



Alerts

Sparsely Pleaded Parity Act Lawsuit Survives Motion to Dismiss

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The LHD/ERISA Advisor

In *Nathan W. v. Anthem Bluecross Blueshield of Wisconsin*, 2021 U.S. Dist. LEXIS 42127 (M (D. Utah Mar. 5, 2021), a federal court held that conclusory allegations of discriminatory medical necessity criteria were sufficient to defeat a motion to dismiss a Mental Health Parity Act claim.

An ERISA plan (Plan) participant sought coverage for in-patient medical care and mental health treatment that his son received at two residential treatment facilities in Utah. The son had a longstanding history of mental health and behavioral issues, which had escalated to a point where he was expelled from one school and was forced to withdraw from another prior to entering the treatment facilities.

The Plan's claims administrator denied coverage on the grounds that the son had not tried lower levels of care, such as an intensive outpatient program, and that the record showed insufficient evidence of imminent harm necessitating residential care. After exhausting his administrative remedies, the father, on behalf of his son (Plaintiffs), sued the Plan and its insurer (Defendants) in federal court under, inter alia, the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act (the Parity Act) (29 U.S.C. § 1185a), which seeks to eliminate disparities in health insurance coverage for mental health as compared to other medical or surgical conditions.

Specifically, Plaintiffs alleged that the Plan reviewers improperly used "acute" medical necessity criteria such as requiring the threat of imminent harm, in order for the claimant to qualify for "non-acute" residential treatment for mental health conditions when such strict standards were not applied for analogous "sub-acute" medical or surgical care. This has become a common line of attack: claimants challenging coverage denials under the Parity Act will often argue that plans have applied unfairly rigorous medical necessity criteria for mental health treatment, whereas the coverage standards are lower for medical/surgical treatments.

To state a claim for a Parity Act claim, a plaintiff must (1) identify a specific treatment limitation on mental health benefits; (2) identify medical/surgical care covered by the plan that is analogous to the mental health/substance abuse care for which the plaintiffs seek benefits; and (3) plausibly allege a disparity between the treatment limitation on mental health/substance abuse benefits as compared to the limitations that defendants would apply to the covered medical/surgical analog. *Johnathan Z. v. Oxford Health Plans*, 2020 U.S. Dist. LEXIS

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21968, at *39 (D. Utah. Feb. 7, 2020).

Defendants moved to dismiss on two grounds. First, Defendants argued that Plaintiffs failed to plead the first element because they did not identify any Plan terms, or any treatment limitation at all, to support their allegations. Second, Defendants argued that Plaintiffs failed to plead the third element because the operative complaint alleged only conclusory allegations of a coverage disparity between mental health and medical/surgical treatments.

The court disagreed with both arguments. As to the first element, the court held that the Parity Act does not require plaintiffs to plead specific Plan terms, especially when relevant documents may not be available before discovery commences. Instead, it was sufficient for the *Nathan W.* Plaintiffs to allege that Defendants' "reviewers improperly utilized acute medical necessity criteria to evaluate the nonacute treatment that [the son] received" and to cite the basis for denial set forth in Defendants' letters. The court further held that Plaintiffs had satisfied the third element by alleging that "[t]he Plan does not require individuals receiving treatment at sub-acute facilities for medical/surgical conditions to satisfy acute medical necessity criteria in order to receive plan benefits" and by identifying skilled nursing facilities as a "sub-acute" facility.

Key Takeaways

Accordingly, the court denied the Defendants' motion to dismiss. The *Nathan W.* case reflects a national trend of federal courts allowing sparsely pleaded Parity Act claims to proceed past the pleading stage. Employers, insurers, and plan administrators should be aware of this trend when considering whether to challenge a Parity Act claim on the pleadings.