Dear Colleagues,

I think you will find this news and the attached court decision in regard to an historic legal victory on behalf of psychiatric care and psychotherapy against the country's largest managed behavioral healthcare organization a remarkable achievenment. We are indebted to the head attorney, Meiram Bendat. It is a game changer for our patients.

Susan G. Lazar, MD

-----Original Message-----
From: Meiram Bendat <mbendat@psych-appeal.com>
Sent: Tue, Mar 5, 2019 12:18 pm
Subject: BREAKING: Federal Court Finds Insurance Giant UBH Illegally Denied Mental Health and Substance Use Coverage in Nationwide Class Action

Dear Colleague,

I write to inform you of a landmark mental health ruling. Today, in a nationwide class action suit, the United States District Court for the Northern District of California held that United Behavioral Health ("UBH/Optum"), the country's largest managed behavioral healthcare organization, illegally denied mental health and substance use coverage based on flawed medical necessity criteria.

The federal court found that, although required by the class members' health plans to make coverage determinations consistent with generally accepted standards of care, UBH developed restrictive medical necessity criteria with which it systematically denied outpatient, intensive outpatient, and residential treatment. Specifically, the federal court found that UBH's internal guidelines limited coverage to "acute" care, in disregard of highly prevalent, chronic, and co-occurring disorders requiring greater treatment intensity and/or duration. The court was particularly troubled by UBH's lack of coverage criteria specific to children and adolescents. Additionally, the court held that UBH misled regulators about its guidelines being consistent with the American Society of Addiction Medicine (ASAM) criteria, which insurers must otherwise use in certain states such as Connecticut, Illinois, and Rhode Island. (The court also found that UBH failed to apply Texas-mandated substance use criteria for at least a portion of the class period.)

Although the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 requires parity for mental health and substance use benefits, insurers are permitted to evaluate claims for medical necessity. By applying internal guidelines or medical necessity criteria developed by for-profit, non-clinical specialty associations, however, insurers can easily circumvent parity in favor of financial considerations and prevent patients from receiving the type and amount of care they actually need. The consequences to patients can be devastating.

In his detailed ruling, Chief Magistrate Judge Joseph Spero found the following to be the generally accepted standards for behavioral healthcare from which UBH's guidelines deviated:

1. It is a generally accepted standard of care that effective treatment requires treatment of the individual's underlying condition and is not limited to alleviation of the individual's current symptoms;
2. It is a generally accepted standard of care that 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 conditions and their implications for determining the appropriate level of care;
3. It is a generally accepted standard of care that patients should receive treatment for mental health and substance use disorders at the least intensive and restrictive level of care that is safe and effective – 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;
4. It is a generally accepted standard of care that 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;
5. It is a generally accepted standard of care that effective treatment of mental health and substance use disorders includes services needed to maintain functioning or prevent deterioration;
6. It is a generally accepted standard of care that the appropriate duration of treatment for behavioral health disorders is based on the individual needs of the patient; there is no specific limit on the duration of such treatment;
7. It is a generally accepted standard of care that the unique needs of children and adolescents must be taken into account when making level of care decisions involving their treatment for mental health or substance use disorders;
8. It is a generally accepted standard of care that the determination of the appropriate level of care for patients with mental health and/or substance use disorders should be made on the basis of a multidimensional assessment that takes into account a wide variety of information about the patient.

The court acknowledged that accreditation by organizations such as URAC and NCQA does not entail substantive review of medical necessity criteria developed by insurers. Therefore, such accreditation does not guarantee use of medical necessity criteria that are consistent with generally accepted standards for behavioral healthcare or with the terms of insurance policies or any laws.

In light of the court's findings, including that UBH's experts (comprised of several of its own medical directors) "had serious credibility problems" and "that with respect to a significant portion of their testimony each of them was evasive – and even deceptive," robust

safeguards against abuses by managed behavioral healthcare organizations are clearly warranted, such as:

1. Legislation mandating ***exclusive*** adherence to medical necessity criteria developed by nonprofit, clinical specialty organizations such as the American Society of Addiction Medicine (ASAM), American Academy of Child and Adolescent Psychiatry (AACAP), and the American Association of Community Psychiatrists (AACP);

2. Formal recognition by the American Psychiatric Association that managed care psychiatric reviewers owe a primary ethical obligation to insureds, consistent with:
    a. *AMA Principles of Medical Ethics: I,III,VII* and *AMA Code of Medical Ethics* Opinion E-10.1.1 (https://www.ama-assn.org/delivering-care/ethical-obligations-medical-directors) and
    b. their fiduciary duties under ERISA (https://www.dol.gov/general/topic/retirement/fiduciaryresp).

Today's ruling stems from two consolidated class actions, *Wit et al. v. United Behavioral Health. and Alexander et al. v. United Behavioral Health*, brought by Psych-Appeal, Inc. and Zuckerman Spaeder LLP under the Employee Retirement Income Security Act of 1974 ("ERISA") in 2014, certified in 2016, and tried in October 2017. While the certified classes encompass tens of thousands of ERISA insureds, non-ERISA insureds (such as governmental employees) adversely impacted by UBH's defective guidelines must rely on state and federal regulators to intervene on their behalf.

I have attached the court decision for your review and trust that you recognize the significance of today's ruling as much as we do.

Sincerely,

Meiram Bendat, J.D., Ph.D.
8560 West Sunset Boulevard • Suite 500
West Hollywood • CA • 90069
Tel (310) 598-3690 • Fax (888) 975-1957

www.psych-appeal.com