

National Association for Behavioral Healthcare  
*2023 Advocacy **Priorities***

NABH's 2023 advocacy priorities reflect the organization's mission to advance responsive, accountable, and clinically effective prevention, treatment and care for children, adolescents, adults, and older adults with mental and substance use disorders (SUD).

2023 is a critically important year as the country begins to move beyond the COVID-19 public health emergency (PHE). The pandemic has been particularly challenging for mental health and SUD treatment providers, as the deadly virus heightened the need for services, pushed facility and labor capacity to its limits, and heightened public awareness about the field.

Looking ahead, behavioral healthcare providers will be armed with new telehealth tools resulting directly from the effort to control the spread of Covid-19 and optimize the overworked workforce that dwindled during the crisis.

In 2023, providers also will face perennial challenges that received less attention during the PHE and remain top priorities. NABH will resume advocating for ongoing priorities such as the IMD exclusion and 190-day lifetime limit. We will also pursue sufficient funding to expand the behavioral healthcare information technology infrastructure. We discuss these and other top NABH issues below.

## Mental Health

### Securing the Promise of Parity

Although the *Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act* became law 15 years ago, Americans have yet to see full parity between behavioral and physical healthcare. As one example, Medicare Advantage plans are exempted from this vital parity law. Further, the *Wit v. United Behavioral Health* case shows that the nation's health plans continue to use substandard mental health and SUD treatment criteria to deny medically necessary care.

#### NABH Advocacy Steps

NABH's Managed Care Committee is harnessing the nationwide footprint of NABH's membership to identify the scope of parity challenges, detail how the lack of true parity harms those most in need of treatment, and develop practical solutions to remedy this unjustifiable crisis.

NABH supports legislation to provide civil monetary penalty authority and increased appropriations to the U.S. Labor Department to improve enforcing parity requirements.

NABH led an effort to submit an amicus brief on the *Wit* case, and request further judicial review, to require insurers to use clinically based medical necessity criteria based on generally accepted standards of care.

## Behavioral Healthcare Workforce

The existing demand for behavioral healthcare exceeds the supply of qualified treatment professionals. Federal projections show the behavioral healthcare workforce will require millions of additional workers to meet current needs. People experiencing a mental health crisis or drug overdose face life-threatening conditions that can be treated with appropriate behavioral healthcare; however, in many parts of the United States, treatment professionals are not available to provide that care.

#### NABH Advocacy Steps

NABH calls for legislation to require increased Medicare reimbursement rates for behavioral healthcare providers to levels that are more consistent with their education and credentialing, comparable with how reimbursement rates are set for general medical providers. This would encourage more behavioral healthcare providers to participate in the program. Moreover, because Medicare rates tend to be key benchmarks for reimbursement in commercial insurance, improvements in Medicare reimbursement should lead to better reimbursement in commercial plans and potentially Medicaid programs as well.

The Centers for Medicare & Medicaid Services (CMS) should also incentivize states to reexamine and improve their Medicaid rates for behavioral healthcare providers to encourage greater participation in Medicaid. One step would be for Congress to expand the Demonstration to Increase Substance Use Provider Capacity in Medicaid (authorized by Sec. 1003 of the *SUPPORT for Patients and Communities Act*).

In addition, we urge Congress and relevant federal agencies to take additional actions to expand the mental health and SUD workforce addressing the full spectrum of treatment professionals, non-professionals, and peer support workers along the entire behavioral healthcare continuum, including through loan repayment and grant programs.

## Behavioral Health Information Technology

Electronic Health Records (EHRs) can improve the quality and efficiency of care substantially. The *Health Information Technology for Economic and Clinical Health Act* of 2009 (HITECH) has offered financial incentives to certain healthcare providers for demonstrating “meaningful use” of EHRs. Unfortunately, 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.

It is well past the time to enable meaningful connectivity between behavioral healthcare providers and the rest of the healthcare delivery system. This overdue step would materially advance the goals of parity, improve overall quality and transitions of care across settings, and help provide greater safety for patients suffering under the nation’s mental health crisis.

### NABH Advocacy Steps

NABH urges Congress and the Biden administration to extend incentives to behavioral healthcare organizations. NABH also encourages the CMS Innovation Center and the U.S. Health and Human Services Department’s (HHS) Office of the National Coordinator to test and fully fund models that provide incentive payments to behavioral healthcare providers for adoption of EHR technology.

## IMD Exclusion

The Medicaid program’s Institutions for Mental Diseases (IMD) exclusion discriminates against adult Medicaid beneficiaries by denying them access to specialized acute behavioral healthcare in psychiatric hospitals and residential treatment facilities. This provision is inconsistent with the principles of parity, hinders care, and contributes to the criminalization of mental illness.

Rising rates of suicide and overdoses highlight the need for improved access to acute mental health and addiction treatment that is provided in psychiatric hospitals and residential treatment facilities. Eliminating the IMD exclusion would give states flexibility to fund a full continuum of care for Medicaid beneficiaries struggling with serious mental illnesses and/or addiction.

### NABH Advocacy Steps

NABH will continue advocating for Congress to repeal the IMD exclusion. At the same time, NABH is pursuing both legislative and regulatory solutions to reduce the burden of the IMD exclusion. These include:

- NABH supports legislation to waive the IMD exclusion for beneficiaries enrolled in Medicaid managed care plans.
- NABH supports legislation to allow state Medicaid programs to cover services in IMDs for mental health treatment as part of a statewide initiative to provide a full continuum of care, including crisis stabilization services.
- NABH supports legislation and regulatory action to exempt qualified residential treatment programs from the IMD exclusion. NABH will proactively educate key Members of Congress and their staff about the urgent need to expand this under-resourced segment of the behavioral health and SUD continuum of care.

## 190-day Lifetime Limit

Medicare beneficiaries are limited to 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 those with more serious behavioral health conditions, improve continuity of care, create a more cost-effective Medicare program, and align Medicare with parity, the standard required for practically all other healthcare coverage programs.

The expert judgment of a treating physician, not an arbitrary restriction, should be the primary basis for determining the scope of inpatient needs. A patient-centered approach would help address the nation’s mental health crisis by decreasing the volume of behavioral health patients who cannot access the right care at the right time.

### NABH Advocacy Steps

NABH supports legislation to permanently repeal Medicare’s 190-day lifetime limit.

# The Addiction Crisis

The nation's addiction epidemic continues to escalate, affecting tens of thousands of individuals and families with loss and grief, as well as posing difficult challenges to public health and the U.S. healthcare system. The Centers for Disease Control and Prevention (CDC) predicts that 107,689 Americans will have died from drug overdoses for the 12-month period ending October 2022, according to provisional data released on March 5, 2023.

Less known is the driving role of stimulants, such as methamphetamine in overdoses and deaths. Overdose deaths involving fentanyl and stimulants grew 60-fold between 2010 and 2021.

Also less known is that excessive alcohol use is responsible for more than 140,000 deaths per year.

Consequently, America's addiction epidemic reflects the growing use of synthetic opioids, the lethality of fentanyl analogues, and the concurrent use of cocaine, methamphetamine, other illicit drugs, and alcohol.

## NABH Advocacy Steps

NABH advocates for reimbursement and policy solutions to increase SUD treatment, including:

- permitting the use of federal funds for all types of drug and alcohol treatment
- permitting the use of federal workforce, treatment, and harm-reduction funds by for-profit treatment programs
- broadening the use of evidence-based contingency management protocols for individuals with stimulant, opioid, and alcohol use disorder
- permitting the use of federal funds for evidence-based levels of contingency management financial incentives
- allowing telehealth treatment through state reciprocity and other measures
- increasing rural treatment capacity.

## Opioid Treatment Programs

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

## NABH Advocacy Steps

NABH will advocate for CMS to ensure the payment rates provide adequate and appropriate reimbursement for OTP services, including:

- assuring rates are competitive by using hospital market basket rates for the non-drug bundle,
- creating rates and billing protocols for contingency management,
- establishing a 17% add-on for rural services in high overdose areas,
- permitting admissions and treatment without a physician referral and preauthorization under Medicare Advantage, and
- working with states to align access to telehealth treatment and methadone take-home policies with federal requirements.

## Maintain Coverage of Tele-Behavioral Healthcare

Expanded coverage of mental health and addiction treatment services via telehealth technology during the COVID-19 pandemic has been critical for preserving access to treatment during these extremely challenging times.

This expanded coverage has also enabled behavioral healthcare providers to demonstrate how effectively they can use this type of technology to provide care. In 2023, NABH and Manatt released the issue brief [Telehealth is Effectively Augmenting Partial Hospitalization and Intensive Outpatient Programs.](#)

## NABH Advocacy Steps

To build on some of the pandemic telehealth flexibilities that Congress and HHS made permanent, NABH advocates for continued telehealth coverage in Medicare, Medicaid, and commercial insurance plans for mental health and addiction treatment, including partial hospitalization and intensive outpatient programs and medication-assisted treatment.

This coverage should also include behavioral healthcare delivered via audio-only technology, which is critical for supporting treatment for people living in professional shortage areas, with limited access to transportation, or without access to video technology, as well as other vulnerable populations.

NABH also advocates that reimbursement rates for behavioral healthcare services via telehealth be maintained at comparable levels with rates for in-person treatment. In addition to clinical services, providing care via telehealth requires assistance from administrative staff and other overhead costs. Without assurance of continued reimbursement that accounts for costs associated with providing telehealth services, we will lose the opportunity to maintain behavioral healthcare access now and expand access to this treatment in the future.

## Increase Crisis Stabilization Services for 988 Hotline Calls

Designating 988 as a universal, toll-free crisis hotline has created a tremendous opportunity to prevent tragic outcomes and increase access to behavioral healthcare, which includes both mental healthcare and addiction treatment.

Many of the callers to crisis hotlines require a rapid assessment to determine whether they need mental health and/or addiction treatment, and at what level, as well as help in finding behavioral healthcare providers.

In most areas of the United States, this type of urgent crisis assessment and stabilization service is not available. Consequently, people experiencing a serious mental health or addiction crisis land in emergency departments, where they are unlikely to receive appropriate care, or are taken into custody of law enforcement.

### NABH Advocacy Steps

NABH supports federal funding for and guidance to help states establish or improve crisis systems that integrate crisis response with a full continuum of mental health and addiction treatment services, including mobile crisis, short-term crisis stabilization, and inpatient and outpatient care. Research shows that such systems improve treatment outcomes and can reduce interaction with law enforcement and emergency department utilization.

This federal guidance and funding should encourage states to identify a high-level 988 coordinator to work with local behavioral healthcare providers as well as police, emergency departments, and 911 operators to develop crisis stabilization systems that address the needs of 988 callers.

## Partial Hospitalization

Nearly 45% of NABH members offer psychiatric partial hospitalization programs (PHP) as either a transition from a hospital program or as an alternative to inpatient care. These programs can help prevent unnecessary hospitalization among individuals with more serious behavioral health conditions and also provide a transitional level of care for those discharged from inpatient care. Unfortunately, these types of programs are not available in many regions of the United States. This undoubtedly results from inadequate reimbursement in the Medicare and Medicaid programs and widespread lack of coverage in commercial insurance plans.

### NABH Advocacy Steps

NABH supports legislation to improve Medicare reimbursement for PHPs, including reimbursement for providing transportation, food and nutritional services, and vocational counseling. Improved Medicare reimbursement can provide an influential example for both Medicaid and commercial insurance plans, NABH will advocate for legislation that would.

Make certain that intensive outpatient programs (IOPs) and PHPs are effectively covered for individuals with a primary diagnosis of a SUD, consistent with the American Society of Addiction Medicine criteria.

Permit reimbursement for delivering IOP and PHP services in OTPs.

Eliminate the requirement that the treating physician must determine the need for both IOPs and PHPs more frequently than monthly.

## 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.

### NABH Advocacy Steps

NABH participates in technical panels and collaborates with CMS, the National Quality Forum, the National

Academy of Medicine, and other partners to develop and improve quality measures for opioid and other substance use disorder treatment.

NABH advocates for all data-collection for performance and outcomes measurement to be 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.

## Alternative Payment Models (APMs)

Various stakeholders, including CMS, are exploring 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 Advocacy Steps

NABH is engaged in the national conversation about VBPs and APMs in behavioral healthcare settings and will continue working with CMS as the agency continues to develop these models.

## 42 CFR Part 2

Federal regulations known as 42 CFR Part 2, or “Part 2,” have been modified to align with the *Health Insurance Portability and Accountability Act* (HIPAA). Changes to the law and its regulations will require education of consumers and providers to assure that patients are appropriately protected.

### NABH Advocacy Steps

NABH supports funding for federal agencies to provide training to all stakeholders, including consumers, providers, and the legal community, on the changes to the law and the appropriate best practices to assure compliance and patient protection.

## Modernize Psychiatric Hospital Regulations

CMS regulations define conditions of participation (COP) applicable to all hospitals, including psychiatric facilities. However, psychiatric hospitals and units are also currently subject to an additional series of COP, the majority of which have not been updated since the 1980s. These outdated regulations impose large costs on providers without increasing treatment quality or patient safety.

### NABH Advocacy Steps

NABH’s 2019 report [\*The High Cost of Compliance: Assessing the Regulatory Burden on Inpatient Psychiatric Facilities\*](#) recommends a series of revisions to the psychiatric hospital requirements and calls on CMS to convene a commission to gather professional input on how best to update them. We continue to urge CMS to update these regulations and interpretive guidance.

## EMTALA

The *Emergency Medical Treatment and Labor Act* (EMTALA) is a federal law that requires patients in emergency departments to 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.

### NABH Advocacy Steps

NABH’s report on [\*The High Cost of Compliance: Assessing the Regulatory Burden on Inpatient Psychiatric Facilities\*](#) includes a series of recommendations to improve EMTALA’s enforcement based on adherence to the law’s purpose. NABH is working to promote CMS implementation of the report’s recommendations.

## Veteran and Military Healthcare

Veterans make up less than 8% of the U.S. population, but account for 14% of all suicides. 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 Advocacy Steps**

NABH recommends reforms to the VA Choice program to increase patient access to care, include coverage for 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.

*Please visit [www.nabh.org](http://www.nabh.org) to learn more about NABH.*

*For questions or comments about NABH's 2023 advocacy priorities, please contact us at [nabh@nabh.org](mailto:nabh@nabh.org).*