

A Seat at The Table for Mental Health



Medical Necessity Criteria and Behavioral Healthcare

While state and federal parity laws have resulted in important advances in how behavioral health is treated by insurers, **people with mental health and substance use disorders continue to be denied care by their insurer on the grounds that it is not “medically necessary.”** There has been increasing attention paid to the guidelines insurers use to make medical necessity determinations – i.e. “medical necessity criteria” – and how these can be used to circumvent state and federal parity laws and deny medically necessary treatment for mental health and substance use disorders (MH/SUD).

Key Facts

- Medical necessity refers to healthcare services that are clinically indicated for the diagnosis and/or treatment of a medical or behavioral health condition.
- To assess if care is medically necessary, insurers primarily rely on “medical necessity criteria” (sometimes referred to as “coverage guidelines” or “clinical criteria”).
- [A 2019 federal court decision](#) (i.e. the “Wit Decision”) found that the medical necessity criteria used by the nation’s largest managed behavioral healthcare company, United Behavioral Health (UBH), were:
 - **inconsistent with generally accepted standards of behavioral healthcare** and
 - **inappropriately influenced by a financial incentive to reduce costs.**ⁱ
- A central theme in the Wit Decision, and a concern echoed by providers across the country about health plans, is that UBH’s medical necessity criteria overemphasize **acute crisis-stabilization at the expense of providing treatment for chronic conditions.**ⁱⁱ
- Neither Federal Parity Law nor Illinois Parity Law require that health plans cover mental health and addiction treatment; they simply require that if treatment is covered it be covered equitably with medical and surgical benefits. Additionally, the laws do not define what is “medically necessary”.
- Medical necessity is largely unregulated by state and federal government, with little to no oversight of whether or not the criteria being used by insurers is consistent with generally accepted standards of care.
- The Wit Decision referenced medical society guidelines, like the American Society of Addiction Medicine (ASAM criteria) and American Academy and the American Academy of Community Psychiatrists (AACCP), as authoritative sources that are reflective of generally accepted standards of care. ⁱⁱⁱ Use of the ASAM criteria for substance use disorders is required by law in Illinois. However, there is no similar requirement for mental health conditions.

Possible Questions for Discussion

- Have you or your family/friends ever felt discriminated against when trying to have MH/SUD treatment paid for by an insurance company?

- Have you ever been denied treatment for a MH/SUD condition prescribed by your provider because your insurer said it wasn't "medically necessary"?
- Do you know how medical necessity is determined in your insurance policy?
- Who and/or what do you think should determine what treatment is medically necessary?

What You Can Do

- Share your story with elected officials and urge your state legislators to require insurers to use medical necessity criteria that are externally validated and consistent with generally accepted standards of care.
- Educate yourself about MH/SUD parity and your plan's appeals process for medical necessity denials.
- Find additional resources and file complaints at <https://ParityRegistry.org>

About The Kennedy Forum

Just as President Kennedy rallied the nation to dream big and set audacious goals 50 years ago, The Kennedy Forum in Illinois is working toward lasting change in the way mental health and addictions are considered and treated. Our mission is to end stigma against mental health and substance use disorders in both attitudes and practice. We believe that strong, bold leadership, strategic collaboration with partners and concerted action, it is possible to build a future with a health system that fully recognizes that the brain is part of the body and all persons are treated with dignity. Join us at www.thekennedyforumillinois.org

RESOURCES

- National Council for Behavioral Health toolkit for upholding generally accepted standards of care: <https://www.thenationalcouncil.org/standards-of-care/>
- Filing an appeal based on a parity violation: <https://www.thekennedyforum.org/app/uploads/2017/09/20170615-The-Kennedy-Forum-Filing-an-Appeal-Issue-Brief-Final.pdf>
- The Kennedy Forum statement on the Wit Decision: <https://www.thekennedyforum.org/blog/unitedhealthcare-defective-criteria-reject-coverage-for-mental-health-addiction-federal-court-finds/>

ⁱ *Wit v. United Behavioral Health*, 2019 WL 1033730 (N.D.CA Mar. 5, 2019)

ⁱⁱ <https://www.zuckerman.com/news/press-release/federal-court-rules-unitedhealth-group-subsiary-illegally-denied-mental-health-and-substance-use>

ⁱⁱⁱ <https://www.end-opioid-epidemic.org/wp-content/uploads/2019/06/ARC-Issue-Brief-Wit-v-United-Behav-Health-March-2019-FINAL.pdf>