

# Is Your Insurance Company Breaking the Law?

written by Kathleen M. Pike, PhD

May 17, 2019

*Quite possibly. For the more than 50,000 individuals who were denied insurance coverage for mental health and addiction treatment in a recent landmark case, the answer was definitively “yes.”*



[Photo Credit](#)

*Health insurance companies are required by law to provide coverage for mental illness and substance use disorders, and Americans are required by law to have health insurance. So, what's up?*

## **1. The Case.** [Wit, et. al. v. UnitedHealthcare and Alexander, et al. v. United Behavioral Health \(UBH\).](#)

Representing more than 50,000 patients and their families, these two lawsuits were consolidated and brought before Magistrate Judge Joseph C. Spero of the U.S. District Court for the Northern District of California. The crime: systematic denial of coverage for individuals with mental health and substance use disorders.

**2. The verdict.** By applying flawed, internally developed guidelines, UBH failed its beneficiaries by violating its fiduciary obligations as specified by the Employee Retirement Income Security Act (ERISA). Further, [D. Brian Hufford of Zuckerman Spaeder](#) and [Meiram Bendat of Psych-Appeal](#), argued that UBH practices were “unreasonable and an abuse of discretion” and “infected” by financial incentives meant to restrict access to care. It was decided that UBH systematically denied coverage based on the use of “medical necessity” criteria that overemphasize acute mental health and substance use disorder symptoms, while disregarding the reality that in many cases such conditions are chronic and/or complex.

**3. Is insurance denial a common problem?** Yes, UBH is [far from alone](#) in this practice. Just think about the fact that almost 30% of mental health and addiction claims are denied - more than twice as many as general medical care claims. The most common reason for the denials is that mental health and addiction treatment was not perceived to be a “medical necessity.”

**4. But what about the 2008 Federal Parity law?** Yes, the passage of the [Mental Health Parity and Addiction Equity Act of 2008](#) made it mandatory that mental health claims receive coverage that is on par with other medical claims. But not all insurers are following the law. Many factors contribute to the situation. Operational

definitions of “parity” have been lacking, and the behavioral health field has lagged in setting standards for determining what “medical necessity” means for mental health and addictions treatment. We, as consumers, have come to expect that we will need to pay out of pocket for mental health and substance use services because so many mental health providers do not “participate” in insurance or insurers do not cover the care. And insurance companies have calculated that it is less expensive to deny coverage and pay the occasional penalty since the majority of beneficiaries do not fight back when they receive a denial of services.

**5. Don’t Deny Me.** This is the platform launched by [The Kennedy Forum](#) where you can register your experience of coverage denial for mental health or addictions treatment. Other organizations focused on this issue include [NAMI](#), [Wounded Warrior Project](#), [National Eating Disorders Association](#) and the [Legal Action Center](#). National evidence-based guidelines exist for outpatient, intensive outpatient, and residential treatment of mental health and substance use disorders. As more and more people go public with their denials, the legal system will have the necessary material to challenge the practice of denying care that meets these national standards.

*This is a huge step and a landmark case for mental health parity. But it is even bigger than that. When we talk about legal decisions, let’s not forget that we are talking about the lives of individuals and families that are forever impacted. Wit, Alexander and the tens of thousands of individuals involved in this case have moved us along in clearing a path to the day when we all get the care that is our legal right.*