**National Association
for Behavioral Healthcare**

Access. Care. Recovery.

NABH 2020

LEGISLATIVE AND REGULATORY PRIORITIES

IMD Exclusion

The Medicaid program's Institutions for Mental Diseases (IMD) exclusion prevents adult Medicaid beneficiaries (ages 21-64) from accessing short-term, acute behavioral healthcare in psychiatric hospitals and other residential treatment facilities with more than 16 beds. Eliminating the IMD exclusion would give states flexibility and allow Medicaid beneficiaries to receive cost-effective, efficient, and high-quality treatment.

NABH Action

NABH is pursuing full repeal of the IMD exclusion. Absent that, NABH is also pursuing legislative and regulatory solutions to reduce the burden of the IMD exclusion, such as making changes to the Medicaid managed care rule and expediting 1115 waivers.

Behavioral Healthcare Workforce

The existing demand for behavioral healthcare treatment exceeds the supply of qualified treatment professionals. Federal projections show the behavioral healthcare workforce will need up to 253,000 workers by the year 2025. People experiencing a mental health crisis or drug overdose face life-threatening conditions. Their conditions can be treated with appropriate behavioral healthcare. But in many parts of the United States, treatment professionals are not available to provide that care.

NABH Action

NABH encourages Congress to create a streamlined approach to enhancing and expanding the mental health and SUD workforce. This new model should include the full spectrum of treatment professionals, non-professionals, and peer workers along the entire behavioral healthcare continuum so that behavioral healthcare access, treatment, and recovery is within reach for all Americans.

190-day Lifetime Limit

Medicare beneficiaries are limited to only 190 days of inpatient care in a psychiatric hospital in their lifetime. No other lifetime limits exist in Medicare for any other type of inpatient care. Eliminating the Medicare 190-day lifetime limit for psychiatric hospitals would expand beneficiary choice, increase access for the most seriously ill, improve continuity of care, create a more cost-effective Medicare program, and align Medicare with parity, the standard required for all other insurance plans.

NABH Action

Senators Susan Collins (R-Maine) and Tina Smith (D-Minn.) and Representatives Paul Tonko (D-N.Y.) and Bill Huizenga (R-Mich.) are expected to introduce the *Medicare Mental Health Inpatient Equity Act* in the Senate and House, respectively. This legislation would permanently repeal Medicare's 190-day lifetime limit. NABH supports this legislation.

Parity

The *Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act* (MHPAEA) became law a decade ago, but full parity still does not exist. A 2019 report from Milliman found that inpatient out-of-network use for behavioral health was over five times more likely than for medical/surgical services, worsening from 2.8 times more likely in 2013 to 5.2 times more likely in 2017, reflecting an 85% increase in disparities over five years. Meanwhile, office visit disparities were already five times higher in 2013 and worsened to 5.4 times in 2017, the report said.

NABH Action

NABH is working through its new Managed Care Committee to identify challenges that NABH members experience with utilization management procedures from health plans; discuss problems they face providing care that their patients' need; and develop practical recommendations to solve this persistent problem. NABH is also working on legislative efforts to increase the U.S. Labor Department's parity-enforcement authority and allow the department to levy monetary penalties for non-compliant health plans.

Opioid and Addiction Crisis

The nation's opioid and addiction crisis remain one of the worst behavioral healthcare challenges the United States has faced. More than 69,000 Americans died in 2019 from drug overdoses, more than the total number of Americans killed during the Vietnam War. This epidemic of addiction reflects the growing use of synthetic opioids and concurrent use of cocaine, methamphetamine, other illicit drugs, and alcohol.

NABH Action

NABH is pursuing legislative and regulatory solutions to the addiction crisis, including removing reimbursement and policy barriers to substance use disorder (SUD) treatment; broadening use of federal funds for treatment of all types of drug and alcohol addiction; and expanding medication-assisted treatment, telehealth, and rural treatment capacity.

Partial Hospitalization

Nearly 45% of NABH members offer psychiatric partial hospitalization (PHP) services as either a transition from a hospital program or as an alternative to inpatient care. The current PHP payment structure from CMS does not cover the cost of providing transportation, nutritional services, or vocational counseling to Medicare beneficiaries.

NABH Action

NABH and Rep. Alcee Hastings (D-Fla.) are advocating for Congress to pass H.R. 1564, Rep. Hastings's *Outpatient Mental Health Modernization Act*, which would require Medicare to reimburse PHPs for providing transportation, food and nutritional services, and vocational counseling.

42 CFR Part 2

Federal regulations dating from the 1970s—commonly referred to as 42 CFR Part 2 or "Part 2"—currently govern the confidentiality of patient records in substance use treatment programs. Part 2 provisions are more demanding than those in the Health Insurance Portability and Accountability Act (HIPAA). In today's digital environment, these regulations make healthcare integration more difficult and risk endangering patients.

» NABH Action

NABH supports legislative and executive branch efforts to reform Part 2 and improve information sharing in a way that protects individuals from the use of medical records in criminal, civil, and administrative prosecution and discrimination.

The *Family First Prevention Services Act* (FFPSA)

President Trump signed the *Family First Prevention Services Act* (FFPSA) in February 2018. A provision in the legislation that established qualified residential treatment programs (QRTPs) could lead to more young Americans in the juvenile justice system, more adults in prison, a larger homeless population, and potentially more suicides.

» NABH Action

NABH is working within the legislative and regulatory process to reduce the impact of the QRTP provision. Partnering with association members and outside organizations, NABH has pushed for CMS to include QRTPs in the "psych under 21 benefit" and therefore make them eligible for Medicaid reimbursement.

Medicare Payment Bundle for Opioid Treatment Programs

Opioid Treatment Programs (OTPs) offer a range of services, including methadone, the most widely researched FDA-approved medication to effectively treat opioid use disorder. In addition, OTPs offer counseling, vocational, recovery support and other services. OTP services are now funded through Medicare Part B, improving access to services for Medicare beneficiaries.

» NABH Action

NABH supports ongoing collaboration with CMS to assure that full and partial bundled payment rates provide adequate and appropriate reimbursement for the range of treatment services needed by individuals with opioid use and other co-occurring disorders to achieve and maintain long-term recovery.

Special Conditions of Participation or "B-tags"

CMS regulations define conditions of participation (COPs) applicable to all hospitals (the "A tags"), as well as a set of COPs specific to psychiatric facilities (the "B-tags"). As a matter of law, the B-tag regulations define general standards for psychiatric evaluations, medical records, and staffing. CMS' interpretive guidance is extremely detailed, however, articulating requirements with a level of granularity that far surpasses the A-tags.

» NABH Action

NABH has sent its report *The High Cost of Compliance: Assessing the Regulatory Burden on Inpatient Psychiatric Facilities* to CMS. This report recommends a series of reforms to the B-tags, such as convening a commission to review the B-tags and making the B-tags less prescriptive.

Quality and Outcome Measures

NABH and its member organizations have worked closely with CMS, accrediting agencies, consumers, and other stakeholders to develop and support innovative performance metrics. NABH was one of the original organizations that helped develop the Hospital-Based Inpatient Psychiatric Services (HBIPS) measures that were used in the Inpatient Psychiatric Facility Quality Reporting (IPFQR) program. More recently, NABH has collaborated with the National Quality Forum and other partners on developing and improving measures for opioid and other substance use disorder treatment.

» NABH Action

NABH continues to engage with partners and CMS to ensure all data-collection for performance and outcomes measurement are used to measurably improve the processes, outcomes, efficiency, effectiveness, and patient experiences of the care being delivered; focus on indicators that provide the most useful clinical and operational data possible; support actionable steps that fall within the scope of responsibility and accountability of the organization being measured; and provide value in the data generated proportionate to the intensity of the data-collection effort.

Ligature Risk

Limiting the risk of suicide is a top priority for every hospital that treats patients with mental health conditions. Hospitals apply best practices and the latest technologies and data to ensure patient safety. However, CMS' new approach to surveying for ligature risk potentially denies access to critically needed treatment because it is unclear, unrealistic, and unscientific.

NABH Action

NABH has sent its report *The High Cost of Compliance: Assessing the Regulatory Burden on Inpatient Psychiatric Facilities* to CMS. This report includes a series of reforms to ligature risk enforcement, including issuing proposed guidance, allowing greater flexibility in areas under constant supervision, providing advanced notice of required new technology, and permitting at least a three-year safe harbor for any feature deemed ligature resistant. NABH appreciates CMS' recent guidance on ligature risk and asks the agency to finalize it.

Alternative Payment Models (APMs)

Various stakeholders, including CMS, are exploring the idea of value-based payment (VBP) arrangements for Medicaid behavioral healthcare services. The goal is to shift from systems that pay for volume of services to a model that rewards high-quality, cost-effective care.

NABH Action

NABH is engaged in the national conversation about VBPs and APMs in behavioral healthcare settings and has developed a list of challenges, guidelines, and next steps for CMS to consider as the agency begins to develop these models.

Veteran and Military Healthcare

According to a report from the National Academies of Sciences, Engineering, and Medicine, about 1.7 million veterans from the wars in Afghanistan and Iraq and the Global War on Terrorism have a mental health need, but more than half of them are not receiving any mental health services. Meanwhile, veterans make up less than 9% of the U.S. population but account for 18% of all suicides. And while active military have lower rates of illicit drug use, they show a higher prevalence for using prescription drugs (mostly opioid pain relievers) and alcohol.

NABH Action

NABH is working to develop a national strategy to address the mental health and SUDs among our nation's veterans. NABH is focused on redesigning the current VA Choice program to increase patient access to care, include veterans' family members in treatment plans, forge greater public/private community partnerships, and increase reimbursement rates for behavioral health services to align with actual costs in certain specialty areas such as mental health and SUD treatment.

EMTALA

The *Emergency Medical Treatment and Labor Act* (EMTALA) is a federal law that requires patients in emergency departments must receive a medical screening from a qualified medical professional (QMP). If a provider identifies an emergency condition in the patient, then the patient may not be discharged or transferred until the emergency condition is stabilized. Recent actions by the CMS and the Office of Inspector General (OIG) suggest a new interpretation of EMTALA in the behavioral healthcare context.

NABH Action

NABH has sent its report *The High Cost of Compliance: Assessing the Regulatory Burden on Inpatient Psychiatric Facilities* to CMS. The report includes a series of recommendations to improve EMTALA's enforcement through adherence to the law's purpose. NABH appreciates that CMS released guidance on EMTALA and asks the agency to implement the report's additional recommendations.

Behavioral Health Information Technology

EHRs can improve the quality and efficiency of care substantially. The *Health Information Technology for Economic and Clinical Health Act* of 2009 (HITECH), was designed to stimulate EHR adoption by offering providers financial incentives for demonstrating "meaningful use" of EHRs. The law accomplished that goal, but behavioral healthcare providers were not included in the incentive program. This has resulted in lower EHR adoption rates and fewer EHR developers creating systems that apply to behavioral healthcare and are interoperable with general healthcare.

NABH Action

NABH is pushing Congress and the administration to extend incentives to behavioral healthcare organizations. NABH has also encouraged the CMS Innovation Center to test models that provide incentive payments to behavioral healthcare providers who adopt EHR technology.

Tele-behavioral Health

Telehealth is widely accepted as a mechanism that can address provider shortages in some geographic areas. There is significant potential for using tele-behavioral healthcare to address unmet psychiatric and substance use needs. However, outdated laws and regulatory structures have slowed the use of tele-behavioral healthcare and other support services to help people with serious mental illness and SUDs.

NABH Action

NABH is working to update rules that inhibit tele-behavioral healthcare services and revise reimbursement policies to allow behavioral healthcare treatment via tele-behavioral health.