Wit v UBH

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https://www.thenationalcouncil.org/standards-of-care/

Background

- 11 Plaintiffs alleged that they were improperly denied benefits for treatment of mental health and substance use disorders because UBH's Guidelines do not comply with the terms of their insurance plans and/or state law.

- Benefits:
  - Residential treatment, intensive outpatient, and outpatient
  - Mental illness and substance use disorder

- Plaintiffs
  - 11 named
  - 3 classes certified
  - All under ERISA

Health insurance contracts generally provide coverage for treatment that is "medically necessary"

- AMA/APA definition of **medical necessity:**
- *Health care services or products that a prudent physician would provide to a patient for the purpose of preventing, diagnosing or treating an illness, injury, disease or its symptoms in a manner that is: (a) in accordance with* ***generally accepted standards of medical practice****; (b) clinically appropriate in terms of type, frequency, extent, site, and duration; and (c) not primarily for the economic benefit of the health plans and purchasers or for the convenience of the patient, treating physician, or other health care provider.*
- "**Generally accepted standards**" (**GAS**) are the key to medical necessity

Wit v. UBH - Case History

- Class action filed against UBH in 2014
  - Suit challenged UBH's proprietary medical necessity criteria as inconsistent with Generally Accepted Standards of Care
  - Over 50,000 class members with approximately 67,000 claims
  - Claims for outpatient, intensive outpatient, and residential treatment of mental health and substance use disorders from 2011-2017
- Case tried in 2017
- UBH found liable in 2019
  - There are eight principles of generally accepted standards of care
  - UBH's guidelines were more restrictive than generally accepted standards of care.
  - There was an overemphasis on moving patients to a less restrictive setting and creating a system focused on treating acute symptoms rather than facilitating long-term improvement or maintenance of existing function and treatment of underlying conditions.

Sources of Generally Accepted Standards of Care

- There is no single source of generally accepted standards of care

- Multiple sources, including:
  - peer-reviewed studies in academic journals,
  - consensus guidelines from professional organizations,
  - guidelines and materials distributed by government agencies.

Standards of Care Stipulated by Wit v. UBH

- Effective treatment requires treatment of the individual's underlying condition and is not limited to alleviation of the individual's current symptoms.

- Effective treatment requires treatment of co-occurring behavioral health disorders and/or medical conditions in a coordinated manner that considers the interactions of the disorders and their implications for determining the appropriate level of care.

Standards of Care Stipulated by Wit v. UBH

- The fact that a lower level of care is less restrictive or intensive does not justify selecting that level if it is also expected to be less effective. Placement in a less restrictive environment is appropriate only if it is likely to be safe and just as effective as treatment at a higher level of care in addressing a patient's overall condition, including underlying and co-occurring conditions.

- When there is ambiguity as to the appropriate level of care, the practitioner should err on the side of caution by placing the patient in a higher level of care.

Standards of Care Stipulated by Wit v. UBH

- Effective treatment includes services needed to maintain functioning or prevent deterioration. Treatment services should continue if there is a reasonable expectation that if treatment services were withdrawn the patient's condition would deteriorate, relapse further, or require hospitalization.

- The appropriate duration of treatment is based on the individual needs of the patient; there is no specific limit on the duration of such treatment.

Court Findings Regarding UBH Guidelines and Practices

- They are not consistent with generally accepted standards of care.
- There is an excessive emphasis on addressing acute symptoms and stabilizing crises while ignoring the effective treatment of members' underlying conditions.
- The fact that a lower level of care may be less restrictive does not justify moving the patient to that level of care if it is also likely to be less effective in treating the patient's overall condition

The 3 Classes

- *Wit Guideline Class*: coverage of residential treatment services for a MI or SUD was denied by UBH, in 2011- 2017, based upon UBH's Guidelines.
- *Wit State Mandate Class*: Any benefit plan governed by both ERISA and the state law of CT, IL, RI, or TX, for coverage of residential treatment services for a SUD was denied.
- *Alexander Guideline Class*: coverage of outpatient or intensive outpatient services for a MI or SUD was denied by UBH, 2011- 2017, based upon UBH's Guidelines

Specific Sources of Generally Accepted Standards of Care

- American Society of Addiction Medicine Criteria ("ASAM Criteria");
- American Association of Community Psychiatrist's ("AACP") Level of Care Utilization System ("LOCUS")
- Child and Adolescent Level of Care Utilization System ("CALOCUS") developed by AACP and the American Academy of Child and Adolescent Psychiatry ("AACAP"), and the Child and Adolescent Service Intensity Instrument ("CASII"),
- Medicare benefit policy manual issued by the Centers for Medicare and Medicaid Services ("CMS Manual")
- APA Practice Guidelines for the Treatment of Patients with Substance Use Disorders
- APA Practice Guidelines for the Treatment of Patients with Major Depressive Disorder
- AACAP's Principles of Care for Treatment of Children and Adolescents with Mental Illnesses in Residential Treatment Centers