

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

WIT, *et al.*, Plaintiffs

v.

UNITED BEHAVIORAL HEALTH
(operating as OPTUMHEALTH
BEHAVIORAL SOLUTIONS), Defendant

Civil Action No. 3:14-cv-02346-JCS

NOTICE OF PARTIAL DECERTIFICATION OF CLASS ACTION

TO: Any member of a health benefit plan governed by ERISA whose request for coverage of residential treatment services for a mental illness or substance disorder was denied by UBH between May 22, 2011 and June 1, 2017, based on any ground other than application of UBH's Level of Care Guidelines or UBH's Coverage Determination Guidelines, where such request was denied at the administrative appeal level of UBH's coverage determination process based, in whole or in part, on UBH's Level of Care Guidelines or UBH's Coverage Determination Guidelines, and: 1) to whom an individual notice of this action was not sent; and 2) who did not receive actual notice of this action before the applicable deadline to opt out of the class from the website maintained by Plaintiffs' counsel as part of the official notice plan approved by the Court.

A federal court authorized this notice. This is not a solicitation from a lawyer.

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY

1. Purpose of this Notice

The Court has ordered this Notice to be published to let affected individuals know about a recent change in the definition of the Classes certified in the above-captioned lawsuit, which may affect their legal rights.

2. Who is Affected by this Change?

This Notice applies to you if all of the following are met:

- You sought coverage for residential treatment services for a mental illness or substance use disorder; and
- UBH denied your request for coverage between May 22, 2011 and June 1, 2017 on any ground other than application of UBH's Level of Care Guidelines or UBH's Coverage Determination Guidelines; and
- You, or someone acting on your behalf, filed an administrative appeal of UBH's initial denial; and
- UBH upheld its initial denial in whole or in part; and
- UBH's decision on the administrative appeal was, in whole or in part, based upon UBH's Level of Care Guidelines or UBH's Coverage Determination Guidelines; and
- You did not receive actual notice of this lawsuit and the opportunity to opt-out before July 27, 2017.

3. About the Lawsuit

This is a civil lawsuit filed in the United States District Court for the Northern District of California, alleging that defendant United Behavioral Health, or "UBH" (operating as OptumHealth Behavioral Solutions), violated ERISA and certain state laws by developing and applying internal guidelines that were inconsistent with the terms of the class members' health insurance plans.

On September 19, 2016, the Court ruled that the case should be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure and certified two Classes: the *Wit* Guidelines Class and the *Wit* State Mandate Class. Following a trial in October 2017, the Court ruled in Plaintiffs' favor on March 5, 2019. The Court's merits ruling defined the *Wit* Guidelines Class as follows:

Any member of a health benefit plan governed by ERISA whose request for coverage of residential treatment services for a mental illness or substance disorder was denied by UBH, in whole or in part, between May 22, 2011 and June 1, 2017, based upon UBH's Level of Care Guidelines or UBH's Coverage Determination Guidelines. The *Wit* Guideline Class excludes members of the *Wit* State Mandate Class defined below.

The Court's March 5, 2019 ruling defined the *Wit* State Mandate Class as follows:

Any member of a fully-insured health benefit plan governed by both ERISA and the state law of Connecticut, Illinois, Rhode Island, or Texas, whose request for coverage of residential treatment services for a substance use disorder was denied by UBH, in whole or in part, within the Class period, based upon UBH's Level of Care Guidelines or UBH's Coverage Determination Guidelines, and not upon the level-of-care criteria mandated by the applicable state law. With respect to plans governed by Texas law, the *Wit* State Mandate Class includes only denials of requests for coverage of substance use disorder services that were sought or received in Texas. The Class period for the *Wit* State Mandate Class includes denials governed by Texas law that occurred between May 22, 2011 and June 1, 2017, denials governed by Illinois law that occurred between August 18, 2011 and [January 1, 2016], denials governed by Connecticut law that occurred between October 1, 2013 and June 1, 2017, and denials governed by Rhode Island law that occurred between July 10, 2015 and June 1, 2017.

4. Partial Decertification of the Class and How your Legal Rights Are Affected

On November 3, 2020, the Court amended the Class definitions set forth above by adding to each of them the following exclusion (the "Initial Administrative Denial Exclusion"):

In addition, with respect to remedies awarded under Rule 23(b)(3) of the Federal Rules of Civil Procedure only, the *Wit* Guideline Class excludes individuals who meet the requirement set forth in the first sentence of the class definition based only upon a denial at the administrative appeal level of UBH's coverage determination process and: 1) to whom an individual notice of this action was not sent; and 2) who did not receive actual notice of this action before the applicable deadline to opt out of the class from the website maintained by Plaintiffs' counsel as part of the official notice plan approved by the Court.

Therefore, members to whom the Initial Administrative Denial Exclusion applies are no longer class members in this lawsuit and their individual rights and claims are no longer being addressed or represented in this lawsuit.

Nothing in this Notice is an expression by the Court as to the merits of any claim(s) which a member excluded by the Initial Administrative Denial Exclusion may assert. This notice is intended merely to advise affected individuals of the partial decertification of the Classes.

If the Initial Administrative Denial Exclusion applies to you, and you believe that UBH violated the law by issuing its denial on appeal pursuant to its Guidelines, you may still file an individual claim or lawsuit against United Behavioral Health on your own. You should be aware that you may have a limited amount of time in which to do so before the statute of limitations bars your claim.

The Court stayed its decertification ruling until **120 days** after this Notice is published. This means that, 120 days after this Notice is published, the statute of limitations as to your individual claim(s), if any, will begin to run.

5. Additional Information and Inquiries

Additional information about the Action, including copies of the Court's merits ruling and decertification order, is available on the internet at: www.UBHGuidelinesClassAction.com.

The pleadings and other papers filed in the lawsuit are also available for inspection during business hours at the United States District Court, 450 Golden Gate Ave., 16th Floor, San Francisco, CA 94102.

Any questions you have concerning the matters contained in this Notice should be directed to Plaintiffs' Counsel or the Notice Administrator. **DO NOT CALL THE COURT OR UNITED BEHAVIORAL HEALTH.**

Plaintiffs' Counsel:

Caroline E. Reynolds
D. Brian Hufford
Jason S. Cowart
ZUCKERMAN SPAEDER LLP
1800 M Street, NW, Suite 1000
Washington, DC 20036
Tel: (202) 778-1800

Meiram Bendat
PSYCH-APPEAL, INC.
8560 West Sunset Boulevard, Suite 500
West Hollywood, CA 90069
Tel: (310) 598-3690

Class Administrator:

UBH Guideline Class Litigation
c/o A.B. DATA, LTD.
P.O. Box 173005
Milwaukee, WI 53217
Tel: (800) 985-7155