1. **Minutes Approval**

A move was made and seconded to approve the Sept. 13 Executive Committee (EC) call minutes. Members approved the minutes unanimously.

1. ***Build Back Better Act*: Reconciliation Update**

Before he discussed the *Build Back Better Act* (BBA), Shawn briefly discussed the recent infrastructure bill, which is on its way to President Biden for his signature and does not contain a lot of healthcare provisions. However, there was one provision to make personal protective equipment (PPE) in America, which requires the U.S. Health and Human Services Department, the Homeland Security Department, and the Veterans Affairs Department to oversee production of PPE There is a year extension for the Medicare sequestration cut.

Congress has adjourned through Nov. 15. After this break, Congress is expected to consider the $1.75 trillion BBA. This bill will cover the approximately 4 million people who fall under the Medicaid coverage gap, which means they make too much money to be eligible for Medicaid, but not enough to cover their healthcare costs.

Other provisions include Project Aware and the 988 Crisis Hotline.

NABH has engaged in discussions about civil monetary penalties for parity violations.

The bill calls for reducing DSH payments by as much as 12.5% to states that have not expanded their Medicaid programs. NABH has argued these cuts can be extremely harmful and we partnered with other organizations on this.

The Congressional Budget Office (CBO) is still working on scoring this bill. Shawn said the expectation is that if CBO scores the bill at $1.75 trillion, the bill will pass.

1. **Regulatory Update**

Kirsten Beronio discussed the Physician Fee Schedule Rule (PFS) and OPPS rule. The PFS included several provisions related to telehealth. Kirsten said Congress previously extended Medicare coverage for telehealth after the public emergency ends, and the PFS finalized some details around that coverage.

For mental healthcare via telehealth: there is an in-person visit at least six months before the telehealth service begins. This does not apply to SUB and/or co-occurring conditions. There were some payment cuts related to a budget-neutrality requirement and NABH has advocated for lifting that requirement, but that has not occurred yet. This will relate to a reduction for some practitioners.

Sarah Wattenberg added that CMS published an interim final rule (IFR) freezing methadone reimbursement rates for calendar year (CY) 2022.

CMS is establishing a limited exception to the current CMS methodology for determining rates for the drug episode of care for methadone (HCPCS G2067-weekly bundle) and the add-on take-home for methadone (HCPCS G2708) by freezing rates at the CY2021 rate.

Kirsten Beronio added that CMS will use 2019 claims data for the 2022 OPPS rate.

NABH informed members about the PFS and OPPS in the Nov. 5 edition of *CEO Update* and will include a news item about the methadone payment rate in the Nov. 12 edition of *CEO Update*. All editions of *CEO Update* are posted on the association’s [homepage](http://www.nabh.org).

1. **Senate Request-for-Information Response Letters**

Sens. Wyden and Crapo had requested information and we have asked NABH members to respond. We were able to submit a detailed series of recommendations to the Senate Finance Committee.

NABH also submitted a letter to Sens. Cassidy and Murphy regarding grants. Members of the EC received the letters before the EC call and both letters are posted on the association’s [website](http://www.nabh.org).

1. **Vaccine Mandate**

Shawn reported there are at least four separate mandates for Covid-19 vaccines: federal employees, federal contractors, OHSA’s for employers with more than 100 employees, and CMS’ mandate for healthcare workers. NABH sent Alerts to members about both.

Regarding the CMS rule: it applies to all Medicare-participating facilities, including psychiatric hospitals and psychiatric residential treatment facilities. The rule includes both clinical and non-clinical staff. It does not include employees who provide telehealth services only. The CMS rule also allows for health or religious exemptions.

OTPs are not included in the CMS mandate but are subject to the OSHA mandate.

Mark asked how the injunction in Louisiana affects these. Shawn said a three-judge panel in La. Imposed an injunction on the OSHA mandate, questioning constitutionality. The Biden administration has yet to respond. In addition, 26 Attorneys General are fighting the mandates.

Shawn added that the injunction relates to OSHA. Because CMS is basing the mandate on Medicare’s Conditions of Participation, this is a different standard.

NABH continues to support vaccinations, but not mandates.

1. **Medicare Automatic Payment Cuts**

Shawn said there are at least three Medicare payment cuts pending:

* + - 1. Medicare 2% sequestration cut as a financing mechanism. Congress had delayed that cut to December 2021 in the *American Rescue Plan.*
      2. There is an additional 4% pay-go cut. So providers are facing a potential 6% cut to all Medicare payment cut in January.
      3. 3.75% payment bump to Medicare providers through calendar year 2021 is set to disappear on Jan.1, 2022. If this payment bump is allowed to expire, the combined impact would mean providers will face an automatic 9.75-percent reduction. CMS could take regulatory steps to try and rework the expiration of the 3.75% payment bump, but congressional action is required to delay the sequester and PAYGo-triggered payment cuts.

1. **National Disability Rights Network (NDRN)** [**Report**](https://www.ndrn.org/wp-content/uploads/2021/10/NDRN_Desperation_without_Dignity_October_2021.pdf) **on For-Profit Residential Treatment Facilities**

Shawn said NABH sent the NDRN report (that EC members received before the EC call) to the NABH Youth Services Committee for feedback.

Jessica Zigmond added that Shawn was interviewed in the news publication *The Imprint* about the report on Nov. 2. Click [here](https://imprintnews.org/top-stories/federal-watchdogs-find-widespread-abuse-at-youth-residential-programs/60071) to read the article.

1. **Workplace Violence Prevention**

Kirsten Beronio said some members expressed concerns about OSHA’s requirements to prevent violence. NABH met with OSHA back in August and other behavioral health groups to help establish standards.

OSHA said we should prove how we prevent violence. We developed a letter citing peer-reviewed articles that show the practices used are evidence-based. The letter was sent on Nov. 5 and is available [here](https://www.nabh.org/joint-letter-to-osha-on-workplace-violence/). Kirsten said we’ll have more updates to come on this issue.

Shawn said the workplace violence regulations we thought were imminent were postponed, likely due to a focus on Covid-19-related regulations.

1. **988 Crisis Hotline Response Efforts**

Shawn reported about the 988 Crisis Hotline that will take effect on July 1, 2022. The groups in the 14-member CEO coalition is developing a letter about the infrastructure to handle calls that will come from the hotline. Shawn said the coalition close to a joint paper that lays out how the process should work so people receive the appropriate care at the appropriate time.

1. **Surprise Billing Rule**

This rule will become effective Jan. 1, 2022. Shawn said NABH contacted the association’s law firm Foley Hoag to examine how this rule might apply to mental health providers. Shawn added that it’s a convoluted way in which NABH members could be affected. NABH will provide the summary to EC members from Foley-Hoag in the next week.

1. **Price Transparency Rule**

The administration finalized a rule that takes effect in January 2022 and targets practices that make it hard to find and access hospital prices for services. Under the new rule on Nov. 2, penalties can go as $2 million a year for large hospitals (the prior cap was around $109,500). Penalties remain the same for hospitals with 30 or fewer beds.

1. **EHR Incentives**

Shawn said NABH learned about a proposal from CMS related to incentives for behavioral healthcare providers to adopt EHRs. NABH has heard rumors that this might be included in the president’s budget for next year.

1. **Adjournment**

The call adjourned at 3:58 p.m.