

Pivotal ERISA Case Stalls Amid Mental Health Crisis

By **Gianna Ferrarin**

Law360 (June 11, 2024, 3:24 PM EDT) -- Amid a nationwide mental health crisis and growing demand for related insurance coverage, a landmark case involving thousands of claims denied by United Behavioral Health is facing a new hurdle at the Ninth Circuit.

The outcome of the long-running Employee Retirement Income Security Act case will decide the future of nearly 70,000 insurance claims from patients challenging guidelines used by UBH to make coverage determinations for those experiencing suicidal ideation, substance use disorders and other kinds of mental health conditions.

In recent weeks, the insurance giant and plaintiffs have traded arguments at the Ninth Circuit over whether one of the two claims for relief is within the scope of proceedings now back in front of a district court.

As the litigation approaches its 10-year anniversary, attorneys say the stakes of the case have risen, particularly in the wake of the COVID-19 pandemic.

"The need for care has increased so much, and yet most people go without care or experience serious delays or gaps in their care," Abbi Coursolle, a senior attorney at the National Health Law Program, told Law360. "That's why this case is so important, and why ensuring that people have real access to medically necessary behavioral healthcare is so important."

Wins and Losses Amid Mental Health Crisis

The case began in 2014, when patients accused UBH of breaching its fiduciary duty to plan participants through its use of overly restrictive coverage guidelines for mental illness and substance use disorder treatment.

Plaintiffs alleged that, because of these guidelines, they were illegally denied coverage under employer-provided health plans administered by UBH and regulated by ERISA.

The plaintiffs scored wins in the case in **2019** and **2020**, when a California federal court ruled that financial incentives "infected" UBH's development of mental health coverage guidelines and ordered the insurer to reprocess tens of thousands of patient claims.

But in years of appellate proceedings following that decision, plaintiffs have repeatedly seen their victory dissected by the Ninth Circuit. Since 2022, the circuit court has issued three decisions reversing patients' wins in the case to different extents.

The National Health Law Program, which advocates for the health rights of low-income and underserved individuals, is one of **several industry groups** that have weighed in on the case in amicus briefs.

Along with the National Association for Behavioral Healthcare, the American Hospital Association, the Kennedy Forum and others, NHLP has urged the Ninth Circuit to recognize the case's significance in light of a worsening mental health crisis in the U.S.

Pointing to an increased need for behavioral health services exacerbated by the pandemic, the groups have emphasized the impact of coverage denials on patients' ability to access care.

Annual drug overdose deaths climbed to over 109,000 in 2022, up from roughly 71,100 in 2019, according to the U.S. Centers for Disease Control and Prevention. This count has remained above 100,000 since 2021. Meanwhile, suicide rates jumped about 36% between 2000 and 2021, according to the CDC.

Insurance claims for mental health treatment have risen in step with this, increasing by 83% from 2019 to 2023, according to LexisNexis Risk Solutions.

A Lengthy Appellate Journey

The case has followed a convoluted path since UBH first **challenged** its district court loss on both of the ERISA claims and a sweeping set of remedies ordered by the court.

In a pair of rulings in 2019 and 2020, U.S. Magistrate Judge Joseph C. Spero found that UBH abused its discretion in developing guidelines for behavioral healthcare coverage and certified three classes of beneficiaries bringing breach of fiduciary and denial of benefits claims.

The judge subsequently ordered the reprocessing of roughly 67,000 denied claims and appointed a special master to oversee UBH's compliance with new guidelines for 10 years.

Following **two opinions** largely erasing those orders, the Ninth Circuit tempered its reversals in its third and **latest opinion** from August 2023. The panel upheld plaintiffs' class certification on their breach of fiduciary duty claim but reversed certification on the denial of benefits claim.

With the remainder of the case sent back to the district court, those proceedings are **on pause** thanks to a January petition by UBH arguing that, on remand, the district court defied portions of the panel's August ruling. The parties are now sparring over what issues the panel intended the district court to consider.

With the case currently in limbo, attorneys told Law360 that fundamental questions remain up in the air surrounding plaintiffs' ability to challenge insurance coverage denials as a class; the viability of claims reprocessing as a remedy under ERISA; and what obligations UBH has to consider generally accepted standards of care when evaluating claims.

Andrew Oringer, a partner and general counsel at the Wagner Law Group, highlighted the importance of the remaining class certification issues.

"The headline issue here to me most likely is going to be the extent to which the court will allow an aggregation of thousands of claims for purposes of deciding whether or not reprocessing of those claims needs to happen," Oringer told Law360. "I think that's going to be where the rubber hits the road."

Class Questions on Ninth Circuit Decision

Despite the Ninth Circuit reversal of class certification on the denial of benefits claim, UBH and patients are now arguing over whether that ruling left open the possibility for plaintiffs to adjust their proposed denial of benefits classes.

In an opposing brief, UBH said the circuit court signaled "**no intent**" to leave any portion of the denial of benefits class intact. Plaintiffs say the ruling **left it up** to the district court to decide whether errors in certifying that class can be cured by excluding class members the court deemed ineligible for reprocessing.

This question is particularly important in light of a **new stance** on claims reprocessing that the Ninth Circuit took in its August opinion. To the surprise of some ERISA attorneys, the panel had ruled in prior opinions that reprocessing was not a remedy under ERISA that justified class treatment.

In August, however, the court clarified that reprocessing is available for individuals who can show their claims were denied based on the wrong standard and that they might be entitled to benefits under the proper standard.

If the Ninth Circuit allows the district court to consider whether narrower classes align with these constraints, plaintiffs may have the opportunity to demand classwide reprocessing on their denial of benefits claim.

The stakes are high for both sides on this issue, Oringer told Law360.

"Particularly after COVID, which really accentuated the mental health problems of a lot of people, there are people that are very concerned that mental health claims are not being properly adjudicated and that procedural decisions like this on class certification could make it harder for participants to turn that around," Oringer said.

But for insurers and plan administrators, Oringer noted, class certification and court-ordered reprocessing would signal a massive administrative and financial burden. In his practice, Oringer counsels employers and other corporate clients on ERISA matters.

"What they don't want is to be told that their procedures are defective for everybody, and then have to reprocess everybody," Oringer said. "They want to live in a world where they're dealing with individual participants, not with tens of thousands."

Standards of Care for Mental Health

Another major question in the case involves how UBH's coverage guidelines align with generally accepted standards of care, or GASC.

Patients often face challenges in getting coverage for care needed to stabilize their behavioral condition, J.J. Conway, a longtime plaintiffs side ERISA attorney, told Law360. He said insurers often prioritize acute treatment over stabilization and, as a result, may go against widely held medical standards.

"The idea behind [behavioral] medical treatment is to actually move the patient out of the facility and have them be able to have a successful independent living situation post-treatment," Conway said.

"And so where this comes up in conflict with administrative guidelines that are used by insurance companies is — it might be a six-month stay that a patient needs, and in the guidelines that are being applied, there may be no way to approve a six-month stay."

In its August decision, the Ninth Circuit ruled that the health plans did not mandate UBH's guidelines to be "coextensive" with generally accepted standards of care.

While the plans required treatment to be consistent with these standards in order to be covered, they "did not compel UBH to cover all treatment that was consistent with GASC," the panel said.

In the remanded proceedings following this ruling, however, plaintiffs and UBH have argued over whether the district court ever ruled in the underlying case that UBH's coverage must be coextensive with generally accepted standards of care.

Though several key issues remain unresolved in the case, the district court has also highlighted elements of its landmark rulings that the Ninth Circuit preserved.

In its August opinion, the panel did not disturb Judge Spero's factual findings that UBH abused its discretion by inaccurately representing generally accepted standards of care in its guidelines and had a financial conflict of interest because it was incentivized to keep benefit expenses down.

Like Conway, Coursolle of NHLP emphasized the significance of court decisions on generally accepted standards of care and their role in how individuals access treatment.

"There has to be some relationship to whatever decision-making process about care those decision-makers are using and a clinical idea of what is medically necessary," Coursolle said.

"The basic idea, when you distill it down, is just that people should have access to the care that they need," Coursolle added.

Counsel for the plaintiffs declined to comment. Counsel for UBH did not respond to a request for comment.

The case is *United Behavioral Health v. U.S. District Court for the Northern District of California San Francisco*, case number 24-242, in the U.S. Court of Appeals for the Ninth Circuit.

The district court case is *Wit et al. v. UnitedHealthcare Insurance Co. et al.*, case number 3:14-cv-02346, in the U.S. District Court for the Northern District of California.

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