Congressional Research Service
Informing the legislative debate since 1914

Legal Sidebar

Behavioral Health Benefit Coverage and *Wit v. United Behavioral Health*

December 21, 2022

The National Institute of Mental Health estimates that nearly 53 million American adults live with a mental illness, and about 24 million (46.2%) received treatment in 2020. The demand for behavioral health services, including mental health and substance use disorder (SUD) treatment, also increased during the COVID-19 pandemic. As a result, access to and coverage for behavioral health services has been a priority for many in the 117th Congress.

This Legal Sidebar discusses the U.S. Court of Appeals for the Ninth Circuit's decision in *Wit v. United Behavioral Health*, which could have implications for individuals with private health insurance plans who are seeking behavioral health coverage. Some stakeholders anticipate that the case's disposition could affect private insurance patients' access to mental health and SUD treatment nationwide.

Background

Wit was brought as a class action in the U.S. District Court for the Northern District of California against United Behavioral Health (UBH), one of the largest behavioral health plan administrators in the country. At issue in the case is whether UBH may use internal guidelines, which are not based on generally accepted standards of care (GASC), to guide its behavioral health care coverage determinations (i.e., its decisions as to whether the plan's covered benefits are medically necessary, and coverable, for the given enrollees that sought the treatments). According to plaintiffs and the amici curiae, it has become common practice for plan administrators to base coverage decisions, at least in part, on internally developed guidelines as UBH did in *Wit*.

Although plan administrators owe fiduciary duties to their enrollees, federal law does not require private health insurers (or benefit administrators such as UBH) to base their benefit coverage decisions on GASC. Federal law does not define GASC, and there is no universal clinical definition. Instead, the district court in *Wit* looked at a variety of sources to determine the GASC, including the American Society of Addiction Medicine (ASAM) Criteria, which the court found are "the most widely accepted articulation of the

generally accepted standards of care for how to conduct a comprehensive multidimensional assessment of a patient" with a SUD.

The three classes of plaintiffs in the *Wit* case comprise more than 60,000 people, all of whom were denied behavioral health benefits under their plans' terms when UBH determined, based at least in part on its internal guidelines, that the requested behavioral health treatment was not medically necessary. Plaintiffs were denied coverage for a range of services, including inpatient hospitalization for mental health treatment, inpatient SUD treatment, and outpatient treatment, including psychotherapy services. The plaintiffs are all beneficiaries of employer-sponsored health plans with behavioral health benefits administered by UBH. The Employee Retirement Income Security Act (ERISA) governs all of the plans. There are three distinct classes of plaintiffs, one of which is composed of beneficiaries whose plans are governed by both ERISA and the state laws of Connecticut, Illinois, Rhode Island, and Texas. These states require plan administrators to base coverage decisions on GASC.

Plaintiffs sued UBH under Section 502 of ERISA, which, in part, allows employee benefit plan participants and beneficiaries to sue their plan administrator to recover benefits due under the plan or otherwise enforce the plans' terms. Plaintiffs alleged UBH breached its fiduciary duty to administer the plans in the beneficiaries' interest by "prioritizing cost savings over members' interests." Plaintiffs also argued that UBH's denials of their claims constituted an arbitrary and capricious denial of benefits. Plaintiffs have emphasized that the case does not concern whether the beneficiaries were actually entitled to benefits, but rather whether plan administrators may use internal guidelines that are inconsistent with GASC as a basis for claim denials.

District Court Decision

The district court issued a decision on March 5, 2019, finding that UBH breached its fiduciary duty to plaintiffs by violating the duties of loyalty, due care, and compliance with plan terms by relying on unreasonable guidelines that do not adhere to GASC. The court further ruled in plaintiffs' favor on the denial-of-benefits claim, finding that "UBH's Guidelines were unreasonable and an abuse of discretion, because they were more restrictive than [GASC]." The court further found that UBH violated the state laws of Illinois, Connecticut, Rhode Island, and Texas by not adhering to GASC when making benefit determinations. The district court ordered UBH to reprocess more than 60,000 claims, all of which were initially denied on the basis that they were not medically necessary under UBH's internal guidelines.

The Appropriate Standard of Review and UBH's Conflict of Interest

A central issue in *Wit* is whether UBH breached its duty to the plan beneficiaries. District courts review the question of whether a breach of duty occurred under an abuse-of-discretion standard. The U.S. Supreme Court has held that under that standard, a plan administrator's decision is entitled to deference and should be upheld if it is reasonable. The Supreme Court (as well as a lower circuit court) has also acknowledged, however, that some degree of skepticism regarding the plan administrator's decision to deny benefits is warranted when there is evidence of a conflict of interest. In *Wit*, the court found UBH's conflict of interest clear and said that as a result, "significant skepticism is warranted in determining whether UBH abused its discretion when it adopted the guidelines." According to the district court, the "most striking" indicator of UBH's abuse of discretion was its refusal, for which it had no clinical justification, to adopt the ASAM Criteria. The court identified several facts indicating that UBH's guidelines were driven by financial considerations. For example, the court emphasized a decision of UBH's CEO not to amend the guidelines to broaden the coverage for Applied Behavior Analysis, a common treatment for autism spectrum disorder, citing "business implications," even after the company's Utilization Management Committee had approved the change.

UBH's Guidelines Fell Short of Generally Accepted Standards of Care

In deciding that UBH abused its discretion under the plan by denying benefit claims using its internal guidelines, the court first clarified that UBH's internal guidelines were not part of the terms of plaintiffs' plans, but rather that UBH used them "as objective criteria for making standardized decisions about coverage." The court then conducted a thorough analysis of whether the guidelines adhered to the GASC. The court reviewed the sources of GASC, particularly the ASAM Criteria, and made factual findings with respect to the GASC for treatment of mental health and SUDs.

In finding that UBH's guidelines were not based on medically appropriate standards, the court identified several shortfalls, including that they were overly focused on treatment of acute symptoms, rather than treatment of chronic conditions and the provision of holistic care. For example, the court noted that the guidelines incorrectly necessitated the continuation of acute symptoms in order for the plans to continue coverage, observing that the denial of coverage at one level of care did not necessarily mean approval at a lower level of care. Other issues identified included that the UBH guidelines required patients to "improve within a reasonable time," and equated "improvement" with "control of acute symptoms," rather than the patient's holistic improvement.

The court also found that the UBH guidelines deviated from GASC because they denied coverage if a patient demonstrated an unwillingness to participate in treatment, "regardless of whether attempts to motivate the patient may eventually be effective or whether it is likely that treatment at this level of care is likely to be effective despite the patient's low motivation." Further, the court stated that "one of the most troubling aspects" of the guidelines is that they do not appropriately address the behavioral health needs of children and adolescents.

The UBH Guidelines Violated State Law

After determining that the UBH guidelines did not follow medically acceptable standards of care in evaluating claims for behavioral health benefit coverage, the court next analyzed whether the guidelines violated the state laws of Illinois, Connecticut, Rhode Island, and Texas. Plaintiffs from each of these states formed a class, alleging that UBH's use of internal guidelines that were incompatible with GASC violated these states' laws, which require plan administrators to base coverage denials for SUD treatment on lack of evidence of medical necessity on medically appropriate standards. Three of the states require UBH to use the ASAM Criteria for determining medically necessary care; Texas requires UBH to use the criteria developed by its Department of Insurance. The court found that UBH violated each of these states' laws in using its internal guidelines, because the guidelines were incompatible with GASC.

Ninth Circuit Decision and Motion for Rehearing En Banc

UBH appealed the district court's ruling to the Ninth Circuit. On March 22, 2022, the Ninth Circuit issued a succinct reversal of the district court. After concluding that plaintiffs had standing to bring their case and were a properly certified class, the panel reversed the district court, stating: "While the district court noted the correct standard of review, [it] misapplied this standard by substituting its interpretation of the Plans for UBH's." Further, the panel found that "UBH's interpretation—that the Plans do not require consistency with the GASC—was not unreasonable." The Ninth Circuit did not evaluate the district court's analysis of whether the Guidelines complied with GASC.

On May 5, 2022, plaintiffs filed a motion for rehearing en banc, currently pending before the Ninth Circuit, arguing that the court's decision enables plan administrators to more easily deny behavioral

health benefit claims. Plaintiffs argue that the decision "nullifies" state laws requiring insurance companies to determine medical necessity by using GASC and that it "gutted the well-established conflict of interest doctrine that is vital to protecting ERISA plan participants." By giving UBH deference, the plaintiffs urge that "the panel gave insurers a roadmap for insulating from scrutiny decisions tainted by even egregious conflicts of interest." Plaintiffs also pointed out that almost all states require ERISA plan administrators to follow the GASC, and that most insurers use internal guidelines, at least some of which are stricter than the GASC, to make those determinations. Plaintiffs insist that allowing UBH to use guidelines that are more restrictive than those accepted by the medical community will affect mental health and addiction coverage nationwide. Several amici curiae filed briefs in support of plaintiffs, one of whom claims the case is an example of how "insurers dig a new—but often illegal—trench, finding new ways to deny critically needed behavioral health services."

In its response to the plaintiffs' motion for rehearing, UBH counters that "the panel's fact-bound, unpublished decision fails the ordinary requirements for rehearing, and nowhere approaches the type of earth-shattering ruling Plaintiffs portray it as." UBH emphasizes its discretion to interpret plan terms and urges that rehearing is not warranted on the state laws at issue. The company states that many of the plaintiffs "likely would not benefit" from having their claims reprocessed anyway, and that the panel's ruling does not interfere with state law because it does not preclude states from enforcing their own insurance requirements. UBH also argues that while its guidelines were used to inform decisions of medical necessity, consistency with the GASC was merely one of several requirements for a medical necessity determination. The Ninth Circuit could rule on the motion for rehearing soon.

Considerations for Congress

Congress has a number of options available if it seeks to pursue these issues further. It could wait to assess the results of the case that remains pending before considering any potential legislative changes. It could instead or in addition amend ERISA to change the amount of deference to which plan administrators are entitled when courts review their benefit determinations. In September 2022, the House of Representatives passed H.R. 7780, the Mental Health Matters Act, which would amend ERISA Section 502 to require district courts to review de novo plan administrators' denial decisions for certain types of ERISA health plans. Such a provision could change the outcome of cases brought under Section 502, as it would allow district courts to review some plan benefit determinations de novo, rather than giving deference to the administrator, as the Ninth Circuit did in the *Wit* case.

There is currently no federal requirement that plan administrators base their coverage decisions on GASC. As a further option, Congress could amend ERISA to require, as many states have done, that any administrator's internal guidance to evaluate coverage decisions or interpret plan terms be based on GASC. If Congress were to do so, it could amend ERISA such that the requirement would apply to all types of private health plans.

Author Information

Hannah-Alise Rogers
Legislative Attorney

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.