

Court OKs denying coverage for mental health, substance-use care

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If allowed to stand, a three-judge panel decision from the 9th U.S. Circuit Court of Appeals will destroy the progress that has been made in helping ensure that patients receive the medically appropriate mental health and substance-use disorder care they need and deserve, physicians tell a federal appeals court.

The ruling in the case, *Wit v. United Health*, lets United Behavior Health (UBH)—an insurer and plan administrator—decide whether services under health-benefit plans are medically necessary ones that will be paid for based on a “set of clinical policies and guidelines” that the company created internally and that do not meet generally accepted standards of care.

The Litigation Center of the American Medical Association and State Medical Societies joined with the American Psychiatric Association (APA), California Psychiatric Association, California Medical Association (CMA) and American Psychiatric Association California District Branches in filing an amicus brief that urges the court to grant a petition that will allow a rehearing of the case or for the full panel of the 9th U.S. Circuit Court of Appeals to rehear the case.

“These guidelines ‘are supposed to reflect generally accepted standards of care,’ but they fall far short of these standards,” the brief says. “Indeed, UBH’s own expert witness admitted that UBH’s guidelines are much more restrictive than generally accepted standards.” That physician witness “testified that no physicians ‘worth their salt’ would use UBH’s guidelines to ‘make clinical judgments’ due to irreconcilable ‘discrepanc[ies]’ between the guidelines and the generally accepted standards of care required under plan terms.”

Find out more about the cases in which the AMA Litigation Center is providing assistance and learn about the Litigation Center’s case-selection criteria.

Read the letter (PDF) that the AMA and nearly 100 other organizations concerned about the “deeply flawed ruling” sent to the U.S. Department of Labor after the appellate three-judge panel’s decision.

The 9th U.S. Circuit Court’s three-judge panel ruling overturned an opinion from U.S. District Judge Joseph Spero. In 2019, Spero issued a “detailed and scathing rebuke to [UBH] for placing the payer’s financial interests over the safety and well-being of patients from 2011–2017 across four states: Connecticut, Illinois, Rhode Island and Texas,” according to the AMA Advocacy Resource Center’s issue brief on the *Wit v. United Health* case.

The AMA Advocacy Resource Center issue brief adds that “guidelines developed by the nation’s medical societies may be the true star of the ruling” that was issued by Judge Spero in 2019 and overturned by the three-judge panel of the 9th U.S. Circuit. These include the American Society of Addiction Medicine criteria as well as guidelines from the APA, American Association of Community Psychiatrists, and the American Academy of Child and Adolescent Psychiatry.

Prompted by the advocacy efforts of the AMA and state medical societies, the attorneys general representing Connecticut, Illinois and Rhode Island jointly filed an amicus brief (PDF) that also seeks a full panel rehearing of the unfavorable three-judge ruling.

Guidelines don’t meet care standard

UBH’s coverage-determination guidelines “fall woefully short” of the generally accepted standards for care, explains the brief from the AMA Litigation Center, APA, CMA and others.

The guidelines conflict with generally accepted standards of care and undermine patient treatment because they:

- Focus on “crisis stabilization” and symptom suppression rather than treating patients’ underlying conditions.
- Don’t provide for continuing care, even though that is the generally accepted standard of care.
- Don’t pay for coordinated care of co-occurring conditions, hampering the accurate multidimensional assessments that form the basis of any level of care decision.

Potential national impact

The *Wit v. United Health* ruling deviates from precedent and will interfere with the ability of physicians and other health professionals to provide medically necessary care. Mental health and substance-use

disorder patients will have less access to care and less effective care compared to patients who seek care for physical ailments, physicians tell the court.

In addition, the ruling comes amid the COVID-19 pandemic, which has exacerbated the need for mental health and substance use disorder care—care that was often difficult to access even before COVID-19 entered the global vocabulary.

“While paying lip service to compliance with generally accepted standards of care, UBH and other insurers across America have adopted policies that mischaracterize as ‘medically unnecessary’ numerous services covered under the plans even though such covered services are fully consistent with generally accepted standards” of mental health or substance-use disorder care, the brief says in urging the court to reconsider the case. “These insurers can be expected to rely on the panel decision to reduce the availability of psychiatric care and to adopt policies that impede the ability of mental health professionals to provide medically necessary care for their patients.”