

Ninth Circuit Reversal of Trial Court Order Equals Big Win for Payors

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On March 22, the Ninth Circuit reversed the trial court's order and underlying decision in *Wit et. al. v. United Behavioral Health* and *Alexander et al. v. United Behavioral Health* (Case Numbers 20-17363, 20-17364, 21-15193, and 21-15194). In doing so, the court undid a pair of orders that had required UnitedHealthcare Group, Inc.'s (United) behavioral health unit to reprocess thousands of claims for substance abuse and mental health treatment after finding United's coverage guidelines were improper — and thus its denials were unreasonable.

The Ninth Circuit considered, in large part, whether United's internal guidelines for mental health and substance abuse coverage contravened generally accepted standards of care. It held that United's interpretation — that the plans did not require consistency with the generally accepted standards of care — was not unreasonable. In so holding, the Ninth Circuit ruled that the lower court was wrong in finding that United abandoned its duties under ERISA.

Significantly, although the Ninth Circuit noted that the district court had noted the correct standard of review — abuse of discretion — it misapplied this standard by substituting its own interpretation of the plans for United's. The Ninth Circuit also rejected the plaintiffs' argument that United had a conflict of interest, which would decrease the level of deference to be afforded in applying an abuse of discretion standard. Indeed, the court held that *even if* United had a conflict of interest because it served as plan administrator and insurer, it would not change the outcome on the facts.

This decision is significant, as plaintiffs bringing ERISA claims for substance abuse and mental health treatment have been relying on *Wit* since the landmark 2019 decision to argue that use of level of care guidelines lead to an abuse of discretion, going so far as to cite to *Wit* in their complaints. Indeed, in the underlying decision, the lower court lent support to the argument that payors' guidelines are unreasonable; that such guidelines harm members because they were developed solely for the payors' benefit; and that consequently, use of such guidelines are unreasonable and an abuse of discretion because they are more restrictive than generally accepted standards of care.

At bottom, following the reversal of *Wit*, plaintiffs can no longer rely on the case to definitively claim that the level of care guidelines used by payors fall below reasonable standards of care in the medical community, or that payors breached the generally accepted standard of care by relying on the same. The reversal also precludes plaintiffs from relying on the case to argue a conflict of interest. Thus, the Ninth Circuit's rejection of the lower court's finding that United had abused its discretion in interpreting the health benefit plans' language is a big win

for payors.

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