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Alerts

Insurance Coverage During Involuntary Legal Holds Under California Law

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Mental health patients are sometimes hospitalized under a legal hold allowing their temporary hospitalization. Medical providers seeking payments for services provided to patients subject to a legal hold argue, in both the arbitration and litigation context, that the existence of the hold means that the treatment must be covered because the hold renders any provided treatment as medically necessary, emergent, or has some other effect rendering treatment payable. Both an arbitrator and a federal court judge recently rejected such arguments, ruling in favor of insurers that legal hold status does not confer coverage.

In California, the law governing the involuntary civil commitment of individuals under legal holds or subsequent conservatorships is the Lanterman-Petris-Short Act ("LPS"), found at California Welfare and Institutions Code ("WIC") Sections 5000 et. seq. Under the LPS, an individual who—due to mental illness—poses a danger to self, a danger to others, or who is gravely disabled may be involuntarily confined. WIC §5002(b). The intent of LPS was to end inappropriate lifetime commitment of people with mental illness and firmly establish the right to due process, while significantly reducing state institutional expense. A person may first be subject to a §5150 hold and held in a psychiatric hospital against their will for up to 72 hours if the hold is determined to be necessary by the treating physician. WIC §§5150- 5152. A person is considered civilly "gravely disabled" if the person is a danger to self or others, or as a result of mental disorder, is unable to provide for his basic personal needs of food, clothing, or shelter. *Riese v. St. Mary's Hospital & Medical Center*, (1987) 209 Cal. App.3 d 1303. The treating physicians can continue the involuntary hold for 14 days and then 30 days if they deem it necessary, and the patient does have certain rights to contest the hold. *See*, *e.g.*, §§ 5250, 5260.

Providers now sometimes argue that the treatment they provide to patients under a legal hold is medically necessary, as a matter of law, and therefore must be reimbursed by the patient's insurer. If successful, that argument would seriously upend the foundation of insurance law because it would, in effect, make the treating physician the arbiter of whether there is coverage. It is the treating physician who determines whether and for how long a patient's legal hold is to last. Courts have held in other contexts that a treating physician's determination is not conclusive of coverage and instead coverage decisions are left to the insurer of the plan or its claim administrator, only to be reviewed by the courts or neutral third parties. *Sarchett v. Blue Shield of California*, (1987)

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43 Cal.3d 1, 9. The argument also runs afoul of the language in most health insurance policies, which base coverage on treatment provided to the insured. The LPS, however, does not require or concern treatment of the patient's condition, but instead simply confers confinement, and therefore LPS decisions are divorced from coverage. Finally, the LPS itself includes a provision at §5012 that specifically provides that the fact that a person has been taken into custody under the LPL may not be used in the determination of that person's eligibility for payment or reimbursement for mental health or other health care services.

There is a lack of authority interpreting coverage obligations for patients under a legal hold. Hinshaw attorneys were able to defeat a provider's arguments that coverage was available for treatment provided during a legal hold in a recent arbitration. The provider argued that §5012 was enacted to protect patients, not health insurers, and is meant to prohibit health insurers from denying coverage for services rendered during a legal hold. The arbitrator, a former California Appellate Court Judge, determined that the statute prohibits anyone from using the custody status to determine eligibility for benefits. Thus, the claimant cannot use custody status to establish eligibility and insurer cannot use custody status to deny eligibility. The fact that a patient was under a legal hold could not mandate reimbursement or a determination that any services rendered to the held person were medically necessary.

Similarly, in a recent California federal court case (*disclaimer:* Hinshaw's Dennis Rolstad, Robert Bohner and Misty Murray represented Beacon in this case), the provider argued that healthcare provided to mental health patients subject to a legal hold qualified as emergency services that must be paid at the provider's "reasonable and customary fees" for such services. In granting summary judgment for the health plan's payor, the court found that §5012 precludes a patient's legal hold status from consideration when determining that patient's eligibility for payment or reimbursement for mental health or other health care services under any health care service plan, and therefore the provider could not rely on the patient's hold status to support its argument that such healthcare is necessarily rendered on an emergency basis. *The Regents of the University of California v. Beacon Health Options, Inc.,* 8:19-cv-01296-AB (C.D. Cal. Sept. 10 2020).

Thus, while there remains a dearth of precedent, at least one arbitrator and a federal court have determined that providers may not invoke the legal hold status of patients in support of their fee claims.