

National Association for Behavioral Healthcare



Access. Care. Recovery.

Vice President Mike Pence
Senate Majority Leader Mitch McConnell (R-Ky.)
Senate Minority Leader Chuck Schumer (D-N.Y.)
House Speaker Nancy Pelosi (D-Calif.)
House Minority Leader Kevin McCarthy (R-Calif.)

20 March 2020

Dear Vice President Pence, Senate Majority Leader McConnell, Senate Minority Leader Schumer, Speaker Pelosi, and House Minority Leader McCarthy:

As you prepare to vote on additional actions to address the Covid-19 pandemic, we offer these recommendations to address the pandemic's many effects on the nation's behavioral healthcare providers and patients.

The National Association for Behavioral Healthcare (NABH) advocates for behavioral healthcare and represents provider systems that treat children, adolescents, adults, and older adults with mental health and substance use disorders in more than 1,800 inpatient behavioral healthcare hospitals and units, residential treatment facilities, partial hospitalization and intensive outpatient programs, medication assisted treatment centers, specialty behavioral healthcare programs, and recovery support services.

Our leadership and the leadership of our member systems stand ready to assist in any way possible, from providing access to on the ground experts at every level of care to providing additional information on the following behavioral healthcare specific actions that need immediate attention as we as a nation address the pandemic.

These solutions represent initiatives that will increase access to behavioral healthcare services, provide tools to allow providers to expand their service capabilities, help protect both patients and providers from exposure to the virus, and ensure that the millions of Americans who are managing the stress and trauma of isolation, job loss, depression and other behavioral conditions can continue to access the services they require.

Behavioral Healthcare Provider Recommendations:

Eliminate the Medicaid IMD Exclusion and the Medicare 190-Day Lifetime Limit:

General acute-care hospitals need to ensure their hospital beds are available for potential Covid-19 patients. The Centers for Medicare & Medicaid Services (CMS), using waiver authority under the Trump administration's emergency declaration, has already allowed general acute-care hospitals to use "distinct part" psychiatric unit beds for patients with Covid-19. This raises questions about where individuals with serious psychiatric conditions who need inpatient care will receive that care when there will be fewer beds available in those psychiatric units.

Furthermore, medical-surgical facilities do not have the extra capacity to accept these patients, and undoubtedly access to inpatient psychiatric care will be diminished greatly. We are also concerned that

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healthcare facilities may move patients from specialized facilities to medical-surgical facilities or community-based settings where they are more likely to be exposed to Covid-19.

Medicare beneficiaries – older adults and people with disabilities as well as individuals with serious mental illness, which includes many Medicaid beneficiaries who also often have high rates of co-occurring chronic medical conditions – are more at risk for contracting Covid-19 than the general population, so providers need to take special precautions with these beneficiaries. In addition, anxiety stemming from the pandemic is likely to exacerbate the underlying mental health and/or substance use conditions for people with psychiatric conditions.

One solution is to move these patients to freestanding psychiatric hospitals. However, many patients will not be eligible for Medicare or Medicaid coverage in those settings due to the 190-day lifetime limit in Medicare and the IMD exclusion in Medicaid.

Occupancy rates in freestanding psychiatric hospitals are generally at about 75%, so these hospitals have excess capacity to pick up patients who are displaced from distinct part units in acute care hospitals.

Staffing:

The behavioral workforce is facing increasing challenges as clinicians and other staff self-isolate or take time off work to care for their families as schools close. There are several steps that can be taken:

- Relax staffing ratio requirements and other Conditions of Participation that are generally higher for inpatient psychiatric settings to allow healthcare facilities flexibility to fully use the clinical staff they have available allowing them to operate up to the full extent of their licenses to provide care during this emergency;
- Allow out-of-state providers enrolled in Medicare or Medicaid and unenrolled providers to offer care to Medicaid and Medicare beneficiaries especially via telehealth. CMS has authorized this flexibility for the two states that have received 1135 waivers so far, but this flexibility should be available in every state during this emergency
- Specify that intensive outpatient programs/partial hospital program (IOP/PHP) providers may provide services via telehealth or services in alternative setting for Medicare and Medicaid beneficiaries;
- Behavioral healthcare worker availability is vital to keeping hospitals fully functional. Staff will need childcare assistance during the pandemic as schools and childcare centers have closed. Provide funding to states to provide emergency childcare for health care workers.

EMTALA:

Behavioral healthcare providers need specific guidance to ensure they are keeping their patients safe while not violating EMTALA:

- Establish an emergency exception for behavioral healthcare providers to enable them to refer patients with Covid-19 to alternative settings.

Telehealth:

Our members have received CMS' guidance on telehealth for both Medicare and Medicaid. Additional behavioral healthcare specific guidance is needed as it relates to medication management. Although

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CMS guidance is providing much broader coverage of telehealth for Medicare beneficiaries, there are still requirements that equipment with audio and video capabilities be used.

Many patients only have audio equipment, e.g., flip phones or regular telephones. We urge Congress to specify that behavioral health counseling through audio alone may be covered in Medicare. We also urge Congress to require uniform and broad coverage of telehealth including behavioral healthcare through audio-only devices, in all state Medicaid programs as well.

Payers:

Our members are struggling with rules imposed by payers that limit flexibility to keep vulnerable patients in their facilities to protect them from exposure to Covid-19 and pressure to discharge patients quickly even when there is nowhere for them to go. Congress should direct all commercial plans to allow greater flexibility in medical-necessity determinations and discharge requirements during the current emergency.

Supply Chain/Resources:

The pandemic will also affect the availability of medical supplies for behavioral healthcare providers during the pandemic. People with underlying behavioral health conditions will likely have increased needs since these conditions are often exacerbated by emergency and stressful situations. We urge Congress to ensure that the needs of behavioral healthcare providers for personal protective equipment are considered when distributing emergency supplies.

Surveys:

We have members on the verge of opening new hospitals, joint ventures, and specialty programs. With the decision to limit surveys to critical functions only, we strongly request the ability use a paper process for certification in Joint Commission and CMS surveys to allow these critical resources to become available as soon as possible.

NABH appreciates everything you all are doing to address the Covid-19 pandemic. We are ready to assist in any way we can. Should you have any questions, please do not hesitate to contact me directly (Shawn@NABH.org).

Sincerely,

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